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INVITED ARTICLE

Interpolity Law and Jurisdictional Politics

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Abstract

Challenging the common assumption that legal misunderstanding was pervasive, this article analyzes jurisdictional politics as an element of "interpolity law"—a broad framework for legal interactions across polities and regions in the early modern world. It draws on recent research on jurisdictional politics to show how such an approach allows historians to avoid some of the familiar pitfalls associated with studies of legal pluralism. This approach provides clear methodological advantages over the study of global legal history as a function of multi-normativity. Political communities across the globe centered on internal and external conflicts on the nature and reach of legal authority. By focusing on jurisdiction as a touchstone of legal action and tracing how legal authority was produced through conflict, our approach treats legal pluralism as a valuable descriptive term rather than an analytical framework. The study of jurisdictional politics portrays state authority as potentially one among many forms of legal authority, and it brings into sharp focus continuities within and across pluri-political regions. By tracking broad institutional shifts that occurred when empires and states moved to assert power over multi-jurisdictional orders, the perspective informs new narratives about trajectories of regional and global legal order.

When a small English mission arrived in Japan in 1613, its leader, John Saris, requested a meeting with the retired shogun, Tokugawa Ieyasu. The negotiations that followed—between a newly formed East India Company and a Tokugawa military government still consolidating its control—were both extremely rapid and notably smooth. Saris presented a pre-prepared list of "Articles or demaundes" to Japanese officials, who rejected a single article that would have given English vessels permission to attack Chinese shipping and sell the captured cargo in local ports. The shogun ordered the remaining articles to be "passed under his great Seale."[1] They included a provision that if

[1] Ernest Satow, ed., *The Voyage of Captain John Saris to Japan* (London: Hakluyt Society, 1900), 131.

any "Englishmen commits an offense" he would be judged by the English commander, who would pronounce all "sentences … at [his] discretion."[2]

This quick agreement took place several centuries before Commodore Perry's expeditions to Japan and the eventual signing of the 1858 Treaty of Amity and Commerce between Japan and the United States. Most accounts of those events repeat an old trope: an insular Japan confronting exotic foreign visitors who arrived speaking an alien legal language. Yet as in 1613, the negotiations over extra-territorial rights occasioned little controversy, in part because both sides could draw on long experience with legal orders rife with divisions, layers, and jurisdictional tangles. As in the earlier encounter, Tokugawa officials agreed "without demur" to the jurisdictional divisions proposed by U.S. representatives.[3]

The tendency to exaggerate legal misunderstanding in global encounters, clearly present in descriptions of Perry's visits to Japan, has proven difficult to shake. Scholars looking for evidence of legal incommensurability readily find examples of confusion and discordance, and this material is then pressed into service to suggest the presence of intractable cultural divides, especially in the early stages of encounter. In fact, as Sanjay Subrahmanyam observes, most claims of "radical incommensurability" are proven "false on closer examination."[4] A more productive approach credits the strong evidence of mutual intelligibility and places jurisdictional tensions at the center of analysis. Conflicts over jurisdiction made up a set of broadly recurring practices of legal interaction across the early modern world.[5] Examining recurring jurisdictional arrangements as an element of what we call "interpolity law"—international law *avant la lettre*—allows us to tap rich veins of recent research on legal conflicts and strategies and to chart a way out of the labyrinth of problems associated with treating legal pluralism as an analytical framework rather than a descriptive term.[6]

[2] Derek Massarella and Izumi K. Tytler, "The Japonian Charters. The English and Dutch Shuinjō," *Monumenta Nipponica* 45, no. 2 (1990): 198.

[3] Mario Emilio Cosenza, ed., *The Complete Journal of Townsend Harris First American Consul General and Minister to Japan* (Rutland, VT: C.E. Tuttle, 1959), 316–17. For an important discussion of these negotiations that emphasizes the lack of controversy on key points, see Michael R. Auslin, *Negotiating with Imperialism: The Unequal Treaties and the Culture of Japanese Diplomacy* (Cambridge: Harvard University Press, 2006), 11–33.

[4] Sanjay Subrahmanyam, *Courtly Encounters: Translating Courtliness and Violence in Early Modern Eurasia* (Cambridge: Harvard University Press, 2012), 29. Compare Bernard Cohn, *Colonialism and Its Forms of Knowledge: The British in India* (Princeton: Princeton University Press, 1996), 18–19.

[5] Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400 to 1900* (Cambridge: Cambridge University Press, 2001), 1–30.

[6] Lauren Benton and Adam Clulow, "Legal Encounters and the Origins of Global Law," in *Cambridge History of the World*, vol. 6, eds. Jerry Bentley, Sanjay Subrahmanyam and Merry Wiesner-Hanks (Cambridge: Cambridge University Press, 2015), 80–100. Another key element of interpolity law was protection; see Lauren Benton and Adam Clulow, "Webs of Protection and Interpolity Zones in the Early Modern World," in *Protection and Empire: A Global History*, eds. Lauren Benton, Adam Clulow and Bain Atwood (Cambridge: Cambridge University Press, 2017), 49–71.

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Jurisdictional disputes were readily intelligible to members of diverse political communities in the early modern world, from empires to micropolities. This is not to say that jurisdictional arrangements were stable. The limits and force of legal authority over bodies, territory, or actions were continually open to challenge and redefinition. Extra-territorial clauses in treaties and other objects of jurisdictional tension could quickly become highly politically charged, as in fact occurred in Japan in the decades after the 1858 treaty when they came to be viewed as unacceptable incursions into domestic sovereignty. Still, "jurisdictional politics," or "conflicts over the preservation, creation, nature, and extent of different legal forums and authorities," operated as a powerful organizing element of legal interactions across regions and centuries.[7] Shifts in jurisdictional arrangements prepared the way for global transformations, including prohibition regimes to contain slave trading and piracy, imperial projects of regional and global ordering, and claims about sovereign states as exclusive members of the international legal community.

Behind the focus on jurisdictional politics lies a perspective on law as a flexible framework for negotiation and conflict rather than an assemblage of sets of norms or rules. The approach contrasts with recent attempts to study legal pluralism as a function of multiple "normativities" or "multinormative knowledge."[8] Although historical actors often referenced norms as integral to semi-autonomous systems of law, they consistently did so in disputes over legal authority—its definition and location, and its capacity to declare, enforce, and reinforce laws and procedures.[9] Such conflicts operated both within and across polities. Historians ignore the relation between norms and authority at their peril. As Robert Cover pointed out decades ago, "normative worlds" depended on the imagination of systems that relied on shared commitments and operated without force, but legal meanings always referenced violence, and interpretation always developed "in the shadow of coercion."[10]

Different processes of jurisdictional politics have been well documented in studies of law in empires. Recent scholarship has revealed sophisticated forum shopping by litigants, sharp conflicts over imperial and indigenous legal authority, and the gradual influence of jurisdictional disputes on states

[7] Benton, *Law and Colonial Cultures*, 10.

[8] For a discussion of this approach and its challenges, see Lauren Benton and Richard Ross, "Empires and Legal Pluralism: Jurisdiction, Sovereignty, and Political Imagination in the Early Modern World," in *Legal Pluralism and Empires: 1500–1850*, eds. Lauren Benton and Richard Ross (New York: New York University Press, 2013), 1–20. For examples of norm-centered approaches to legal pluralism and use of the term "normativities," see Manuel Bastias Saavedra, ed., *Norms beyond Empire: Law-Making and Local Normativities in Iberian Asia (1500–1800)* (Leiden: Brill, 2021); and Thomas Duve, "What is Global Legal History?," *Comparative Legal History* 8, no. 2 (2020): 73–115, especially 115, where Duve proposes the term "multinormative knowledge." On the origins of norm-centered approaches to law and legal pluralism, see Natasha Wheatley, *The Temporal Life of States: Central Europe and the Transformation of Modern Sovereignty* (Princeton: Princeton University Press, 2023).

[9] For a reinterpretation of a case of legal pluralism that refocuses analysis on the constructed jurisdiction of magistrates, see Clifford Ando, "The Rise of the Indigenous Jurists," in this volume.

[10] Robert M. Cover, "*Nomos* and Narrative," *Harvard Law Review* 97, no. 1 (1983): 12, 40.

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and sovereignty.[11] Such studies trace how participants in jurisdictional conflicts improvised, uncovering complex legal strategies that were sometimes based on snippets of information about the content of law and the way courts operated. Historical actors invoked law and legal doctrines imaginatively and selectively, while unsystematically claiming the force of norms.[12] Yet unlike pronouncements about norms, the effects of conflicts over jurisdiction left clear archival and institutional traces. It is possible to connect their history to systemic changes in regional and global order.

Attention to patterns of jurisdictional politics blunts two familiar lines of critique of legal pluralism. Some scholars complain that studies of legal pluralism err in situating all legal behavior in relation to state law and institutions. Others object that by expanding the category of non-state law, studies of legal pluralism invite "over-inclusiveness" and reproduce a tendency to encompass "phenomena that do not appear to be law."[13] The recurrence of these observations makes it difficult to read an essay on legal pluralism without some sense of déjà vu.[14] This wearisome repetition suggests it may be time to replace "legal pluralism" as a field of analysis with a new focus on interpolity law, including jurisdictional politics, in the history of the early modern world. By highlighting jurisdiction as a touchstone of legal action and focusing on the

[11] Examples of recent studies of jurisdictional politics include Lisa Ford, *Settler Sovereignty: Jurisdiction and Indigenous People in America and Australia, 1788–1836* (Cambridge: Harvard University Press, 2011); Mitra Sharafi, "The Marital Patchwork of Colonial South Asia: Forum Shopping from Britain to Baroda," *Law and History Review* 28, no. 4 (2010): 979–1009; Priyasha Saksena, "Jousting Over Jurisdiction: Sovereignty and International Law in Late Nineteenth-Century South Asia," *Law and History Review* 38, no. 2 (2020): 409–57.

[12] Critics of a conflict-driven approach to law and legal history often misrepresent it as offering a stark separation between practice and theory; for example, Andrew Fitzmaurice, "Context in the History of International Law," *Journal of the History of International Law* 20, no. 1 (2018): 5–30; and Duve, "What is Global Legal History?." The approach is also poorly understood in some of the philosophical literature on normativity, which assumes that an insistence on social practice as a starting point for analysis equates to collapsing "is" and "ought," or insisting that all norms derive from social action. See Sylvie Delacroix, "Understanding Normativity," *Revus* 37 (2019): 17–28. Our approach has more in common with Pierre Bourdieu's insistence on the creation of meaning through cultural practice: *Outline of a Theory of Practice* (Cambridge: Cambridge University Press, 1977); see also Lauren Benton, "Beyond Anachronism: Histories of International Law and Global Legal Politics," *Journal of the History of International Law* 21 (2019): 7–40. The tendency of historical actors to either adopt positions of studied ignorance or to feign mastery of legal rules makes it methodologically difficult, if not impossible, to discern the depth of commitment to norms or track knowledge about them. Lauren Benton, "In Defense of Ignorance: Frameworks for Legal Politics in the Atlantic World," in *Justice in a New World: Negotiating Legal Intelligibility in British, Iberian, and Indigenous America*, eds. Brian Owensby and Richard Ross (New York: New York University Press, 2018), 273–90.

[13] Brian Z. Tamanaha, *Legal Pluralism Explained: History, Theory, Consequences* (Oxford: Oxford University Press, 2021), 11. See also Benton and Ross, "Empires and Legal Pluralism," 1–20 and Ido Shahar, "State, Society, and the Relations between Them: Implications for the Study of Legal Pluralism," *Theoretical Inquiries in Law* 9 (2008): 417–41.

[14] Almost all reviews of the perspective discuss two classic articles: Sally Engle Merry, "Legal Pluralism," *Law and Society Review* 22, no. 5 (1988): 869–96; and John Griffiths, "What is Legal Pluralism?," *The Journal of Legal Pluralism and Unofficial Law* 24 (1986): 1–55. See, for example, Tamanaha, *Legal Pluralism Explained*, 169–208.

construction of legal authority through conflict, the approach outlined in this article has many advantages. It presents state authority as potentially one among many different forms of legal authority. It brings into sharp focus continuities within and across pluri-political regions that reflected repeating arrangements of authority. And it generates new narratives about historical moments when empires and states moved to assert power over multi-jurisdictional orders and, in the process, transformed regional regimes and global legal order.

This article assembles evidence of these phenomena to demonstrate the promise of studying jurisdictional politics as an element of interpolity law. Widespread familiarity with jurisdictional politics within political communities facilitated movement across them by sojourners, officials, soldiers, settlers, merchants, captives, and others. The pervasiveness of multicentric jurisdictional orders made foreign legal communities at least minimally intelligible to outsiders. Precisely because jurisdictional politics operated at the threshold of domestic spheres and external relations, clusters of jurisdictional conflicts promoted synchronicity in institutional change across legally disparate settings. Europeans did not invent empires or states, and they did not design and then impose international order. A diverse array of legal actors engaged in conflicts over the legitimacy, location, and scope of legal authority, invoking as well as defying narratives about the West's singular "jurisgenerative" power.[15]

Patterns of Jurisdictional Politics

"Jurisdiction" refers broadly to the scope of legal authority—over persons, places, or categories of activity. For all their ascendant power, rulers and states were constructed within systems of multicentric jurisdictions in which the sovereign exercised authority within a jumble of often competing jurisdictions. As long-distance trade and imperial projects brought unprecedented movement across world regions, jurisdictional complexity provided a necessary and convenient framework to manage the ebb and flow of imperial power and to structure relations across polities.

In one common pattern, communities of merchants in foreign places retained jurisdiction over most of their own members' activities, including most (but seldom all) offenses and crimes. Merchants and imperial agents typically arrived with expectations and demands for some jurisdictional autonomy. In Asia and Africa, Portuguese officials as well as Dutch and English trading company agents asserted the right to adjudicate most cases involving their subordinates. These arrangements, often described as capitulations, were familiar to local rulers and officials. As with all jurisdictional arrangements, the scope of jurisdiction varied, and it changed in response to shifting power relations and diplomatic pressures.

Jurisdictional complexity was on bright display in the port cities of Southeast Asia. Melaka, one of the best-known examples, hosted a dizzying array of foreign merchants, including "Moors from Cairo, Mecca, Aden, Abyssinians, men of Kilwa, Malindi, Ormuz, Parsees, Rumes, Turks,

[15] This useful term comes from Cover, "*Nomos* and Narrative," 16.

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Turkomans, Christian Armenians, Gujaratees, men of Chaul, Dabhol, Goa, of the kingdom of Deccan, Malabars and Klings, merchants from Orissa, Ceylon, Bengal, Arakan, Pegu, Siamese, men of Kedah, Malays, men of Pahang, Patani, Cambodia, Champa, Cochin China, Chinese, [and] Lequeos...."[16] Rulers celebrated their own capacity to attract and host self-governing communities and the resulting economic vitality. In 1472, the king of the Ryukyu kingdom wrote to the sultan of Melaka celebrating the port city's reputation for cosmopolitan "virtues" and praising his capacity to rule without "distinctions among various peoples."[17] Like similar rulers, the sultan burnished his legitimacy by allowing cultural and religious diversity to flourish, causing "[m]erchant-travellers [to] flock to your country on each other's heels."

In the seventeenth century, such arrangements were increasingly regulated by treaty. In 1602, the newly formed English East India Company concluded an agreement with the sultan of Aceh granting the English "authority to execute justice on their owne men offending."[18] The Dutch East India Company (*Vereenigde Oostindische Compagnie* or VOC) signed dozens of similar treaties with Asian rulers, all repeating the same basic provision that offenders must be "condemned and punished by [their] own authorities."[19]

Treaties incorporating jurisdictional clauses did not map neatly onto distributions of power. In some cases, precisely because such practices were commonplace, Europeans were able to retain a measure of jurisdiction over their own subjects in Asian polities with vastly superior military resources. For example, the Dutch signed a 1623 treaty with the ruler of Safavid Persia placing offenses as serious as murder under the Company's jurisdiction if they involved Dutch merchants or sailors.[20] When they gained territories in Asia, European officials also ceded jurisdiction strategically, thereby reinscribing familiar arrangements. After establishing Batavia in 1619 on the ruins of the conquered port of Jayakarta, Governor-General Jan Pieterszoon Coen created the post of China captain (*Kapitan Cina*) to help administer the city's Chinese residents.[21] Across its commercial empire, the VOC followed the model of other Asian port cities by permitting communities of foreign merchants to adjudicate intra-communal disputes.

Jurisdictional schemata were never stable. Arrangements that initially preserved the jurisdiction of subordinate communities could shift quickly to the

[16] Tomé Pires, *The Suma Oriental of Tomé Pires: An Account of the East, from the Red Sea to Japan* (London: Hakluyt Society, 1944), 2:268.

[17] Atsushi Kobata and Mitsugu Matsuda, *Ryukyuan Relations with Korea and South Sea Countries: An Annotated Translation of Documents in the Rekidai Hoan* (Kyoto: A. Kobata, 1969), 114. For Melaka as a template for other cities, see Philip D. Curtin, *Cross-Cultural Trade in World History* (Cambridge: Cambridge University Press, 1984), 132.

[18] Clements Markham, *The Voyages of Sir James Lancaster, Kt., to the East Indies* (London: Hakluyt Society, 1877), 84.

[19] J. E. Heeres and F. W. Stapel, eds., *Corpus Diplomaticum Neerlando-Indicum*, 6 vols. (The Hague: Martinus Nijhoff, 1907–55), 1:52.

[20] Heeres and Stapel, eds., *Corpus Diplomaticum Neerlando-Indicum*, 1:189.

[21] Remco Raben, *Batavia and Colombo: The Ethnic and Spatial Order of Two Colonial Cities, 1600–1800* (PhD dissertation, Leiden University, 1996), 200.

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disadvantage of either guest or host community. Jurisdiction, after all, was a capacity that had to be demonstrated and performed; it was not fully defined by rules, which could in any case never be sufficiently specific to cover all cases. Most historical actors found such ambiguity advantageous. It provided openings for merchant diaspora communities to settle and allowed rulers to expand trade without ceding anything of value. Everyone knew that claims to jurisdiction could protect only up to a point and that such agreements could fail suddenly.

The open-ended nature of jurisdictional claims made them useful aids in campaigns of conquest. In early European expeditions in the Americas, symbols expressing the exercise of jurisdiction, from public trials to punishments, marked possession and signaled the intent to settle and rule—and the grounds for resistance.[22] The founding of cities extended Spanish crown control while also establishing the political power of colonial elites, goals often in sharp tension. In 1525, for example, the founding of a new town, Cáceres de la Frontera, in what is now Nicaragua, was accompanied by symbols of legal authority, including erecting a gallows and pillory and forming a town council (*cabildo*). The territory's governor, Pedrarias Dávila, sent troops to demolish the town because the area fell within his jurisdiction.[23] Both factions claimed to be advancing the interests of the crown, and each accused the other of illegally usurping the powers of the king while trumpeting their effective representation of the crown in diplomacy with nearby indigenous groups.[24]

In another typical pattern, conflict over markers of jurisdiction played to both internal and external audiences and could serve diverse political purposes. To converse with indigenous peoples exhibited the "power necessary to claim, maintain and territorialize jurisdiction."[25] Signs of indigenous jurisdiction might double as a challenge and a symbolic concession to imperial authority.[26] In some cases, indigenous groups pulled imperial representatives into performances of jurisdiction designed for multiple audiences. In the Banda islands, which were coveted for their production of precious spices like nutmeg, local elites staged an elaborate theater of jurisdictional submission designed to bind their lands to the English monarch via the handing over "the earth of the countrye, sticks and stones."[27] Establishing such connections served to deflect Dutch East India Company claims to the same territory.

[22] Lauren Benton and Benjamin Straumann, "Acquiring Empire by Law: From Roman Doctrine to Early Modern European Practice," *Law and History Review* 28, no. 1 (2010): 1–38; Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge: Cambridge University Press, 2010), 57.

[23] Jorge Díaz Ceballos, "New World *civitas*, Contested Jurisdictions, and Inter-cultural Conversation in the Construction of the Spanish Monarchy," *Colonial Latin American Review* 27, no. 1 (2018): 30–51.

[24] Díaz Ceballos, "New World *civitas*," 37.

[25] Díaz Ceballos, "New World *civitas*," 44.

[26] Bianca Premo and Yanna Yannakakis, "A Court of Sticks and Branches: Indian Jurisdiction in Colonial Southern Mexico and Beyond," *American Historical Review* 124, no. 1 (2019): 28–55.

[27] William Foster, ed., *The Journal of John Jourdain, 1608–1617: Describing His Experiences in Arabia, India, and the Malay Archipelago* (Cambridge: Hakluyt Society, 1905), 329.

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If jurisdiction could be a useful tool of imperial power, it could also create dangerous expectations, and empires sometimes found reasons to limit their claims to jurisdiction over sojourning subjects. The English government disassociated itself from unruly interlopers and raiders in the Indian Ocean at the turn of the seventeenth century, even as Mughal representatives in London urged them to assume jurisdiction over pirates.[28] Seeking to avoid being drawn into conflicts far from home, the Tokugawa regime issued a stream of letters in the first two decades of the seventeenth century that effectively relinquished jurisdiction over Japanese subjects operating overseas. Instead, officials across a range of southeast Asian polities were encouraged to "follow the laws of your country and punish [Japanese merchants] appropriately."[29]

Local authorities conformed to the jurisdictional clauses of treaties selectively—and sometimes not at all. Officials chose frequently to override extraterritorial clauses when an offense was deemed serious enough. European officials complained vociferously about violated legal privileges and then did the same when confronted by what they perceived as dangerous crimes. In 1623, for example, the Dutch governor of Amboina insisted he had jurisdiction over a mixed group of British merchants and Japanese mercenaries whom he accused of plotting to eject the Company from the island. By the time the dust settled, twenty-one alleged conspirators had been executed, triggering a long dispute as English writers, company officials, and the king decried the VOC's "pretended sovereignty and jurisdiction in the East Indies."[30]

Three insights emerge from this survey of patterns in the fluid jurisdictional politics. One is that the exercise of jurisdiction was inseparable from its definition. Officials, merchants, and diasporic communities asserted legal authority by performing it, and they were acutely aware that their actions opened an interpretive field rather than establishing a matrix of rules. Second, jurisdictional acts conveyed the distribution and function of authority in both intra- and interpolitical registers. Symbols of jurisdiction helped to claim territory or assert power in crowded interpolitical fields as well as to secure patronage and solidify rule. Third, historical actors across world regions saw jurisdiction as a vital and mutually intelligible category of legal action. Relations across polities routinely aimed at defining, challenging, or altering jurisdictional arrangements. Far from conveying the strangeness of other legal systems, jurisdictional politics depended on widespread recognition of a diverse range of markers of legal authority, regardless of embedded doctrine and trajectories of power.

Jurisdictional Politics and Institutional Change

Pervasive patterns of jurisdictional conflict promoted institutional changes that in turn composed local, regional, and global legal orders. Jurisdictional

[28] Lauren Benton, "Legal Spaces of Empire: Piracy and the Origins of Ocean Regionalism," *Comparative Studies in Society and History* 47, no. 4 (2005): 700–24.

[29] Adam Clulow, "Like Lambs in Japan and Devils Outside Their Land: Violence, Law and Japanese Merchants in Southeast Asia," *Journal of World History* 24, no. 2 (2013): 342.

[30] W. N. Sainsbury, ed., *Calendar of State Papers Colonial, East Indies, China and Japan, 1622–1624* (London: HMSO, 1878), 290.

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disputes structured the relation of private to public law and shaped claims about sovereignty. Such conflicts served to create new states and to fortify the legal authority of existing governments. And in turn they supplied a legal framework for interpolitical violence ranging from imperial small wars to major conflicts.

One striking pattern was the strengthening of central authority in response to clusters of jurisdictional conflicts. As imperial agents and indigenous communities jockeyed to control land, jurisdictional disputes chipped away at the commons and strengthened officials' capacity to distribute and regulate property.[31] Legal actors in empires quickly learned to appeal to distant sovereigns—a practice that could strengthen imperial authority in relation to local elites. Mughal petitioning, for example, prepared the way for late-eighteenth-century appeals to the East India Company. Such petitions added to other forces, including a flood of local litigants to Company courts, prompting British revisions to the pluri-jurisdictional order.[32] In settler colonies such as New South Wales, disputes about jurisdiction over crimes committed by or against indigenous people roiled colonial courts and nurtured settlers' imagination of territorial sovereignty.[33]

Even if jurisdictional conflicts did not arrive in clusters, they could have far-reaching consequences. Imperial scandals could escalate quickly from local disputes to major constitutional controversies.[34] In Trinidad, the case brought against Governor Edward Eyre for the torture of a mulatto teenager, Luisa Calderon, activated debates about the proper interpretation of Spanish law in a crown colony under British law, which prohibited torture. The continuation of the case in England brought public attention to the question of how to discipline governors and connected to wider debates about the imperial constitution.[35] The language of scandal evoked charges of petty despotism, defined as jurisdictional overreaching by colonial elites.[36]

The relation of jurisdictional tensions to rising imperial authority is particularly notable in legal battles over slavery and abolition in the Atlantic world. At the turn of the nineteenth century many British opponents of the slave trade, such as the prominent abolitionist lawyer James Stephen, argued that the clearest path to reform lay with policies designed to shrink the jurisdiction

[31] Alan Greer, *Property and Dispossession: Natives, Empires and Land in Early Modern North America* (Cambridge: Cambridge University Press, 2018), 241–270.

[32] Robert Travers, "Indian Petitioning and Colonial State-Formation in Eighteenth-Century Bengal," *Modern Asian Studies* 53, no. 1 (2019): 89–122.

[33] Ford, *Settler Sovereignty*.

[34] Lauren Benton and Lisa Ford, "Legal Panics, Fast and Slow: Slavery and the Constitution of Empire," in *Power and Time: Temporalities of Conflict in the Making of History*, eds. Dan Edelstein, Stefanos Geroulanos and Natasha Wheatley (Chicago: University of Chicago Press, 2020), 295–316.

[35] Lauren Benton and Lisa Ford, "Island Despotism: Trinidad, the British Imperial Constitution, and Global Legal Order," *Journal of Imperial and Commonwealth History* 46, no. 1 (2018): 1–24; James Epstein, *Scandal of Colonial Rule: Power and Subversion in the British Atlantic during the Age of Revolution* (Cambridge: Cambridge University Press, 2012), 273–275.

[36] Lauren Benton and Lisa Ford, *Rage for Order: The British Empire and the Origins of International Law, 1800–1850* (Cambridge: Harvard University Press, 2017), 28–55.

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of slave owners. Reformers explicitly tied proposals for limiting the slave trade to the amelioration of slavery through direct appointments of magistrates, a move designed to place local courts under imperial authority. Modified slave protector courts promised, though rarely delivered, increased oversight of slave owners' latitude to discipline enslaved people.[37]

Here and elsewhere, conflicts over slavery took the form of jurisdictional disputes. For a time, Haitian revolutionaries preserved the Code Noir because it recognized public authority over the private jurisdiction of slaveholders.[38] However they could, enslaved and formerly enslaved people used courts to assert rights to dominium over their own households.[39] The jurisdictional complexity of slaveholding legal orders, meanwhile, opened possibilities for freed Blacks and enslaved people to act in their own causes—defending credit transactions or other limited property rights and seeking to secure freedom papers.[40] Taken together, jurisdictional politics in societies with slavery centered on the definitions and limits of legal authority of household heads over subordinates, including women, children, servants, and slaves.[41]

These widespread processes remind us that conflicts over extraterritorial jurisdiction of the nineteenth century were by no means new, but shifting conditions altered the political stakes and institutional outcomes. The increasing power of European imperial agents to demand and enforce jurisdictional claims drove many nineteenth-century changes. Ottoman capitulations had recognized limited jurisdictional rights for aliens as early as the fifteenth century, but in the nineteenth century multiplying cases, together with intensifying dangers of ceding marks of sovereignty to foreign powers, changed the form and stakes of extraterritoriality. In South Asia, British efforts to limit the jurisdiction of princely states framed a century of "jousting for jurisdiction" that connected conflicts involving jurisdiction over crime in princely states to constitutional controversies over British "paramountcy" and Indians' political allegiance to the crown.[42] In Qing China, which like Tokugawa Japan had long treated extra-territoriality as an uncontroversial fact of jurisdictional politics,

[37] Benton and Ford, "Legal Panics," 309–11; Randy M. Browne, *Surviving Slavery in the British Caribbean* (Philadelphia: University of Pennsylvania Press, 2017), 39–94.

[38] Malick Ghachem, *The Old Regime and the Haitian Revolution* (Cambridge: Cambridge University Press, 2012), 5–7, 220–22.

[39] For example, Sue Peabody, *Madeleine's Children: Family, Freedom Secrets, and Lies in France's Indian Ocean Colonies* (Oxford: Oxford University Press, 2017), 10; on *dominium* and its limits, see Daniel Severin Allemann, "Slavery and Empire in Iberian Scholastic Thought, c. 1539–1682" (PhD dissertation, University of Cambridge, 2020), 139–78.

[40] Kimberly M. Welch, *Black Litigants in the Antebellum American South* (Chapel Hill: University of North Carolina Press, 2018), chapter 4; Alejandro de la Fuente and Ariela Gross, *Becoming Free, Becoming Black: Race, Freedom, and Law in Cuba, Virginia, and Louisiana* (Cambridge: Cambridge University Press, 2020), 79–131.

[41] Lauren Benton, *They Called It Peace: Worlds of Imperial Violence* (Princeton: Princeton University Press, forthcoming), chapter 3; on the relation of household heads to women, see Anna Becker, *Gendering the Renaissance Commonwealth* (Cambridge: Cambridge University Press, 2019), chapter 5.

[42] Saksena, "Jousting Over Jurisdiction," 409–57; Benton, *A Search for Sovereignty*, chapter 5.

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new treaties coupled with European military power transformed extraterritoriality into a symbol of unequal power.[43]

Europeans also deployed jurisdictional gambits to cast imperial power across politically plural regions where they had little or no direct political control. British naval captains, for example, were authorized to undertake measures short of war in a stunning variety of circumstances, including but not limited to preemptive strikes on "pirate" communities.[44] In newly formed South American republics such as the República Oriental del Uruguay, British consular agents badgered officials to secure British persons and property through changes to local laws and courts.[45]

Europeans were not the only actors angling for new jurisdictional arrangements in the shadow of empires. Wars of rebellion and bids for protection by indigenous political communities disrupted jurisdictional maps. In Alexandria, some locals positioned themselves as protégés of foreign governments and brought disputes to consular courts, asserting their simultaneous membership in multiple communities and the capacity to cross and re-cross jurisdictional divides.[46] Ionians claimed the status of British subjects when captured and tried for violating Ottoman laws on shipping and trade.[47]

One of the most important effects of jurisdictional politics was the constitution of state authority. As litigants sought enforceable judgments, they helped to conjure state legal power into existence.[48] Jurisdictional conflicts and patterns of state formation in broad regions were mutually constitutive. The association of Islamic law with jurisdiction over ritual and family matters in Malaya, Egypt, and India, for example, traces to colonial jurisdictional politics, including an elusive process of regional circulation of discourse about selective deference to religious law.[49] Secular and religious law also came to be imbricated in new ways within coexisting jurisdictions, as occurred in India, Pakistan, and Bangladesh.[50] An open-ended approach to jurisdictional politics

[43] One charged issue centered on claims by missionaries to expansive authority over Chinese Christian converts. Richard Horowitz, "*Protégé* Problems: Qing Officials, Extraterritoriality, and Global Integration in Nineteenth-Century China," in *The Extraterritoriality of Law: History, Theory, Politics*, eds. Daniel S. Margolies, Umut Özsu, Maïa Pal and Ntina Tzouvala (London: Routledge Press, 2019), 104–118.

[44] Lauren Benton, "Protection Emergencies: Justifying Measures Short of War in the British Empire," in *The Justification of War and International Order: From Past to Present*, eds. Lothar Brock and Hendrik Simon (Oxford: Oxford University Press, 2021), 167–181; Benton and Ford, *Rage for Order*, 131–45.

[45] Benton, *Law and Colonial Cultures*, 210–52; on the broader institutional effects of extraterritoriality in the Mediterranean, see Jessica Marglin, "Extraterritoriality and Legal Belonging in the Nineteenth-Century Mediterranean," *Law and History Review* 39, no. 4 (2021): 679–706.

[46] Z. Fahmy, "Jurisdictional Borderlands: Extraterritoriality and 'Legal Chameleons' in Precolonial Alexandria, 1840–1870," *Comparative Studies in Society and History* 55, no. 2 (2013): 305–29.

[47] Benton and Ford, *Rage for Order*, 105–106.

[48] Benton, *Law and Colonial Cultures*, 127–66.

[49] Iza Hussin, *The Politics of Islamic Law: Local Elites, Colonial Authority, and the Making of the Muslim State* (Chicago: University of Chicago Press, 2013).

[50] Julia Stephens, *Governing Islam: Law, Empire, and Secularism in Modern South Asia* (Cambridge: Cambridge University Press, 2018).

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and its offshoots situates the formation of nation-state legal orders within histories of imperial and regional legal politics.

Several generalizations emerge from histories of jurisdictional politics and broad institutional change. One is that we can look for alignments of jurisdictional arrangements inside composite polities in a search for important regional and global legal change. Nineteenth-century European empires at times actively promoted such alignments, both to expand regulatory regimes that might enhance commercial protections and to erect global prohibition regimes against slave-trading and piracy that also favored the interests of hegemonic powers. A second insight is that jurisdictional conflicts often reinforced imperial legal authority in distant regions. The realization of abolitionists that they needed to advocate strengthening imperial power in order to contain slaveholders' jurisdictional prerogatives is a case in point, but there were other settings, too, where unusual political bedfellows, such as indigenous groups and imperial officials opposing local elite power, joined to advocate jurisdictional reordering. Finally, as with extra-territorial arrangements, jurisdictional tensions simmered for long periods and then sometimes exploded into sharp political controversy. Clusters of jurisdictional conflict and the moments of legal crises they produced often prefigured broader legal transformations.

Conclusion

As an element of interpolity law, jurisdictional politics helped to construct a framework for interactions across polities. That framework encompassed Europeans, who were operating in a global legal milieu well before the ascendance of European power and before the emergence of European-centered international law. Europeans were, in other words, important but not exceptional legal actors in the early modern world. Jurisdictional politics both facilitated imperial expansion and framed possibilities for challenging imperial authority. The rise of the state-centered international legal order emerged as the product of decentered conflicts rather than the export of European law and statecraft.

Histories of jurisdictional politics both support this narrative and create the basis for further research. Standard objections to legal pluralism lose their force since a focus on the location and scope of legal authority makes the impulse to draw sharp differences between state and non-state law moot and removes the danger of defining all social behavior as legal. Jurisdictional politics also has clear methodological advantages over attempts to study global legal history as a function of multi-normativity. Analysis of jurisdictional politics does not depend on assumptions about normative concerns or the distribution of legal knowledge. Participants in jurisdictional conflicts drew selectively on legal sources and applied available information and claims about norms to appeal to or challenge jurisdiction. They were not engaging in legal practice to the exclusion of the production of legal narratives or knowledge; instead, they were mobilizing "law talk" in conflicts over authority

and in ways that actively engaged and influenced representations of law and rights.[51]

The perspective outlined and advocated here opens new research avenues about local, regional, and global legal change. The complexity of strategies deployed by legal actors, the relation between patterns of jurisdictional ordering and global legal change, and the interplay between jurisdictional conflicts and ideologies of rule—these and other phenomena call for further investigation. Pursuing such lines of inquiry does not require the rejection of "legal pluralism" as a descriptive term denoting the presence of multiple legal authorities or the use of multiple sources of law (a relevant distinction). But it recognizes the limits and potential distortions of legal pluralism as an analytical lens. The more precise and more powerful alternative is to privilege jurisdictional politics and follow its analytical promise to reveal more about legal strategies and meanings, institutional effects, and patterns of continuity and rupture. Historians have not reached the end of the promise of this line of inquiry—in fact, we are still near its beginning.

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[51] On "law talk," see Benton and Ford, *Rage for Order*, 2, 4. On the structuring of rights in relation to authority in empires, see Lauren Benton and Jane Burbank, "Rights and Empires: Relations of Authorities," in *The Cambridge History of Rights*, vol. 4, eds. Dan Edelstein and Jennifer Pitts (Cambridge University Press, forthcoming).

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