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Book Review: Legal Pluralism and Empires

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Book Reviews

Lauren Benton and Richard J. Ross, eds. *Legal Pluralism and Empires, 1500–1850*, New York: NYU Press, 2013. Pp. 336. $85.00 cloth (ISBN: 9780814771167).
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These are boom times for scholarship on legal pluralism. With the collapse of the bipolar Cold War order and the increasing recognition of transnational and international institutions and networks that operate distinct from nation-states, observers have used legal pluralism as a useful framework for conceptualizing a world of multiple overlapping assertions of authority. This framework challenges traditional international relations and international law scholarship that has long tended to focus almost exclusively on nation-states, their jurisdictional boundaries, and their interests, goals, and strategies. Legal pluralists insist that an assertion of jurisdiction is only one gambit in an ongoing interplay of social fields, authorities, and actors.

Historians of legal pluralism are a reminder that it has always been thus. Even the most powerful empires in world history only ever governed partially, and there were many spaces left—and often deliberately left—for alternative and competing legal and quasilegal systems. These liminal spaces formed the locus for jurisdictional battles and strategic action. It is significant that jurisdictional uncertainty often creates multiple ports for entry. An actor unheard in one forum can try another. Therefore, legal pluralism research is not just a challenge to a vision of clear borders among authorities; it also literally opens up space to discover the agency of less powerful actors, who sometimes used that pluralism to jockey for position.

Given this renewed focus on legal pluralism, scholars from many different fields—law, international relations, critical geography, law and society, colonial theory, cosmopolitanism, and religion—should cheer *Legal Pluralism and Empires, 1500–1850*, as a truly significant contribution to our work. This is a truly wonderful collection of essays, filled with absorbing stories, underappreciated moments of contestation, and a rich variety of case studies, spanning multiple periods, locations, and types of pluralism. Certainly, this is a must-read for anyone interested in legal pluralism, and although I am not a historian of empires, I suspect that this is also an important addition

to our knowledge of how empires operated during their heyday from 1500 to 1850.

One of the many strengths of this collection is that it responds to a key shortcoming that sometimes infects legal pluralism scholarship: the assumption that "state" and "non-state" law are relatively stable categories that are layered "on top" of one another in a hierarchical pattern. Even scholars who insist that state law should not be the only topic of conversation nevertheless sometimes slip into a narrative about non-state law as a sort of unified mass of "custom" that then becomes dominated (although not eliminated) by state law. The essays here significantly complicate that picture. A richer portrait emerges of continual legal restructuring and the creation of hybrid and composite legal arrangements. This emphasis means that the creation of a legal system is shown to be not simply imposed; it is also co-constitutive of social life and in constant motion based on the activities of many agents.

A second strength here is the book's focus on jurisdictional conflicts rather than normative orders. This focus means that we do not need a single overarching definition of law or a clear demarcation between state and non-state or public and private actors. Instead, we can focus on contestation, evolution, and (perhaps) structural patterns to jurisdictional conflicts over time.

The essays in the collection demonstrate the usefulness of the jurisdictional approach, illuminating competitions for authority everywhere we turn. Starting with overseas trading companies establishing quasilegal jurisdictions and settlers establishing feudal enclaves in New France, the collection turns to the jurisdictional conflicts not only between religion and the imperial order, but also among religious jurisdictions of Christian, Jewish, and Islamic communities in the Ottoman Empire. We also see jurisdictional clashes concerning fugitive slaves in the Caribbean, slaves and convicts in the British Empire, and indigenous peoples in New Zealand.

Finally, the collection admirably engages with intellectual, as well as social, history. And instead of portraying the centralizing discourses of Bodin, Hobbes, and Pufendorf as the only relevant perspectives, we are treated here to a discussion of intellectual projects that were far more receptive to the claims of pluralism. Thus legal pluralism emerges not as an after-the-fact historical framework placed on the study of empire, but as a part of the living breathing debates of the time.

One quibble is that the contributors to the volume are all scholars who work in the United States, the United Kingdom, Canada, and Australia. Given that the subject is both empire and pluralism, it might have been nice to include the perspectives of scholars from a wider variety of settings. But no single volume on legal pluralism could ever hope to do justice to all the plural perspectives potentially at play, and it is the nature of legal pluralism that the dialogue is never ending, and no contribution is ever the definitive word. It is probably

sufficient, therefore, simply to say that this collection is essential for anyone interested in engaging in that dialogue.

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Saliha Belmessous, ed., *Native Claims: Indigenous Law against Empire, 1500–1920*, Oxford: Oxford University Press, 2011. Pp. 288. $78.00 cloth (ISBN: 9780199794850).
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The 2007 adoption of the United Nations Declaration on the Rights of Indigenous Peoples altered the political landscape for Aboriginal peoples and governments. At a national level, a lengthy series of legal decisions in countries such as Brazil, Norway, Canada, the United States, Australia, and New Zealand have redefined indigenous rights before the law. In many countries, the intersection of indigenous rights, indigenous legal systems, and the legal values and structures of newcomer societies have moved front and center in national political debates. *Native Claims* is an important contribution to this debate, because it connects what is typically seen as a contemporary development with the historical processes of colonization.

In the introduction to this fine collection of essays, Saliha Belmessous argues, "The story of indigenous resistance to European colonization is, of course, well known. But legal resistance has been wrongly understood to be a relatively recent phenomenon. Whether in North or South America, Africa or Australasia, indigenous peoples made claims to territory and forced Europeans to make rival claims, from the moment European expansion commences in the fifteen century through the final great expansion of the nineteenth century"(3). This is a valuable perspective, particularly because it illustrates the degree to which indigenous people understood the motivations, the European obsession with land and territorial control, and the legal systems of the newcomers.

Belmessous makes a particular contribution in describing the relevance of understanding indigenous concepts of land and territoriality in the context of European concepts of sovereignty, property, and the like. Her introductory chapter, rather than simply summarizing the articles that make up the collection, is a thoughtful and comprehensive discussion of both the historical processes involved in bridging indigenous and newcomer legal traditions and the historiographical challenges associated with understanding early native claims. She also makes clear the indigenous understandings of the intersection of their and European laws and practices. As she concludes, "Our book shows that