

2015

Legal Pluralism and Empires 1500-1850 (Book Review)

Kunal Parker

University of Miami School of Law, kparker@law.miami.edu

Follow this and additional works at: http://repository.law.miami.edu/fac_articles



Part of the [Law and Society Commons](#), and the [Legal History Commons](#)

Recommended Citation

Kunal Parker, *Legal Pluralism and Empires 1500-1850 (Book Review)*, 89 *New West Indian Guide* 295 (2015).

This Article is brought to you for free and open access by the Faculty and Deans at University of Miami School of Law Institutional Repository. It has been accepted for inclusion in Articles by an authorized administrator of University of Miami School of Law Institutional Repository. For more information, please contact library@law.miami.edu.

Lauren Benton & Richard J. Ross (eds.)

Legal Pluralism and Empires, 1500–1850. New York: NYU Press, 2013. ix + 314 pp.
(Paper US\$ 25.00)

Legal Pluralism and Empires, 1500–1850 is a collection of essays that attempts to reorient our understanding of European colonialism in the early modern era. According to the introductory essay by Lauren Benton and Richard Ross, it poses “new questions about the complex and contingent configurations of imperial law—not as a structure of command but as a set of fluid institutional and cultural practices” (p. 2).

The volume lives up to its promise. Focusing on settings ranging from Europe to French North America to Spanish America to the Caribbean to Australia and New Zealand, the various essays bring to life an early modern world teeming with distinct, competing, and changeable legal jurisdictions. Far from being concentrated in a centralized state, they collectively argue, sovereign power in early modern Europe was highly fragmented into a range of different jurisdictional orders organized along lines of territory, religion, trade, social class, and so on. Subjects were not governed by a single set of laws emanating from a single center, but instead by a plethora of legal regimes. This meant that legal distinctions familiar to us—state versus subject, public versus private—made little sense. For example, as Philip Stern observes in his essay on the role of corporations in Great Britain, the corporation was a legal form that effortlessly combined private and public power, looking like a business enterprise in some respects and a state in others, responsible to shareholders but exercising extensive power over subjects.

Such forms of jurisdictional fragmentation were carried outwards as Europeans established colonies in the Americas, Asia, Africa, and the Pacific. The jurisdictional fragmentation that marked the colonial enterprise created considerable room for maneuver that could be exploited by sovereigns, European settlers, and indigenous populations alike. However, by the nineteenth century, the editors argue, this tangle of jurisdictions had given way to “a more hierarchically structured legal order defined in part by the assertion (whether realized or not) of imperial jurisdiction” (p. 12).

In a concluding commentary on the essays, Jane Burbank and Frederick Cooper observe perceptively that the volume “has trouble setting a conventional end to the ‘early modern’ of its title” (p. 287). The essays on Australia and New Zealand, in particular, tell a story that reaches well into the nineteenth century, when, by most accounts, the “early modern” has given way to the “modern.” More important, Burbank and Cooper point out that jurisdictional fragmentation remained a feature of European empires—to say nothing

of postcolonial sovereign states—into the twentieth and twenty-first centuries. A range of countries around the world retain aspects of jurisdictional fragmentation along lines of territory and religion.

Given that jurisdictional fragmentation cannot be firmly cabined into the “early modern” period, and hence that this is no story about the “early modern” alone, one could well ask what might be at stake in writing the history of European colonialism as a history of jurisdictional fragmentation. What alternative historical lens is being displaced here? Burbank and Cooper write that “investigation of jurisdictional complexity opens up to view a far richer cast of characters engaged in legal and other conflicts than did the early phase of colonial studies with its dichotomies between rulers and ruled” (p. 286). This is undoubtedly true. The collection presents a complex tapestry in which jurisdictional fragmentation in metropole and colony alike makes the colonial enterprise look more contingent, complicated, precarious, and manipulable than we might hitherto have imagined. Holding a magnifying glass to reveal the jurisdictional games “on the ground” shows how all parties—from the most powerful to the least—were able to play the system. Accordingly, in the essay by Linda Rupert, we find the most abject of colonial subjects—slaves in the Dutch and British colonies—exploiting jurisdictional differences as they fled to Spanish territories on the pretext of embracing Catholicism.

But writing the history of empire as a history of jurisdictional fragmentation replete with endless possibilities for manipulation does not—and perhaps should not—necessarily allow one to move entirely past the old, clunky dichotomy between colonizer and colonized. For one thing, as all contributors to the collection undoubtedly recognize, jurisdictional fragmentation, despite the possibility of manipulation that it furnished, did not diminish the *particular* oppressions visited upon the indigenous peoples and slaves of the New World. Furthermore, even though we learn from deeper histories, it is worth remembering that we always marshal history to our own ends. The older histories that focused on the sometimes simplistic dichotomy between colonizer and colonized—i.e. those this volume seeks to displace or complicate—were often unabashedly anticolonial ones linked to anticolonial and antiracist struggles, within and outside the West. In seeking to move past such histories, and in seeking to write the history of European colonialism as a history of jurisdictional fragmentation, *Legal Pluralism and Empires* often sets aside the old anticolonial and antiracist impulses. In its pages, colonialism becomes an object of neutral, scholarly contemplation, its meanings best grasped as the jurisdictional multiplicity of early modern European societies was projected onto European colonial possessions. Race, an indisputably significant structuring aspect of European empires and the postcolonial states that emerged in its

wake, recedes as jurisdictional fragmentation takes center stage (even though it is clear that race could cut across jurisdictional fragmentation and blunt the opportunities of racialized subjects). With significant exceptions (such as the wonderful essays of Bruce Owensby on the Spanish Empire and Linda Rupert on fugitive slaves in the Caribbean), few of the essays are at particular pains to give voice to what an older historiography might have deemed the “victims” of European colonialism. The European colonial project, responsible for the deaths and sufferings of so many millions of non-Europeans, has become a matter of jurisdictional ordering, little different from jurisdictional orderings that are a feature of all societies. If we gain much from this volume, we should also be cognizant of what it relegates to the background.

Kunal M. Parker

University of Miami School of Law, Coral Gables FL 33146, U.S.A.

kparker@law.miami.edu