LAW AND COLONIAL CULTURES

Legal Regimes in World History
1400 – 1900

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Law in Diaspora

The Legal Regime of the Atlantic World

In the public bathhouses of Castilian towns established in the course of the Reconquest, simple attendance served as a reminder of legal identity. Women and men went to the baths on different days, and Jews and Muslims also had designated days. A bathhouse dispute or crime might come to the attention of one of four local legal authorities – the town magistrate, rabbi, qadi, or priest – depending on the gravity of the offense and the day it occurred. Conflicts among co-religionists would be handled by their communities' own judges; for Christians, these would be secular magistrates, unless the Christians had blasphemed or committed some other crime against the faith, in which case the clergy might step in. If a Muslim or Jew committed a serious crime, secular authorities were likely to assert a claim to jurisdiction. Most Castilians perhaps understood only in broad terms where to locate these jurisdictional boundaries, but they must have perceived clearly, even in the simple rituals of bathing, that they lived in a world of divided jurisdictions and that these divisions represented fundamental differences among them. Many Castilians knew, too, that neither the cultural and religious, nor the legal, boundaries were fixed. Crossing was not easy, but there were routines for doing so, from the weightier matter of conversion to the commonplace legal maneuvering that could be used to move a dispute to a more sympathetic forum.[1]

Historians' attention to the narrative of rising state power in Western Europe has tended to obscure the degree to which this fluidity of the

[1] On the schedules and rituals of bathhouses in towns of the Reconquest, see Heath Dillard, *Daughters of the Reconquest: Women in Castilian Town Society, 1100–1300*, p. 152.

legal order, and of social categories and identities, was for participants an expected, even naturalized, aspect of the social order. A compelling superiority over minority communities sometimes permitted dominant powers to suppress alternative legal authorities and forums. But power was not often so one-sided, and minority ethnic communities were often useful, particularly in their participation in long-distance trading diasporas. It was far more common for host polities to create or sustain a place in the legal order for "other" authorities, with rules in place about when jurisdiction would revert to ruling institutions.

This jurisdictional complexity was itself a source of continuity across widely different cultural and political entities. In this sense, a single legal regime spanned the interconnected regions of the Mediterranean, South Atlantic, and Indian Ocean worlds in the centuries of expanding long-distance trade. Indeed, structural similarities of different regional systems of law helped to make this expansion possible. Contact, settlement, and the forced migration of Africans to the New World had the effect of reinforcing these similarities. The main feature of this legal regime was a shared emphasis on legal distinctions between cultural and religious groups.

This chapter explores this interconnection by analyzing jurisdictional tensions and their influence in various legal arenas of the Atlantic world, with special emphasis on the South Atlantic. I examine, first, the origins of jurisdictional fluidity in the Iberian empires on the eve of overseas expansion. I then view legal practices in the African states drawn into trade with Europeans in the early centuries of maritime contact. Although Europeans often misinterpreted or denigrated African legal systems, they also responded to aspects of African law they found to be quite familiar – especially its jurisdictional complexity. The third section of the chapter shifts to an analysis of legal culture in the New World African diaspora and argues that an understanding of European and African models of legal pluralism sheds new light on treaty negotiations between planter regimes and maroon communities. I then examine the legal framework for other sorts of captivity and captive rescue in the Atlantic world, in particular the seizure of captives by Barbary pirates and the influence of this phenomenon on European expectations about New World captivity. Across these disparate regions and sets of interactions, and in legal systems reliant on different legal sources, the law structured polities in which the existence of multiple legal authorities gave institutional space to culturally and ethnically different groups. The project of structuring this plural legal order itself created a certain

institutional consistency that also allowed various kinds of "strangers" to recognize and learn to manipulate the legal processes of foreign, or host, polities.

JURISDICTIONAL COMPLEXITIES IN IBERIAN LAW

Jurisdictional complexity was an inherent part of the legal order of Iberian society on the eve of conquest. The legal order contained overlapping authorities and forums, and the scope and precise nature of claims to legal control were continually in dispute. One set of tensions focused on the boundary between secular and religious legal authority. Another contested boundary was that between local and centralized law. These jurisdictional debates sometimes intersected, and the dynamics and language of one arena of conflict tended to influence the other. Patterns of jurisdictional jockeying established both an institutional framework and a rhetorical resource for colonial legal disputants, who imported into Latin America the association of legal authority with cultural and religious group boundaries.

The divide between canon and state law in medieval Europe more generally was important in setting the terms of jurisdictional conflicts of all sorts. The early history of the Catholic Church established canon law as an independent judicial system with jurisdiction over significant areas of social life. The transformation from a relatively unimportant force in the rule of a minority of Roman society to a central element of imperial administration occurred mainly in the fourth century. During this period, the nature and structure of church authority were transformed. The period marked the development of a church hierarchy – largely in response to and in emulation of the hierarchy of Roman imperial administration – and church synods and councils began to function as courts and legislative bodies. Unsurprisingly, the change in the position of the church went hand in hand with new jurisdictional complexities. On one side, church authority had to be separated from imperial authority; on the other, the increasing power of canon law sharpened distinctions between Christians and non-Christians.

The church secured recognition of its authority over matters related to belief and practice, and this jurisdictional scope was interpreted widely by church leaders to include purview over marriage and family law, slavery, some types of economic and commercial behavior, and military service. In addition, church leaders became preoccupied with regulating interactions between Christians and non-Christians, using

law to accentuate the borders separating religious communities. Non-Christians were further broken down into the categories of heretics, apostates, and unbelievers. In addition to being barred from participating in shared religious celebrations with other groups, Christians were forbidden to engage in an array of social interactions with non-Christians. Such restrictions extended naturally to the law. Whereas the canon law has been described as historically novel for its application to all Christians, regardless of gender or class, the law distinguished sharply between the legal status of Christians and non-Christians. The latter were not permitted under ecclesiastical law to sit as judges or magistrates in cases involving Christians. Jews could not serve as witnesses in suits involving Christians. Church leaders reserved the greatest wrath and restrictions for lapsed Christians or those who had deviated from Christian teaching.

Thus two sorts of jurisdictional distinctions were being made early: one that established authority by reference to particular activities and another that awarded jurisdiction by asserting authority over particular classes of persons. The definition of law as personal law was reinforced under the Germanic rulers. One effect of this emphasis was to reduce the authority of canon law in the early medieval period. The decline in imperial authority, of course, also weakened the centralizing power of the church. Canon law developed along local lines and responded increasingly to the directives of local rulers. The exception to this trend came under the Carolingian empire, when eighth- and ninth-century reforms tightened the relation between secular and religious law. While enhancing the legitimacy of church institutions, including canon law, the reforms aimed at bringing the church into the service of imperial order. Their force did not outlast the fragmentation of Carolingian control. Into the tenth century, the prominent pattern everywhere was, as Brundage puts it, "subordination of ecclesiastical institutions and religious values to the whims and drives of soldiers, adventurers, and thugs."[2]

This balance began to shift again in the eleventh century. Papal strategies to assert church independence, protect church property, and discipline recalcitrant rulers were closely intertwined with the reform of church law. The refashioning of canon law included an attempt at a thorough systematization of legal doctrine, through compilations of existing law and additions to it and the writing of new law. Just as

[2] James Brundage, *Medieval Canon Law,* p. 34. I have drawn extensively on Brundage's excellent summary of medieval canon law in my account.

important, though, was a procedural overhaul to establish an orderly court system and prosecute offenders. These objectives overlapped as eleventh-century canonists sought to reinforce the jurisdictional hierarchy within the church by weighting decisions of superior authorities more than those of local, now subordinate councils and synods. Procedural reforms happened more slowly, and by trial (literally) and error. Papal legates sent out to resolve local disputes were used extensively, though sometimes ineffectually, to reinforce papal authority. Gaining control over monasteries and parishes that sought exemptions under the protection of local rulers proved particularly difficult. A smoothly functioning system of ecclesiastical courts would prove elusive until well after other institutional and political shifts in the twelfth century.

Berman has labeled the period from the middle of the eleventh century to the middle of twelfth century, a period encompassing the Gregorian Reformation and Investiture Struggle, as revolutionary.[3] The events of this period, he has argued, laid the basis for a distinctive Western legal tradition, and the origins of an orderly legal pluralism in the West are to be found precisely in the tensions between secular and religious law that I have begun to outline. That is, the legacy of tensions between secular and religious law came to be imprinted on the state and the institutional ways of resolving these tensions constituted an important source of regional order. Further, Berman argues, the similarity of jurisdictional tensions across polities *inside* the West were a fundamental element of the creation of a *transnational* legal order. This argument is consistent with the main themes of this book. But Berman goes further in claiming that the jurisdictional complexity of the West was historically unique – he cites it as "the most distinguishing characteristic" of the Western legal tradition.[4] This claim is one I will challenge in this chapter and the next. One does not have to accept it in order to agree that the period from 1050 to 1150 marked a fundamental reorganization of legal authority in the West and that jurisdictional tensions defined this shift.

In 1075, Pope Gregory VII declared that the papacy had complete authority within the church and should not be subject anywhere to secular authority. The conflicts between the papacy and secular rulers that followed this declaration ranged from diplomatic sparring to open warfare and cannot be surveyed here. Essential for our purposes (and for

[3] See Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition*.
[4] Berman, *Law and Revolution*, "Introduction," and especially p. 9.

Berman's) is the observation that establishing papal authority depended upon a more rigorous separation of ecclesiastical law from secular law. This separation created, in turn, irresistible pressures for the emergence of a class of legal professionals and a separate court hierarchy, and for a clearer definition of the jurisdictional boundaries of the two legal systems. Paradoxically, this drive for systematization also led to more pervasive borrowing of legal practices and principles across canon and civil law systems; to prevalent cross-training among legal professionals; and, by the end of the thirteenth century, to the conceptual unification of Romano-canonical law into the *ius commune*, or the body of law that was common to Christian territories and that could supersede customary law everywhere.

The interdependence yet separateness of the two legal systems are illustrated well in the career paths of legal professionals. At Bologna, which emerged as the undisputed center of legal studies in Europe, and at other universities, it was possible to specialize in canon law and, by the early decades of the thirteenth century, to receive a degree that designated specialization. By the middle of the century or so, canonists comprised a distinctive occupational group that sought to regulate admissions to its ranks and establish norms of professional conduct.[5] In practice, however, canonists included in their ranks those with broader legal training who were prudently preparing to represent any sort of clientele in any kind of forum. And law-trained personnel of all varieties were assuming positions of prominence in civil affairs. The interplay between secular and ecclesiastical law was more than doctrinal and procedural; it was embodied in the personnel staffing both legal systems.

Not surprisingly, jurisdictional boundaries shifted often and tended to form a focus for legal politics. Claims establishing church authority continued to have a dual rationale asserting church control over particular classes of actions and beliefs and over particular classes of persons. Canonists claimed jurisdiction, for example, over clerics in all matters, no matter how serious the alleged infractions. But the claims extended, too, to broad categories of persons who were seen by the church as requiring its protection. These groups included crusaders, "wretched persons" (poor people, widows, orphans), and travelers (for example, merchants, students, and sailors), who moved from one local jurisdiction to another. For all these classes of persons, secular jurisdiction might apply in particular times and places – this was true even for the clergy,

[5] See Brundage, *Medieval Canon Law*, pp. 64–65.

though technically they and members of their households fell narrowly under the purview of ecclesiastical courts. The jurisdictional rules established the right of the church to intervene only where secular authorities were not protecting the interests of a member of these groups.

Ecclesiastical courts also claimed jurisdiction over certain classes of activities. The realm of ecclesiastical authority was in general considered to cover activities related to spiritual concerns. But this was broadly defined. It included the traditional preserve of canonists, namely, marriage, inheritance, and in general the constitution of families, intrafamilial relations, and sexual relations. It extended, too, to commercial and financial actions of various sorts: usury, benefices, the collection of tithes, and the administration of church property.[6] As they had in the past, canonists on the eve of conquest claimed a special authority to define and punish heresy. The formation of the Inquisition relaxed the stringent proofs required to establish guilt under canon law and allowed judges wide latitude in interrogating the accused. The Inquisition was in this sense a special type of court and court procedure in a plural legal order. It was an institution specializing in defining and enforcing the boundary between Christians and the legally distinctive categories of heretic, apostate, and unbeliever.

Alongside these guidelines establishing church authority existed mechanisms for virtually anyone to submit voluntarily to the jurisdiction of ecclesiastical courts. Litigants could do so at the time a dispute arose or even in advance, as an element of a contractual agreement. More broadly still, any litigant could take a dispute to an ecclesiastical court if he thought that it was impossible to obtain justice in a secular court. The church thus recognized the existence and legitimacy of secular courts while at the same time asserting a theoretically higher authority that justified an informal appellate role.

In Iberia, these jurisdictional tensions were pervasive in Christian territories. With the exception of the persecution of crimes of heresy, church claims were often contested by secular authorities. There was also cooperation, though, as when ecclesiastical judges released criminals to secular authorities for much harsher punishments than the church could inflict, or where political enemies sought to discredit each other by exhorting ecclesiastical courts to punish sinful behavior.

[6] Canonists' broad definition of church authority also brought ecclesiastical courts more frequently into the prosecution of criminal complaints, especially in matters involving clergy, where church claims were clearest. See Brundage, *Medieval Canon Law.*

Beyond corporate struggle and cooperation, individual litigants encountered a legal landscape in which choices of forums (in turn loosely linked to different sources of law) defined legal strategies. Church law was well regarded for its more orderly and uniform doctrine and procedure, and (notwithstanding the reputation of the Inquisition) its generally more lenient punishments. Secular law was more permissive in certain areas and stringent in its requirements for establishing the validity of local custom. This possibility of recurring to different jurisdictions not only contributed to legal sophistication but also focused the attention of jurists themselves on the boundaries of legal systems.[7]

A particular source of disruption to the distribution of authority was the encounter of Europeans with increasing numbers of non-Christians. Canon law had, in its early formulations, asserted only limited authority over unbelievers. Jews, for example, though subject to ecclesiastical court jurisdiction in disputes with Christians, were free to disobey church law regarding marriage. They were also not required to pay tithes, even when they lived in Christian-ruled territories. These rules came increasingly under scrutiny as the Reconquest of the Iberian peninsula brought larger numbers of Muslims under Christian rule. Both the practical tensions and theological debates prompted by this trend urged a shift in the dynamics of legal pluralism and set the terms for struggle and debate about the legal claims of conquerors and the rights of the conquered. Although many historical accounts emphasize the crown's break with tolerance – the expulsion and forced conversion of Jews and Muslims – these events followed a long period of accommodation in which complex and locally varied arrangements allowed for the coexistence of multiple legal authorities, including those of religious "others" in conquered territories.

Such accommodations were based closely on the model of shared and mutually limited jurisdictions of church and state. Before the thirteenth century, canonists had shown relatively little interest in defining the relation between Christians and infidels outside Europe. In the middle decades of the thirteenth century, Pope Innocent IV addressed Christian-infidel relations and in a commentary on the seizure of infidels' lands held that infidels had the right to hold property. Yet Innocent IV also

[7] As Berman puts it, "the limitations placed upon the jurisdiction of each of the polities of Western Christendom, including the ecclesiastical polity . . . made it both necessary and possible for each to develop not only laws but also a *system* of laws, and more than that, a system of *law*" (Berman, *Law and Revolution*, p. 223).

anticipated circumstances under which the church would have the authority to intervene in infidel society. His reasoning exactly paralleled, and in fact built upon, the logic of arguments that the church could intervene in secular affairs if needed to preserve or obtain justice. Innocent IV thus concluded that the pope had "jurisdiction over infidels *de jure* but not *de facto*."[8] The church could assert its authority in cases where the actions of infidels violated divine law. Going further still, Innocent IV argued that the pope could intervene in cases where unbelievers violated *their own* law. Again, the logic was parallel to that which had been used to establish church legal authority when secular courts had failed to administer justice. In subsequent commentary, canonists were both carefully limiting the jurisdiction of the church and establishing a special responsibility of the church to intervene and protect natural law.

In the Iberian peninsula, where interdependence drove Christians, Jews, and Muslims together, all three groups sought to reinforce the idea of an orderly pluralism in which communities followed their own laws. There were obvious incentives to make such a system work. Christians on the frontier often found themselves dependent on non-Christians. Muslims who did not follow the edicts of religious leaders to leave Christian-controlled territories were crucial to the agricultural economy. In some regions, especially in Valencia, they also made up the majority of skilled workers in craft occupations. Jews served Christian elites in advisory roles in matters of finance and statecraft, and they were prominent in medicine and commerce. Though church leaders feared "contamination" for Christians living among unbelievers, Christian residents in the newly conquered regions sought to contain conflict. For Muslims, practical considerations also often outweighed pressures for religious conformity. Although Islamic teaching had long recognized the rights of Christians and Jews to live under their own law, Muslim scholars had not anticipated a situation in which one of these groups, rather than Muslims, would be in power. Religious leaders found no support in Islamic scholarship for living as a subjugate population. Large numbers of refugees did leave for North Africa or for Granada, where an Islamic state held out against Christian incursions until 1492. But many also

[8] Quoted in James Muldoon, *Popes, Lawyers, and Infidels: The Church and the Non-Christian World, 1250–1550*, p. 10. Muldoon's work remains the best study of debates about the legal incorporation of non-Christians. See also Robert A. Williams, *The American Indian in Western Legal Thought: The Discourses of Conquest*.

stayed behind and sought a quiet accommodation with Christian rule. Religious leaders on both sides advocated separation – social distance and residential segregation. Particularly given the pressures in favor of conversion, on the Christian side, and flight, on the part of Muslims, it is not surprising that the architecture of this plural legal order was difficult both to design and to sustain. Jurisdictional tensions (though somewhat difficult to study in detail because of the nature of sources) recurred and probably contributed to the growing sophistication of legal culture on the peninsula and the rising importance of legal training among elites.

We thus find examples of legal arrangements that would have surely been rejected by religious doctrine on both sides receiving tacit acceptance. Merely by remaining in Christian lands, Muslims (*mudejars*, the common term for subject Muslims in Christian territories) were already disobeying religious teaching. It seems to be the case, too, that they reinforced Christian authority in some places as a protection against the abuses of local lords. In the kingdom of Aragon, for example, where mudejars generally occupied a low level in the socioeconomic order as sharecroppers, Muslims also benefited from a measure of royal protection. The Aragonese crown claimed special jurisdiction over mudejars in the region. This device was probably an adaptation of the legal status of Jews throughout Europe. Although mudejars' special legal status reflected their exclusion from the rights of "citizenship," individual Muslims undoubtedly used the status of protected outsider in appeals to royal justice to remedy local abuse. Harvey suggests that some Christians would have preferred the ambiguity of Muslim legal status.[9] At the same time, legal offices were still needed in the Muslim community for the adjudication of disputes not involving Christians. In Aragon, as in other regions, Christian authorities made appointments to these posts (which were sometimes lucrative) on the basis of patronage ties, political considerations, and financial interests. It was not uncommon in the later centuries of the Reconquest to find *Christian qadis* – an abomination by Islamic legal standards, but a practice that would not have been inconsistent with developing canonist ideas about the obligation and ability of Christians to administer law other than their own. Even where the qadis were Muslim, their close ties to royal authority made their independence highly doubtful.

[9] Harvey, *Islamic Spain*, p. 102. The summary of jurisdictional complexities in Spain around the time of the Reconquest draws especially on Harvey's work. See also Richard Kagan, *Lawsuits and Litigants in Castile, 1500–1700*.

Muslim litigants in Aragon also blurred the separation of the two legal systems. It was possible for Muslims to take their disputes to a Christian forum, and it is not unlikely that some chose to do so to avoid harsh penalties they might have incurred under Muslim law. There is certainly evidence that Muslims chose on occasion prominent Christians as arbitrators. Choosing arbitration was a well-established Islamic legal practice and, though Islamic jurists would have been appalled by the designation of non-Muslim arbitrators, this strategy made sense when litigants believed that judgments by Christian elites would have greater legitimacy and possibility of enforcement. Finally, though Muslims presided over their own courts, royal jurisdiction offered a final level of appeal, thus drawing the separate systems together. We do not know how often Muslims took cases to the king, but even though he was theoretically bound to judge cases according to the shariʿa, the formal role for a non-Muslim in cases involving Muslims was historically new and, from the perspective of Islamic jurists, inevitably contaminating.

It was in the region of Valencia where the contradictions and tensions of the plural legal order were most apparent. Whereas in other newly conquered regions, Muslims became a minority in a generation, in Valencia they remained in the majority and the Christian settler populations stayed small for centuries. The Christians found that by paying a salary to qadis and other Muslim officials they would ensure order and support the peaceful collection of taxes and tribute. Thus qadis had the contradictory role of preserving Islamic law and submitting to Christian authority. In Valencia as in Aragon, the king exercised the function of a judge in cases on appeal. Rule on appeal by nonreligious authorities did not in and of itself go against Islamic legal tradition; as we will see in a later chapter, there was considerable support among Islamic jurists for obedience to secular authority. The situation was historically novel, however, since the authority in this case was not even Muslim. There is little evidence, too, that the shariʿa was seriously referred to by the king, who instead used appeals cases to demonstrate the power of Christian mercy.

Consider a case described by both Burns and Harvey, in which James I pardoned a slave who had been found guilty in a qadi court for killing another slave.[10] The first slave had tossed a javelin, not aiming for the

[10] Robert Burns, *Islam Under the Crusaders: Colonial Survival in the Thirteenth-Century Kingdom of Valencia*, p. 252; Harvey, *Islamic Spain*, pp. 131–32.

second slave, who had tried to catch it and was struck in the throat and killed. The different expected outcomes in Islamic and Christian forums might seem to reflect different traditional treatments of intentionality.[11] But Harvey believes that the problem is not the accidental nature of the killing, for which the Quran lays down explicit punishments in the case of slaves, but the fact that both slaves were the property of a Christian. No laws or precedents applied to such a case in Islamic law. It was the anomaly created by the complex social order, and not the clash of legal cultures, that led the case to the king. In situations such as this one, where power determined who would decide unprecedented cases falling between one system of law and the other, the legal outcome was a gradual undermining of the force of the shariʿa, even while the structure of the system still protected its authority. That this gradual erosion was apparent even in Valencia suggests that the Islamic jurists were in fact right to warn that by accepting a subject status in a Christian-ruled polity, Muslims would find the moral authority of their leaders inevitably undermined.

Over time, a gradual weakening of Muslim (and Jewish) authority did occur through restrictions on non-Christian law. Cases involving Christians and Jews were tried only in royal courts, the crown reserved the right to bring criminal cases, and even civil suits among co-religionists could be appealed to a royal court. By 1476, Jews and Muslims involved in disputes with co-religionists could bring suit before a Christian judge. Even where Jewish and Muslim courts continued to operate, then, they did so with significant direct and indirect influence of Christian and crown law.

These sources of gradual change gave way to a much more aggressive assault in the wake of the conquest of Granada. At first, Christian rule was established in the pattern that had been followed in other regions: Muslims were to retain their right to practice their own religion and obey their own laws. The Capitulations of Granada specified, "The Moors shall be judged in their laws and law suits according to the code of the shariʿa, which it is their custom to respect, under the jurisdiction of their judges and qadis."[12] Suits between Christians and Muslims were to be judged by both a Christian judge and a qadi. Muslim inheritance law

[11] On intentionality in various cultural contexts, see Lawrence Rosen, ed., *Other Intentions: Cultural Contexts and the Attribution of Inner States*.

[12] Harvey, *Islamic Spain*, p. 318.

was also explicitly protected. Yet this attempt to re-create mudejar status for Muslims in Granada was short-lived. Forced conversion of elite Muslims, some after being tortured and publicly humiliated, together with the open persecution of *elches*, or Christians who had converted to Islam, helped to spur the revolt in 1500. After this date, forced conversion became widespread. Its acceptance was clearly linked to the formal shift in the legal position of Jews, who were required in 1492 to convert or emigrate. Thus the completion of the conquest of Iberian territories coincided neatly with the official end of a policy of protected legal status and the separation of legal authorities.

Still, we should not mistake this shift for a full claim of sovereignty by the state. Forced conversion sought to eliminate the tensions of religious pluralism by removing the subjects of non-Christian religious communities – not by emphasizing or defining more precisely their subordination to secular authority. It was the inability of the crown to control and order diversity that led to the extreme measures of expulsion and forced conversion. The possibilities of pluralism remained a part of the legal order in the continuing coexistence of Christian and state law, the dualism that had served as a model for the legal pluralism of the various religious communities in conquered territories.

Complexities in the legal order stemmed only in part from the coexistence of religious groups with separate legal authorities. An even more pervasive tension was found in the relationship of local custom to royal legal authority. As the Christian conquest edged across the peninsula, each major settlement adopted its *fuero*, a written or unwritten body of customary law. The fueros drew on Roman law and were substantially alike. They regulated everything from criminal procedure and punishment, to sexual conduct, to the selection and qualifications of local magistrates. The crown's formal efforts to establish royal authority as superior to the fueros had begun in the mid-thirteenth century with the Fuero Royal and the Siete Partidas. Royal claims had been more forcefully asserted in 1348, when the Ordenamiento del Alcalá established an order of precedence for sources of law that noted the superiority of royal law to fueros. But the force of custom continued to guide most judicial decisions. As in its relation to the law of religious minorities, at the same time, the crown asserted its right to act as a court of appeal and in this way began to influence procedures and actions in local forums. As Christian territory expanded, moreover, Castilian law was applied to conquered territories, a practice that was continued

in the Americas, in contrast to the legislative independence awarded colonists in North America.[13]

In addition to this indirect influence, the crown established the right in the Siete Partidas to intervene directly – to oversee the court of first instance – in cases involving widows, orphans, the aged, crippled, sick, poor, or "wretched." This claim set up a parallel relationship between royal and local authority, on the one hand, and ecclesiastical and secular authority, on the other, with the subtle but important difference that the crown's jurisdiction over the various classes of disadvantaged persons rested not on any claim to divine authority but on the obligation to provide summary judgment for these subjects and release them from the burdens of protracted litigation. The costs of litigation and the long delays involved in most suits were already a well-known part of the legal culture of the peninsula. Later, the crown's obligation to provide summary judgment and legal representation to widows, orphans, and *miserables* would provide a model for the legal status and treatment of American Indians.

In Portugal, as in Spain, the Reconquest produced a patchwork legal order. In the south of Portugal, Muslim offices and administrative boundaries were adapted to Portuguese use. The local unit of judicial administration was the township (*conselho)*, which contained various officials involved in the administration of justice, the most important of whom was the *juiz ordinário*, municipal magistrate. Gradually, the crown enacted legal reforms to improve its control over local administration of justice. The crown created the office of *juizes da fora* ("judges from outside") in 1352, to oversee local magistrates, and strengthened royal courts of appeal. By the fourteenth century, justice "was firmly monopolized by the crown."[14] Further centralization took place in the early sixteenth century, when the crown issued the Ordenaçoes Manuelinas, greatly increased the number of juizes da fora, and extended the authority of *corregedores*, superior crown magistrates who occupied a next level of royal judicial overview.

Yet, the Portuguese legal order had the same forces operating within it as in Spain to create a certain jurisdictional looseness. Limited legal autonomy continued to be extended to non-Christian religious

[13] A particularly good overview of the similarities and differences of the fueros (and their relation, too, to the law of different religious communities) can be found in Dillard, *Daughters of the Reconquest*. See also Kagan, *Lawsuits and Litigants in Castille.*

[14] A.H. de Oliveira Marques, *History of Portugal, Vol. I*, p. 99.

communities, and Jews were segregated in designated, self-regulating quarters of the larger cities. Military-religious orders continued to function under a separate legal bureaucracy, with officials called *ouvidores*, appointed by the military order, rather than crown-appointed corregedores. As in Spain, ecclesiastics enjoyed immunity from secular courts, and they sought jurisdiction over special classes of people and crimes against the faith.

In summary, the legal order of Iberia on the eve of overseas conquest was one that is best characterized as "essentially a patchwork of customs and law . . . and of judicial jurisdictions."[15] Spain, in particular, was a relatively litigious society, in which legal strategies and expertise were widely used to defend group, family, and individual interests. As Borah has noted, overseas conquest and colonization seemed to offer the crown an irresistible opportunity to simplify and solidify the jurisdictional patchwork.[16] Simplicity was not, however, what colonial conditions would produce. Chapter 3 will explore the new jurisdictional tensions of Spanish America. Here we will turn to the legal complexities of the Portuguese Atlantic diaspora, with its roots in both the European legal pluralism we have already described and the multicentric legal orders of the Atlantic world beyond Europe.

LAW IN THE PORTUGUESE TRADING-POST EMPIRE

The complex legal landscape inside Portugal before the fifteenth century helps to explain the crown's willingness to follow ad hoc arrangements for the administration of justice as the Portuguese moved into the Atlantic. In administering military outposts on the coast of North Africa, Atlantic island settlements in the Azores and Madeira, the islands off the coast of Guinea, the islands of São Tomé and Cabo Verde, and the West African coastal trading factories, the Portuguese combined a strategy of delegating legal authority to captains and privateers with sporadic attempts to assert royal supervision. The laws of Portugal were

[15] Borah makes this point about Spain. It would also apply to Portugal, though the earlier completion of the Reconquest also shifted to an earlier century the prominence of debates about the legal incorporation of non-Christians. See Woodrow Borah, *Justice by Insurance: The General Indian Court of Colonial Mexico and the Legal Aides of the Half-Real*, p. 8; Kagan reports that Castile was a "hodgedpodge of confused laws and competting jurisdictions that crafty litigants exploited to their own advantage" (Kagan, *Lawsuits and Litigants in Castille*, p. 5).

[16] Borah, *Justice by Insurance*, p. 16.

to be applied in the overseas territories. In many outposts, captains were awarded summary judicial powers and had ultimate jurisdiction except in the most serious cases. Some captains were permitted to appoint ouvidores, as in the Azores and on Madeira. In Angola and Brazil, *donatários,* nobles who had been awarded control over extended tracts of territory, also had judicial authority but could appoint ouvidores. The crown periodically expressed its dissatisfaction with this system and sent corregedores to investigate ouvidores appointed by captains and privateers.[17] This occurred in the Azores and, in 1516, on the islands of São Tomé, Cabo Verde, and the islands off the Guinea coast. The crown showed its readiness to intervene when judicial powers were seriously abused. At Mina, on the West African coast, judges from Lisbon were sent in 1562 to investigate the activities of an outpost commander who, when accused of involvement in illicit trade, had sent the local bailiff to the galleys.[18]

Consistent across the Portuguese territories and trading posts, from Brazil to Malacca, was an official reluctance to assert jurisdictional claims outside the Portuguese community of settlers, soldiers, privateers, and crown officials. This did not mean that the line dividing this population from indigenous communities was easily defined. In many of the Atlantic islands, Angola, Goa, and certainly Brazil, the Portuguese administered law to a heterogeneous population of Portuguese-born settlers, indigenous inhabitants who had not been enslaved, non-Portuguese slaves, Portuguese convicts, and a growing population of mulatto and mestizo residents who spoke Portuguese and considered themselves Christians. Where jurisdictional claims extended outside these groups, it was usually in an attempt to supervise the behavior of Christians who lived outside the bounds of Portuguese towns or posts.[19] In Mina, a fortified outpost devoted to trade, the vicar arrested a baptized former slave named Grace in 1540, who had gone to live in the nearby African

[17] The crown also had a standing interest in trying to control the conduct of illicit trade. A royal official called the Judge of Guinea and India had authority to take depositions from returning ships' crews and to order arrests or fines for any deviations from sailing orders. John Vogt, *Portuguese Rule on the Gold Coast, 1469–1682*, pp. 38–39.

[18] See Vogt (*Portuguese Rule on the Gold Coast*) for a discussion of this case of 1563.

[19] Outside the Atlantic, the pattern of Portuguese legal administration was similar, though in Goa, the administrative center of the trading post empire, a larger local subject population and the creation of a sizable community of nominal Christians through intermarriage produced new legal challenges. A tribunal of the Inquisition was established in 1560 in Goa, further complicating legal politics. See Chapter 3 for an analysis of Portuguese policies and local responses in Goa.

village and, by her own admission, had forgotten her Christian teaching. The Portuguese went to the village and searched her house, where they found fetishes. The vicar had her sent to Lisbon, where she was tried before the Inquisition and sentenced to perpetual imprisonment.[20] Such attempts to extend authority outside the factories occurred, though, very rarely. In Angola, where the royal family and members of the court converted, the Portuguese left judicial affairs of Africans entirely in their hands. Members of the elite traveled to Portugal, where their education would have included canon law, but they were not made part of the Portuguese legal administration on their return, and we have little knowledge of the impact of their training on local administration of justice. The overall pattern remained one of restricted rather than expansionist claims about the boundaries of judicial authority.[21]

Even in Brazil, where the Portuguese were not able to operate under the same trading post system but, from the 1530s on, pursued a policy of settlement and plantation agriculture, Portuguese law was applied narrowly to Europeans. Indians were either condemned as living outside the law or treated to virtually unregulated disciplinary excesses if they lived within Portuguese-controlled territory. Private justice, and severe, ad hoc punishments were administered to Indians suspected of crimes against Portuguese. Sixteenth-century Jesuit writings complained that the Portuguese administered this rough justice to Indians while treating infractions against Indians by Portuguese with great leniency. One Jesuit father wrote that Indians were regularly "hanged, hewn in pieces, quartered, their hands cut, nipped with hot pinchers, and set in the mouth of pieces, and shot away."[22]

[20] John Vogt, *Portuguese Rule on the Gold Coast*, p. 56.

[21] The only territory over which the Portuguese attempted to extend tighter control was in the seas. Here claims of sovereignty were understood to justify all manner of interventions, from seizures of ships' cargoes to blockades. The Portuguese relied on papal bulls recognizing their control of ocean trade in asserting this claim. But the Portuguese were painfully aware of its limitations. Africans, Asians, and other Europeans plied "Portuguese" waters with persistent regularity, and Portuguese renegades themselves skirted crown controls over trade. Although Patricia Seed makes much of the Portuguese tendency to claim possession of sea lanes delineated by navigational markers, this claim of sovereignty was, much like land ownership in coastal enclaves, a useful fiction (Patricia Seed, *Ceremonies of Possession*). More important to the world of the Portuguese was their sense that legal authority extended over people who in one sense or another belonged to the community of the Portuguese, as Christians, subordinates, or slaves.

[22] Stuart B. Schwartz, *Sovereignty and Society in Colonial Brazil: The High Court of Bahia and Its Judges, 1609–1751*, p. 31.

The Jesuits, of course, were engaged in a long struggle with secular officials and settlers over control of the Indian population. Schwartz describes the legal dimensions of this struggle as involving "constant jurisdictional dispute" in the decades leading up to the ascension of Spanish sovereignty over Portugal in 1580.[23] The Jesuits aligned themselves on a number of occasions with the *ouvidor geral* against governors, and governors in turn were known to seize the estates of crown judges and send them back to Portugal. Hapsburg reforms after 1580 sought to move Brazil toward a more tightly centralized system, but these efforts were not always effective. In 1609, a new High Court of Brazil, the *Relação*, arrived in Bahia and soon after published a new law issued in Madrid making it illegal to employ Indians without paying them a wage and declaring that all Indians captured illegally should be freed. Measures for enforcement included provisions that the governor and High Court chancellor would appoint a special magistrate for each village to adjudicate disputes between whites and Indians. But this new regime was never successfully put in place. Instead, the law was replaced in 1611 with a decree permitting slavery under certain conditions and awarding full judicial powers over Indians to Portuguese captains in each settlement. The law included provisions for appeals to the local ouvidor or to an official specially designated as a magistrate of Indian affairs. But this retreat reestablished the status quo of the legal marginalization – and effective exclusion – of Indians in Brazil as legal actors.

The limited legal authority of the crown in Brazil was reproduced in outlying regions. Here the crown's attempts to provide for the administration of justice were desultory. The interior region of the *sertão* had a reputation as a place of lawlessness – a refuge, in fact, for fugitives. In the south, slave raiding against Indians in the interior was difficult to control, and royal officials found that "intentional disregard" served their own interests better.[24]

It is important to note that despite the difference in settlement patterns in Brazil and Africa, Portuguese officials treated the regions as part of the same legal realm. Portuguese *degregados*, or convicts, were exiled from Brazil to Angola; even African slaves were sometimes punished in this way. In the mid-sixteenth century, the crown even officially extended Brazilian legal jurisdiction to include parts of West Africa. Although Angola was never formally placed under the authority of the

[23] Schwartz, *Sovereignty and Society in Colonial Brazil*, p. 39.
[24] Schwartz, *Sovereignty and Society in Colonial Brazil*, p. 166.

High Court of Bahia, this measure was suggested, and some judicial oversight, mainly in the form of supervision of reviews of royal officials in Africa, was instituted.[25] This perception on the part of Portuguese officials that they were operating in a single judicial field is significant in and of itself. The limits placed by Portuguese policy makers in Brazil on the expansion of the judicial bureaucracy and on its authority must be understood in this wider Atlantic context, in which the Portuguese were accustomed to operating as one of many competing judicial authorities with relatively narrow purview.

This is not to say that the Portuguese did not view law as crucial to overseas empire.[26] As in Spanish America, though, colonial conditions exacerbated sources of jurisdictional tension between the crown and the church, and institutional controls dissipated on the frontier. In addition to these forces, the Portuguese were influenced by their insertion into a legal universe in Africa that was itself structured around the coexistence of multiple legal authorities. This homology – rather than any striking difference with African legal institutions – reinforced practical adaptations made by the Portuguese in restricting legal jurisdictional claims. In a narrow sense, surely, the Iberian empires were imposing state law; in a broader sense, they were formulating state law as an extension of personal law.

LEGAL PLURALISM IN AFRICA

The continuing jurisdictional complexity and fluidity of the Iberian legal orders must be kept in mind when evaluating the tendency of some scholars to emphasize fundamental differences in the nature of legal authority in Europe and Africa in the early centuries of maritime trade. Thornton, for example, has argued that the distinctiveness (and unity) of

[25] Schwartz, *Sovereignty and Society in Colonial Brazil*, p. 254. Schwartz points out that some Portuguese officials who were sent to Africa in judicial posts were given titles as officials of the High Court of Bahia, though they never set foot in Brazil. In 1744, he reports, leaders of a São Tomé slave rebellion were sent to Bahia where the High Court was expected to sentence them. The court refused, claiming it had no jurisdiction over Africa.

[26] Boxer reports that "maladministration of justice (*a falta de justiçia)* was the theme of continued complaints in both official and unofficial correspondence" from all corners of the Portuguese overseas world over the span of several centuries. Portuguese chroniclers observed the corrosive effects of the widespread flaunting of judicial procedure on perceptions of Portuguese rule among non-Europeans. See C.R. Boxer, *The Portuguese Seaborne Empire, 1415–1825*, p. 144.

African legal traditions is key to an understanding of European-African relations between 1400 and 1680. In particular, the expansion of the maritime slave trade had only a controlled effect on Africa because slavery not only already existed but was fundamental in African economic and legal systems. Thornton writes that slavery "was widespread in Atlantic Africa because slaves were the only form of private, revenue-producing property recognized in African law. By contrast, in European legal systems, land was the primary form of private, revenue-producing property, and slavery was relatively minor."[27] Thornton concludes that Africa was not "backward or egalitarian," only "legally divergent."[28] Europeans were so conditioned by the experience of their own, very different legal institutions that they failed to understand this fundamental difference and behaved, at times, as if Africans also had a market in land and measured both wealth and sovereignty in terms of control over land.[29]

While a substantial improvement on approaches that would ignore African institutions or represent them as irrevocably damaged by contact with Europeans, such a view exaggerates the differences in European and African institutions and overlooks substantial similarities and even some direct connections. In drawing the distinction between African and European systems of law, Thornton makes much of the central place of landholding in European legal traditions, even calling "the concept of landownership . . . the fundamental starting point of law."[30] He notes that the Siete Partidas states clearly that all land should have an owner, either private persons or the state. Yet, as we have seen in outlining legal tensions in early modern Spain, such a statement was not incompatible with the continued influence of forms of personal law. Indeed, even where the definition of property was concerned, it is not clear that the concept of ownership was radically different in Iberia from what it appears to have been in many African kingdoms. Thornton notes that conquest in precolonial Africa generated income in tribute and taxes, not rights to landed property, per se. African "nobles" thus "ultimately derived their rights from their position in the state and

[27] John Thornton, *Africa and Africans in the Making of the Atlantic World, 1400–1680*, p. 74. Thornton does note in regard to slavery in Europe and Africa that "legally the institutions were indistinguishable" (p. 86, note 58), but he insists that the different treatment of land made the institutions function in strikingly different ways.

[28] Thornton, *Africa and Africans*, p. 76.

[29] Thornton, *Africa and Africans*, pp. 76–77. See also pp. 95 and 105.

[30] Thornton, *Africa and Africans*, p. 76.

not as landowners in the European sense."[31] But this statement would also describe both Portuguese who were awarded captaincies in the Atlantic islands or in Brazil and Spaniard *encomenderos* in the Americas. In the latter case, the crown's reluctance to approve a legal equation of *encomienda* rights with rights to land was at the heart of colonial political conflicts for much of the sixteenth century. The creation of both institutions grew out of practices in place in the Iberian Reconquest, and they could hardly be considered as inconsistent with the European legal order.[32]

The historical experience of the Reconquest also shaped Iberian notions of sovereignty in ways that suggested a certain homology with the African legal system's emphasis on the protection of "rights to people." To begin with, it is important to note that raiding was a very familiar modus operandi for Iberians. Raiding was, indeed, the central activity of the Reconquest, with actual conquest and settlement following protracted rounds of raiding and retreat. Seizures of people as slaves in raids was an "ordinary" feature of the Mediterranean world from antiquity through the nineteenth century.[33] Although, as Thornton notes, raiding gradually gave way to regulated trade by Europeans in Africa, this does not mean that the raiding Thornton views as so central to African understandings of conquest was in any sense foreign to Iberians. Raiding continued as a prominent activity of entrepreneurial Spanish and Portuguese settler-merchants through the eighteenth century in the Americas, particularly in frontier regions in contact with un-Christianized and seminomadic indigenous peoples. Because raids were less practical in the African context did not make them institutionally anomalous.[34]

[31] Thornton, *Africa and Africans*, p. 80.

[32] In an interesting parallel argument, Subrahmanyam asserts that differences between the legal order of agricultural empires in Asia in the same period (most notably the Ottoman state) and small-scale, coastal Asian states are also often overstated. The latter are typically described as trade based and the former as supported by revenue collection from landed estates. But, he argues, it is difficult and perhaps impossible to distinguish between revenues from "land" and those from "trade." Land "was a convenient category for purposes of assignment, since it concealed the fact that what was being parceled out was the right to use coercive force" (Sanjay Subrahmanyam, *The Portuguese Empire in Asia, 1500–1700: A Political and Economic History*, p. 12).

[33] James William Brodman, *Ransoming Captives in Crusader Spain: The Order of Merced on the Christian-Islamic Frontier*, p. 1.

[34] The Portuguese, in fact, transported an emphasis on raiding to African shores in early encounters. As one historian notes, "north Africa had always been associated politically and culturally with Hispanic Islam," and early chronicles of voyages to Africa feature descriptions of raids on the villages of "Moors" to seize captives (Brodman,

There are other reasons to suggest a homology between European and African legal practices, too, that relied on either substantive or structural similarities. To begin with, the mutual influence in Iberia and Africa of Islamic law has undoubtedly been underestimated. The usual assumption of Western legal historians is that the influence of Roman legal sources was so profound as to overshadow any significant direct influence by Islamic law. Patricia Seed has found, however, that the Spanish *Requerimiento*, the statement of rights to conquest that was read by conquistadors to uncomprehending Indians in the Americas, was drafted for the crown by jurists informed by Islamic legal proscriptions on the announcement of *jihad*.[35] Historians of North and West Africa, for their part, have commented on the substantial similarities in some aspects of legal practice in Europe and Islamic Africa. Most prominently, the legal status and treatment of slaves were similar in many respects, despite the difference in legal sources for slave law.[36] No doubt such connections between European and Islamic law deserve greater scrutiny; it would be surprising, given what we know about the dynamics of legal change elsewhere, if centuries of coexisting adjudication in Iberia and cross-cultural contact in the Mediterranean did not produce significant mutual influence.[37]

Ransoming Captives in Crusader Spain, p. 3). For an example of these detailed accounts of raids in North Africa, see the excerpt from the Portuguese history by Gomes Eannes de Azurara, reproduced in Robert Edgar Conrad (ed.), *Children of God's Fire: A Documentary History of Black Slavery in Brazil*, pp. 5–11.

35 Seed, *Ceremonies of Possession*, Chapter 3.

36 Fisher and Fisher, for example, note that both Iberians and North African Muslims had come to associate slaving with the conquest of religiously different peoples. In Islamic North Africa, as in Iberia, slaves were rarely co-religionists (at the moment they were enslaved); their capture was justified as an outcome of religious war; and similar restrictions limited recognition of slaves as legal actors. Allan B. Fisher and Humphrey J. Fisher, *Slavery and Muslim Society in Africa: The Institution in Saharan and Sudanic Africa and the Trans-Sahrara Trade*, pp. 6, 17, 39. Paul Lovejoy also argues that Islamic links were important in structuring early Portuguese slave trading in West Africa. Paul Lovejoy, *Transformations in Slavery: A History of Slavery in Africa*. It should be noted that asserting institutional continuities between Muslim and European slave trading should not be mistaken for a "cultural" or "noneconomic" explanation of the expansion of the African slave trade. The institutional connection helped establish a framework for trade but did not create demand or set prices. Manning overstates criticism of institutional approaches to slavery on these grounds. See Patrick Manning, *Slavery and African Life*.

37 One quite plausible possibility of overlap that would have been directly transmitted to colonial settings is in the area of adjudication of water rights; the Moorish origins of irrigation systems in Iberia, and the continued presence of *mudejar* cultivators, would have created the perfect conditions for the transmission of both legal concepts and

One does not, though, have to rely on conjectures about undiscovered Islamic influences; Islam was a unifying influence in another way. The long history of contact with and incorporation of Muslims in Iberian territories accentuated the dualism that was already implicit in the overlapping jurisdictional claims of church and state. This same force was also at work in African territories where Muslim traders had established communities in diaspora. These communities were self-regulating. Qadis judged disputes within merchant communities even where local sovereigns remained non-Muslim.[38] The situation created in some settings a form of governance that was openly divided, as, for example, in the medieval kingdom of Ghana, where Muslim travelers noted, as early as the eleventh century, the parallel existence of Muslim and non-Muslim legal functionaries. The Muslim geographer al-Bakri describes the physical and administrative separation of two towns, one inhabited by Muslims "with their *imams*, their *muezzins*, their readers (of the Coran)," and their scholars and jurists.[39] In the king's town, Muslims were readily received and could presumably bring disputes before the king, who personally oversaw the settlement of legal disputes involving his co-religionists. The two populations signaled their subservience to the king in different ways:

> [The king] holds an audience to repair injustices. . . . The beginning of the audience is announced by beating on a drum, called a *daba,* which is a long piece of wood (evidee). The people begin to assemble right away. His co-religionists, when they approach, throw themselves on their knees and touch the ground with their heads: this is their way of saluting the king. As for Muslims, they are content to clap their hands.[40]

procedures. (Thomas Glick has found such influence in the regulation of water rights and irrigation in Valencia; I am indebted to Lawrence Rosen for mentioning the apparent similarities between some aspects of adjudication of water rights in Morocco and in the southwestern United States.) Even if such Islamic influences were muted over time, this sort of intermingling of legal traditions would have influenced legal definitions of property and would have created another, more direct connection between Iberian and African legal practices.

[38] Curtin notes, "Throughout the Western Sudan, Muslim clerics were often found with their own ward in a town, sometimes with a separate town alongside the secular town, or simply with the right to apply Muslim law to Muslims with the non-Muslims following their own customs" (Philip Curtin, *Economic Change in Precolonial Africa: Senegambia in the Era of the Slave Trade*, p. 44).

[39] Joseph M. Cuoq, ed., *Recueil des sources Arabes concernant l'Afrique occidentale du VIIIe au XVIe siècle*, p. 99; my translation.

[40] Cuoq, *Recueil des sources Arabes*, p. 100; my translation.

This recognized existence of multiple legal authorities was common even outside areas of Muslim influence. African cities and towns were structured to admit the settlement of outsiders. The accommodation was a practical one; long-distance trade was mainly in the hands of diasporic communities held together by ethnic and kinship ties. It was expected that these communities would obey local laws in interacting with local residents but that they would also provide their own legal controls. The system fit well with the institutions of rule of local populations, in which wards were typically the site of judicial control in the first instance, with appeals possible to higher authorities. Special wards set aside for outsiders coincided with an existing level of legal supervision.[41]

In some cases, merchant diasporas extended their jurisdiction beyond their own community borders. This was not always the result of conscious policy but was nevertheless consistent with both religious goals and commercial interests. Muslim merchants who brought Islam into non-Muslim parts of Africa benefited when rulers converted. As in other areas of Islamic expansion, Muslim justice undoubtedly also appealed to some litigants on nonreligious grounds, for the relative certainty and authority of judgments.[42] This possibility of transforming the law of a diaspora into a central institution was not, however, limited to Muslim communities. The Aro, a trading diaspora of Iboland in what is now southeastern Nigeria, benefited commercially and politically from the religious status among non-Aro groups of the Aro's oracle at Arochukwu, in Aro territory. Non-Aro peoples increasingly sought out the oracle as a means for settling disputes, sometimes making long trips to Arochukwu. This gave the Aro the curious status in many regions as a community of outsiders with religious prestige and, as a result, considerable practical legal authority.[43]

[41] This physical and legal separation was also applied to communities of "white" Muslims, that is, light-skinned North Africans and Egyptians, in the capital of Mali in the fourteenth century and in the Niger River city of Gao. See Richard W. Hull, *African Cities and Towns Before the European Conquest*, p. 82. Subrahmanyam (*The Portuguese Empire in Asia*, p. 46) notes that jurisdictional subdivisions for culturally different groups were common to medieval cities of Europe and Asia; with numerous resident foreigners, the cities "tended to develop systems of internal regulation for these foreign communities, which at times gave them considerable social and judicial autonomy."

[42] On the influence of Muslim legal institutions, see Hull, *African Cities and Towns*, pp. 84–85. Chapter 3 contains further discussion of Islamic law.

[43] For a brief discussion of the Aro (and a broader discussion of the importance of institutions in tying together communities in diaspora), see Philip Curtin, *Cross-Cultural Trade in World History*, pp. 46–49.

Separate legal authorities for different corporate groups existed not just for trade diasporas but also for subordinate or conquered corporate groups within loosely confederated African states. As Thornton points out, smaller conquered states typically continued to exercise local authority, including legal authority, and could effectively check the power of larger states in some circumstances.[44] Curtin notes that this fragmented legal authority was also a feature of a Senegambian political structure in which corporate groups defined by lineage retained authority despite formal subordinate status in relation to larger state structures.[45] Related to the recognition of the (limited) sovereignty of outsiders and constituent polities, African states also operated in an established system of international relations. The recognition of immunity for ambassadors was fairly widespread in precolonial West Africa, as were regulations for the conduct of warfare.[46] It was the existence of this system that allowed the Portuguese and, later, other European powers to set up trading relations and factories along the African coast. The Portuguese sent regular embassies to local rulers before establishing trading posts.[47] Although it is possible that Africans and Europeans misunderstood the meaning of Portuguese tenure on these relatively small holdings, different interpretations of landholding were hardly significant at this stage. More important was the understanding on both sides that the factories did not establish Portuguese sovereignty over Africans themselves. This limited jurisdiction was familiar to both sides; on the one hand, it fit with existing patterns of merchant diasporas and, on the other side, it was part of a repertoire of practices used in interactions with non-Christian populations on the frontier.[48]

The existence of a precolonial system of international relations was linked, too, to broad patterns of customary procedures and law that cut

[44] Thornton, *Africa and Africans*, p. 91.

[45] Curtin, *Economic Change in Precolonial Africa*, and see note 48 below.

[46] Robert Smith, *Warfare and Diplomacy in Precolonial West Africa*, pp. 3–4.

[47] See A.J.R. Russell-Wood, *A World on the Move: The Portuguese in Africa, Asia, and America, 1415–1808*, p. 21. Russell-Wood notes that the Portuguese in Africa used force "usually only as a measure of last resort" and relied instead on negotiations with local rulers.

[48] Curtin notes, for example, that Senegambian leaders dealt with European traders as if they were simply another corporate group. "If the Europeans asked permission to build a factory or set up a town of their own, Senegambian practice had plenty of precedents with dealing with aliens through their own chiefs. From the African point of view, a European trading post was not ceded territory, merely another religious minority, more easily dealt with by letting it live under its own laws" (Curtin, *Economic Change in Precolonial Africa*, p. 45).

across cultural and political boundaries. Despite the emphasis among Europeans on written sources in European law, Portuguese traders learned that Africans recognized unwritten contracts, sanctified by oaths or other unwritten practices, and these lent a certain stability to early coastal trading relations.[49] However, Europeans also misinterpreted African political and legal structures, and they consistently portrayed them as inferior to European law. Thus European chroniclers often mistakenly interpreted the sovereignty of African kings as rule "above the law." Though longer contact revealed community acceptance of rule and cooperation in the enforcement of law – familiar limitations of sovereignty for European powers – as unifying features of West African polities, it was also commonplace for Europeans to characterize African legal practices as uncivilized and inferior. This attitude was consistent with the Africans' status as non-Christians. It contributed, too, to formal policies of exclusion of Africans or Afro-Portuguese from positions of legal administration.[50]

Yet these representations did not disturb the fundamental perception among European chroniclers that African polities were indeed sites of legal administration, however autocratic or arbitrary. Jurisdictional disputes arose from time to time involving crimes committed across the borders of fortified European posts. In a 1577 case in Mina, a Portuguese captain killed two sons of the Efutu ruler after a dispute. The Efutu demanded the Portuguese punish the captain, and the conflict escalated to a costly battle. The reverse situation occurred when the Portuguese

[49] See Smith, *Warfare and Diplomacy*, on these understandings as an aspect of African international law.

[50] Two scholars comment that Europeans "were content to believe that African rulers were more autocratic than contemporary rulers in Europe, whereas they were most probably often a good deal less autocratic" (A. Teixeira da Mota and P.E.H. Hair, *East of Mina: Afro-European Relations on the Gold Coast in the 1550s and 1560s: An Essay with Supporting Documents*, p. 21). Officially, "purity of blood" was necessary for appointment to judicial posts in the empire, though in practice this requirement had to be relaxed in some places. For example, at São Tomé in 1528 the governor was instructed by the king not to oppose the election of mulattos to the town council (Boxer, *The Portuguese Seaborne Empire*, p. 280). Relaxing this requirement did not seem to affect views about the unsuitability of non-Portuguese-born residents for legal posts. An anonymous report from Mina written in 1572 suggests that settlers should be encouraged from the Azores and São Tomé but should not be entrusted with the administration of justice "unless they are home-born Portuguese . . . [because] the older folk do not, as a rule, speak highly of their worth and honesty." Document translated in Mota and Hair, *East of Mina*, p. 82.

sought to have "rebels" from the nearby town of Caia "handed over to [Portuguese] justice" and threatened to punish the whole town.[51] These sorts of jurisdictional disputes were familiar elements of frontier politics for both sides.

Another unifying feature of African legal systems existed in the institution of slavery. Enslavement of Africans by Africans, though not universal on the continent, was a widespread and well-established practice before European demand for slaves to transport to the Americas prompted a radical shift in scale of this activity. Despite regional variations in the economic importance of slavery and in the specific terms and conditions of bondage, institutional similarities extended to quite different regions. The mechanisms for enslavement – economic (the purchase of slaves), political (taking slaves as war captives), and judicial (the awarding of slaves as part of legal judgments) – formed a familiar repertoire with widespread legitimacy, if different frequency. In a more fundamental sense, as Miers and Kopytoff have argued, slavery existed as an institutional category in which, independently of different terms and conditions of bondage, slaves were marginalized from the status of community insider. Thus, even though some African slaves were incorporated into kinship groups and households, these steps moved them toward a status of "belonging" (more meaningful in the African context than the status of "freedom") but did not remove their stigma as outsiders.[52]

Distinctions between economic enslavement and military or political enslavement that resulted from warfare increasingly became blurred as decisions to go to war were influenced by economic interests. Judicial mechanisms for enslavement declined in relative importance, though they also intensified in response to the rising demand. Nevertheless, it is significant that the rise in slave raiding did not lead African states to abandon a legal basis for slavery. Enslaving war captives was itself recognized as legitimate, and justifications for war could always be produced. An advisory letter to the then-united Spanish-Portuguese crown in 1612 reported that African traders were aware of papal restrictions on slavery and would "falsely assert that the persons whom they

[51] The first incident is described by Vogt (*Portuguese Rule on the Gold Coast*); the second is described by the anonymous report from Mina reproduced and translated in Mota and Hair, *East of Mina*, p. 87.

[52] Suzanne Miers and Igor Kopytoff, "Introduction" in *Slavery in Africa: Historical and Anthropological Perspectives*.

bring to be sold are captured in a just war."[53] In at least some cases, captives or their former patrons themselves challenged the legality of their enslavement by questioning the legitimacy of acts of aggression. In sixteenth-century Kongo, legal institutions were strengthened in an effort by the king to continue to control distributive wealth as slave raiding and trading expanded and threatened that authority. Kongalese elites found they could use the courts simultaneously to improve their own access to slaves and to challenge the legality of ownership of slaves by others. While increasingly seeking slaves as legal remedies, elites also forwarded their own interests by taking charge of slaves they had induced to "free" themselves from less powerful masters. The latter challenged these actions in court but with little success. In the early sixteenth century, the Kongolese ruler Afonso had used the courts to challenge Portuguese trading that bypassed his control. Afonso appointed three judges to rule on whether slaves purchased by the Portuguese had been captured in legitimate wars or were merely being kidnapped.[54]

Europeans, for their part, responded to shortages of labor in West African outposts by increasing forms of judicial enslavement using quite similar mechanisms. Suggesting responses to the dire need for galley slaves so that the Portuguese could effectively patrol the Mina coast, for example, a sixteenth-century report proposes condemning criminals in São Tomé and the Island of Fogo to service in the galleys "either for a limited period or for life." It warns that cases should be removed from the hands of African judges as much as possible because they were too lenient.[55] The exile of criminals from Portugal and Brazil to Angola became a central feature of the imperial penal system. And in Brazil, as we have already commented, the possibility of declaring Indians slaves through declaration of just war outlived Spanish reforms. It hardly matters for our purposes whether African and Portuguese mechanisms of judicial enslavement were precisely the same; they coexisted, with substantial similarities, through the first three centuries of Atlantic contact and commerce, and constituted another element of mutual recognition.

In summary, the legal features of precolonial Africa we have surveyed briefly – limited legal autonomy of religious communities, established norms for interstate relations, and a separate legal status for captives

[53] "Proposta a Sua Magestade sobre a Escravaría das Terras da Conquista de Portugal," pp. 11–15 in Conrad, *Children of God's Fire*, p. 12.

[54] Anne Hilton, *The Kingdom of Kongo*, pp. 85, 122–25.

[55] Anonymous report from Mina in Mota and Hair, *East of Mina*, p. 74.

and slaves – were hardly foreign to European powers trading along the African coast from the fifteenth century on. Indeed, the familiarity of the legal order permitted Europeans to pursue the only possible expansionist strategy, given the high costs of military protection and the obstacle of Africa's hostile disease environment. On the one hand, the trading post networks minimized internal jurisdictional complexities. These emerged forcefully only in places where significant groups of European settlers and descendants, or of Christian converts, challenged the neat designation of Europeans as yet another community living in Africa in diaspora, with limited legal autonomy and authority. On the other hand, jurisdictional complexity was implicit in the patchwork of African polities and small European outposts. The legal status of slaves, who were outsiders under the complete authority of culturally different societies and masters, must be understood as the negation of the rights of outsiders to membership in corporate communities with their own legal authorities. These shared features of plural legal orders were to continue to influence legal politics in the Americas.

MARRONAGE AS A LEGAL STATUS

Keeping in focus the structural similarities of Iberian and African legal orders provides us with another perspective on the legal relationship of Africans and Iberians in the New World. In emphasizing the continuity of legal categories from one side of the Atlantic to the other, we need not fall into the pattern either of tracing African cultural "survivals" or of asserting the transformative influence of the experience of slavery. Certainly the historical conditions of slavery in the New World were unique. But it is significant that Africans who became slaves both possessed political theory, based on prior understandings of captivity as a legal category, and developed a reading of Portuguese (and Spanish) legal orders that would have shifted but not dramatically altered these ideas.

From the narrow perspective of sources of law, the law of slavery of the South Atlantic is uncomplicated. Both Portuguese and Spaniards adopted legal statutes that were derived with relatively minor change from Roman law. Slaves did not have legal personality – they could not be parties to lawsuits and could appear as witnesses only under very limited circumstances. As in Roman law, masters were awarded nearly complete control over their slaves, with restrictions added that only moderate punishment would be permitted and that slaves would be remitted to government officials for more serious punishment. These

restrictions resulted, however, in few interventions in masters' treatment of slaves and in relatively little local legislation until the first decades of the nineteenth century.[56] In one sense, slavery itself fortified jurisdictional divisions in the plural legal order by awarding considerable judicial power to slave masters and limiting circumstances for intervention by, or appeal to, state courts.

Yet, we should take care not to view the legal context of slavery as overdetermined by Roman legal sources or isolated from change because of the severe limitations on slaves as legal actors. The background of legal pluralism in Africa and Europe informed both masters and slaves about the fit of slavery within a larger array of legal possibilities, and these continued to exert an influence on slave strategies and planter responses. Indeed, the perspective gained by this exercise helps to shed light on the "problem" posed for historians by slaves who embraced "comparatively moderate ambitions" or who "visualized freedom" in ways that seemed oddly incomplete.[57] The approach helps to explain, too, the puzzle of maroon communities that seemed to relinquish too much, too easily, in treaties with plantocratic polities, while undermining their separatism in other ways by staying "curiously close" to settled plantations.[58] Rather than viewing attempts to define a political space for semiautonomous communities as politically naïve or necessarily doomed, an understanding of models for plural political and legal authority shared in a broad sense by both Africans and Europeans suggests that such strategies were logical and viewed as workable, even if potentially unstable, over the long term.

Consider the legal response to *marronage*. Under the slave law shaped in the Americas largely out of Roman law sources, slaves who were

[56] Watson argues that this heavy reliance on Roman law extended to the English colonies and was imported through common references to civil law sources. Further, he questions the distinction made by Klein and others between legal views of slaves as chattel in the English colonies and the extension of legal personality to slaves in Spanish and Portuguese America. In the Iberian colonies, he argues, close adherence to Roman law meant the adoption, with only minor variation, of the view that slaves did *not* possess legal personality, though they could be treated as "thinking property" in ways that distinguished them from inanimate objects. I could draw on Watson's arguments to buttress my case for an interrelated legal order in the Atlantic world, but to do so would be to rely too narrowly on the importance of legal sources. As Watson himself points out, his analysis shows "how difficult it is to deduce much about a society from an examination of its legal rules." See Alan Watson, *Slave Law in the Americas*, especially pp. 121–22, and quote on p. 129.

[57] Michael Craton, *Empire, Enslavement, and Freedom in the Caribbean*, pp. 277–78.

[58] Craton, *Empire, Enslavement, and Freedom*, p. 64.

fugitives were simply criminals, and actions to help slaves escape or to hide fugitives were also criminalized. Various provisions in slave laws thus permitted harsh punishments for fugitives and in many places made assisting escape a capital offense. Living in settlements where Europeans were heavily outnumbered by enslaved Africans, sugar planters considered harsh penalties for runaways and rebellious slaves essential to their safety. They feared the influence of maroon communities and everywhere sought first to destroy these settlements and recapture the fugitives. In Jamaica, maroon communities in the mountainous interior were targets of repeated military campaigns. In Brazil, where an extensive network of villages, or *mocambos*, was linked in the largest maroon polity of the Americas, Palmares, the first response was also a series of military campaigns to burn villages and recapture slaves. In an expedition against Palmares in 1676, the commander told a force of 185 whites, mestizos, and Indians that "the blacks fought as fugitives" and the troops were "hunting them down as lords and masters . . . it being a disgrace for every Pernambucan to be whipped by those whom they had themselves so many times whipped."[59]

The undisputed label of fugitive slaves as criminals did not prevent colonial authorities from also imagining the existence of a tight political structure within runaway slave communities. In many places, chroniclers reported that maroons lived under the control of powerful kings, or chiefs. In Palmares, for example, the political order was described as comprising a network of "rulers and powerful chiefs" in dispersed mocambos, who were in turn under the authority of a king, Ganga Zumba.[60] Maroon leaders elsewhere were described in similar terms.[61] As in European representations of African polities, this portrayal coexisted with descriptions of maroons as uncivilized or lawless.[62] Historians, too, have sometimes reproduced these contradictory images of maroon life. In characterizing maroon communities as re-creations of African polities in the Americas, some historians have emphasized the monarchial

[59] From a manuscript written in the late seventeenth century by an anonymous chronicler of the war against Palmares, translated in Conrad, *Children of God's Fire*, p. 372.

[60] Phrase quoted in manuscript in Conrad, *Children of God's Fire*, p. 369.

[61] I refer in my account to a few examples; for comparative cases that bear out these generalizations, see Richard Price, *Maroon Societies: Rebel Slave Communities in the Americas*; for Brazil, João José Reis and Flávio dos Santos Gomes, *Liberdade por um fio: História dos quilombos no Brasil*; and for the Caribbean, Michael Craton, *Testing the Chains: Resistance to Slavery in the British West Indies*.

[62] See, for example, my discussion of local officials' portrayal of palenques in New Spain at the end of this section.

character of rule in these communities while also representing marronage as part of a "restorationist project" intended to rekindle egalitarian impulses of a romanticized African past.[63]

Yet, as Richard Price has pointed out, political centralization in maroon communities was exaggerated both by European observers and strategically by maroons themselves. Price notes that Europeans found representations of monarchial rule understandable in terms of European political models; our discussion in the previous section shows that such representations had already become standard (and equally misleading) in descriptions of states in Africa, and this precedent was probably influential. More importantly, Price tells us that at least in the case of the Saramaka of Surinam, political centralization was never as strong as it appeared and that the maroons themselves played an important part in misrepresenting the nature of political authority to Europeans.[64] Price suggests that a similar combination of purposeful misrepresentation and misreading probably took place in Portuguese dealings with Palmares.[65] Certainly there is evidence from here and elsewhere that political authority was quite dispersed, giving rise in times of crisis to intense rivalries that were capable of splitting the groups apart. Lines of division included ethnic boundaries of groups from different regions (and different areas from within the same regions) of Africa and rifts between creole and African-born slaves. Such divisions remind us, as Price puts it, that the communities were necessarily in the midst of shaping a new culture out of a confluence of African and American influences, a process he calls "creolization-while-in-a-state-of-war."[66]

It is possible, then, to understand the influence of African political and cultural practice without devoting ourselves to a search for African cultural "survivals" or ignoring the impact of American realities. Extending this approach to an understanding of representations of legal order leads to the observation that the continuing homology between African and European representations of plural political and legal orders – and not just failed separatist strategies – underlay the political negotiations of

[63] The trend is discussed in João José Reis and Flávio dos Santos Gomes, "Introdução – Uma história da liberdade," p. 11. For an early and prominent example of this argument, see R.K. Kent, "Palmares: An African State in Brazil."

[64] See Richard Price, *First Time: The Historical Vision of an Afro-American People*; and Richard Price, *Alabi's World*.

[65] Richard Price, "Palmares come poderia ter sido."

[66] Price, "Palmares," p. 57.

maroons and planters. That is, both sides had recent and working models of limited sovereignty in mind. Maroon communities could be redefined as having both independent political authority and recognized subordination to European power. In legal terms, this meant jurisdiction over all matters except the most serious capital cases, which were to be referred to colonial courts. This relation reproduced, on the one hand, familiar African political arrangements whereby communities in diaspora controlled their own internal affairs while at the same time referring specific sets of disputes and criminal prosecutions for specific types of offenses to resident rulers. At the same time, the relationship reproduced for planters the jurisdictional arrangements under which they themselves held local legal authority. Nearly complete legal authority was limited by specific guidelines for referrals to both crown and church. Viewed in this context, the treaties signed by maroons appear as neither purely compromising documents nor restorationist projects; they built on widely shared understandings of the structure of political authority and responded to the exacerbated jurisdictional fragmentation of colonial legal administration.

In Jamaica, colonial authorities authorized a fifteen-article peace treaty with the maroons in 1739. It contained the usual provision that the maroons agree to return runaways, including those who had joined the community within the previous two years.[67] Legally, the treaty awarded Cudjoe, the maroon leader, judicial authority within the maroon community except in capital cases, which would be referred to the colonial judiciary.[68] Maroons in such cases would be tried by "proceedings . . . equal to those of other free negroes." Other jurisdictional guidelines were also familiar, and limited maroons' authority.

[67] They were to be returned to their former masters, though, only if they were willing to go; otherwise they were to "remain in subjection to Captain Cudjoe," the maroon leader, and thus required to abide by the peace. Craton, *Testing the Chains*, p. 89. Price points out that these familiar clauses in maroon treaties were probably much less effective than one might assume. Saramakan maroons harbored a significant "illegal" population of recently freed slaves while also finding other ways around the requirement that they not assist fugitives. Such strategies would have been available to other maroons, too. Price, "Palmares."

[68] This pattern had already been applied in dealing with maroons on the island. When the English took Jamaica from the Spaniards, one of the first English governors offered an alliance with a palenque leader, Lubolo, proposing that he be made "colonel of the black regiment of militia, and he and others appointed magistrates over the negroes to decide all cases except those of life and death." Quoted in Richard Hart, *Slaves Who Abolished Slavery, Vol. 2: Blacks in Rebellion*, p. 6.

Whites committing offenses against maroons would not be subject to their courts but would respond to complaints brought before "any commanding officer or magistrate in the neighborhood," while maroons who injured whites could be brought before colonial courts.[69]

In Palmares, European chronicles describe the signing of the treaty of 1678 as an act of submission. The men coming from the *quilombo* to negotiate the treaty with the governor, Don Pedro de Almeida, "prostrated themselves at D. Pedro's feet, striking their palms together as a sign of surrender and to acknowledge his victory."[70] The governor, advised by the members of the city council, the high judge, the royal treasury officer, and two military commanders, agreed to a treaty requiring cooperation in the capture of fugitives and relinquishment of recent arrivals, in exchange for a place of settlement and freedom for all those born in Palmares. The treaty included two clauses that would seem contradictory: that the residents of Palmares "would remain obedient to the orders of the government" and "that their king would continue as commander of all his people."[71] As in Jamaica, the arrangement was clearly a familiar one of limited autonomy, the division of authority over internal and external affairs, and over routine versus exceptional cases.

Such treaties have often been blamed for the subsequent weakness of maroon communities. Craton argues, for example, that the treaties enabled colonial agents "to argue that the establishment of physical boundaries, the definition of maroon autonomy, and the right to send in liaison officers implied that ultimate suzerainty resided with the colonial regime."[72] Yet, though the treaties did in fact implicitly recognize colonial sovereignty, the relation must be understood in the context of a concept of the state as less than completely dominant. Certainly sixteenth- and seventeenth-century maroons, like the Europeans they negotiated with, were accustomed to a world in which fragmented authority was a normal part of the political order, easily understood

[69] Craton, *Testing the Chains*, p. 90.

[70] Anonymous chronicle of Palmares war, Conrad, *Children of God's Fire*, p. 375. Note the similarity of this gesture with the actions of Muslim traders coming before the Ghana king as vassals who maintained a separate polity-within-the-polity (described in the previous section). The actions described by the Portuguese could have signified a recognition of limited sovereignty, but not surrender.

[71] Treaty as described by anonymous seventeenth-century chronicler, quoted in Conrad, *Children of God's Fire*, p. 376.

[72] Craton, *Testing the Chains*, p. 65

and not necessarily unstable. Neither side would have confidently predicted either the gradual erosion of maroon autonomy that took place in Jamaica or the return to hostilities that occurred in the case of Palmares. But both sides would have understood these as possible outcomes of arrangements of divided authority.

Under some circumstances, planters also reproduced the logic of jurisdictional claims made for the express purpose of "civilizing" non-Christians. In colonial Mexico, runaway slaves formed *palenques* in the mountains of Veracruz from the earliest beginnings of plantation agriculture in the region. A series of especially violent rebellions, in 1725, 1735, 1741, 1749, and 1768, led to the creation of a string of new settlements; the 1735 revolt alone gave rise to the formation of six new mountain strongholds. In 1769, the residents of one palenque petitioned the royal audiencia for freedom. Negotiations and a series of depositions taken in connection with the case revealed that the ex-slaves had an intricate web of relationships with the surrounding communities, including serving as intermediaries between the district magistrate and local Indians. The *alcalde*, in turn, aided the rebels by helping to draft their petitions to the audiencia and by arguing, in an extraofficial capacity, the merits of their case for freedom.[73] The reasons given by local officials in support of a pardon included their desire to bring the maroons under state legal authority. The "unfortunates" had been living "abandoned to vice . . . and in a word, without Christian or political governance." After being given liberty, it would be possible for them to "elect an alcalde, *or* alcaldes, and other officials, however many the law entitles them to according to the number of families," and the mountain communities would be reconstituted as officially recognized towns.[74] This argument reproduced in a different context the logic of thirteenth-century canonists describing a rationale for extending crown jurisdiction into heathen lands. The perspective continued to provide background to the accommodation of maroons in the colonial order.

Although treaties with maroons were frequently broken, and a return to a state of war was a constant threat, a surprising number of settlements did make the transition to legally constituted communities that were

[73] See Patrick Carrol, "Mandinga: The Evolution of a Mexican Runaway Slave Community, 1735–1827."

[74] Archivo de la Nación, México, Tierras tomo 3543, exp. 1, 1769. My translation. I am grateful to Herman Bennett for drawing my attention to the Veracruz palenques and for allowing me to study his copy of this document.

either partially or completely incorporated in the colonial legal order.[75] This was not an impossible outcome and, given the available models of jurisdictional complexity available to participants, neither was it an irrational goal. Had the demographic and political conditions of slavery in the New World been different, the threat posed by marronage would have been greatly lessened and the possibilities greatly increased for multiplying a model that treated maroon settlements as one of a series of corporate communities within a fragmented colonial order.

BARBAROUS RAIDS, CIVILIZED RANSOM

We can find further evidence of a widely shared legal framework in attitudes and routines surrounding captive redemption. The seizure of captives was a phenomenon that encompassed the trans-Atlantic slave trade but also extended chronologically and geographically beyond it. Captive taking was commonplace across the Atlantic world, from the sea lanes of northern Europe, to eastern Mediterranean lands oriented toward the Atlantic, and to all parts of the New World. Though Europeans in captivity were proportionately a small part of those who were held for ransom or enslaved, the threat of captivity and accounts of its conditions were symbolically central to Europeans' understandings of the Atlantic world and their own relations with cultural and religious others.

Scholars have long taken note of the consistency of themes of captivity narratives, and of their popularity. These accounts constituted their own genre in European letters from the sixteenth century on. The narratives focused attention especially on the fear that captivity would result in cultural or religious conversion. Dreaded "incorporation" into captor societies took a literal form when cannibalism figured among the horrors reported by freed captives.

Accentuating the fear of captives' becoming "lost" – and the promise of their temporal and spiritual salvation – involved emphasizing the differences between "civilized" captives and "barbarous" captors. But the subtext of captivity accounts was quite different and drew quiet attention to shared understandings and established routines that made responses to captivity – in particular, redemption – possible. Just as the

[75] Caroll, in "Mandinga," notes that twelve such cases have been well documented in the South Atlantic. It is probable that other examples exist but have not received scholarly attention because of the small numbers of runaways involved or the unofficial routes taken to achieve legal integration, such as settlement in established communities.

cultural categories employed to define captors were transposed from one group to another – from Barbary pirates to New World Indians, for example – expectations about negotiations and redemption were also reproduced across a wide interregional sphere. Encounters with captor groups created and reinforced different kinds of knowledge: new findings about the legal practices of others; affirmation of ideas about the multicentric character of law; and a necessary tolerance for the contradiction of treating "outlawed" groups of criminals, brigands, and "savages" as legally constituted polities.

The activities of the Barbary pirates formed a particularly important background to captive taking elsewhere in the Atlantic world. What had been largely a Mediterranean threat became also an Atlantic one in the early seventeenth century. Following the expulsion of Moriscos from Spain in 1610, corsair raids against Spanish ports and ships accelerated, with the numbers of captives seized reaching a peak between 1610 to 1639.[76] The raids reached all the Spanish coasts; in 1667, Basque officials pleaded with the crown to be excused from meeting the quota for the levy on seamen because North African pirates had taken so many local men.[77] French and British ports were also targets, as were ships from these countries traveling in both the Mediterranean and the Atlantic. Hebb estimates that between 1622 and 1642, the English had more than three hundred ships and seven thousand captives seized by Barbary pirates, losses that fell disproportionately on London and southwest ports.[78] Several estimates place more than twenty thousand Christian captives in Algiers alone in the 1620s and 1630s.[79]

Corsair activity endangered cross-Atlantic voyages. Iberian ships sailing both to and from the West Indies and Brazil faced the threat of lost cargoes and the captivity of their crews. English and North Atlantic ships and routes were also affected. In 1625, William Bradford complained that a ship on its way to England with beaver skins was seized "almost within sight of Plimouth."[80] The American merchant Joshua Gee set sail from Boston on a trading voyage in 1680 and was

[76] Ellen G. Friedman, *Spanish Captives in North Africa in the Early Modern Age*, p. 13. Friedman calls the raiding an "undeclared war" of North African Muslims against Spain in the seventeenth century (p. 23).

[77] Friedman, *Spanish Captives in North Africa*, p. 19.

[78] David Hebb, *Piracy and the English Government, 1616–1642*, p. 139. Expanding the estimate to include the decades prior to 1622, Hebb arrives at the estimate of four hundred ships and eight thousand captives.

[79] Paul Baepler, "Introduction," *White Slaves, African Masters*, p. 3.

[80] Nabil Matar, *Turks, Moors, and Englishmen in the Age of Discovery*, p. 94.

captured by corsairs from Algiers. For these merchants and other traders and travelers, North African captivity was a real threat, one that was made more ominous by the religion of the captors and the supposition – more imagined than real – that captivity in the North African city states inevitably meant forced conversion and sexual slavery.[81]

Corsair activities also extended their reach across the Atlantic because for some they represented rival opportunities. Privateering was hardly unique to North Africans; Drake and other English privateers called in North African ports, and substantial, if uncounted, numbers of English seamen joined Mediterranean pirates. John Smith was not exaggerating when he commented that his countrymen were more interested in joining the ranks of the corsairs than in settling the New World.[82] Indeed, many men sailing to the New World had already had Mediterranean experience and knew of or had taken part in corsair raiding. The German privateer Hans Staden, for example, sought prizes along the Barbary Coast before being drawn across the Atlantic to assist the Portuguese at Pernambuco, where he fell captive to Tupinamba Indians.[83]

The backdrop of Barbary piracy and captive taking no doubt helped to shape Europeans' perceptions of captivity in the New World. Timing perhaps made this transposition inevitable. In South America, Portuguese encounters with the Tupinamba in the sixteenth century overlapped with routine captive taking across religious lines in the Mediterranean. In North America, the seventeenth-century threat by corsairs to cross-Atlantic shipping reached its peak just as the phenomenon of settlers in Indian captivity was transfixing public attention. Joshua Gee, the Boston merchant seized and held in Algiers, had set sail for Europe only three years after Mary Rowlandson was released by her Indian captors.[84] Cotton Mather shared the pulpit of North Church with Gee's son and preached on the spiritual plight of Christian captives

[81] Matar traces the European fixation on sodomy among Muslims in Chapter 4 of Matar, *Turks, Moors, and Englishmen*.

[82] Matar, *Turks, Moors, and Englishmen*, p. 58.

[83] Hans Staden, "The True History of His Captivity," p. 19.

[84] Baepler ("Introduction," *White Slaves, African Masters*) observes the proximity of these events and suggests that Gee, a resident of Boston at the time of Rowlandson's release, would certainly have known about her captivity. Rowlandson and several of her children had been seized by Indians during King Philip's War. Her captivity account, *The Sovereignty and Goodness of God*, was published in England and Massachusetts in 1682, received a wide readership, and became a classic in the genre of American Indian captivity.

among both Indians and North Africans; both groups faced the challenge of maintaining faith in the face of what Mather supposed to be constant pressure to recant Christian beliefs and civilized habits.[85]

Both converting to Islam and adopting Indian ways signified an abandonment of Christianity. Narratives of captivity tended to celebrate the resilience of devout Christians, while also noting the fall of weaker captives. This was Mather's theme, for example, when in a 1703 sermon he told of North Africans threatening to kill two captives, a Frenchman and an Englishman, if they refused to convert; the Frenchman gave in, while the Englishman died resisting. This theme carried through to – and was in turn borrowed from – narratives of Indian captivity. Rowlandson confessed her own moments of weakness and attributed her survival and return to her private devotion. Such examples were set against other illustrations of degradation. Jean de Léry, in his account of sixteenth-century Brazil, reported with horror that some "Norman interpreters" who had lived eight or nine years among the Tupinamba had not only abandoned Christianity and "polluted themselves by all sorts of base behavior among the women and girls . . . but . . . even boasted in my hearing of having killed and eaten prisoners."[86] Many Spanish captivity narratives in the New World told of women who were abducted and never returned after marrying Indian captors.[87] On the other side of the Atlantic, travelers repeated stories of Christian captives who had voluntarily converted and then joined in corsair raids. The commonality of representations of captives as "fallen" united discourse about Indian and North African captivity. As Matar observes, the term *renegadoe* itself originated as a label for someone who had converted to

[85] Baepler notes the representations in similar spiritual terms of North African and American Indian captivity ("Introduction," *White Slaves, African Masters*, p. 6).

[86] Jean de Léry, *History of a Voyage to the Land of Brazil*, p. 128.

[87] Bonnie Frederick suggests that the gender of captives in Hispanic narratives shifted from one side of the Atlantic to the other. New World captivity narratives tended to feature women and to portray them as helpless, and the accounts dropped the heroic rescue theme that was common in male-centered captivity narratives in the Mediterranean. Frederick's main examples are from nineteenth-century Uruguay and Argentina, and earlier narratives might not support the point as well. Matar observes, too, that the danger of rape was also implicit in representations of male captivity in North Africa (Matar, *Turks, Moors, and Englishmen*). While conceding the point that captivity accounts were important in the shifting social construction of gender and that this discourse was in many ways specific to time and place, we still observe continuities in the themes of sexual and spiritual danger on both sides of the Atlantic. See Bonnie Frederick, "Fatal Journeys, Fatal Legends: The Journey of the Captive Woman in Argentina and Uruguay."

Islam and was later used for settlers who joined native communities in the Americas.[88]

Such parallels made for a certain easy transposition of cultural categories. Muldoon writes, in a different context, of the "Indian as Irishman" in English settler eyes; captivity narratives show us the "Indian as Muslim."[89] Matar argues, though, that Britons inverted this superimposition by representing the far more numerous captive seizures by Barbary pirates in terms familiar from the less numerous and more containable instances of Indian captivity. In this way, the much more powerful Barbary pirates could be portrayed as culturally primitive, the equivalent of New World "savages." Indeed, both "enemies" were frequently portrayed as lawless. No European settler would have faulted Hannah Dustan for hacking ten of her New England Indian captors to death with a hatchet and escaping. As Mather noted in his sermon on the event, Dustan "had not her own Life secured by any Law unto her" and so "thought she was not forbidden by any Law to take away the Life of the Murderers, by whom her Child had been Butchered."[90]

Despite the common representation of captors as lawless, and the widespread fear that captivity meant a descent from civility, these themes coexisted with other, less prominent representations of captivity as forming part of an array of regulated and in this sense "lawful" exchanges and practices. Captive taking was after all usually motivated by an interest in collecting ransom.[91] Though Europeans feared forced conversion at the hands of Muslim pirates, North African leaders systematically discouraged conversion since only Christian captives would be redeemed.[92] This explicit interest in captive taking as a source of revenue was not consistent everywhere across the Atlantic world, and even where it was most organized, redemption did not free the majority of

[88] Matar, *Turks, Moors, and Englishmen*, p. 96.

[89] See James Muldoon, "The Indian As Irishman."

[90] Cotton Mather, "A Notable Exploit; Wherein, Dux Faemina Facti," in Equiano, et al., *American Captivity Narratives*, p. 185.

[91] There were exceptions. North woods Indians in North America sent out raiding parties to seize captives to replace members of their own groups who had died; the captives were expected to take on the identities of the deceased and their place in the kinship order.

[92] Friedman reports that in 1718 the governor of Algiers ordered that any slaves attempting to convert should be flogged. Conversions by prominent captives were especially discouraged, since they could potentially bring higher prices. Friedman, *Spanish Captives in North Africa*, p. 89.

captives.[93] But the possibility of buying freedom from captivity generated institutional arrangements, expectations about captivity and captor societies, and routines for exchanging prisoners for ransom that had a certain cross-regional continuity.

Some aspects of captivity fit the broader Atlantic pattern of subordinate groups' controlling their own internal affairs within host polities. Captives in North Africa were housed in crowded quarters called *baños* and had officials who both adjudicated internal disputes and reported to the ruling sultans. The captives were organized by nationality into groups that controlled their own areas of the baños and had their own officials. From the thirteenth century on, Trinitarian and Mercedarian friars from Spain were permitted to enter the North African principalities to minister to the religious needs of Christian captives, a function that was not only tolerated but encouraged since the mendicant orders themselves came to play a central role in redemption. Of course, the legal status of these captive populations was not strictly similar to that of ethnic or merchant communities that regulated their own affairs. Conditions in the baños were notoriously horrid, and captives were forced to work hard and had only limited contact with their home communities. But some institutional similarities were striking. Captives who came to occupy high posts had considerable liberty and sometimes acted themselves as go-betweens in negotiations for redemption. The majordomo, the elected official, of each national group of captives, in addition to distributing alms sent from abroad, had the power to adjudicate internal disputes and administer punishments.[94] Mather pointed to these aspects of captives' self-governance as evidence of the spiritual resilience and enduring civility of Christians in captivity. The English captives in the Barbary states, he preached: "formed themselves into a SOCIETY, and in their *Slavery* enjoyed the *Liberty* to meet on the Lords Day Evening, every Week & annually chuse a *Master* and *Assistents*, and form a *Body of Laws*, to prevent and suppress Disorders among themselves."[95]

[93] Some captives passed into private hands and were difficult to retrieve; others indeed converted, while still others died in captivity. About nine years after a group of 302 men, women, and children from Iceland were seized and taken to Algiers, a delegation sent to redeem them were able to locate only 37. Hebb estimates that only around a third of English captives in the Barbary states were ever ransomed and returned (Hebb, *Piracy and the English Government*, p. 163).

[94] Friedman, *Spanish Captives in North Africa*, p. 62.

[95] Cotton Mather, "The Glory of Goodness," pp. 63–64.

Further, slaves had some, if limited, legal protections. The American John Foss's account of his captivity in Algiers between 1793 and 1797 gave a detailed report of the punishments inflicted for various crimes committed by both "Turks" and slaves. The practice of asylum for locals in Marabout mosques, he reported, extended to slaves. If they had committed a crime, they could seek asylum and eventual pardon in a mosque, or they could hold onto a special chain attached to the gates of the Dey's palace. A slave could also come to the chain and request justice if he had "been cheated by any Turk, Cologlie, Moor, Arab, Renegado, or Jew" and could expect an investigation by an officer of the Dey and punishment of the accused if his claim was proven.[96]

The self-regulation of captive communities could not be reproduced in the New World, where European captive numbers were far smaller. But Europeans did transpose the expectation that captives shared interests and identities that should lead them to cooperate in efforts at redemption. Though in North Africa captives had quarters and leaders organized by nationality, Christians from different national groups often helped one another and could be substituted for each other in redemption negotiations – sometimes purposefully by Barbary negotiators to frustrate redeemers and inflate the price for their compatriots. In the New World, Christians' failure to stick together in confronting captivity occasioned outrage. In North America, French collusion with Indian captive taking among English settlers prompted colonists to compare papists to Muslims.[97] In Brazil, the German Hans Staden, in captivity among the Tupinamba and awaiting his turn to be ritually eaten, looked forward to intercession by a fellow Christian, a Frenchman, who instead told the Tupinamba, "Kill him and eat him, the good-for-nothing, for he is indeed a Portuguese, your enemy and mine."[98]

When redemption did occur, customary practices, and in some cases well-established institutions, formed to regulate it. In negotiations with the Barbary states, redemption became increasingly a state-controlled affair. Religious and also sometimes legal ceremonies marked the

[96] John Foss, "A Journal of the Captivity and Sufferings of John Foss." p. 84.

[97] The comparison may have reflected, too, the French practice of soliciting ransom for English captives taken by client Indian groups. For various examples of redemption along the border of English- and French-controlled areas of eastern North America, see Colin G. Calloway, *North Country Captives: Selected Narratives of Indian Captivity from Vermont and New Hampshire*.

[98] Staden, "The True History of His Captivity," p. 32.

transition from captive to free person. Redemption was too frequently successful to be portrayed as an aberration, and it was, in any case, a cause that organized the efforts and resources of captives, their families, and whole communities throughout the seventeenth century. Despite representations of captors as barbarous, redemption implied that they had the capacity to follow behavioral norms – in a word, it implied civility.

The level of institutionalization of redemption was highest in European dealings with the Barbary states. In Spain, Mercedarian and Trinitarian friars organized collections of funds and official redemption voyages with the blessing and participation of the Spanish state. Spanish officials in North Africa and travelers from North Africa to Spain also sometimes participated in negotiations. Travelers engaged in redemption efforts received papers granting them free passage, and the records indicate that they were in fact remarkably safe when in "enemy" territory. Efforts to redeem English captives were more often private affairs, though the government also dispatched redemptionists directly and sent embassies to Constantinople (and from there to North Africa) to threaten naval attacks and the suspension of trade if English captives were not freed. Among Spanish, French, and English captives, organized and private redemption efforts existed side by side. The family and friends of captives enrolled merchants to carry letters back and forth. Individual captives in the Barbary states were sometimes successful in obtaining loans from local merchants to secure their own release.

One result of all this activity was that information circulated widely about the Barbary polities and how to succeed at redemption. In most accounts, the behavior of Barbary sultans was represented as wildly unreliable and capricious. Negotiators who believed they had arrived at a price found that the price had changed when they arrived in port. Redemptionists sent to free specific individuals were encouraged to pay ransom for other, less desirable captives first. One Mercedarian wrote in the late seventeenth century that the state in Algiers was "not governed by law or reason, nor do they keep their word if it conflicts with their interests."[99] Rulers changed often and had singular power. Yet, despite these complaints, redemption voyages continued unabated, and many were successful. Along with the representation of Barbary sultans as impossibly shifty, understandings

[99] Friedman, *Spanish Captives in North Africa*, p. 131.

emerged about routines of the negotiation process. The seemingly erratic price shifts came to have a recognizable pattern, so that redemptionists understood that the first price would rarely stand and could prepare to pay a second, higher price.[100] And because negotiations passed through the sultans, redemption had a certain legal framework within the Barbary states themselves. On arrival in Algiers, captives were taken directly to the Dey's palace. The Dey selected some captives for his own service and might publicly declare the rationale of the capture (in John Foss's case, the Dey railed against the American government's reluctance to negotiate a treaty). On their release, captives also went to the Dey and received passports required to leave the port legally. While in captivity, as we have seen, slaves had precise, if extremely limited, legal rights, and punishments were harsh but not arbitrary.[101]

The sensationalism of accounts of captivity in the Barbary states tended to overshadow the many details about its political and legal regulation. Such information did not, after all, legitimize Barbary captive taking or make it seem less ominous. It is clear, though, that captives themselves concentrated on learning and reporting about the legal framework of Barbary slavery as knowledge both crucial to their quest for liberty and important to the fates of other travelers. The captivity narrative of the American James Cathcart offers many examples of the easy mix of pedagogy and suspense. Cathcart was taken captive by Algerians in 1785 and rose to become the private secretary to the Dey before his ransom and release. He offers close portraits of the structure of authority while preserving his own image as an outsider. For example, when a Muslim notable had a learned discussion with Cathcart about the Quran in a local tavern, Cathcart reports that the qadi was summoned to declare him a convert. The qadi was not at home, and Cathcart was able to bribe several witnesses to affirm that he had shown only his knowledge of Islam, not his faith. His summary of the incident points out both his understanding of the legal probabilities

[100] Hebb suggests that the first price came to be understood as a formal offer to be followed by further negotiations and agreement on a second price. Hebb, *Piracy and the English Government*, p. 152.

[101] When Maria Martin, an American captive in Algiers in 1800, failed in an escape attempt, she and her accomplice were taken before the bashaw's court. The accomplice was sentenced to be executed, and Martin condemned to close confinement and meager rations. Maria Martin, "History of the Captivity and Sufferings of Mrs. Maria Martin," p. 155.

and his desire to turn this knowledge into a lesson:

> The escape . . . ought to serve as a warning to all who read this journal and travel in those countries; for in fact had the Cadhi been at home he was in duty bound to have demanded my admission among the true believers, the Dey himself dare not have opposed it; and had I refused after having recited the symbol of their faith I would have been put to death as an apostate from it.[102]

Here, as in other captivity accounts, the celebration of a narrow escape mixes easily with lessons about legal process.

Just as becoming a captive and securing freedom followed regular and regulated patterns, rituals in Europe framed captives' return to public life. In Spain and France, the mendicant orders involved in redemption organized public celebrations and displays, used in part to raise more money for further efforts at redemption. Returning to England, former captives were required to present a deposition to authorities. The objective was in part to gather information about other captives and corsair activities; the depositions were an opportunity, too, for captives to offer testimony about their individual resistance to cultural and religious corruption.[103] For captives who admitted to or were suspected of conversion, the church devised its own legal procedure. Former captives were brought before a bishop's court and convicted of apostasy, then required to perform penance.[104]

Redemption was less highly regulated and institutionalized in the New World, but European expectations were perhaps not very different. Mary Rowlandson's narrative is similar to those of North African captives not only in presenting captivity as a metaphor for spiritual struggle and salvation but also in its prosaic details about redemption. Rowlandson's ransom of twenty pounds "was raised by some Boston gentlemen," her son was redeemed for seven pounds, paid by "the good people" around Portsmouth, and a nephew was freed after the Council paid four pounds. The Indians were clearly quick to set prices and to negotiate for additional goods to be provided with the ransom. For all its emphasis on the wild nature of the Indians and the risks of being among them, Rowlandson's narrative mainly underscores the willingness of both the Indians and the settlers to

[102] James Leander Cathcart, "The Captives, Eleven Years a Prisoner in Algiers," pp. 144–145.

[103] Matar, *Turks, Moors, and Englishmen*, p. 75.

[104] See Hebb, *Piracy and the English Government*, p. 167.

negotiate.[105] After their "General Court" met and seemed to affirm her release, Rowlandson found that the Indians – "those roaring lions, and savage bears" – had no difficulty recognizing and even celebrating her release: "[T]hey assented to it, and seemed much to rejoice in it; some asked me to send them some bread, others some tobacco, others shaking me by the hand, offering me a hood and scarf to ride in; not one moving hand or tongue against it."[106]

Redemption was both dependent upon mutual understanding and an opportunity for learning. Negotiations revealed, certainly, details of material culture and the structure of power. In showing captives and their rescuers the rituals of release, it conveyed the meaning of captivity itself. In Hans Staden's account of captivity among the Tupinamba, he explains that he arranged his release by carefully instructing the crew and captain of a French trading ship to offer chests of merchandise to his master as a "reward" for his good care and to promise to return Staden after a short stay on the ship: "Meanwhile we had arranged between us that some ten of the crew, who were not unlike me, should gather round and say that they were my brothers and wanted to take me home . . . saying that I must return with them, as my father longed to see me once more before he died."[107] After his stay among the Tupinamba, Staden knew that only an appeal involving ties of kinship would work peacefully – plus the payment of additional goods, "some five ducats' worth in knives, aces, looking-glasses, and combs."[108]

Even if negotiations for redemption fell short of creating an atmosphere of trust or predictability, they produced knowledge – about the legal standing of captives in captor societies, and, also, about the internal legal practices of captor groups. The narratives were a source of information, and many are organized much like early ethnographies,

[105] When Rowlandson's band receives a visit from John Hoar and two Christianized Indians, sent by the Council to try to secure her release, she learns that her master has promised to let her go home if Hoar provides him with a pint of liquor: "Then Mr. Hoar called his own Indians, Tom and Peter, and bid them go and see whether he would promise before them three: if he would, he should have it; which he did, and he had it. Then [the Indian leader] Philip smelling the business called me to him, and asked me what I would give him, to tell me some good news, and speak a good word for me, I told him, I could not tell what to give him, I would [give] anything I had, and asked him what he would have? He said, two coats and twenty shillings in money, and half a bushel of seed corn, and some tobacco" (Mary Rowlandson, "The Sovereignty and Goodness of God," p. 168).

[106] Rowlandson, "The Sovereignty and Goodness of God," p. 171.

[107] Staden, "The True History of His Captivity," p. 58.

[108] Staden, "The True History of His Captivity," p. 58.

with a cataloguing of customs in various areas of social life. One of the categories of description was legal affairs. In this respect, travelers' and captives' narratives were similar in structure, and even the tone was not greatly different.[109] Both sensationalized the strangeness and primitiveness of the groups they observed while also systematically conveying the orderliness of custom.

This built-in ambiguity of knowledge produced through stories about captivity itself provided a certain continuity for the practice of redemption, and for other, more violent responses to captive taking. Expectations of lawlessness *and* lawfulness coexisted. The cultural lessons of captivity and redemption were multilayered. Europeans learned in some settings that even the most alien-seeming captors would settle into patterns of exchange that included the semiautonomy of captives and, ultimately, their release. Europeans learned, too, that this process required a certain flexibility and willingness to play by foreign rules, as both captives and redemptionists. This knowledge implied, then, that there *were* rules to play by and that they included familiar rule making about the legal standing of cultural and religious outsiders. As much as chroniclers wanted to emphasize representations of captors as capricious and cruel, they had an inescapable interest in producing knowledge about specific kinds of ordered behavior.

Redemption was, in this sense, a window both on certain legal practices – the embeddedness of captives in a plural legal order, rituals surrounding changes in legal status – and on a much larger and systemic orderliness of these "wild" peoples. Through redemption, "savages" and "pirates" took on the unmistakable marks of legal authority, political order, and diplomacy. These lessons were too valuable to lose, though through the emphatic insistence on Europeans' unique civility and spiritual righteousness, they could be well hidden – even, if we are not careful, from our own more probing gaze.

AN INTERNATIONAL LEGAL REGIME

This survey of legal complexity in the Atlantic world has ranged from the relation between ecclesiastic and state law in the Iberian peninsula,

[109] Thus, for example, Jean de Léry's description of the Tupinamba in his travels to Brazil (*History of a Voyage to the Land of Brazil*) nearly parallels Staden's account ("The True History of His Captivity"); both insert descriptions of captive taking in a catalogue of observations about Tupinamba social life, though the anxiety and suspense of Staden's description of cannibalism are missing from Léry's account.

to European interactions with Africans in the early centuries of maritime trade, to pacts between maroon communities and colonial authorities in the Americas, and to the legal framework for captivity and redemption. The connecting thread is that these disparate sets of relations were shaped out of the same legal matrix: a structuring of multiple legal authorities that permitted both parallel and independent adjudication and, under specific and clearly defined circumstances, an appellate or controlling authority for state's law. Europeans, we have shown, relied closely on the model of jurisdictional arrangements between church and state, and between crown and nobility, in crafting legal relations with non-Christians. Africans, for their part, had long experience with plural legal orders, especially where trade diasporas established a pattern of dual legal authority. Africans in the New World were in effect responding to opportunities of jurisdictional complexity in widespread attempts to create communities that were simultaneously subordinate to, and independent from, colonial government. Rather than representing self-defeating compromises, such strategies were a logical response to a familiar institutional landscape. Similarly, European captives and redemptionists learned that captivity and release fit into a larger legal framework that assigned a special and permanently separate legal status to captives, regulated the payment of ransom, and ritually marked both incorporation into captor societies and reinsertion into home polities after captives' return. Even the most "barbarous" inhabitants of the Atlantic world, it was understood, possessed both law and legal routines recognizing and regulating subordinate others.

Asserting this *institutional* continuity in the Atlantic world does not require finding *cultural* continuity. There is, though, a cultural connection. One of the impulses for the perpetuation of jurisdictionally complex legal orders – and one of its outcomes – was that legal boundaries were closely associated with the production of cultural boundaries. In the Iberian peninsula, and in Europe more generally, religious distinctions both created legal boundaries marking religious and cultural differences and generated patterns for accommodating difference. As Europeans encountered new types of non-Christians, legal boundaries did not precisely parallel ethnic boundaries, but they existed as an important constraint and rhetorical resource used in shaping ethnic identities. In the South Atlantic, conceptualizing other polities as possessing a legal status that could, under some circumstances, be continued within the territory of another polity placed cultural difference at the center

of political theory and practice. In Africa and the New World, slavery represented the negation of this legal status, the complete subordination of an outsider to the control of a culturally different society and master. The theoretical possibility of reversing this shift – not just for individuals through manumission, but for whole communities through negotiated settlements – was important both to the strategies of Africans in the New World and to Europeans' responses to marronage. Jurisdictional autonomy of a limited kind for communities of runaway slaves created a legal boundary around a space of cultural production; where the boundary remained in place, it came to define not just a political but also an ethnic community. European captivity similarly heightened both awareness of European religious singularity and attention to the divergent interests and identities of various nationalities. Despite the rhetoric in captivity narratives damning captor societies as lawless, redemption depended on institutional regularities that permitted captives to retain their "otherness" and framed cross-cultural negotiations.

This view of legal models and arrangements in the fifteenth century through the end of the eighteenth century in the Atlantic world suggests a different shape and meaning of global interconnectedness in this period. Rather than mapping long-distance trade, modeling core-periphery relations, or tracing civilizational or regional evolutions, a comparative institutional analysis suggests that the world stretching from the Iberian Americas, to Christian Europe, coastal and Islamic Africa, and into the vast Indian Ocean world formed part of a single international legal regime. Broad structural similarities in the ways that power and identity were defined in the institutional order made these culturally diverse regions mutually intelligible for travelers and traders, thereby undergirding (rather than merely following) global economic interconnections. By reproducing this jurisdictional legal complexity, continued contests over cultural and ethnic identities themselves constituted a feature of international order.