

Chapter One

RECONSIDERING THE SEVENTEENTH CENTURY: LEGAL HISTORY IN THE AMERICAS

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Introduction

Commenting in a forum on law in British India, the legal anthropologist Sally Engle Merry noted that colonialism, and colonial law, was always uncertain (2010). Her point applies as well to histories of the seventeenth-century Americas where the uncertainties that Merry identified as arising from law's contradictory roles as source of order and space of contention are complicated by the fact that seventeenth-century America has always been a disputed space. In the seventeenth century, the boundaries of the Americas were subject to disputes between sovereigns, settlers and native peoples, and settlers from different colonies. Today, those boundaries continue to confound: for many legal histories seventeenth-century America is North America, or the closer confines of British North America. But the Americas extended beyond those boundaries, and studies of law and justice in the seventeenth century need to consider New Spain, New France, the New Netherlands, and Native Americans, as well.

To try to capture the complexity of that territory, this chapter tacks between the general and the particular. It begins at the most general level, considering the seventeenth-century Americas as part of a global story of imperialism and sovereignty. The next section tightens the focus to look at regional studies of law and justice in the Americas, while in the third section the perspective shifts out once again, to consider how the various regional studies might be brought into conversation with one another. The final section brings the particular and the general together, suggesting how studies of specific trials might help connect the global to the local.

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The Realms of Legal History

Law and Justice

In a recent review, Stuart Banner observed that one “message of this book is that law is almost everywhere, and thus that just about any aspect of the past can be viewed as a facet of legal history” (Banner, 2009: 685). That expansive view has long been a characteristic of the legal histories of British North America (Tomlins and Mann, 2001), and recently has influenced the legal histories of New Spain and New France as well (Owensby, 2008: 5–11; Moogk, 2000). The realm of law in the seventeenth century was blurred for several reasons. Law changed in the Americas, as native people were forced to adapt their systems of law and justice to European settlement (Hermes, 2008), but it also evolved in the early modern European world of which the Americas were a part (Williams, 2010).

Despite the ambiguities at the heart of the law, disputes in the Americas often were cast as legal claims. But even when they were set out in the language of law, disagreements were not exclusively settled through formal litigation. In addition to the courts, disputants could and did appeal to other institutions—imperial governments (Middleton, 2010), a native process (Kawashima, 2001), church congregations (Oberholzer, 1956), or the household (Herzog, 2004)—to resolve their differences. Seventeenth-century actors might frame their claims in the precise terms of law (Offutt, 1995) or the vague language of justice (Herzog, 2004); they could rest their legal claims on custom and practice (Tomlins, 2010), deeds (Baker, 1989), local rules or imperial statutes (Owensby, 2008), scripture or natural law (Dale, 2001), or treaties and charters (Tomlins, 2001).

Studies of law in the seventeenth-century Americas typically share a desire to uncover general principles about law, its place in society and its role in history, precisely because the very nature of law in this period was unsettled. Many concern themselves with law’s function, asking whether the aims of a legal system are to achieve order (Konig, 1979), ensure the rule of law (Offutt, 1995), or enforce shared understandings of justice (Herzog, 2004). Still others tease out the relationship between formal systems of law and illegal or extralegal practices (Godbeer, 2004), or consider whether law is best understood as a site of power and dominance (Pagan, 2002), a place of contestation (McKinney, 2010), a space for negotiation and resolution (Baker, 1989), or an uneasy mix of all of the above (Kawashima, 2001). Another group of studies look at how legal and constitutional systems changed over time, exploring whether legal concepts were borrowed and adapted from earlier traditions (Reinsch, 1899) or how the legal developments of the seventeenth century laid the groundwork for subsequent legal practices and assumptions (Morgan, 1975).

Imperial Agents, Colonial Subjects, or Founding Fathers?

Because the seventeenth century was marked by extensive European efforts to colonize and assert legal control (MacMillan, 2011; Pagden, 1995), seventeenth-century legal actors were rarely people playing out their lives on a local stage, but were characters in larger, transatlantic (Amussen, 2007) and imperial dramas (Herzog, 2004). Broadly speaking, studies of law in the seventeenth-century Americas approach that dynamic from one of three perspectives, though there is sometimes considerable overlap. The first considers whether seventeenth-century legal actors were creators of distinctive American legal regimes. This is the oldest tradition, stretching back to Paul Reinsch's work at the end of the nineteenth century (Reinsch, 1899), but it has its share of recent practitioners whose studies look to the seventeenth century to find the roots of modern legal orders (Moogk, 2000).

A second approach considers the legal actors as colonial subjects. This perspective is often taken by studies that consider the impact of European settlement on Native Americans (Pulsipher, 2005), but it also is found in scholarship that looks at the legal impact of negotiations between settlers from different countries (Middleton, 2010), explores the influence of colonial slave regimes on European law and society (McKinney, 2010), or traces out imperial efforts to create distinctive, colonial legal systems (Herzog, 2004). A third approach looks at seventeenth-century legal actors as imperial agents, tracing how their decisions implemented (Moogk, 2000), undermined (Koots, 2011), or adapted (Bernhard, 2010) the imperial projects of their sovereigns. In one study of law in New Spain, Brian Owensby offered a variation on this approach, examining how imperial laws were developed to try to control colonial agents and how Native Americans used the imperial laws to check the local officials (2008: 11).

Read as a whole, these studies confirm John Comaroff's observation that "far from being a crushingly overdetermined monolithic historical force, colonialism was often an underdetermined, chaotic business, less a matter of the sure hand of oppression ... than of the disarticulated, semicoherent, inefficient strivings for modes of rule that might work in unfamiliar, intermittently hostile places a long way from home" (Comaroff, 2001: 311). In such a world, the lines between colonizer and colonized are often blurred and that was particularly true in the seventeenth century, notwithstanding the fact that colonial laws often were enacted in order to mark the divisions between colonized and colonizer, or ruler and ruled (Moogk, 2002). Ultimately, those distinctions did take hold, particularly where racial slavery entered into the mix. But as that process unfolded colonial agents undermined imperial authority and command (McKinney, 2010), colonial subjects thwarted efforts to contain them (Daughters, 2009) and settlers constructed their own legal orders (Pagan, 2002).

Constitutional and International Law

As that suggests, international and constitutional law was in flux across the seventeenth century. Although this was the century of the Treaty of Westphalia, with its effort to define national sovereignty and give sovereign nations legal status (Middleton, 2010: 33–34), the scope and shape of international law was unsettled (MacMillan, 2011) and key concepts, from the meaning of imperial authority (Armitage, 2000) to the nature of sovereignty (Benton, 2010) remained unclear. In the colonies, theoretical disputes over sovereign power were complicated by the everyday as claims of sovereignty were ignored by colonial officials (Herzog, 2004) and local disputes escalated into international problems (Middleton, 2010).

These problems were as much issues of constitutional order as they were questions of international law or sovereignty and they were exacerbated because the seventeenth century was a period of considerable constitutional change. In England the Civil War and related internal constitutional debates significantly altered the old order (Nemmer, 1977) while France was “not yet a nation and scarcely a unified kingdom” (Moogk, 2000: 55) in the seventeenth century and experienced its own constitutional tensions as a result. Constitutional weakness at the center was reinforced by conflict in the colonies. There were constitutional disputes within the colonies over who governed (Breen, 1970), an issue that could be complicated by theological differences (Chu, 1987) or social pressures (Morgan, 1975). There were also questions about who was governed and how: Were Native Americans entitled to the rights and protections of subjects of an imperial power, or the privileges typically accorded the subjects of another sovereign, or neither (MacMillan, 2011)? Were women or children part of the political order, and if so, to what extent (Brewer, 2005)? What was the status of Dutch settlers after the New Netherlands became New York (Merwick, 1999), or German settlers in the English colonies of the Chesapeake (Roeber, 1993)? What about settlers who were not Quakers in Pennsylvania (Offutt, 1995) or not Puritans in Massachusetts (Pestana, 2004)? Constitutional ferment in the periphery helped prompt changes in constitutional ideas and practices in Europe (Norton, 1996) just as much as constitutional changes in the center played a role in shaping the rules of colonial governance (Kettner, 1978).

The wealth of recent work on sovereignty and imperialism (Pagden, 2008) invites further work in these areas of law in the seventeenth-century Americas, but more could be done to explore the connections between local problems and imperial designs or to dig down into the sources to tease out support for Benton’s suggestion that “even in the most paradigmatic cases, an empire’s spaces were politically targeted; legally differentiated; and

encased in irregular, porous and sometimes undefined borders” (Benton, 2010: 2). So too, we could go beyond our recognition that colonial charters were important (Bilder, 2004) to discover how they were understood and what constitutional roles they played in both the center and the periphery.

Regional Interpretations of Law

In contrast to recent studies of colonialism and imperialism, which look at more than one country (Benton, 2002), legal histories of the seventeenth-century Americas usually follow the flag, focusing on the legal orders established by particular imperial powers. Many of these studies examine law in the British colonies (Hoffer, 1992), and while recent studies by Christopher Tomlins (2010), Richard Godbeer (2004), and Bradley Chapin (1983) survey specific areas of law across British North America, most look at only a specific part of Britain’s American holdings. The largest share explores the legal history of New England (Ross, 2008), but there are studies of northern colonies that look at law in New York (Goebel, 1944) and Pennsylvania (Offutt, 1995). In similar fashion, histories that study seventeenth-century law in the southern colonies are mostly about Virginia or the Chesapeake (Brown, 1996; Konig, 1982; Roeber, 1981), though some studies of the law or legal institutions of the South discuss law in other parts of the region in the seventeenth century (Hadden, 2001; Wyatt-Brown, 1982). A few recent works have pushed the boundaries of the English Atlantic world to include the law and legal cultures of the Caribbean (Bernhard, 2010; Amussen, 2007) and British Canada (Johnston, 2003). While there are not as many legal histories of the other colonies, there are several important works on law in New Spain. Some cover northern New Spain (Brooks, 2001); others consider Spanish legal regimes in the south (Herzog, 2004). In addition, Peter Moogk has written extensively about law and legal culture in his work on New France (2000), and a handful of studies touch on law and legal regimes in the New Netherlands (Middleton, 2010; Merwick, 1999).

The legal histories that consider law and Native Americans are simultaneously sparse and complex. The best overview of this area of legal history is an article by Katherine Hermes (2008). In it, she described two approaches to Native Americans and law in the Americas. One tries to uncover what she calls the “jurispractice” of Native Americans, the “mixture of thought and action taken by ordinary people to construct the law without elaborate legal theories but with definite understanding about the law and its purposes” (Hermes, 2001: 127 n.9). Thus, in his study of land deeds in seventeenth-century Maine, Emerson Baker reconstructed Native American understandings of land and boundaries (1989); Yasuhide Kawashima offered a view of legal practices and culture among the Native Americans in New England in his study of the Sassamon murder trial (2001). Often

those studies look at native treatment of property or crime and punishment, but some touch on native constitutional principles. Owensby, for example, sketched Aztec institutions and distributions of power in his recent study (2008) and Kawashima offered a similar glimpse at constitutional order in his study of the Sassamon murder. Because of the debates over the extent to which ideas from the Iroquois constitution influenced the U.S. Constitution, there is a more extensive literature on Iroquois constitutional practices (Levy *et al.*, 1996).

Most of the studies of Native Americans and the law consider the treatment of Native Americans within the legal systems of the various European colonies (Hermes, 2008). Some specifically look at the impact of colonial laws on native populations (Kawashima, 1986), others consider laws and legal practices as part of a larger history (McManus, 1993). Many of these studies focus on the English colonies (Kawashima, 2004), but Native Americans play a significant role in legal histories of New Spain (Kellog, 1995; Borah, 1983) and New France (Moogk, 2000). Read together, those works demonstrate that legal relations between the native peoples and European settlers could range from the lofty realm of international law, with its claims of sovereignty and negotiated treaties (Brooks, 2001), to local disputes about injury and harm (Herzog, 2004), rights to property (Baker, 1989), or marriage and inheritance (O'Brien, 2003). Often these studies described how law was deployed to subdue native peoples and societies (Hermes, 2008), though some treat law as a space of interaction between settlers and native people (Plane, 2002), or explore the how Native Americans understood, worked within, and sometimes resisted or manipulated colonial laws (Owensby, 2008; Kawashima, 2004).

Connections or Comparisons?

Taken as a whole, these different works make it possible to begin to actually speak of the legal histories of the Americas in the seventeenth century, but most do little to tell us whether those worlds were as separate and their legal trajectories as discrete as their histories suggest. A few studies have tried to push past the limits imposed by political boundaries; some by looking at various American borderlands and considering how law was used to try to control those fluid spaces on land (Demers, 2009) and sea (Benton, 2010), others by considering the colonies themselves as hybrid spaces where people with different legal practices and expectations met (Hermes, 2008). One example of this approach is Gregory Roeber's study of the impact German immigrants had on the laws and legal cultures of the Chesapeake region (1993), another is William Offutt's consideration of cultural clashes and legal differences among English settlers

in Pennsylvania (1995). Sometimes, as in Offutt's study or in my own work on Massachusetts Bay (Dale, 2001), legal disagreements arose from different belief systems. But other studies (Allen, 1981) have demonstrated that geography, as much as belief, gave rise to distinctive legal cultures when immigrants from one part of England brought with them legal traditions that were foreign to those from other parts of the country. Given that, more could be done to consider these interactions of legal cultures and the effect they had on the institutions and practices of law in the seventeenth century.

There are other ways that historians might try to connect the separate legal histories of the Americas. One approach, suggested by studies of slave law (Watson, 1989), is a comparative analysis. Scholars have taken that approach within the British colonial world: P.G. McHugh looked at how aboriginal societies in a number of British colonies fared under the common law (2004), Philip Stern compared British colonies in Asia and the Atlantic World (2006), while David König compared the legal regimes established in British North America to those set up at roughly the same time in Ireland (1991). But while Richard Ross compared methods of legal communication in the Spanish and English empires (Ross, 2008), little has been done to try to make comparisons across imperial legal regimes. Such an approach is possible and a quick review of some of the themes of seventeenth-century legal history suggests there are a number of points of comparison.

Law and Justice

One recurring theme in the literature that invites comparison is the issue of the relation between justice and law in colonial legal systems. Although the legal system established in the Delaware Valley was marked by a strong commitment to the rule of law from the first (Offutt, 1995), for much of the seventeenth century legal appeals and outcomes were cast in terms of justice, not legal rules (Henretta, 2008). While discretionary justice with its emphasis on community notions of fairness is an established part of the literature, there is little consensus about why that was the case. In his study of law in Virginia, Gregory Roeber argued that for much of the seventeenth century the absence of a significant body of people trained in law encouraged magistrates and other legal actors to appeal to community norms (1981). He found that dynamic ended with the rise of a generation of trained lawyers at the end of the seventeenth century. Recently James Henretta offered another institutional explanation, arguing that because most court systems in British North America lacked separate courts of equity equitable principles often influenced legal outcomes, helping drive the preference for justice (2008). In contrast, Tamar Herzog

concluded that the reason appeals to justice and community were more powerful than law in seventeenth-century Quito was ideological, not institutional (2004); Catholic teachings, with their emphasis on the importance of community and fairness, prompted the focus on justice in that outpost of New Spain.

Even studies that look at the shift from justice to law within a particular colony offer a variety of explanations for the phenomenon. In his study of law in Connecticut, Bruce Mann suggested that the shift to a more formal and legal system occurred as the colony's population became larger, more diverse, and more mobile. When strangers replaced neighbors, people looked to law to provide the sorts of protections and sanctions that the community had been able to guarantee before (Mann, 1987). In contrast, Cornelia Dayton concluded that Connecticut's early, informal legal system reflected religious precepts, which were weakened as part of a larger effort to use law to strengthen the power of the patriarchy (1995). A similar disagreement underlies discussions of the shift to a more formal legal system in Virginia. Kathleen Brown and Edmund Morgan both agree that social shifts, particularly the rise of African slavery, prompted the embrace of legal control in colonial Virginia (Brown, 1996; Morgan, 1975), but differ in their understanding of the causes of that shift. Brown argued that racial issues that arose because of the presence of Native Americans and then the arrival of African slaves intersected with gender norms in a way that forced the colony to enact laws that distinguished between wives and female servants; servants and slaves; and whites and blacks. For Morgan the colony's shift from the older, less formal approach to a more legalistic order was shaped by several factors: the environmental elements that led so many English settlers to die in the first decades; the pressures on land that arose when white settler health improved, and the social tensions that arose because the colony had a skewed sex ratio with far more men than women.

In those studies historians rely on several different causal forces, some ideological, some institutional, to explain the shift from justice to law. Comparative study across colonies and imperial regimes might help scholars piece together whether these influences were truly distinctive, or whether there were factors in play that connected some or all of those forces together and might also provide support for another explanation: Most studies that consider the shift from justice to law emphasize local circumstances, but in their studies of law in New Spain Herzog and Owensby argue that the shift was a reflection of a larger, transatlantic transformation (Herzog, 2004; Owensby, 2008). Comparative study might make it possible to determine whether the shift from justice to law in the Americas was part of a larger, transatlantic process, and, if so, whether that process occurred as a result of the pressures of colonization itself or because of changes in the idea of law.

Religion

The intersection of law and religion is another point that invites comparative or transnational study. Several books explore the place of religion in the legal systems of the English colonies (Dale, 2001; Offutt, 1995; Roeber, 1993); others have looked at the relation between law and religion in New Spain or New France (Owensby, 2008; Moogk, 2000). In addition, some studies of Native American law suggest that native religious practices influenced tribal jurisprudence (Kawashima, 2001), while other studies suggest the extent to which religious differences influenced constitutional and legal decisions within that colony (Middleton, 2010). Many of these studies explored the ways in which religious doctrine shaped substantive law, and often they assert that religion, particularly the strict Protestantism associated with the Puritans, led to the legal subordination of women and oppressive laws (Norton, 1996; Hoffer and Hull, 1984). But several recent works offer alternative perspectives on the intersection of law and religion. One point of view is offered by Richard Godbeer's *Sexual Revolution in Early America* (2004), which found that the Puritan colonies of New England had complex, not always repressive, attitudes towards women, sex, and sexuality. Godbeer's study reveals legal systems that reflected lay religiosity as much as formal religious doctrine. Several other studies have demonstrated that even established religious teachings sometimes shaped popular attitudes towards law. Cornelia Dayton's study of Connecticut found that the dominant Protestant religion empowered women by offering them avenues in which to bring claims and press charges (1995). Similarly, in her study of the criminal justice system in Quito, Tamar Herzog (2004) argued that religious doctrine in New Spain influenced popular and official attitudes towards the role of law in society.

Yet another approach to the intersection of law and religion is suggested by Owensby's recent study of law in northern New Spain, which looked at the relation between religion and law across the Spanish empire (2008: 45–48). That work suggests possibilities for transatlantic or comparative study; the former might trace the influence of religion on law within transatlantic imperial orders, looking to see if religion influenced law in the same way in London and Boston; the latter might compare the extent to which religion shaped law in New France and New Spain.

Substantive Law

Substantive law also provides a foundation for comparative study, either within a single empire's legal regimes or across them. Criminal law offers the greatest riches, since so many works focus specifically on criminal law

(Chapin, 1983) or consider crime and punishment as part of their more general study of law and society (Moogk, 2000). Given that wealth of material, systems of criminal justice in British North America could easily be compared to systems established in New Spain or New France to see what sorts of actions were criminalized (or were not) (Koots, 2011) and what punishment entailed (Meranze, 2008). The apparently close connections between criminal law and religious teachings suggest that comparative study might be a useful way to piece together the nature and extent of religious influence on law. Did a shared Catholic faith make criminal justice and punishment similar in New Spain and New France, or was the influence of national legal culture more significant than religious teachings? Were the different legal orders of New England and Virginia the product of social and demographic forces, or did they reflect the differences between Anglican and Puritan forms of Protestantism?

There are also a number of works on various subfields of criminal law that offer opportunities for comparative or transnational focus. One subfield of criminal justice that has received considerable attention in seventeenth-century studies looks at witchcraft prosecutions. The prosecutions in Salem at the end of the seventeenth century have been much studied (Kamensky, 2008); Richard Godbeer's study (1994) of law and magic makes it possible to put those trials into their larger transatlantic legal context, while studies that look at witchcraft prosecutions in New France (Moogk, 2000), New Spain (Lewis, 2003), and the Caribbean (Bernhard, 2010), invite a comparative approach. Another possibility is to compare witchcraft prosecutions, which often targeted women, with prosecutions of other, highly gendered crimes like infanticide (Miracle, 2008) or slander (Snyder, 2003). One of the earliest studies of infanticide (Hoffer and Hull, 1984), took a transatlantic perspective on the law, an approach that might be revisited in light of more recent work on women and crime in early modern England (Kermode, 1995).

Comparative and transnational study of substantive law need not be limited to crimes, of course, for a number of works touching on the law of property (Owensby, 2008; Dayton, 1995), households (Brewer, 2005; Moogk, 2000), or slavery (Green, 2007; Brooks, 2002; Gaspar, 2001) invite comparison in those areas of law as well. And it is important to remember that a comparative study of one aspect of substantive law may involve comparison on several levels. In an article, Mark Valeri argued that the laws regulating usury in Puritan New England debunked Max Weber's famous theory that market capitalism was closely tied to Protestantism (Valeri, 1997). Economic regulations designed to protect local merchants and manufacturers at the expense of those in other colonies were fairly common in the seventeenth century and there are several other studies that look at economic regulations (Priest, 2008), but at least one study (Koots, 2011) suggests that efforts to use law to regulate commerce and trade were

not particularly successful. A comparative study of commercial regulations would not only expand our understanding of how different colonial systems viewed commercial regulation, but could also permit us to test Valeri's thesis in these other settings, looking at both the law on the books and the law in practice. Similarly, a number of studies discuss laws that regulated all aspects of labor, from wages to terms and conditions of employment (Tomlins, 2010). These laws played several roles, for in addition to controlling transactions they were often used to establish status by defining the rights and privileges of wage and bound laborers (slaves and indentured servants) (Morris, 1946) and establishing special categories for women and children (Brewer, 2005; Pagan, 2002). Similar attempts to regulate status arose in New Spain (Owensby, 2008) and a comparative analysis of these sorts of laws across empires would not only help us understand the differences and similarities across labor regimes, but might add to our understanding of the relationship between sovereign and subject (Kettner, 1978) in the seventeenth century.

Blurring Boundaries, Unsettling Law

Studies of law in the seventeenth century often emphasize how fluid the categories of law were and comparative and transnational studies could also be based on that aspect of colonial legal history. The literature suggests that the interplay of legal categories often was a product of the difficulties of capturing legal subjects, particularly human subjects, in neat legal boxes. Children could be inheritors, raising questions of property and political power (Brewer, 2005), laborers (Tomlins, 2010), or criminals (Steenburg, 2005) and shifts in theories of their legal competence in one area, often affected the way they were treated in another. Likewise, women could be criminals (Kamensky, 1997), wives (Brown, 1996), mothers (Pagan, 2002), or bound servants (McKinney, 2010), and were often several of those things at once (Greene, 2007). Native Americans were both outsiders to be controlled (Moogk, 2002) and holders of desired property (Baker, 1989), slaves (Brooks, 2002) and independent actors (Owensby, 2008). So too, legal categories may be filled by different people at different times, prompting changes in the way law is used and enforced: When deals were made with strangers, rather than neighbors, more law may be necessary (Mann, 1987); when Africans replaced native people and whites as bound labor, new rules needed to be put in place (Morgan, 1975). This problem of fluid categories invites comparisons across colonial systems, to see how different legal regimes tried to capture and contain their human subjects.

At the same time, seventeenth-century legal actors blurred laws in other ways by bringing foreign assumptions into a legal system. Settlers from another country might do so (Merwick, 1999), but foreign legal ideas

could follow people from one colony coming into contact with those from another through trade (Koots, 2011) or by virtue of moving from one colony to another (James, 1999). So too, sojourners, like the young Virginia men who traveled to England for an education, could bring about legal change by carrying new ideas and practices with them on their return (Roebler, 1981). A study, transatlantic or trans-regional, that looked at mobility within empires or across imperial boundaries would deepen our understanding of this sort of legal blurring and its impact on seventeenth-century legal systems.

Finally, there are possibilities for comparison and connection outside of the realm of formal law. While legal history seems, by definition, to need to focus on the workings of formal law and legal institutions, Herzog's observation that in the seventeenth-century Quito law "extralegal arrangements were very frequent" (2004: 10), applies to many colonies. In some (though not all, see Brown, 1996), churches could and did judge, reprimand and punish, or assert jurisdiction to hear claims relating to breach of contract to types of crimes (Oberholzer, 1956). Less formally organized groups also played a role in adjudication in several colonies. In Quito, Herzog found that members of local communities could be relied on to investigate charges of misconduct or wrongdoing, define the boundaries of behavior, and punish outliers. Other studies suggest those practices were not limited to New Spain; in an article on the Atlantic slave trade, David Richardson (2001) set out a number of examples of shipboard revolts that were both acts of resistance and attempts to use extralegal means. Studies of slander in English colonies often suggest that it was a type of social control used by women, and others who were outside the structures of power (Kamensky, 1997), while Simon Middleton traced the way that bakers in seventeenth-century New Amsterdam engaged in self help to press for a recalculation of the price of bread (Middleton, 2010). Here again, there is a possibility for further, comparative study that looked at the types of extralegal practices found in different legal regimes and examined how and to what extent colonial governments tried to control them.

Trials and Legal Processes

The comparative and transatlantic (or trans-regional) approaches suggested above are one way to move from the study of many, separate local legalities to studies that look at law across the Americas and try to reconnect the particular and the general. Another way to try to relate the general to the particular is through the use of case studies. Although histories of trials are often microhistories that unpack a trial to try to learn about a local community, several studies of seventeenth-century

trials connect the local to the transnational, by considering the various sources of law and their interplay in that particular case. For example, Godbeer's study (2005) of a witch trial in late seventeenth-century Connecticut revealed how English legal principles and rules of evidence collided with local context. Kawashima's study of the John Sassamon murder treated the trial as a clash of competing legal regimes, exploring how and why Plymouth's laws were able to trump Wampanoag systems of punishment (2001). In his study of a series of related trials that arose from an illegitimate birth in Virginia, John Pagan traced how and why English laws changed in response to colonial necessity (2002) while in another study Nan Goodman used Roger Williams's forced exile from Massachusetts Bay to uncover a common law framework for law in seventeenth-century New England. Her study, like Pagan's, explored the ways in which the English common law was adapted to the particular circumstances of the colonies (Goodman, 2009). Each of these case studies brings the general principles of law into the everyday, to show how and why those general principles were adjusted in response to particular problems.

Of course, while trial studies can help us connect the general to the particular, they also provide an opportunity for a closer understanding of local law and can tell us about the role courts played in helping resolve, or exacerbate, local problems (Winship, 2005; Chu, 1987; Boyer and Nissenbaum, 1974). For legal historians, trial studies can fulfill a more basic role. There are only a few studies of actual legal practice in the seventeenth-century Americas (Black, 1965), though some studies address process as part of their larger engagement with law (Owensby, 2008). Histories of trials often provide a close look at legal processes (Kawashima, 2001), principles of evidence (Godbeer, 2005), or legal records (Burns *et al.*, 2008).

Conclusion

In the seventeenth century, the Americas were a site of legal orders established by native peoples, imperial powers, and local communities. Within those orders, law and legal practices covered a multitude of subjects, from domestic relations to labor, from crime and punishment to trade. Histories of law trace out these various legal orders, explaining both their impact and their failures or weaknesses, within the different legal regimes. The result is a literature of both depth and breadth, but it is also a literature that is almost exclusively regional, looking at the legal history of particular colonies in isolation. As I suggest above, the wide range of studies on seventeenth-century legal history invites a shift in focus from the particular to the general.

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