

JURISDICTIONAL ACCUMULATION

AN EARLY MODERN HISTORY OF LAW, EMPIRES,
AND CAPITAL

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ABSTRACT

This book links law, empires, and capital through a Political Marxist history of early modern extraterritoriality framed by the new concept of jurisdictional accumulation. Based on secondary and primary material, the concept reveals new aspects of the Spanish, French, English/British and Dutch early modern empires through their colonial and diplomatic practices and social property relations. Going beyond the classic focus on embassy chapels in Northern Europe shows the inadequacy of conventional narratives of extraterritoriality for defining the modern international legal order. The early modern was jurisdictional, but not only because of the plurality and overlapping of jurisdictional regimes. The early modern was jurisdictional because of the use of jurisdictional rights, titles, and functions as institutions and subjectivities, used as means of imperial ownership and rule over indigenous groups and against competing empires. A variety of actors used jurisdictional devices and arguments that shaped imperial expansion in ways defined here as extensions, transplants and transports of authority. Jurisdictional accumulation contrasts to mercantilism and capitalism, and constitutes a significant mode of expansion that brings ambassadors, consuls, merchants, and lawyers out of the shadows of empire and onto the main stage of the construction of modern international relations and international law.

Une once de jurisdiction vaut plus qu'une livre d'or

(An ounce of jurisdiction is worth more than a pound of gold)

Motto of a fifteenth century jurist from Visé, a town at the crossroads of Flanders and Wallonia
(*in de Schepper, 2007: 187*)

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Introduction

Jurisdiction, Empires, and Capital: Stories of Accumulation

In the Eastern and Southern ports of the early modern Mediterranean - in Algiers, Tunis, Tangier, Tripoli in Libya, and on the Levantine shores of the Ottoman empire - foreign merchants and sailors were forbidden to frequent the ale houses of the port in which they disembarked. In exchange, they were allowed 'national' ale houses, a nation in this case referring to the local community or colony of merchants and residents belonging to a particular country and present in a foreign port or trading city. These ale houses were privileges attached to each nation's consulate, which consisted in an office run by a consul as the representative, judge, and solicitor for the nation's trading and residential affairs.

The stories, disputes, and negotiations that must have been conducted within the confines of these ale houses - between merchants, captains, factors, and sailors from Marseille, London, Copenhagen, Amsterdam, Malta, Venice, Livorno and other major trading cities - remain today elusive. This is a pity, since they would undoubtedly help us to better understand early modern empires and the legal mechanisms developed to secure and expand trading interests on the North African and Levantine coast.

If the specific role of foreign ale houses in the early modern Mediterranean is not the subject of this book, this example illustrates the types of spaces and institutions that this book is concerned with. These spaces or institutions could be considered, albeit anachronistically, as extraterritorial; or perhaps as 'preparing men's minds to accept [the] extraordinary fiction' of extraterritorial sovereignty (Mattingly, 1955: 242). In other words, this book is concerned with how certain jurisdictional actors in certain spaces and institutions shaped key political principles and mechanisms of early modern legal orders, principles and mechanisms that remain present or resonate in our contemporary order.

Yet when referring to such spaces, Mattingly emphasises the role of embassy chapels in Northern European cities such as London, Paris, and Amsterdam, as the first 'little islands of alien sovereignty' (1955: 244). These little islands enabled by embassy chapels became essential staging posts for the emergence of permanent ambassadorial practices and territorially defined states. Thus, Mattingly's account of extraterritoriality became highly influential in the discipline of International Relations (IR) for explaining the emergence of modern territorial sovereignty (Ruggie, 1993).¹

In contrast, this study explores a range of other spaces in different institutional and geographical settings, such as the ports of the Mediterranean and the colonies of the Americas. These characterised the jurisdictional complexities of diplomatic and economic relations between leading European empires and contest the dominant focus on embassy chapels as marking the invention of extraterritoriality and considered necessary to the emergence of territorial sovereignty.

¹ The discipline of International Relations will be referred to as 'IR', whereas the expression 'international relations' will be retained to refer to the ensemble of social relations that cross the boundaries of sovereign or otherwise independent political entities and social groupings. As is broadly accepted from its wide usage, the meaning of the term 'international' in this expression has gone beyond the actual historical limits of its components (i.e. it is not limited to relations between nation-states, *stricto sensu*, but equates instead to transhistorical terms such as 'inter-societal' or 'trans-societal').

Consular establishments are some of these particularly neglected spaces in international historiography. Ports and consulates were frequented by individuals of a much lower social order, status, and function than ambassadors and with a less direct relation to the historically fetishised institution of the modern state. The neglect of consuls also relates to the lack of consideration of socio-economic factors in grand diplomatic and international relations narratives. This historiographical lacuna is nevertheless surprising, since if any place were to be significant for illustrating extraterritorial fictions, the ports of the Mediterranean with consular representatives – as well as most ports subject to colonial and imperial expansion - may be more obvious candidates than embassy chapels in a few cities in Northern Europe mostly witness to confessional struggles.

These ports were characterised by multiple overlapping and conflicting jurisdictional arrangements involving a wide range of commercial, political, religious, linguistic, cultural, and judicial encounters. A range of professions frequented consulate ports and, in some cases, needed authorisations to do so - merchants obviously, but also priests and other ecclesiastics, artisans such as bakers, hairdressers, servants, tailors, cooks, clerks, surgeons, etc. The variety of these migrants indicates the broader social impact these mixed jurisdictional spaces had on the everyday lives and mobility of local populations as well as on people in their home destinations.

If the comparison between consular ale houses and embassy chapels remains anecdotal, and perhaps amusing, it nevertheless points to a key question about the relation between ambassadorial and consular spaces. How did ambassadors and consuls differently relate to the royal, commercial, and imperial elites and institutions they depended upon and were used to enhance and enrich? Answering this question reveals something new about the history of extraterritoriality and early modern empires. Exploring the relations between European ambassadors and consuls, and other jurisdictional actors used for imperial expansion, opens a window into the world of jurisdictional accumulation, a world with a much wider range of early modern jurisdictional spaces and actors. These spaces and actors have been unduly neglected as factors of large-scale social change.

Specifically, jurisdictional accumulation is a conceptual device that reveals how certain actors of imperial expansion were extending, transporting, and transplanting the authority of their sovereign, while also, when possible, improving their own social status. Jurisdictional accumulation thus refers to both the accumulation of claims, rights, titles and functions, and the accumulation of revenue from those legal requests and privileges. It emphasises the difficulties in dissociating - for these actors and during this period - the accumulation of property, jurisdiction and wealth.

This analysis helps to overcome some of the puzzles and problems of periodising early modern extraterritoriality by emphasising jurisdiction instead of territoriality or sovereignty as major drivers of early modern social change, as argued in conventional narratives following scholars such as Mattingly. Jurisdictional accumulation captures a new narrative on the 'social property relations' of early modern empires and capital, notably through the social origins and legal means of settlement, negotiation, and trade of various sub-sovereign diplomatic and imperial actors.

The following introduces the problem of early modern extraterritoriality, followed by the context, argument, and methods used for tackling this problem. Before closing with a summary of the following chapters, this introductory chapter defines the project's three main axes; law, empires, and capital. In particular, it discusses why we need to separately conceptualise law in terms of

jurisdiction, why we need another book on early modern European empires, and why we need to include capital from a Marxist perspective in a historical sociology of international law.

The problem of early modern extraterritoriality

Generally, extraterritoriality is understood as a form or practice of jurisdiction associated with the assertion of authority beyond the territorial limits of that authority. History has produced many cases and types of extraterritorial jurisdiction. Some historians trace a common thread from ancient treaties in the Mediterranean basin, to early modern capitulations in the Ottoman empire, and to European, American and Russian extraterritorial courts in late nineteenth century Middle East, Asia, and Africa.

In the twentieth century, and most affirmatively since the 1980s, extraterritoriality has reappeared as part of a transnational regulatory boom mostly driven by acts and disputes emerging from the foreign application of United States (US) law and thus characteristic of US hegemony (Raustiala, 2009; Ryngaert, 2015; Putnam, 2016). However, it is also a practice developed by various other states and organisations. Considered a legal principle used in juridical arguments, as well as a geopolitical device or practice (Haskell, 2019), extraterritoriality affects legal domains of commercial law or antitrust, intellectual property, investment, anti-corruption, criminal or environmental law, as well as human rights. It raises issues concerning the responsibility of states under international law and creates various types of disputes in the legal and diplomatic realms.

This latest rise of extraterritorial arguments and practices has encouraged legal historians to look at the various appearances of this concept in international history. Legal histories of extraterritoriality have largely focused upon its various manifestations in the 'semi-sovereign' states and colonies of the late nineteenth century, where it was used by the Great Powers - France, Britain, Germany, the United States, Russia - as a powerful tool of imperial domination through the establishment of extraterritorial courts and unequal treaties. The nineteenth century witnessed the emergence and widespread usage of the term 'extraterritoriality', also known as 'exterritoriality' in this period, leading to the most substantial, global, and structuring manifestations and effects of this practice.²

This book contrasts with this focus on nineteenth century extraterritoriality by expanding on the few exceptions that have studied its early modern wider effects, and contesting the conventional narrative offered by diplomatic history. According to the latter, early modern extraterritoriality has mostly been associated with the emergence of ambassadorial privileges roughly from the sixteenth century onwards. This highlights a crucial neglect in histories of international law and international relations concerning the role of consular jurisdiction and other jurisdictional practices of the early modern world. This neglect questions the role attributed to the shift from personal to territorial concepts of sovereignty, considered central to the construction of the European *qua* international legal order through the evolving practices of ambassadorial immunity in Northern Europe. In effect, a wider set of often maritime and more 'private' practices of extraterritoriality and jurisdictional extensions of authority, in Southern Europe and across the Atlantic, have been excluded or left to the margins of international history.

Exploring extraterritoriality from a historical sociology perspective allows us to retrieve these practices and also ask the question of continuity and rupture in long-term perspectives of

² For a recent collection of historical studies on extraterritoriality, see Margolies, Öszu, Pal & Tzouvala (2019).

international legal orders. To what extent do the different forms of extraterritoriality (e.g. consular jurisdiction, treaties, settlements, ambassadorial privileges, courts) differ in their use by geopolitical actors? Who are the actors that drive these processes in different historical periods? And finally, what do these processes tell us about the standard drivers of international change in the early modern period, such as states, monarchies, cities, ports, empires and their dynastic, military, and commercial elites?

Context and argument

To guide us through these questions, the stars have recently aligned for an in-depth and secondary study of early modern imperial and jurisdictional history. In the last few decades, social sciences scholarship has significantly turned its attention to the topic of early modern imperial expansion. Some would even call it the 'golden age' for studies of empires (Lachmann, 2018: 1127). Simultaneously, after being mostly inactive during the second half of the twentieth century, the field of international legal history has been significantly prolific in the last two decades. Many recent contributions reflect a broad interdisciplinarity in the social sciences in terms of method, theoretical concepts, and geographical focus. There is also an increasingly undisputed consensus to revisit the near exclusive focus on territorial states as key drivers of international legal change, which has led to an increase of legal histories of early modern and modern empires. This turn is finally influencing the IR discipline (Wallenius, 2019; Pitts, 2018), which aside from a few exceptions (Ruggie, 1993; Cutler, 2003; Keene, 2002; Raustiala, 2009), remained limited in its understanding and incorporation of legal history.

This book is inspired by various counter-narratives to the classic rise of the European *qua* international legal order, as well as by a revival of Marxist historical sociology and of critical histories and theories of international law. It focuses on the study of European imperial practices by taking up the challenge of revealing one of the underlying modes of expansion that drove Europeans into a world they legally colonised and exploited.

This mode or set of practices is innovatively called 'jurisdictional accumulation', a new concept developed by this project, which distinguishes the following narrative from the classic story of European expansion by revealing the practices of a neglected set of sub-sovereign actors and processes in the history of international relations and international law. These consist of, for the most part, ambassadors, consuls, lawyers, parliamentarians, magistrates, theologians, certain clergy, and merchants. Their practices are set in the context of their social origins – or class - and their role in shaping new legal institutions and mechanisms of imperial ordering and expansion.

The key argument of the book is, most simply, that the majority of European early modern empires - the Castilian, French, Dutch and English/British - are best characterised as developing practices of jurisdictional accumulation. These practices are distinguished by the three categories of extensions, transports, and transplants of authority, and this book is mostly concerned with various diplomatic and colonial agents which enabled the transports and transplants of their sovereign's authority. Through these historical analyses, the book consists in two major analytical contributions. It is firstly an exercise in conceptual innovations, based, secondly, on an interdisciplinary mix of methodological angles. These intertwined contributions enable us to go beyond common binaries (structure/agency, internal/external, specificity/similarity, territory/sovereignty) in both conventional and critical histories of international relations and international law.

IR theory has assumed that early modern jurisdictional complexity naturally led to Westphalian modernity - and how the post-Westphalian period of so-called absolute sovereign territoriality

and state formation emerged to resolve the overly personal forms and jurisdictional overlaps of early modern polities. Instead, jurisdictional accumulation emphasises the constitutive, *sui generis*, and self-sustaining character of early modern modes of jurisdictional expansion. It therefore breaks up the historical link between jurisdiction and sovereignty accepted by conventional IR theory as a given or natural cause of the origin of territoriality.

In sum, jurisdictional accumulation is a device that breaks apart the linear and Eurocentric histories of territorial sovereignty that continue to dominate IR, by revealing the extent to which the early modern world was 'up for grabs' and the myriad legal ways imperial actors 'grabbed' it.

A crucial implication of dislodging the role of states and territorial sovereignty as key drivers of social change in the early modern period is the focus on empires. In addition, the focus on jurisdictional accumulation shows how the period's multiple jurisdictional claims reflect each empire's specific social property relations. These contested structures arise from struggles in their respective local contexts, as well as from struggles arising from the attempts to conquer and contain foreign and indigenous social property relations. Thus, social property relations are at the basis of this study, and inform the typology of jurisdictional accumulation in various ways.

Extensions of authority concern all empires and refer to the legal incorporation of land (and the people living on that land) that is contiguous or internal to the expanding authority. Extensions include the colonial expansion of England into the British Isles, the attempts at unification of Iberia's fragmented kingdoms or *reinos*, the various laws and collaborations pursued by the French monarchy to centralise and expand royal authority, and the struggles of the Dutch provinces to emerge as a confederation recognised by other European powers. These cases of extension are discussed in the following chapter 3 focused on social property relations, but the category of extensions remains secondary to the main focus of this project which is the distinction between transports and transplants of authority. These consist in the diplomatic and colonial practices of expansion that were deployed beyond the internal and immediate frontier zones and borders of each empire, and which therefore presented each empire with specific difficulties and opportunities related to jurisdictional incorporation and more innovative extraterritorial strategies.

Transplants of authority consist in conquests of people and territory, by a sovereign and its representatives, through the creation and development of jurisdictional institutions that organically develop (as hybrid social property relations) in their colonial setting. These practices rely on the attribution of jurisdictional subjectivities to indigenous groups and to their use of judicial institutions, based on a broad meaning of jurisdiction or *dominium* as ownership *and* rule over both people and territory. The classic case of transplanting authority is illustrated by the Castilian empire in the 'New World'.

In contrast, the French, Dutch, and English empires are mostly characterised by *transports* of authority, that is the outsourcing of the sovereign authority to conquer, own, and trade over land and resources. This outsourcing is mostly driven by commercial interests and by chartered companies and settlers. It refers to a restricted conception of *dominium* focused on ownership or property - rather than rule - for which the subjugation of people through jurisdictional incorporation is not the primary means and aim of colonisation.

These distinctions are analytical generalisations and therefore have important exceptions and nuances. Specifically, they overlap across empires when trying to distinguish between their use of diplomatic actors. The aristocratisation of French ambassadors (largely copied by the Spanish) and the French monarchy's development of a unique consular model (relentlessly used to control

and regulate most effectively its agents in the Mediterranean) are better understood as *transplants* of authority. French consuls had wide jurisdictional functions and were direct representatives of the king. They were political and economic actors, that shaped French mercantilism in the Mediterranean as a jurisdictional mode of production. They created organic colonies and transplanted the authority of their sovereign in ways that also escaped the jurisdiction of their sovereign and created their own zones of influence. Moreover, their neglect in histories of diplomacy and international law contributed to the separation of political and economic spheres, as well as to the shaping of Christian and non-Christian legal zones of exclusion.

However, the deployment of ambassadors and consuls by the English and Dutch empires is better understood instead as *transports* of authority. Although these actors played important roles, they were less jurisdictionally autonomous, and played different functions for their sovereigns and provinces than French consuls and ambassadors, as is seen through the role of trading companies in their appointment and regulation, in these actors' distinct social origins (less aristocratic and emerging from gentry and merchant class), and through each case's social property relations shaping those functions according to specific limitations and motivations.

If social property relations are considered analytically primary and help to explain the specificities of each case, they do not reveal a logic of causality that can explain similar outcomes. For example, although the French, English, and Dutch are analysed as being characterised by transports of authority in terms of their strategies for colonial jurisdictional accumulation, they each had different social property relations that eventually led to this outcome. Moreover, the French case is the most complex in this typology because it is characterised as transplanting authority through its diplomatic actors in the Mediterranean and transporting its authority through companies and settlers in North America. The point here is not to provide a theory of jurisdictional accumulation, with a clear pattern of causes and outcomes, but to reveal different paths and transitions, entanglements and encounters, based on a methodological choice for understanding different movements of jurisdictional expansion according to the method of outward internalism.

Simply qualifying the early modern age as jurisdictional is already widely accepted and present in the historical literature. However, the contribution of this project is firstly, to analytically situate and develop this concept of jurisdiction as a *constitutive* and independent factor, rather than as an adjective or addendum to existing institutions and actors; and secondly, to focus on *practices* rather than ideas of jurisdictional accumulation. Most literature on the history of international law has focused on doctrine and fails to satisfactorily link social, geopolitical and doctrinal factors. Instead, this study only refers to doctrine when it is relevant to these practices or if it concerns specific jurisdictional debates. For example, in the case of the role of the Iberian kingdoms in the history of international law, doctrine arguably played a more important role for practice than in other cases and is therefore an unavoidable part of the story.

The book's central argument has thus two major implications. On the one hand, mapping 'the jurisdictional' into the existing typology of modes (i.e. feudalism, mercantilism, absolutism, capitalism, but also more specific types such as the dynastic, agrarian, or theological) is an additional way to understand the complex processes that shape early modern inter- and trans-societal relations, i.e. between and across various polities and jurisdictional borders. In other words, the argument brings specificity and complexity to the early modern period. On the other hand, it helps to better understand a key similarity between European empires and regimes of

social property relations overlapping between different modes, without claiming strict causal and linear links between these modes, and in particular between mercantilist, jurisdictional and capitalist accumulation. The aim is to raise the question of this distinct set of practices as a significant characteristic of early modern imperial expansion, list some of the key practices of jurisdictional accumulation, and give a general introductory picture of its contribution to histories of international law and international relations.

In other words, the key analytical payoff of the argument is to incorporate these empires' internal specificities without completely losing sight of external similarities that enable a wider picture of the period's fundamental transformations. This avoids the vague and inadequate notions of the 'international' and the 'global' to describe the early modern period and establishes jurisdiction and accumulation as inescapable but contextualised and constitutive terms for early modern imperialism.

Methods

The research involves a mix of primary and secondary research methods developed in the context of a historical sociology approach. This implies a comparative framework and the search for historical patterns and ruptures drawn from a sample of in-depth cases. These are set in a long-term and large-scale narrative of the development of extraterritoriality focused on sub-sovereign actors grounded in each empire's key sets of contested social property relations.

The book thus defends an analytically-driven approach to international history without losing sight of the diverse, diffuse, specific, and unintended conditions of social relations. This analysis is open-ended and theoretically inquisitive rather than definitive and targeted at one specific disciplinary audience or theoretical debate. It is primarily drawn from historical materialism but also acknowledges the need for more methodological positioning and questioning of the Marxist approach to historical sociology. It draws from critical histories of international law and from new histories of empire and diplomacy to enrich this approach.

The different research methods applied in this book consist, firstly, in a review of secondary sources on the emergence and role of extraterritoriality in the history of modern international relations and international law. This analysis – introduced in chapter 1 and developed in the substantial chapters 3 to 7 - reveals an early modern international history of actors competing and collaborating for jurisdictional authority, i.e. rights, titles, and functions, as well as sovereigns competing and collaborating for the determination of overlapping or separate orders and domains of jurisdictional activity. These practices can be distinguished as transplants, transports, and extensions of authority. This typology helps to compare a set of criss-crossing similarities and differences that characterise different strategies emanating from Castile, the Dutch Republic, England and France.

Secondly, the book builds a conceptual framework to compare these multi-faceted practices of extraterritoriality across the four cases. Jurisdictional accumulation is proposed as a concept building on international legal histories but grounded in a historical materialist approach based on the concept of contested social property relations. This conceptual framework is especially important since the political economy of both extraterritoriality and diplomatic actors has been largely ignored.

Thirdly, the book engages in a selective examination of primary sources to test a key argument emerging from the secondary comparative analysis, i.e. the contrast between the aristocratisation of French ambassadors and the deployment of a unique consular model as two strategies of

French jurisdictional accumulation. The cases of ambassadors and consuls are at the heart of the book's research problem, i.e. the role of extraterritoriality in shaping territorial sovereignty and its specific diplomatic context. These cases are thus investigated more thoroughly than other practices of jurisdictional accumulation, and the questions posed in this case where: how do consular and ambassadorial strategies of expansion relate and what type of jurisdictional accumulation can they be identified as?

This research was conducted in the archives of the *Chambre de Commerce et d'Industrie de Marseille* (CCIM), which contain rich and underexplored resources for early modern Mediterranean diplomatic and maritime history. The primary research (discussed in chapter 5) looks at a selection of correspondence and memoranda between royal authorities, the *Chambre de Commerce de Marseille* (CCM) - as it was called in the seventeenth century - and French merchants in the Mediterranean. The selection is concerned with the French embassy in Constantinople from the mid- to late seventeenth century, and more specifically with the issue of the replacement of the ambassador with a consul or resident in the 1660s. This unique but illustrative case reveals the potential of comparing ambassadorial and consular practices as contested yet intertwined jurisdictional forms of accumulation. Specifically, it shows how Colbert and the CCM were both keen to maintain Mediterranean diplomacy as consular rather than ambassadorial, and points to the development of contrasting yet complementary strategies of diplomatic deployment in Northern and Southern Europe as transplants rather than transports of authority.

Aside from this specific foray into primary material, the book's general reliance on secondary research inevitably runs into various limitations. The first concerns the four empires chosen for this project, and which are discussed only in terms of their Mediterranean, Southern and Northern American contexts.³ The Mediterranean is an area of focus particularly justified by the terms of the enquiry, i.e. achieving a better understanding of extraterritoriality in the early modern period. This area of English empire remains understudied, as is the case for the role of the Dutch in the region. If the French empire's history in the Mediterranean benefits from a wider scholarship, albeit less from an Anglophone perspective, this book contributes to this history by comparing the French jurisdictional approach to that of the English, Dutch, and Iberian empires.

Another important limitation concerns the analysis of the Dutch case, which consequently emerges as more peripheral in the overall project. This peripheral status does not necessarily reflect its comparative historical importance, even in terms of jurisdictional practices. The major risk is to accentuate already existing problematic assumptions due to the neglect of this case in

³ A number of early modern empires are not dealt with in this study, such as most importantly the Portuguese, Chinese, Japanese, Persian and Mughal empires. The Ottoman empire is also only referred to in the context of the European empires under scrutiny. This is justified by the initial aim of this study in addressing the classic narrative of diplomacy, international law and international relations based on the European cases, and the absence or relative lack of information about diplomatic institutions in these other cases (e.g. the Ottoman empire did not establish permanent consuls or ambassadors until the late eighteenth-nineteenth century, in spite of hosting Europeans from the seventeenth century). The Eurocentric consequences of this choice are discussed in more detail in chapter 2. However, considering this study also develops a methodology for analysing the jurisdictional nature of early modern empires, it also remains open to whether further projects might find the framework of jurisdictional accumulation relevant for these other contexts, as it remains committed to being based on each case's social property relations. Their exclusion is also justified by a lack of sources and texts on which a secondary analysis such as the following could satisfactorily rest. Moreover, this book limits itself to colonies in the Mediterranean, North and South America, for reasons of clarity, coherence, and availability of secondary sources.

historiography. However, for now, analysis of this case will have to remain limited because of the relative lack of research regarding the Dutch empire's socio-legal history, the complexity and diversity of its various provinces, and the vast disagreements on how to categorise and explain its unique structure, emergence, and rapid success and decline. Therefore, the propositions for the Dutch Republic remain more modest and focus on existing debates regarding the transition to capitalism and the jurisdictional impact of the provinces' social property relations. However, the discussion contributes a neglected jurisdictional angle that provides useful starting points for further studies.

The contrast of England's agrarian, diplomatic and imperial history is important, but this study is not one of English exceptionalism. In various ways, each case has its own specificities. Neither is the analysis constructed by the chronological and sequential rise and fall of the Iberian, French, Dutch, and British empires, as has been characteristic of historiography for most of the twentieth century.⁴ Instead, revealing jurisdictional accumulation requires the interweaving of imperial expansion, jurisdictional politics, and capital, as axes that have not been simultaneously systematised into a coherent and diachronic framework. This is the book's major methodological challenge and contribution. It implies focusing on the similarities and differences between these polities' jurisdictional strategies without assuming a teleological path-dependency governed by the search for causal links or the origins of capitalism or modernity. In other words, it defends a processual-agentic rather than consequentialist approach to history. The approach is reflected in the book's structure, as the historical narrative is conducted by its analytical and agentic angles, each chapter discussing every empire both in turn and simultaneously according to analytical patterns and ruptures so as to resist the methodological nationalism that remains dominant in mainstream and critical histories.

In sum, the present study of extraterritoriality provides an alternative genealogy of the transitions between international legal orders. It puts the spotlight on actors and processes at the political and historiographical margins of international law and international relations. Historicising extraterritoriality shows how merchants, as well as members of lower orders of the nobility and rising gentry, and even in some cases commoners, were at the forefront of early modern European imperial expansion through the processes of jurisdictional accumulation. These individuals mainly consisted of lawyers, jurists, theologians, priests, merchants, magistrates, ambassadors, envoys, consuls, sailors, and varying obscure types of adventurers.

Specifically, the strategies characterising early modern European empires - and used by imperial agents to extend their jurisdictional reach, as individuals or for those they represent - provide concrete and varied examples of the specificity of mercantile and dynastic elites, as well as the role of lower-order social groups in international relations and international law. For example, we find empires developing new types of diplomatic actors, collaborating with regional elites, negotiating treaties with Mediterranean rulers, allowing and controlling colonial elites in the 'New World' through complex legal mechanisms, or negotiating jurisdictional arrangements with indigenous populations.

Tracing the differences between these strategies enriches the concepts of accumulation usually found in historical sociology (primitive, geopolitical, commercial, capitalist) to understand the big social and political changes of the early modern period. Moreover, it situates these strategies in the Atlantic and the Mediterranean as particular sites where European empires had to develop

⁴ Classic examples include Grewe, 2000; Schmitt, 2003; Bull & Watson, 1984.

alternative practices to compete and secure trading and political interests. They did so in the face of, on the one hand, a more powerful and jurisdictionally challenging trading partner, the Ottoman empire; and, on the other, a different set of challenges and opportunities for colonisation and settlement cross-Atlantic. This alternative genealogy puts the spotlight on the Mediterranean as a particularly important space for jurisdictional accumulation and jurisdictional conflicts between early modern empires. This region has tended to be neglected in recent international history, in comparison to the emphasis on the Atlantic and Pacific as sites of early modern accumulation, dispossession and legal ordering.

Definitions

Some key terms – the project’s guiding axes – need to be defined. Firstly, concerning the legal axis, the central contribution is the need to differentiate jurisdiction from law as a set of practices that deserves more sustained and independent historical and conceptual analysis.

Jurisdiction today is generally understood in its technical dimensions as the *de facto* right to exercise justice, the ‘ordering of legal authority’, leading most legal literature on extraterritorial jurisdiction to be concerned with conflicts of laws and jurisdictions (Dorsett & McVeigh, 2012: 4-6). However, even from a technical and dispute or case-based approach, jurisdiction points to the *de facto*, practical, and constitutive dimension of the law which should concern historical sociology as the study of social change.⁵

In effect, jurisdiction remains mostly ignored in historical sociologies in IR and not deemed worthy of more in depth, systematic or reflective analysis. It has been accepted for some time now that IR scholars need to become better historians, by either engaging more with primary sources or with a wider range of secondary sources. Yet the narrative of the universal standard of sovereign statehood is still claimed by most of the conventional literature to have arisen with the 1648 treaties of Westphalia and to have gradually been established worldwide by the nineteenth century. The continuing importance of Westphalia as a benchmark for the history of the modern state in spite of the many critiques of such a use since the late 1980s, shows that the early modern – and hence the jurisdictional – has always been present in the classic narratives of the history of international relations and international law. However, the ‘early modern’ has remained just that, i.e. a prelude to modern territorial and state-based political institutions and principles, and has not been sufficiently understood *sui generis*.

A growing and critical ‘jurisdictional’ literature has emerged from scholars such as Rush (1997), Ford (1999), Goodrich (2008), Orford (2009), Benton (2010), Tomlins (2010), Dorsett and McVeigh (2012), and Pahuja (2013). Some of these scholars have lamented the lack of ‘a theory of jurisdiction’ (Ford, 1999: 922)⁶ while others have elaborated on the various historical manifestations of jurisdiction and its role in state formation, empire and colonisation. This project situates itself somewhere in between Ford’s theory of jurisdiction and Pahuja’s illustrative use of jurisdiction as ‘orientation’ and as ‘jurisdictional thinking’ (2013: 69). It provides a framework that takes as starting point the transformative, contested, and layered definition of jurisdiction, as well as the focus on jurisdiction’s declarative and pre-constitutive role in relation to law and to sovereignty (Dorsett & McVeigh, 2012).

⁵ In international human rights law, jurisdiction is defined as the ‘actual exercise of control and authority by a state’ (Milanovic, 2011: 8) and as ‘*de facto* political and legal authority; that is to say, practical political and legal authority that is not yet legitimate or justified’ (Besson, 2012: 864).

⁶ Ford’s theory of jurisdiction is based on its definition as ‘a relationship between the government and individuals, mediated by space’ (Ford, 1999: 904).

This book provides different examples of actors and institutions concerned with the legal ordering of authority – in the technical sense – yet it also explores a more critical sense of jurisdiction, which ‘actively works to produce something’ (Dorsett & McVeigh, 2012: 6), and which reverses the technical definition according to which ‘jurisdiction is an exercise of sovereignty’ (Pahuja, 2013: 69); instead, it is as, if not more, important to account for how ‘sovereignty is a practice of jurisdiction’ (Pahuja, 2013: 70) since jurisdiction is ‘the practice of pronouncing the law’, and thus declaring its ‘existence’ and ‘the authority to speak in the name of the law’ (Dorsett & McVeigh, 2012: 4). A critical approach to jurisdiction is thus concerned with the *de facto*, pre-legal phase of the enunciation of rules and laws and its potential for understanding the role of law in contributing to the social construction of major principles of international relations and international law.

This critical approach is fundamental in highlighting the ways in which non-critical approaches have stripped jurisdiction of its historicity, and of its potentially constitutive force, leaving it bare and neutralising its potential as a material factor of social change in historiography, as ‘timeless, natural and indeed inevitable’ (Ford, 1999: 929). This manifests itself in narratives of early modern Europe widely considered as the classic period or golden age of jurisdictional encounters and conflicts. However, it is used there in a descriptive sense to denote the elusive and overlapping boundaries of the early modern period. It is not explored as a determining agency or structure – and as pattern or rupture – and the term is not considered to significantly shift in meaning spatially or temporally.

Instead, this book revisits the potential of a spatio-temporally differentiated narrative of jurisdiction as well as its analytical potential to explain the messier imbrication of law, politics, and economics in processes of early modern imperial ordering. Westphalian narratives are contested by focusing on the endurance of the jurisdictional mode of expansion present up until the nineteenth century and fundamental to a different interpretation of the dynastic politics shaping the Westphalian era.

It is crucial to separate early modern jurisdictional practices from sovereign and territorial practices so as to qualify these terms according to early modern actors rather than according to their modern equivalents or to the consequentialist history of modern sovereignty and capitalism. Presentism remains a problem in legal and international relations history.

Western legal histories are frequently presented as simple tales. The stories told have, from the perspective of the present, a sense of Whiggish inevitability as they move across time towards us and our more familiar forms. To avoid complication, such accounts highlight and often exaggerate the importance of the laws that have become dominant over time. They neglect both a wide variety of other laws and normative orders. (Donlan & Heirbaut, 2015: 9).

This project thereby contributes to highlighting the actors, practices and orders that may not have become dominant over time. If it relies on notions of jurisdiction as constitutive of power relations, these are *potentially and not necessarily* driving the construction of ‘material legal forms of sovereign, state and territory’ (Dorsett & McVeigh, 2012: 5). In other words, it is crucial to ensure that this constitutive function of jurisdiction remains a potentiality determined by historical specificities. Jurisdictional practices are thus grounded in the set of contested social property relations specific to each empire under discussion.

Secondly, regarding the imperial axis, contemporary IR and international legal historians – in the context of the rising influence of postcolonial, decolonial and anti-Eurocentric approaches – are increasingly exploring new ways to understand European and non-European history. However,

beyond current methodological debates regarding types of Eurocentrism – and discussed in chapter 2 - the study of the expansion of legal orders and mechanisms has been particularly problematic or difficult to provincialise or de-centre. Since the authority of common and civil law systems remains mostly undisputed, their conquest of major parts of the world has been met with much less controversy than other aspects of European imperial expansion. For example, it is common for contemporary historians of British empire to express how the rule of law was a gift to the world, the jewel in the crown of British imperialism, an exception that redeems the enterprise. The law thus plays a key function in today's various revisionist and nostalgic exhibitions of why we should retain the glorious and forget the bloody past. Similarly, for historians of the French empire, the potential primacy and exception of French legal codes and constitutional system over absolutist monarchies, enlightening the world since 1789, is understood as a universal good that all should be naturally proud of and celebrate.

An important objective of this study is therefore to contribute to scholarship that focuses on early modern empires and their practices of expansion, competition, plunder, and exploitation. It does so by reconnecting *legal*, *imperial*, and *diplomatic* history to the *socio-economic* histories of European empires. The intellectual, military, and religious histories of European empires remain obviously crucial, and the point is not to ignore these. However, they have been vastly favoured in historiography to the detriment of the relations between the domains focused on here.

The book's third major axis – capital - emphasises its historical materialist approach. Capital is thus understood in the Marxist sense of contested social relations between various actors and institutions that structure the access to, and possibilities for the accumulation of, resources necessary for social reproduction. These structures are identified as 'social property relations' and are used as the analytical starting point for this study.

Most simply, historical materialism consists in a method that seeks 'to encompass historical specificity, as well as human agency, while recognizing within it the logic of modes of production' (Wood, 1995: 59). This angle questions how early modern empires sought to establish their authority - i.e. through which agency and logics - by expanding through law and the search for wealth, and in some cases, through newly emerging capitalist social relations.

The choice of the term 'accumulation' inevitably refers to other Marxist concepts of accumulation and thus to the large-scale expansion and reproduction of resources. The aim is therefore to distinguish as well as connect jurisdictional accumulation to other processes characterising this period and which have been used to understand the early modern history of international law, such as primitive accumulation (Neocleous, 2012) or geopolitical accumulation (Teschke, 2003). However, jurisdictional accumulation in this project refers mostly to the accumulation of rights, functions, and titles. Revenue or wealth acquired from jurisdictional accumulation remains difficult to ascertain and dissociate from other sources of revenue, such as commercial capital. Providing even only a very general assessment of this revenue is beyond the scope of this study and requires a separate research project. Nevertheless, it is certain that consuls, corsairs, chartered companies, settlers, etc. extracted significant revenue from the jurisdictional privileges they acquired, though they also had significant costs, which they often tried to claim back from their sovereigns through the legal privileges they had acquired or thought they deserved - hence the book's focus on jurisdictional accumulation as primarily the search to accumulate those functions, rights, and titles as means to achieve property and sovereignty.

This focus is also justified by the way in which early modernity, when seen through the lens of jurisdictional accumulation, is not primarily deployed to better explain the rise of modernity and

the origins of - or transitions to - capitalism. This concept is first of all put forward to better understand the historical phase during which Europe expanded its control on an increasingly global scale and to highlight its specificities.

The difficulty here lies in accounting for the shifting meaning and practices of 'capital' in a period of conflicting and overlapping modes of production and expansion. In effect, the question of the transition to capitalism cannot be ignored, even if it is not the primary research problem here, since these modes of expansion inevitably co-existed and in some cases overlapped such as in English/British America.

Moreover, a significant focus in the vast literature on the early modern period has been on defining it as mercantilist. Recent debates on the transition to capitalism have focused on the issue of whether mercantilism is a structurally necessary and sufficient mode of expansion or accumulation for the transition to capitalism, nationally and globally. This issue also remains contested in Marx's work, who oscillated on this point depending on the periods and left the question open in his unfinished manuscripts. This book proposes to shift the terrain of the debate towards providing a more nuanced picture of these modes and by adding the notion of jurisdictional accumulation to question the homogeneous use of the term 'mercantilism' when identifying early modern strategies and actors.

Marxist historiography has also ignored the significance of the concept of jurisdiction, and in response it is used here to emphasise the importance of maritime and mercantile spaces for the development of (geo)political class dynamics and reproduction. The presence of these various modes for the development of specific practices such as ambassadorial representation and the role of jurisdictional actors is illustrated by the neglected role of maritime consuls, at the crossroads of mercantile and geopolitical expansion.

When approached from this angle, capital is understood widely, and the book plays with the notion of jurisdiction as a form of capital, as the motto used as epigraph denotes. This implies there are different types of capital determined by contested social property relations. These shape the diverging social origins of leading European imperial actors, such as ambassadors and consuls, and the social implications of contending diplomatic and expansionist strategies. This understanding of capital avoids falling prey to a structural concept of capitalism that can ultimately only provide an approach of ahistorical materialism to understand the important geopolitical, economic and legal transitions of the early modern period.

Thus, if this book draws on a Marxist conceptual framework, it is not written primarily as a defence and exposition of Marxism in IR and international law. The primary drive is historical and concerned with legal ruptures and patterns. Nevertheless, the book does defend the ways in which historical materialism provides original and necessary questions to explore early modern jurisdictions that would not be generated by using an alternative conceptual matrix or theoretical framework, such as a Weberian, constructivist, or post-colonial approach to historical sociology.

Chapter summaries

The following chapters 1 and 2 expand on these definitional, theoretical and methodological problems. Chapter 1 problematises the classic history of diplomacy in relation to extraterritoriality and presents the key debates in IR and international law to which this study contributes. This chapter further shows that classic diplomatic history's focus on embassies and Grotius to historicise extraterritoriality has contributed to the Westphalian imaginaries that remain dominant and maintain linear trajectories of the shift from personal to territorial

concepts of sovereignty. If a range of new studies are also contesting this approach and account of early modern jurisdiction, they nevertheless remain limited in terms of not fundamentally questioning the link between extraterritorial and territorial sovereignty based on the analysis of ambassadorial immunity and the shift from the personal – the ambassador – to the territorial – the embassy. These limitations call for new approaches to this history.

Chapter 2 discusses historical sociology as the framework adopted to develop a new approach to early modern jurisdictions. The project aims to enrich diplomatic history's institutional and cultural paradigm through a more productive engagement with new legal histories of extraterritoriality and historical materialist approaches. Debates regarding Eurocentrism and how to conceptualise imperial agency in historical sociology are discussed, and an outward methodological internalism is proposed as required by the research problem posed in chapter 1, namely the problem of narrow and linear sources of the means of imperial expansions of authority such as ambassadorial immunities. To frame this methodology, the commodity form theory of law is discussed as a powerful but overly structural approach to processes of expansion that conflates mercantilism and capitalism. In response, the methodology is framed instead by Political Marxism, as a more agency-based and historicist approach to international history, that relies on the concept of social property relations.

Chapter 3 begins the substantial empirical analysis by focusing on the social property relations – class and legal institutions – of each case under examination. It builds on social histories of these cases, broadly but not exclusively from the Political Marxist tradition, by engaging with (international) legal history. This chapter lays the groundwork for the following chapters in terms of presenting the major institutions, actors, and jurisdictional disputes that are necessary to build the following contributions to diplomatic and legal history. The analysis of social property relations in chapter 3 provides some bases to understand the local specificities of the Castilian kingdom and its American colonies, emphasising the broader Iberian fragmented assemblage and the role of theologians in the particular politico-religious form of empire linked to principles of morality and law. In France, the focus is on the reign of Louis XIV and his ministers in trying to contain the various jurisdictional regimes and conceptions of space, as well as its legal actors and orders. The debate on the role of England's social property relations is discussed in relation to the role of the common law and of enclosures in primitive accumulation and the transition to capitalism. Finally, the section on the Dutch Republic also highlights the problem of transition and the specific jurisdictional context of its confederation, as well as the role of merchants and magistrates in shaping its politics. Although it is not the main focus of this chapter, it implicitly describes practices that could be considered as extensions rather than transports or transplants of authority.

Both chapters 4 and 5 contribute to rejecting simplistic linear accounts of the gradual modernising of the diplomatic profession, which is claimed to provide the basis for a modern system of international relations and accompanies Westphalian narratives of the international order and of extraterritoriality. The chapters map key changes and geographical patterns in the social origins and composition of early modern diplomatic and jurisdictional actors. They question how these diplomatic actors might map onto the typology of jurisdictional accumulation adopted in this study, and what neglected aspects of their history it may reveal.

Chapter 4 links analyses of social property relations to scholarship on the social origins of the diplomatic corps and the aristocratisation of ambassadors from the late seventeenth century. It presents the debates in diplomatic theory and history regarding the social origins or functions of

actors regarded as necessary or ideal to fulfil diplomatic duties. The chapter argues that the aristocratisation of ambassadors led by France and Spain can be understood as a jurisdictional strategy of collaboration between noble classes and sovereigns to sustain an 'old regime' Europe. Moreover, the chapter proposes to separate the cases of Spain and France, leading this trend, from those of England/Britain and the Dutch Republic, which used diplomats and the importance of their social origins and functions according to different criteria leading to different extraterritorial strategies. Thus, the typology of jurisdictional accumulation can be used to contrast French and Spanish strategies of ambassadorial recruitment as transplants of authority, with English and Dutch counterpart strategies as transports. Transplants mark the former's more embodied and organic reliance on the prestige of the person of the ambassador, whereas the latter favoured the potential utility and political requirements of their more merchant-based imperial agents in shaping the social diversity of their ambassadorial corps, and therefore can be identified through the more functional concept of transports.

Chapter 5's study of the practices of Dutch, French, and English consuls in the Mediterranean is at the heart of the book's argument for jurisdictional accumulation since it illustrates key relations of jurisdictional collaboration and conflict between sovereigns, merchants, trading companies, and regional institutions. It discusses what was expected of consuls and the range of their jurisdictional functions, the policies and strategies developed such as the restrictive regulations increasingly put in place for the French service and its unique model of salaried and commissioned consuls, as well as the different practices found in Christian and non-Christian parts of the Mediterranean. Through a selection of archive material regarding events in the French embassy in Constantinople from the 1660s to 1680s, the analysis reveals a more interdependent relation between ambassadors and consuls in shaping so-called extraterritorial and jurisdictional spaces in the early modern period. Incorporating these challenges - based on class differences or social origins - formulates new research questions regarding the role of consular diplomacy, its connection to the aristocratisation of ambassadorial diplomacy, and the development of different forms of early modern mercantilism. For similar reasons to those raised in the conclusion of the preceding chapter, the analysis of consuls concludes that French consular practices are better categorised as transplants of authority, in contrast to the less jurisdictionally autonomous role of English and Dutch consular attempts to transport their sovereign's authority.

These conditions pave the way for discussing colonial practices of jurisdictional accumulation in chapter 6. These consist, in the Iberian case, of the *requerimiento*, *encomiendas*, *audiencias*, and the various jurisdictional opportunities provided by the above institutions and practices, leading to jurisdictional competition and subjectivities in colonial New Spain. The open question of Spain's mercantilism is also discussed in relation to its governance and administrative structures and commercial-legal institutions. These practices are considered *transplants* of authority because they create organic and autonomous institutions that remain hybrids linked to the royal authority at the centre of the empire, and rely on the jurisdictional incorporation of both settlers and Native American subjectivities. In other words, Castilian practices of imperial expansion transplant Castilian authority and are primarily concerned with authority over people, which provides both jurisdictional opportunities of contestation and subjugation. A different set of practices of jurisdictional accumulation are then presented relating to the French, Dutch and English/British empires. These mostly relate to trading and chartered companies and settlements primarily concerned with authority over land and resources, a process for which the inhabitants of the colonised land need to be excluded rather than jurisdictionally incorporated. The more commercial, indirect and outsourced practices of these empires are discussed through the

debates on mercantilism and the practices of corsairing, which produced conditions for jurisdictional accumulation as *transports* of authority, i.e. focused on the use of intermediaries and a jurisdictional distancing between the imperial centres and their colonies.

Chapter 7 concludes the book by discussing in more detail the conceptual and historiographical implications of the analysis of consuls in chapter 5 and of the jurisdictional practices of accumulation in chapter 6. Exploring different meanings of jurisdiction for the doctrine of the law of nations in Spain and for England's famous *Calvin's Case* - both focused on cross-Atlantic colonisation - reveals the importance of the difference between transplants and transports of authority as shaped by different notions of *dominium*. In effect, transplants of authority refer to notions of *dominium* that incorporate both ownership of things and people *and* rule or judicial authority over things and people. In contrast, transports of authority refer to a more restricted notion of *dominium* focused on the ownership of things, or what some might identify as private property. Finally, in the Mediterranean, jurisdictional accumulation reveals how early modern consuls, as the most significant and neglected of jurisdictional actors, were shaping key legal fictions (political/economic and Christian/non-Christian) that were maintained in the later nineteenth century's construction of modern international law, and which contributed to excluding peoples from the standards of civilisation. Thus, the book concludes with these remarks aimed at opening debates on the significance and potential future of the concept of jurisdictional accumulation. If nothing else, this concept will have contributed to the growing scholarship on the shared histories of international relations and international law. Echoing Christopher Hill's wise advice to fellow historians, it also hopes to contribute to this generation's need to rewrite its history as it relives different aspects of its predecessors' experiences; namely, those of empire and accumulation.