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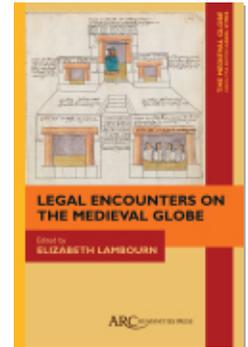
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EDITOR'S INTRODUCTION TO "LEGAL ENCOUNTERS ON THE MEDIEVAL GLOBE"

ELIZABETH LAMBOURN

THE SEVEN ARTICLES gathered in this thematic issue analyze a variety of legal encounters ranging from South Asia to South and Central America, via the Horn of Africa, the Middle East, and Europe. According to its founding manifesto, connectivity is one of *The Medieval Globe's* core foci: "the means by which peoples, things, and ideas came into contact with one another" during this era.¹ As a system of ideas embodied in people and enacted on bodies—and also as a material, textual, and sensory "thing"—law has been a primary locus and vehicle of contact across human history. Our choice of the term "encounter" further underlines the human components of these contacts: it is defined variously as "a meeting face to face" or "the fact of meeting with a person or thing."² Honing in on acts of encounter has encouraged our authors to reflect on the people behind and within legal systems, and on human encounters with various material expressions of law.

As a scholar of the "non-West" by training, my special aim was to ensure that work on European legal worlds would be placed alongside the varied and vibrant research on regions elsewhere on the medieval globe. (Future issues could, of course, broaden this lens still further, through contributions on legal encounters in Southeast Asia and the Far East, as well as across Austronesia, Oceania, or North America.) Of necessity, the period explored here is a "long medieval." Contributors engage with sources covering more than a millennium, from the fifth to the sixteenth centuries, and we have all written in full awareness of the complex and contested nature of periodizing categories and labels.³ Until quite recently, for example, Americanists have not embraced the term "medieval" as a descriptor for pre-contact or early colonial eras.⁴ For South Asia, the term has often framed by literal or metaphorical "scare quotes," and the same has been true for sub-Saharan Africa.⁵

1 Symes, "Introducing *The Medieval Globe*," 4.

2 *OED: Oxford English Dictionary*, 5:215, s.v. "encounter"

3 See Davis and Puett, "Periodization and 'The Medieval Globe.'"

4 This is changing rapidly: see, for example, Pauketat and Alt, *Medieval Mississippians*. The symposium "The Medieval Americas: Violence, Religion, and Cultural Exchange before Columbus" was convened at the University of Illinois on April 3, 2015: <<http://www.medieval.illinois.edu/events/conferences/>> [accessed October 3, 2015].

5 Again, this is changing: the symposium "Medieval Africa: The Trans-Saharan World,

The articles gathered here do not ignore this problem; indeed, Patricia Skinner's essay provides a particularly detailed survey of the term's loose chronological application in recent South Asian historiography and sets it against more common European usages. But on the whole, we have chosen not to see this as a barrier to scholarly dialogue. Nor is the need to establish points of direct contact between many regions of the globe an impediment to the exploration of synchronous histories or to meaningful dialogue among scholars across these regions. Ultimately, such comparative and methodological exchanges may lead to the elaboration of viable alternative terminologies, periodizations, and spatial imaginaries; for now, we aim to advance *The Medieval Globe's* project of *doing* (as well as theorizing) globalized medieval studies. Hence each contribution offers a different, very individual example of this praxis, unified by our shared theme.

In keeping with this ethos of encounter, only three of our authors—Phillip Ackerman-Lieberman, Donald Davis, and Jerome Offner—might be described as legal historians, in the sense that the study of past legal systems constitutes, or at one time constituted, a primary area of their scholarly training and research. The majority of scholars writing here—myself, Susan Ramírez, Patricia Skinner, Habtamu Tegegne, and Laurel Wilson—are historians who use legal sources in our research. Some of us do so regularly; for others, this is a new engagement with legal materials and the specialist scholarship surrounding them. Contributors also range from well-established scholars to those who have only recently completed their doctorates. All answered a call for contributions that encouraged a broad interpretation of where and how the idea of legal encounter might be explored: whether at the intersection of different legal systems or within a single document, corpus, or locale; or through human representatives or practitioners of different legal systems. They were encouraged to think about legal encounters enabled by mobility, via mobile peoples' dealings with "Other" legal systems (legal extraterritoriality is a particular issue here) or in jurists' efforts to deal with forms of mobility (social, religious, economic, sexual) within their respective cultures. They were also urged to focus on places of legal encounter as well as legal encounters with, and accommodations of, novel ideas, people, or things.

In this issue, two articles center in different ways on one of the most geographically extensive and lengthy legal encounters in human history: that between European and indigenous American legal systems as a result of European exploration and colonization from the late fifteenth century onwards. Both contributions

500–1700" was held at Harvard University on February 5–6, 2015. Africa, South Asia, the Americas, and other regions are the focus of various ongoing projects sponsored by the Global Middle Ages Project (GMAP): <<http://globalmiddleages.org/>> [accessed October 11, 2015].

focus on the frequently cataclysmic encounters that took place in the "New World," although the questions they raise apply wherever Europeans, their laws, or their assumptions about law, have ventured. In "The Future of Aztec Law," Jerome Offner's aim is to recover "the substance and nature of a legal tradition developed in the Americas in isolation from the rest of the world and now forever lost in time."⁶ Offner writes very explicitly for what he calls an "Old World" audience, presenting a historiography of Aztec jurisprudence and legal practice and outlining the special challenges posed by surviving sources. Although some of these challenges are unique, Offner's discussion addresses the perennial and pervasive problem of teasing out the interplay among established rules, jurisprudential principles, and actual behavior: the interface between law in theory and in practice. He also draws attention to the ways that premodern/indigenous sources have been shaped and contaminated by modern/imperialist categories and historical methods: a problem familiar to scholars in many fields. For example, his discussion of the graphic communication system (GCS) that mediated the Nahuatl language and an array of cultural practices emphasizes the extent to which the past performativity of so many medieval documents and recording technologies have been lost or overlooked. Law resided first and foremost in people, not texts, and our study of past legal sources will always be hampered by the impossibility of direct participant observation. In many ways, Offner offers a positive model for the future of the global medieval.

In "Land and Tenure in Early Colonial Peru: Individualizing the *Sapci*, "That Which Is Common to All," Susan Ramírez focuses very directly on the Spanish conquest and settlement of Inca Peru and the encounter between European expectations of land ownership and administration, and indigenous concepts of land and its occupation. Iberian newcomers carried ideas of permanent ownership rooted in ancient and medieval European precedents to the Inca empire's many ethnic groups, who conceived of the earth as so sacred "that it could not be possessed in perpetuity by anyone."⁷ Ramírez's detailed discussion of often unpublished archival sources conveys the complexity and nuanced nature of this encounter over the course of the sixteenth century.

This issue's featured source showcases Habtamu Tegegne's study of a newly discovered legal text, "The Edict of King Gälawdéwos against the Illegal Slave Trade in Christians: Ethiopia, 1548." His recent find is an important contribution to the study of the slave trade in the Indian Ocean during this pivotal century, but his chief concern in this essay is to examine the immediate and longer term con-

6 Offner, "Future of Aztec law," 1.

7 Ramírez, "Land and Tenure in Early Colonial Peru," 34.

texts in which this document should be interpreted. Tegegne situates the edict (*fetha* in Ge'ez) within a deep history of Ethiopian law little known beyond specialist scholarship. With its layering of Coptic Christian, Islamic, and postclassical Romano-Byzantine elements, "the intricate and hybrid Ethiopian legal system exemplifies the interconnections and translation processes involved in the production of normative texts in many areas of the medieval globe, the result of cross-border communication processes and a special fruit of enduring Coptic-Ethiopian religious ties and interactions."⁸ Parallel to this, Tegegne concentrates on situating the promulgation of the edict within the contemporary regional politics of the Horn of Africa, notably the decades-long war between the kingdom of Ethiopia and the neighbouring sultanate of Adal. Together with Elizabeth Lambourn and Phillip Ackerman-Lieberman's study of the reception of Chinese porcelain within the rabbinic systems of Aden's twelfth-century Jewish community (see below), Tegegne's analysis reveals the western Indian Ocean to be a place of significant and far-reaching legal encounters.

Indirect legal encounters are the topic of Patricia Skinner's contribution: "Mutilation and the Law in Early Medieval Europe and India: A Comparative Study." As its title makes explicit, this essay does not rest on evidence of contact between European and South Asian legal systems, but argues that placing them in communication with one another enriches the study of both. Skinner reminds us of Marc Bloch's assertion that comparison is "a means of better understanding one's *own* area of expertise, and exposing assumptions that a model developed in one part of the world [is] applicable, uncritically, elsewhere."⁹ On one level, this is the intellectual encounter of a Europeanist with the unfamiliar sources and legal scholarship of South Asia; on another, Skinner's comparative exercise allows her to distil common aspects of the operation of law in both areas that are easily lost in narrower contexts. She observes that, in both Europe and South Asia, "written law *mattered* [...] and functioned as a symbol of rulers' authority."¹⁰ While this may seem self-evident, all of the essays gathered here repeatedly point to the fact that laws are often promulgated or systematized at times of conflict, fragmentation, or rapid social change; this suggests that it was not so much law itself than the *making* of law, the processes of intellectual ordering and ceremonial publication, that mattered most. Law produced a physical, visual, and aural record of law making: a legal *thing*.

⁸ Tegegne, "Edict of King Gälawdéwos," 75.

⁹ Cited in Skinner, "Mutilation and the Law in Early Medieval Europe and India," 117.

¹⁰ *Ibid.*, 120.

This point is upheld and demonstrated explicitly in Laurel Wilson's essay "Common Threads: A Reappraisal of Medieval European Sumptuary Law," an ambitious comparative analysis of the mass of seemingly inconsistent and ineffective sumptuary laws drawn up in the territories of Spain, Italy, France, and England during the thirteenth and fourteenth centuries. As Wilson cogently demonstrates, to read these laws as instrumental—as intended to effect real change—is to miss what they actively *did*. Wilson shows that the earliest bodies of sumptuary legislation reflect moments of rapid social change, in particular a multiplying urban elite or gentry that occupied an "interzone" at the juncture of older knightly classes and the upper bourgeoisie. In this context, sumptuary laws were not intended to control the wearing of specific types, colors, or qualities of clothing; rather, they affirmed traditional virtues and values, and ultimately sought to maintain the social order. The fact that they were never, or rarely, upheld and frequently repeated and reissued illustrates the core fact that "written law mattered" for its symbolic, ordering function.

The final two essays included here are Donald Davis's "Toward a History of Documents in Medieval India: The Encounter of Scholasticism and Regional Law in the *Smṛticandrikā*" and "Chinese Porcelain and the Material Taxonomies of Medieval Rabbinic Law: Encounters with Disruptive Substances in Twelfth-Century Yemen," co-authored by Phillip Ackerman-Lieberman and myself. Both turn around the organizing role of law in the face of what has been termed the "promiscuous profusion" of the real world.¹¹ In Davis's essay, the focus is the encounter between Dharmaśāstra, the Sanskrit textual corpus containing systematized discussions of all major legal topics, and the profusion of real world documents involved in a variety of legal processes. Taking as his starting point a key chapter on documents from the twelfth-century digest of Hindu law, the *Smṛticandrikā* (Moonlight on the Laws), Davis offers a new English translation of the Sanskrit text and, with it, a close commentary on the documentary taxonomies evinced in this source and their relationship to known documentary types. He uncovers the palpable tensions between the digest's "scholastic compulsion to be true to the commentarial tradition by not elaborating further categories of document beyond those mentioned in the accepted root-texts" and the author's own working knowledge of the abundance of documentary types that existed "in accordance with local standards."¹² Working outward from this tension, Davis is keen to reinvigorate the study of South Asian documentary cultures, in particular by moving his discipline "beyond vague invocations of literacy and documentary culture in the

11 Clunas, "Trade Goods, Commodities and Collectables," 45.

12 Davis, "Toward a History of Documents in Medieval India," 169.

singular”¹³ towards a more developed understanding of regionally and chronologically specific literacies, documentary functions, material patterns, and other issues. Like all of the contributors to this issue, Davis writes with the non-specialist in mind; and, like Offner and Tegegne, he offers a concise and cogent introduction to legal corpora and their study, alongside a specialist discussion of the opportunities that they represent.

The function of law in relation to “real world” objects and concerns is central to understanding the reception of new Chinese ceramic technologies among the Jewish communities of the medieval Middle East: the topic of the essay co-authored by Phillip Ackerman-Lieberman and myself. This essay brings rabbinic sources into direct dialogue with material culture through a collaboration by scholars specializing in each of these fields. It reflects part of a broader and very recent new direction within the study of Middle Eastern material culture, and one more commonly applied, experimentally, within the field of Islamic law. Recognizing that the objects of material culture were the product of legal processes as well as of craftsmanship, this strand of scholarship regards objects as sites of negotiation between the theory and the praxis of law. In this case, we focus on the encounter between material taxonomies developed within rabbinic Judaism as part of the regulation of purity (*tohora*) and impurity (*tuma*), on the one hand, and new ceramic technologies and types of object that did not fit these categories, on the other. Focusing on the earliest dated and located set of questions surrounding the taxonomic position of Chinese porcelain within this system, the article explores the implications of these questions for the history of porcelain’s (ongoing) legislation within Judaism as well as the history of ceramic exchanges between China and the Middle East.

While ostensibly about legal encounters in the medieval past, this issue as a whole is also very much about encounters “in the now.” Our sources have agency: they acted in the pasts that we study; they act in the world now in multiple ways; they act on us as we study them; and they act on others through the medium of scholarly publication. Most prominent among these interactions, perhaps, are the one-to-one encounters between the scholars and their legal source materials. However, encounters among academic disciplines, methods, regions, and temporalities also permeate these pages. These encounters range from purposeful cross-disciplinary collaboration, to comparative studies such as those of Skinner and Wilson, to encounters “on the page” with other bodies of scholarship testified in the footnotes of every contribution—and, of course, the plethora of verbal and written exchanges among scholars, past and present, that our acknowledgements

13 Ibid., 172.

only ever half capture. I think I can safely speak for my fellow contributors in saying that the process of producing this volume has helped all of us to articulate our own standpoints far more clearly than if we wrote safely inside our own disciplinary confines and for our usual specialist audiences. Offner, for example, explicitly marks his contribution as a place of encounter between the lost legal tradition he studies and the non-specialist readership to which he reaches out. Each of these essays constitutes an act of scholarly generosity in digesting a complex body of sources and scholarship for the benefit of new audiences.

In important ways, these essays also call attention to renewed encounters with indigenous and premodern legal systems. In Mexico, a new generation of contemporary Nahuatl speakers is returning to Aztec legal sources with new questions and frames of reference. All over the world, rabbinic texts dating back to antiquity continue to guide the behavior of observant Jews and to frame their relationships with almost every material object in the (post)modern home. In all of these encounters, the legal past is very much alive in the present. Recognizing this helps to underline the vibrant range of research being undertaken on, and from, legal sources. There is no human society that does not have law in some form, and there is a rich and growing body of scholarly work examining legal cultures around the medieval globe. Yet while some of this work is being undertaken within the discipline of legal history strictly defined, more often it is in the writing of other medieval histories that fresh questions about the nature and function of law and the creation of "legal worlds" are emerging. This makes for stimulatingly diverse interpretations of law's place in medieval studies, but it can also impede exchanges between regional specialists and among disciplinary specializations, lessening the overall impact and utility of this research. This issue of *The Medieval Globe* is accordingly designed as a space of encounter for scholars of law in all its aspects, in any context, and from diverse perspectives.

Bibliography

- Clunas, Craig. "Trade Goods, Commodities and Collectables: Some Ways of Categorising Material Culture in Sung-Yuan Texts." In *Arts of the Sung and Yuan*, edited by Maxwell K. Hearn and Judith G. Smith, 45–56. New York: Metropolitan Museum of Art, 1996.
- Davis, Donald R., Jr. "Toward a History of Documents in Medieval India: The Encounter of Scholasticism and Regional Law in the *Smṛticandrikā*." In *Legal Worlds and Legal Encounters*, edited by Elizabeth Lambourn, special issue, *The Medieval Globe* 2, no. 2 (2016): 167–98.
- Davis, Kathleen, and Michael Puett. "Periodization and 'The Medieval Globe': 'A Conversation.'" *The Medieval Globe* 2.1 (2016): 1–14.

- Lambourn, Elizabeth, and Phillip Ackerman-Lieberman. "Encounters with Disruptive Substances: Chinese Porcelain and the Material Taxonomies of Medieval Rabbinic Law." In *Legal Worlds and Legal Encounters*, edited by Elizabeth Lambourn, special issue, *The Medieval Globe* 2, no. 2 (2016): 199–238.
- Offner, Jerome A. "The Future of Aztec Law." In *Legal Worlds and Legal Encounters*, edited by Elizabeth Lambourn, special issue, *The Medieval Globe* 2, no. 2 (2016): 1–32.
- The Oxford English Dictionary*. 2nd ed. prepared by J. A. Simpson and E. S. C. Weiner. 20 vols. Oxford: Clarendon Press, 1989.
- Pauketat, Timothy R., and Susan M. Alt, eds. *Medieval Mississippians: The Cahokian World*. Santa Fe: School for Advanced Research Press, 2015.
- Ramírez, Susan Elizabeth. "Land and Tenure in Early Colonial Peru: Individualizing the *Sapci*, 'That Which Is Common to All.'" In *Legal Worlds and Legal Encounters*, edited by Elizabeth Lambourn, special issue, *The Medieval Globe* 2, no. 2 (2016): 33–71.
- Skinner, Patricia. "Facial Mutilation and the Law in Early Medieval Europe and India: A Comparative Study." In *Legal Worlds and Legal Encounters*, edited by Elizabeth Lambourn, special issue, *The Medieval Globe* 2, no. 2 (2016): 115–139.
- Symes, Carol. "Introducing *The Medieval Globe*." *The Medieval Globe* 1 (2014): 1–8.
- Tegegne, Habtamu Mengistie. "The Edict of King Gälawdéwos against the Illegal Slave Trade in Christians: Ethiopia, 1548." In *Legal Worlds and Legal Encounters*, edited by Elizabeth Lambourn, special issue, *The Medieval Globe* 2, no. 2 (2016): 73–114.
- Wilson, Laurel Ann. "Common Threads: A Reappraisal of Medieval European Sumptuary Law." In *Legal Worlds and Legal Encounters*, edited by Elizabeth Lambourn, special issue, *The Medieval Globe* 2, no. 2 (2016): 141–165.

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Abstract This introduction presents and draws together the articles and themes featured in this special issue of *The Medieval Globe*, "Legal Encounters on the Medieval Globe."

Keywords Law, legal systems, jurisprudence, global studies, medieval studies, encounter, connectivity.