

Introduction

Property and Colonization

To sum up, there everywhere appears to be an intimate link between the way in which nature is used and the way in which human beings themselves are used. However, whilst historians have given much thought to the path leading from ways of treating human beings to those of appropriating nature, researchers who have explored the opposite trajectory are still rare.

Maurice Godelier, "Territory and Property in Some Pre-Capitalist Societies"¹

Every established order tends to produce (to very different degrees and with very different means) the naturalization of its own arbitrariness . . .

Pierre Bourdieu, *Outline of a Theory of Practice*²

Parchment domains, leases and freeholds delimited by inky clauses, not by ancient hedges or boundary stones. His [Thomas Cromwell's] acres are notional acres, sources of income, sources of dissatisfaction in the small hours, when he wakes up and his mind explores their geography . . . he thinks not of the freedom his holdings allow, but of the trampling intrusion of others, their easements and rights of way, their fences and vantage points, that allow them to impinge on his boundaries and interfere with his quiet possession of his future.

Hilary Mantel, *Bring up the Bodies*³

This book proposes a new reading of the history of the colonization of North America and the dispossession of its indigenous peoples. Land,

¹ Maurice Godelier, *The Mental and the Material* (London: Verso, 1986), "Territory and Property in Some Pre-Capitalist Societies," 116–17.

² Pierre Bourdieu, *Outline of a Theory of Practice*, trans. Richard Nice (Cambridge: Cambridge University Press, 1977), 164.

³ Hilary Mantel, *Bring up the Bodies* (London: HarperCollins, 2012), 102.

territory and property are its central focus and it deploys the concept of “property formation” to consider the ways in which Europeans and their Euro-American descendants remade New World space as they laid claim to the continent’s resources, extended the reach of empire and established polities and jurisdictions for themselves. It examines the cases of Mexico (New Spain), New England and Canada (New France) from the sixteenth to the eighteenth century. This selection of zones of colonization shines a comparative spotlight not only on the three principal European empires active in North America, but also on indigenous nations ranging from what are sometimes referred to as agricultural state societies (the Nahua peoples of Mexico), to semi-sedentary villagers (New England Algonquians) to nomadic hunter-gatherers (the Innu of Quebec). Although dispossession of one sort or another was their ultimate fate, these native peoples were not pure victims and accordingly they appear in this account as actors. As Chapter 2 will show, each had its own complex traditions governing territoriality and property, and as later parts of the book reveal, those who survived the colonizers’ onslaught had a hand in shaping the course of colonial property formation.

Property and Dispossession challenges a set of assumptions, powerfully entrenched since the time of the Enlightenment, that sees property as a single thing, the hallmark of civilization and modernity.⁴ Europeans of the early modern period had “it,” according to this view, Native Americans did not, and colonization meant installing this mechanism of progress on New World soil where it had previously been unknown. Historians who would not dream of endorsing such ideological justifications of imperialism still tend to take a rather naive view of property, as though colonists arrived from Europe with a system of property that was somehow complete, fully formed and fundamentally in line with that of the historian’s own time. In place of the on/off binary conception of property (and its close cousin, the linear scale leading from “weak” to “strong” property), my book highlights the diversity of indigenous and Euro-American property systems in the early modern period, bringing out their contingent and protean qualities, not to mention their occasional incoherence. It tries to take all forms of landed property seriously on their

⁴ Emer de Vattel, *Le droit des gens ou principes de la loi naturelle appliqués à la conduite et aux affaires des nations et des souverains*, 4 vols. (London [Neuchatel]: n.p., 1758), vol. 1: 78–79, 195–96; Adam Ferguson, *An Essay on the History of Civil Society* (Edinburgh: A. Kincaid & J. Bell, 1767), 112–64; Robert A. Williams, *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600–1800* (New York: Oxford University Press, 1997), 146 n 18.

own terms, including the indigenous American as well as the European-derived versions, and aims at a historicized, cross-cultural understanding of New World property formation.

My objective has been to tell this story without reifying “property” or “land,” without naturalizing current arrangements and without falling into whiggish assumptions about progress. Undercurrents in settler-national memory portray the European takeover of America as a vast modernizing operation: a new nation was born and the engines of economic development switched on the moment natives were displaced. Contemporary historiography generally avoids such celebratory readings, but where landed property is concerned, there is still an unreflexive tendency to equate colonization and modernization.⁵ A leftist variant on this metanarrative of progress insists on an association between colonization and capitalism stretching back to the earliest encounters with the New World and its inhabitants. “Colonists were moved to transform the soil by a property system that taught them to treat land as capital,” declares one influential study of early New England.⁶ A more wide-ranging work puts it more strongly: “The form of colonialism that the Indigenous peoples of North America have experienced was modern from the beginning: the expansion of European corporations, backed by government armies, into foreign areas, with subsequent expropriation of lands and resources.”⁷ One consistent theme of this book will be to emphasize the very limited role of developments associated with capitalism, private property and modernity in the early colonization of North America. Moreover, as Chapter 7 argues,

⁵ Usually an unspoken assumption structuring historical accounts, that interpretation is occasionally expressed baldly, most often in popular works. See, for example, Tom Bethell, *The Noblest Triumph: Property and Prosperity through the Ages* (New York: St. Martin’s Press, 1998); Niall Ferguson, *Civilization: The West and the Rest* (London: Allen Lane, 2011), ch. 3, “Property,” 96–140; Andro Linklater, *Owning the Earth: The Transforming History of Land Ownership* (New York: Bloomsbury, 2013). Faith in the wonder-working propensity of property, whether linked to colonization or not, is particularly strong in the field of economic history. See, for example, Douglas C. North and Robert Paul Thomas, *The Rise of the Western World: A New Economic History* (Cambridge: Cambridge University Press, 1973); David S. Landes, *The Wealth and Poverty of Nations: Why Some Are So Rich and Some So Poor* (New York: W. W. Norton, 1998), 31–36.

⁶ William Cronon, *Changes in the Land: Indians, Colonists, and the Ecology of New England* (New York: Hill and Wang, 1983), 77.

⁷ Roxanne Dunbar-Ortiz, *An Indigenous Peoples’ History of the United States* (Boston: Beacon Press, 2014), 6. See also Howard Zinn, *A People’s History of the United States: 1492–Present*, revised ed. (New York: HarperCollins, 2003), 16; Ellen Meiksins Wood, *Empire of Capital* (London: Verso, 2003), 73–101.

natives were dispossessed as much by the settler commons as by any sort of colonial version of the Enclosure movement. Though rapacity and exploitation are very much part of the history of empire and colonization, the establishment of settler tenures revolved more around the requirements of residence and subsistence than of profit. While setting the pattern in many respects for later centuries, early modern colonization remained, if I may put it this way, more “early” than “modern.”

This book is about the practices by which settlers came to exert control over particular portions of the land at the expense of indigenous peoples. Scholars working in an intellectual history tradition have already examined, with great rigor and thoroughness, the various legal doctrines, “theories of empire” and “ceremonies of possession” by which Europeans expressed their qualms and asserted their justifications for seizing overseas territories.⁸ The emphasis here will instead be on concrete on-the-ground actions, actions that had the effect of instituting colonial property for both settlers and surviving indigenous populations. Of course, it is not so easy to concentrate exclusively on what some have called the “history of the real”:⁹ we cannot escape discursive and conceptual issues merely by dedicating ourselves to the study of practice. The vocabulary evoked here, beginning with the key terms “property” and “land,” raises all sorts of questions of definition. To project these words, loaded as they are with contemporary assumptions and ideals, back into the seventeenth century

⁸ Highlights from a vast literature: L. C. Green and Olive Patricia Dickason, *The Law of Nations and the New World* (Edmonton: University of Alberta Press, 1988); Anthony Pagden, *Lords of All the World: Ideologies of Empire in Spain, Britain and France c. 1500–c. 1800* (New Haven, Conn.: Yale University Press, 1995); Patricia Seed, *Ceremonies of Possession in Europe’s Conquest of the New World, 1492–1640* (New York: Cambridge University Press, 1995); David Armitage, *The Ideological Origins of the British Empire* (Cambridge: Cambridge University Press, 2000); Patricia Seed, *American Pentimento: The Invention of Indians and the Pursuit of Riches* (Minneapolis: University of Minnesota Press, 2001); Paul G. McHugh, *Aboriginal Societies and the Common Law: A History of Sovereignty, Status, and Self-Determination* (Oxford: Oxford University Press, 2004); Brian Slattery, “Paper Empires: The Legal Dimensions of French and English Ventures in North America,” in *Despotic Dominion: Property Rights in British Settler Societies*, ed. John McLaren, A. R. Buck, and Nancy E. Wright (Vancouver: UBC Press, 2005), 50–78; Anthony Pagden, “Law, Colonization, Legitimation, and the European Background,” in *The Cambridge History of Law in America*, vol. 1: *Early America, 1580–1815*, ed. M. Grossberg and Christopher L. Tomlins (New York: Cambridge University Press, 2008), vol. 1: 1–31.

⁹ See David Gary Shaw, “A Way with Animals,” *History and Theory* 52 (2013): 11. “At this moment,” writes Shaw, “history and theory have generally been turning away from the symbolic and the linguistic. Trends are toward sensation and presence, to materiality and space, to the body and its affect.”

is to court conceptual disaster. (By way of illustration, we might note that the word “propriété” rarely occurred in connection with land in the French language at that time, while in English people usually spoke of property *in*, rather than property *of*, a piece of land.)¹⁰ But even in the context of today’s world, the language of property is anything but transparent. Those who have thought deeply about the topic show that the everyday discourse of property is rife with metaphors, reification, and complex and contradictory assumptions.¹¹ This chapter will have more to say about the general conceptual problem of property in land and the book as a whole might be read as a set of further reflections on that theme. Meanwhile, another key word, “colonization,” needs to be addressed, as it will be used here in a particular way.

EMPIRES, COLONIZATION AND LAND

“The actual geographical possession of land,” wrote Edward Said, “is what empire in the final analysis is all about.”¹² Where European empires of the early modern world are concerned, this is not a strictly accurate statement. The navigators who ventured across the seas in the “Age of Discovery” were generally more interested in controlling trade, plundering treasure, extending the reach of Christendom and enhancing the glory of their respective monarchs than they were in appropriating territory. As Lauren Benton and others have established, empire in this period was as much about water – trade routes, ports and estuaries – as it was about land. Portuguese, Dutch and, later, English and French fought to control the sea lanes leading to the spice islands and beyond; they each used their superior naval firepower to force Asian rulers to open their ports to trade and to close them to rivals; and they tried to legitimate their monopoly claims in terms of a nascent international law that focused as much on the sea as the land.¹³ Their territorial claims along the coasts of Africa and Asia rarely extended

¹⁰ G. E. Aylmer, “The Meaning and Definition of ‘Property’ in Seventeenth-Century England,” *Past & Present*, no. 86 (1980): 87–97.

¹¹ Thomas C. Grey, “The Disintegration of Property,” in *Property*, ed. J. Roland Pennock and John W. Chapman (New York: New York University Press, 1980), 69–85; Alain Pottage, “Instituting Property,” *Oxford Journal of Legal Studies* 18 (1998): 331–44.

¹² Edward W. Said, *Culture and Imperialism* (New York: Knopf, 1994), 78.

¹³ Lauren A. Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (New York: Cambridge University Press, 2010). See also Sanjay Subrahmanyam, *The Portuguese Empire in Asia, 1500–1700: A Political and Economic History*, 2nd ed. (Chichester, UK: Wiley-Blackwell, 2012); Romain Bertrand, *L’histoire à parts égales: récits d’une rencontre Orient-Occident, XVIIe-XVIIIe siècle* (Paris: Points, 2014).

beyond isolated fortified ports. America was a somewhat different story: beginning at the time of Columbus, Spaniards used ruthless violence to establish control over the large islands of the Caribbean before invading and conquering the Aztec Empire of Mesoamerica and then the Inca Empire of the Andes. Even where Spanish arms prevailed, however, “possession of the land” remained qualified and uncertain (see Chapter 4). Moreover, the largest part of the New World, including coastal areas exposed to the Atlantic, long remained unconquered; through the sixteenth and much of the seventeenth centuries, Europeans probed and traded and established coastal strongholds, but they did not manage to seize and hold very much territory. On sea and on land, the vigorously expansive European overseas empires of the early modern period are best envisioned as webs and nodes rather than as solid blocks of territory.¹⁴

In place of “empire,” Edward Said might better have inserted the word “colonization,” for that is indeed a historical process intimately bound up with real “possession of land.” The empire/colony distinction, critical for what follows, needs to be highlighted. Influenced by the history of the “high imperialism” of the late nineteenth century, casual discourse tends to confuse the concepts of empires/imperialism on the one hand with colonies/colonization on the other. Colonies tend to be seen basically as subordinate polities, subject to the sovereign authority of a distant imperial metropole: colonization, from this point of view, suggests the subjection of one country to the exploitive rule of another. Put differently, colonies are often viewed as the territorial units of which an empire is composed. But things were never that tidy, even during the heyday of modern imperialism,¹⁵ and certainly not in the sixteenth and seventeenth centuries. Rather than being composed of territorially defined building blocks, overseas empires then were essentially tentacular entities, unbounded whether by sea or by land. They were opportunistic, employing strongholds, fortified ports and enclaves of settlement to influence and lay claim to much broader, but ill-defined, areas over which they exercised varying degrees and different kinds of influence.¹⁶ Colonization was an aspect of empire building, but it was not the same thing as empire building. Certainly, colonies did not define the spatial extent of empire.

¹⁴ Benton, *A Search for Sovereignty*.

¹⁵ Ann Laura Stoler, “On Degrees of Imperial Sovereignty,” *Public Culture* 18 (2006): 125–46.

¹⁶ Benton, *A Search for Sovereignty*. See also Charles Maier, *Once Within Borders: Territories of Power, Wealth, and Belonging since 1500* (Cambridge, Mass.: Harvard University Press, 2017), 14.

In European languages of the period, “colonization” and its associated vocabulary referred more to demography and agriculture than to political institutions. More so than its English cognate, the French term *colonisation* had (and still has) a specifically agrarian sense, denoting the appropriation of land and its transformation for agricultural purposes. In seventeenth-century English, it was more common to speak of “planting” overseas settlements: what the French referred to as “*une colonie*,” the English called a “plantation”; colonists were typically known as “planters.” Over time, “colony” would acquire more of a political sense in English (see Chapter 6). From its earliest stages, however, American colonization north of Mexico was associated with the physical act of tilling the soil to bring it into agricultural production. “Planters” and “*colons*” could be the actual workers in these operations or they could be members of the elite who employed others to do the work, but their use of the land is fundamental to the definition of “colonization” in this period. The Spaniards, with their emphasis on conquering indigenous nations and relying on their tribute and labor, construed colonization somewhat differently. Those who came to dominate New Spain rejected the appellation “*colón*” because of its association with manual labor. They instead wanted to be called *conquistadores* if they had participated in the first wave of invasion, or as “*pobladores*” if they came later; many were proud to be known as *conquistadores/pobladores*, claiming the honor of both subjugating and settling the country.¹⁷ Different, but not utterly different, from English and French discourses, the Spanish language of colonization also evoked the establishment of European settlers on the ground and the cultivation of the soil.¹⁸ Planting people, planting crops and building homes for enduring habitation: these were essential elements of colonization and they implied a deep hold over circumscribed territory in a way that “empire” did not.

The Americas gradually emerged over the early modern period as the one field of European imperial activity where colonization came to predominate.¹⁹ After an initial surge through the Antilles, Mesoamerica and the Andes in the decades following Columbus’s voyages, Spanish

¹⁷ J. H. Elliott, *Empires of the Atlantic World: Britain and Spain in America* (New Haven, Conn.: Yale University Press, 2006), 9, 121.

¹⁸ On metaphors of gardening in Spanish and English discourses of colonization, see Jorge Cañizares-Esguerra, *The Puritan Conquistadors: Iberianizing the Atlantic, 1550–1700* (Stanford, Calif.: Stanford University Press, 2006), 178–214.

¹⁹ There were a number of – rather small – European overseas settlements in the period that form exceptions to this generalization: the Canaries and other Atlantic islands, Angola

territorial dominion met limits, imposed mainly by indigenous resistance, and its march slowed. Meanwhile, the Portuguese were settling along the coast of Brazil and beginning their probes into the heart of South America. Later, English, French and Dutch colonists would carve out settlements on the shores of North America; here too, imperial penetration and the indirect effects of the European presence raced into the interior, far ahead of actual colonization. In eastern North America, as in Brazil, the patches of colonized territory grew ever larger; over the course of the nineteenth century, these would encompass large portions of the western half of the continent; more recent times saw progressive penetration into Alaska and northern Canada, though the process of colonization has never been complete. Meanwhile, European colonization was claiming other portions of the world: in South Africa, Algeria and other small parts of Africa and in Australia, New Zealand and Hawaii settlers established themselves, imposed a colonial property regime and dispossessed natives.²⁰ Almost all of this expanded campaign of colonization, including the occupation of western North America, occurred after the end of what American historians call the “colonial period.” The early modern colonization of North America therefore stands as an archetypal model that, notwithstanding all its peculiar (from a modern point of view) characteristics, set the pattern for the larger, global land grabs of later centuries.

For centuries, the greater part of North America remained in the possession of indigenous nations; from the time of Cortés to that of the American Revolution, colonization spread rather slowly.²¹ However, that does not mean that natives were unaffected by the European enclaves in their midst. Historians are increasingly coming to grips with what might be called the “empire effect,” which is to say the profoundly destabilizing impact of imperial penetration that ran far beyond the zones of conquest and settlement. Here the empire/colonization distinction becomes crucial.

and the Cape of Good Hope, as well as the Philippines and some small Indian Ocean islands.

²⁰ John C. Weaver, *The Great Land Rush and the Making of the Modern World, 1650–1900* (Montreal and Kingston: McGill-Queen’s University Press, 2003); James Belich, *Replenishing the Earth: The Settler Revolution and the Rise of the Anglo-World, 1783–1939* (Oxford: Oxford University Press, 2009).

²¹ Pekka Hämäläinen, “The Shapes of Power: Indians, Europeans, and North American Worlds from the Seventeenth to the Nineteenth Century,” in *Contested Spaces of Early America*, ed. Juliana Barr and Edward Countryman (Philadelphia: University of Pennsylvania Press, 2014), 33–38.

Exploratory probes such as Hernando de Soto's *entrada* into the south-east (1539–42) or Jacques Cartier's contemporaneous expeditions up the St. Lawrence River (1534–41) touched off major transformations across a wide indigenous landscape, even though they did not establish lasting colonies.²² Later, when Spanish, French and English became established on the coastal margins of North America, the indirect effects of their presence rippled across half a continent. Epidemics of Old World origin decimated whole regions. Just as important, trade spread European products far and wide, though always unevenly. Guns and other weapons of war gave a decisive military advantage to those who could gain direct access to colonial traders; the general effect was to exacerbate conflict and to make it much more deadly. The destructive effects of war and disease produced inland "shatter zones," most notably in the Southeast, where raiders armed by South Carolina traders attacked their neighbors and sold them into slavery.²³ The European presence on the edges of the continent created conditions that fostered the emergence of militaristic indigenous empires in the interior, such as those of the Comanches, the Sioux and the Iroquois.²⁴ In the midst of death and devastation, the "empire effect" gave birth to new empires, though even more than was the case with European empires, these aimed to dominate peoples rather than territories. For native societies, European empires could be hugely consequential even where they did not rest on "the actual geographical possession of land."

Capitalizing on the mayhem created by the empire effect, the French constructed a vast inland empire in North America (Chapter 5) and other

²² Robbie Franklyn Ethridge, *From Chicaza to Chickasaw: The European Invasion and the Transformation of the Mississippian World, 1540–1715* (Chapel Hill: University of North Carolina Press, 2010), ch. 3, "The Aftermath of Soto, ca. 1541–1650"; Bruce G. Trigger, *Natives and Newcomers: Canada's "Heroic Age" Reconsidered* (Kingston and Montreal: McGill-Queen's University Press, 1985), ch. 3, "The Approach of the Europeans, 1497–1600," 111–163.

²³ R. Brian Ferguson and Neil L. Whitehead, "The Violent Edge of Empire," in *War in the Tribal Zone: Expanding States and Indigenous Warfare*, ed. R. Brian Ferguson and Neil L. Whitehead (Santa Fe, N.M.: School of American Research Press, 1992), 1–30; Tom Holm, "American Indian Warfare: The Cycles of Conflict and the Militarization of Native North America," in *A Companion to American Indian History*, ed. Philip J. Deloria and Neal Salisbury (Oxford: Blackwell, 2004), 154–72; Robbie Ethridge, "Introduction: Mapping the Mississippian Shatter Zone," in *Mapping the Mississippian Shatter Zone: The Colonial Indian Slave Trade and Regional Instability in the American South*, ed. Robbie Ethridge and Sheri M. Shuck-Hall (Lincoln: University of Nebraska Press, 2009), 1–62.

²⁴ Hämäläinen, "The Shapes of Power," 31–68.

imperial powers did likewise, though on a more modest scale. Colonists also made use of roaming herds of cattle and pigs to add another layer to the imperial effect, undermining indigenous subsistence and so paving the way for future colonization. It was through colonization itself, however, that effective European rule was established and settlers were placed in possession of land previously controlled by indigenous peoples.

In spatial terms, dispossession is really the essence of colonization: colonists from Europe and their progeny displacing the original holders of the land. We need to introduce some nuances, however, for dispossession was never undifferentiated, nor was it total. Some scholars speak of an “eliminationist” logic driving settler colonialism toward the utter destruction of natives who stand in its way,²⁵ and though there are ample instances of deadly violence and forced migration in the annals of colonial North America, such “ethnic cleansing” is not the whole story. In Mexico, where the term “settler colonialism” hardly applies, the thrust of colonization as examined in Chapter 4 was in the direction of incorporating, rather than eliminating, indigenous peoples and lands. Natives also had a place within the English and French colonies, though on a much smaller scale than in Spanish-ruled America. Forming indigenous enclaves within the European enclaves within the larger indigenous/imperial spaces that surrounded them, the “praying Indian” settlements of New England and the mission villages of New France were more than a merely residual presence. Even as they experienced the *imperium* of the colonial power, these communities did their best to maintain a margin of cultural and jurisdictional autonomy, fashioning a colony within a colony. In all cases, indigenous people lived under separate jurisdiction and they held their lands under their own tenures, different from that of the surrounding European settlements. “Indian land” and settler land emerged as legally quite distinct forms of property. Colonial property formation therefore had a dual thrust: in creating property for colonists and property for natives it effectively defined the boundaries, social and political as much as territorial, dividing colonists from “Indians.”

For heuristic purposes, I am proposing a rather schematic set of distinctions here: territories that are colonial or indigenous or indigenous-but-subject-to-empire-effect; indigenous people who either live independently outside the colonized zones or who occupy “Indian” lands within them. Such an approach may seem to run counter to major

²⁵ Patrick Wolfe, “Settler Colonialism and the Elimination of the Native,” *Journal of Genocide Research* 8 (2006): 387–409.

currents of contemporary historiography emphasizing borderlands, indeterminacy, “people in between,” the mixing of cultures and “races.” Viewed up close, especially in contested areas but not only there, the basic spatial distinctions between zones of colonization and zones of imperial penetration tend to break down, as do attempts to trace a clear boundary between colonizers and colonized peoples. Instead, what so much recent work reveals is a fascinating cauldron of shifting identities, multiple agents and undefined geographies. I hope it will become clear in what follows that I have no quarrel with fine-grained research that brings out the rich variety of lived experiences in the encounter/clash of Europeans and native Americans: to the contrary. At the same time, I see value in a zooming-out strategy that attempts to discern some basic patterns in the spatial dynamics of colonialism and property formation.

THE PROBLEM OF PROPERTY IN LAND

So pervasive is the language of ownership in today’s society – my car, his shirt, her idea, their backyard – that it may not be initially obvious how strange the idea of property in land really is.²⁶ When it comes to property

²⁶ Some important theoretical works on the concept of property: A. Irving Hallowell, “The Nature and Function of Property as a Social Institution,” in *Culture and Experience* (New York: Schocken, 1967), 236–49; Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974); C. B. Macpherson, “Capitalism and the Changing Concept of Property,” in *Feudalism, Capitalism and Beyond*, ed. Eugene Kamenka and Ronald Stanley Neale (London: Edward Arnold, 1975), 105–124; James Tully, *A Discourse on Property: John Locke and His Adversaries* (Cambridge: Cambridge University Press, 1980); Alan Ryan, *Property and Political Theory* (Oxford: Blackwell, 1984); Richard A. Epstein, *Takings: Private Property and the Power of Eminent Domain* (Cambridge, Mass.: Harvard University Press, 1985); Alan Ryan, *Property* (Minneapolis: University of Minnesota Press, 1987); Jeremy Waldron, *The Right to Private Property* (Oxford: Oxford University Press, 1988); Laura S. Underkuffler, “On Property: An Essay,” *Yale Law Journal* 100 (1990): 127–49; Robert C. Ellickson, “Property in Land,” *Yale Law Journal* 102 (1992): 1315–400; Carol M. Rose, *Property and Persuasion: Essays on the History, Theory, and Rhetoric of Ownership* (Boulder, Colo.: Westview Press, 1994); J. E. Penner, *The Idea of Property in Law* (Oxford: Oxford University Press, 1997); C. M. Hann, ed., *Property Relations: Renewing the Anthropological Tradition* (Cambridge: Cambridge University Press, 1998); Marilyn Strathern, *Property, Substance, and Effect: Anthropological Essays on Persons and Things* (New Brunswick, N.J.: Athlone Press, 1999); Robert Castel, *Propriété privée, propriété sociale, propriété de soi: entretiens sur la construction de l’individu moderne* (Paris: Fayard, 2001); Rosa Congost, “Property Rights and Historical Analysis: What Rights? What History?,” *Past & Present*, no. 181 (2003): 73–106; Alain Testart, “Propriété et non-propriété de la terre: l’illusion de la propriété collective archaïque (1re partie),” *Études Rurales* (2003): 209–42; Laura Brace, *The Politics of Property: Labour, Freedom, and Belonging*

claims, land is not like concrete objects (“chattels” or “movable property” in the language of the law). It cannot be passed from hand to hand in barter transactions, nor can it be relocated. It is inextricably attached to a specific environment. Water runs over its surface and collects underground; weeds, insects and fires cross its boundaries; the trees that grow on a lot and the buildings erected upon it affect the currents of air and the exposure to sun of neighboring properties; access to roads, waterways and utilities necessitates arrangements that connect different properties and common spaces. Ground may also have sacred significance: even in our modern secular society landowners are not allowed unrestricted control over buried human remains or ancient artifacts found on their property. Land cannot help but be part of a landscape that has natural, social and spiritual dimensions. My land cannot belong to me exclusively, simply because it cannot be fully detached from other lands.²⁷ And what about this “me” who claims the land? Can I really be completely disconnected for ownership purposes from my spouse, my family, my community and nation? Since land is for all practical purposes eternal, and human life is finite, property in land implies some sort of inheritance arrangements and therefore it implicates lineages as well as individuals. At least that is the case where the owner is a human person, but in today’s world, much land is owned by corporations or by offshoots of the state. The superficial view of property as a relationship between a single owning subject and an owned object (“I own this land”) is deceptive in several respects. Though it sometimes appears to refer to a relationship between a person and a thing, property is actually very much a social phenomenon. In Karl Marx’s pithy phrase, “An isolated individual could no more have property in land and soil than he could speak.”²⁸

Of landed property in the sixteenth and seventeenth centuries, we might say, in very general terms, that it consisted of multiple claims to the

(New York: Palgrave Macmillan, 2004); Peter Garnsey, *Thinking about Property: From Antiquity to the Age of Revolution* (Cambridge: Cambridge University Press, 2007); Margaret Davies, *Property and Critique: Meanings, Histories and Theories* (Abingdon, UK: Routledge-Cavendish, 2008); Nicole Graham, *Landscape: Property, Environment and Law* (Abingdon: Routledge, 2011).

²⁷ For concrete cases illustrating the inherent impossibility of absolute property rights, see Eric T. Freyfogle, *The Land We Share: Private Property and the Common Good* (Washington, D.C.: Island Press, 2003), 11–36.

²⁸ Karl Marx, *Grundrisse*, as quoted in Godelier, “Territory and Property in Some Pre-Capitalist Societies,” 84–85. Cf. Wesley N. Hohfeld, “Fundamental Legal Conceptions as Applied in Judicial Reasoning,” *Yale Law Journal* 23 (1913): 28–57.

resources of a given territory; that it was bound up in lineage and marital relations and, more generally, embedded in specific societies;²⁹ that it delineated surface areas in a variety of imprecise ways, none of which resembled current techniques of geometric mapping; that it was not readily salable. These observations apply to landed property in indigenous North America just as much as in Western Europe at the time of initial colonization. For all their fundamental similarities, however, European and Native American approaches to property diverged in one important respect: the former tried to reduce property to a set of formal rules, “the law,” while the latter, on the whole, did not.³⁰ Chapter 2 will look more closely at indigenous property practices in select regions of North America; here there is room only for a brief overview of theories and practices of landed property in the European context.

Ancient Rome has to be the starting point, for Roman law has for millennia exercised outsize influence over Western understandings of landed property. Central to Roman law were the powers and privileges of ownership: *dominium*. “Conceptually,” writes Peter Birks, “ownership was absolute: distinct, singular, and exclusive.”³¹ A free man could own objects, domestic animals, slaves or lands; in theory, he could use any of these as he saw fit, sell them, rent them or offer them as gages of repayment for a debt. The “Twelve Tables,” dating back to the early republican period, give the head of household extensive power to dispose as he pleased of objects, slaves, a wife, sons (including the right to sell or kill the latter), as well as land. In a society dominated by the institutions of slavery and the patriarchal household, the emphasis was on the power of the proprietor, normally a free adult male.³²

²⁹ On the socially “embedded” nature of landed property, see Karl Polanyi, “The Economy as Instituted Process,” in *Trade and Market in the Early Empires: Economies in History and Theory*, ed. Karl Polanyi, Conrad M. Arensberg and Harry W. Pearson (New York: Free Press, 1957): 243–70; Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (Boston: Beacon Press, 1957), 178; Rosa Congost and Rui Santos, “Working Out the Frame: From Formal Institutions to the Social Contexts of Property,” in *Contexts of Property: The Social Embeddedness of Property Rights to Land in Europe in Historical Perspective* (Turnhout, Belgium: Brepols Publishers, 2011), 16–17.

³⁰ Timothy Mitchell argues that the law of property is an abstraction that serves to disguise the origin of property rights in the arbitrary and violent transfer of control over land, notably in a modern colonial context. Timothy Mitchell, *Rule of Experts: Egypt, Techno-Politics, Modernity* (Berkeley: University of California Press, 2002), 1–15.

³¹ Peter Birks, “Roman Law Concept of Dominion and the Idea of Absolute Ownership,” *Acta Juridica* 7 (1985): 31.

³² A historian of New World slavery, Orlando Patterson, has made the suggestive point that the “hard” property rights built into Roman law were connected to the prominence of

A central characteristic of Roman law contributed to its reputation for rationality and coherence: it made no distinction in principle between land and other forms of property. When goods were sold under early Roman law, the transaction involved a formal handing over of the physical object (*mancipatio*), but where land was concerned the transfer was, of necessity, metaphorical.³³ In this and in other respects, the legal identity of landed and movable property could be maintained only symbolically. Various servitudes applied only to land: for example, *iter* (the right to cross another's land), the duty to maintain a wall supporting a neighbor's roof, the prohibition against erecting buildings that affected someone else's exposure to light.³⁴ Such servitudes, inescapable consequences of the fact that owned lands are always situated within and have an effect on a wider environment, had the effect of restricting an owner's control over his property and of differentiating land from other forms of property in everyday life. Consequently, we have to understand the commitment to unrestricted ownership, and the equation of land and other property objects, as a Roman ideal rather than as a description of actual practices of property.

With the so-called barbarian invasions and the fall of Rome, Roman law faded into the background in Western Europe, and along with it the notion that land should be configured as the appendage of a singular owning subject. Among the pastoralist invaders, land holdings tended to be provisional and they were attached more to a family than to an individual; wives and female heirs generally counted for more than was the case among the Romans. When it came to passing land from generation to generation, the *pater familias* was dethroned; across much of Europe during the Middle Ages, a man could bequeath movable objects by means of a will, but land belonged after his death to his widow and children.³⁵

slavery in the Roman Empire. The aspiration toward absolute power over humans, he writes, led to a corresponding desire for absolute power over land. Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge, Mass.: Harvard University Press, 1982), 29–32.

³³ Alan Watson, *The Law of the Ancient Romans* (Dallas, Tex.: Southern Methodist University Press, 1970), 50–51. See also David Pugsley, *The Roman Law of Property and Obligations* (Cape Town: Juta, 1972).

³⁴ Watson, *The Law of Property in the Later Roman Republic*, 176–202; Alan Watson, *Roman Law and Comparative Law* (Athens: University of Georgia Press, 1991), 49–50; Max Radin, "Fundamental Concepts of the Roman Law," *California Law Review* 13 (1925): 210–11.

³⁵ Jean Imbert, *Histoire du droit privé*, 8th ed. (Paris: Presses universitaires de France, 1996), 26. This situation was partially reversed in England with the passage of the Statute of Wills in 1540.

Meanwhile, peasant communities across Europe were developing tenure customs that blended individual allotments with collective practices (open fields, commons, gleaning) that seem to be the antithesis of Roman *dominium*.³⁶ Feudal lordships added further layers of property, combining both “benefice,” the right to draw revenues, and jurisdiction, the right to judge. Landlordism and judicial authority largely coincided in the Middle Ages. Marc Bloch summed up the complexities of medieval land law in his classic work, *Feudal Society*:

For nearly all land and a great many human beings were burdened at this time with a multiplicity of obligations differing in their nature, but all apparently of equal importance. None implied that fixed proprietary exclusiveness which belonged to the conception of ownership in Roman law. The tenant who – from father to son, as a rule – ploughs the land and gathers in the crop; his immediate lord, to whom he pays dues and who, in certain circumstances, can resume possession of the land; the lord of the lord, and so on, right up the feudal scale – how many persons there are who can say, each with as much justification as the other, “That is my field!” Even this is an understatement. For the ramifications extended horizontally as well as vertically and account should be taken of the village community, which normally recovered the use of the whole of its agricultural land as soon as it was cleared of crops; of the tenant’s family, without whose consent the property could not be alienated; and of the families of successive lords.³⁷

In the Middle Ages, people “held” land, as opposed to owning it; they claimed property *in* a certain plot rather than the property *of* it; and it was only with the greatest difficulty that land could be sold. In such cases, it was not ownership but rather *seisin* that changed hands. Toward the late Middle Ages, English lawyers developed a system of conveyancing called “livery of seisin,” which left aside questions of ultimate ownership and simply transferred existing rights of possession.³⁸

In the late medieval and early modern period, Roman law began to make a comeback, at least in the realm of theory. With the rise of law as a learned profession, jurists began to search for consistent principles on

³⁶ Jerome Blum, “The European Village as Community: Origins and Functions,” *Agricultural History* 45 (1971): 157–78.

³⁷ Marc Bloch, *Feudal Society*, trans. L. A. Manyon (London: Routledge & Kegan Paul, 1961), 116. Note that the words “the property” in the last sentence of this quotation is an imperfect translation of the French term “le bien”; “estate” would come closer to the author’s meaning.

³⁸ William Searle Holdsworth, *An Historical Introduction to the Land Law* (Oxford: Clarendon Press, 1927), 110. See also Bloch, *Feudal Society*, 115; A. W. B. Simpson, *A History of the Land Law* (Oxford: Clarendon Press, 1961), 35; David J. Seipp, “The Concept of Property in the Early Common Law,” *Law and History Review* 12 (1994): 29–91.

which to ground a rational and supra-regional understanding of law.³⁹ Where property was concerned, the abstract doctrine of *dominium* appeared as an attractive antidote to the tangled and variable property practices then prevailing across Europe. The impulse to institute a uniform and rational legal order, one that assimilated land with other forms of property, one that reinforced the prerogatives of a single owner and that facilitated buying and selling, found powerful supporters; princes and royal ministers were inclined to favor the juridical unification of their realms, entrepreneurs and many profit-hungry aristocrats detected opportunities in a regime where land might be figured more as a commodity. Yet the layered claims of communal customs and feudal lordship could not simply be swept away; peasants as much as seigneurs tended to react ferociously to rationalizing measures that threatened their respective entitlements.

The Roman law revival had its greatest impact in Mediterranean countries such as the kingdom of Castile, where a legal code proclaimed in 1268, the *Siete Partidas*, used the language of *dominium* as though every piece of land had a proprietor, with unclaimed territory belonging to the state. In the real world of early modern Spain, however, unrestricted individual ownership of land was rare. Spain stood out in the European context as the kingdom par excellence of public lands, municipal commons and extensive grazing privileges.⁴⁰ France was not juridically integrated until the Revolution, but regional customary laws were consolidated and codified in the sixteenth century in a Roman law-inspired movement of reform and rationalization. Faced with the bewildering array of feudal claims on the land, French legal experts tried to retrieve a Roman concept of ownership by pretending that all such claims could be understood as either “*dominium directum*” – the landlord’s title – or “*dominium utile*” – the vassal’s right to use the land.⁴¹ Meanwhile, on the ground, seigneurs in early modern France were doing their best (encouraged perhaps by the theory of *dominium*) to reinforce their control over the land and its revenues, encroaching on village commons, expanding demesnes and leasing land to farmers and sharecroppers.

³⁹ Clifford R. Backman, *The Worlds of Medieval Europe*, 2nd ed. (Oxford: Oxford University Press, 2009), 298–302.

⁴⁰ See Chapter 7. Spanish commons remained extensive even in more recent centuries. Francisco J. Beltrán Tapia, “Social and Environmental Filters to Market Incentives: The Persistence of Common Land in Nineteenth-Century Spain,” *Journal of Agrarian Change* 15 (2015): 239–60.

⁴¹ Imbert, *Histoire du droit privé*, 37; Perry Anderson, *Lineages of the Absolutist State* (London: NLB, 1974), 25.

Many historians find evidence of growing “agrarian capitalism,” operating largely within rather than against existing feudal institutions, in the centuries preceding the Revolution.⁴² And yet, notwithstanding the revival of Roman law and the inroads of profit-driven agriculture, France remained a country of peasant communities and aristocratic overlords, one where property in land still consisted of multiple overlapping claims, where rights of *retrait* gave families and seigneurs the ability to annul land sales, and where rural *communes* still regulated the agricultural practices of land-holders.⁴³

England may have been less directly affected by the revival of Roman law, but here too the drive to standardize law and to favor unitary ownership and transferability of land made itself felt. The common law was the principal vehicle of that shift as lawyers invented a variety of technical procedures and legal fictions to cope with the complexities of feudal land law. “By the early seventeenth century,” writes David Seipp, “‘property’ had been installed, at least in elementary works on the common law, as a fundamental concept applying to land as well as to other things.”⁴⁴ The consensus among historians is that property relations changed more rapidly in early modern England than in its continental neighbors (except perhaps the Netherlands), making that

⁴² Marc Bloch, *French Rural History: An Essay on Its Basic Characteristics*, trans. Janet Sondheimer (Berkeley: University of California Press, 1966), 126–49; Jean Meyer, *La noblesse bretonne au XVIIIe siècle* (Paris: Flammarion, 1972), 219–29; Georges Lefebvre, *Les paysans du nord pendant la révolution française*, 2nd ed. (Paris: Armand Colin, 1972); Jonathan Dewald, *Pont-St-Pierre, 1398–1789: Lordship, Community, and Capitalism in Early Modern France* (Berkeley: University of California Press, 1987); Annie Antoine, “Les paysans en France de la fin du moyen âge à la révolution: propriétaires? tenanciers? locataires?,” in *Ruralité française et britannique, XIIIe-XXe siècles: approches comparées*, ed. Nadine Vivier (Rennes: Presses universitaires de Rennes, 2005), 153–66; Gérard Béaur, “Les rapports de propriété en France sous l’ancien régime,” in *ibid.*, 187–200; Guy Lemarchand, *Paysans et seigneurs en Europe: une histoire comparée, XVIe-XIXe siècle* (Rennes: Presses de l’Université de Rennes, 2011), 193–95.

⁴³ In addition to the works listed in the previous footnote, see Pierre Goubert, *The Ancien Régime: French Society, 1600–1750* (New York: Harper & Row, 1973), 78–152; Robert Mandrou, *La France aux XVIIe et XVIIIe siècles*, 2nd ed. (Paris: Presses universitaires de France, 1974), 76–83; Gérard Béaur, “Le marché foncier éclaté: les modes de transmission du patrimoine sous l’ancien régime,” *Annales. Histoire, sciences sociales* 46 (1991): 189–203; Gérard Béaur, “L’accession à la propriété en 1789,” in *Un droit inviolable et sacré: la propriété*, ed. Catherine Chavelet (Paris: ADEF, 1991), 21–29; David Parker, “Absolutism, Feudalism and Property Rights in the France of Louis XIV,” *Past & Present*, no. 179 (2003): 60–96.

⁴⁴ Seipp, “The Concept of Property in the Early Common Law,” 80. On the law of estates and interests, see Holdsworth, *Historical Introduction to the Land Law*, 48–77, 102–10; Simpson, *History of the Land Law*, 82.

nation “unique among European counties in the concentration of its landed property, and in the divorce of its peasantry from the soil.”⁴⁵ A key to that development seems to be the exceptional political power of the English landed aristocracy. Summary accounts tend to focus exclusively on the Enclosure Movement, a phenomenon that reached major proportions only in the late eighteenth century. In the meantime, many other innovations – for example, the growing imposition of leasehold tenancies that made smallholders vulnerable to eviction and rent rises – tended toward the liquidation of the peasantry.⁴⁶ Even so, England in the eighteenth century was not exactly a land of freely circulating private property. Though feudal incidents had been simplified by the Tenures Act of 1660, land continued to be held of a lord; dower rights and strict settlements were among the many obstacles to sales; gleaning rights, wasteland grazing and other collective practices still prevailed over much of the countryside.⁴⁷

In sum, there was no such thing as exclusive personal control over land anywhere in Europe at the time of Columbus, and that was still fundamentally the case three centuries later. Major changes had certainly occurred in Old World property law and practice during the time when North America was being colonized, but land had never been extracted from its social and environmental settings. Notwithstanding the inroads of capitalism, the revival of Roman law and the emergence of an ideology of private property (see Chapter 11), property remained a set of multiple claims – communal, familial, aristocratic and state – over the resources of any given tract. Land could not be reduced entirely to a buyable, sellable object.

PROPERTY FORMATION IN COMPARATIVE PERSPECTIVE

In considering Europe or indigenous America, we need to think of property in fluid and dynamic terms and not as a fixed structure that can be “read”

⁴⁵ R. H. Tawney, *The Agrarian Problem in the Sixteenth Century* (London: Longmans, 1912), 3.

⁴⁶ Tawney, *Agrarian Problem*, 287–301; Robert Brenner, “The Agrarian Roots of European Capitalism,” *Past & Present*, no. 97 (1982): 30–75; Harold J. Berman, *Law and Revolution II: The Impact of the Protestant Reformations on the Western Legal Tradition* (Cambridge, Mass.: Harvard University Press, 2003), 333.

⁴⁷ Holdsworth, *Historical Introduction to the Land Law*, 36–37; Simpson, *History of the Land Law*, 1; E. P. Thompson, “Custom, Law and Common Right,” in *Customs in Common* (New York: New Press, 1991), 97–184; J. M. Neeson, *Commoners: Common Right, Enclosure and Social Change in England, 1700–1820* (Cambridge: Cambridge University Press, 1993); Julian Hoppit, “Compulsion, Compensation and Property Rights in Britain, 1688–1833,” *Past & Present*, no. 210 (2011): 93–128.

through a set of rules. Similarly, we can hardly understand the colonial takeover of portions of the New World as a simple replacement: a European regime imposed in place of a native one. I prefer the term “property formation” as a means of more fully historicizing matters. The phrase is meant to convey a sense of movement and flux; it evokes a process of becoming that is never complete. As with the concept of “state formation” from which it is obviously derived, it directs attention to the social forces in play where access to land is concerned and resists the attempt to treat property as a thing. Property formation is relational: it implicates both natives and newcomers, together with their respective property forms, in their confrontations and entanglements. It implies a process of mutual engagement through which native property, European property and new colonial property forms could coexist and shape one another. Of course, this was a massively unequal encounter, one in which force and violence were rarely absent; almost invariably people of settler stock flourished at the expense of indigenous populations; yet the triumph of settler tenures was not instantaneous, nor was it completely conclusive, nor was it the outcome of unilateral settler action. Colonial property formation is instead a fully historical process, filled with contingency and driven by multiple actors. Of necessity, it has to be apprehended in the context of larger historical processes.

If land and proprietors appear as the object and the subject of property relations, the property formation approach considers them as mutually constitutive; put differently, the same process that makes land into property makes people into proprietors: subject and object can therefore be considered two sides of the same property coin.⁴⁸ To the extent that it plays a part in creating colonial subjects, property formation includes and excludes: it institutes privileges for some while it pushes others to the margins. In a colonial setting, property can be a prime location for the definition of race, tending at times to divide people into those qualified to own (“whites”), those qualified to be owned (“blacks”) and those not qualified to own or be owned (“Indians”).⁴⁹ We will need to be attentive, in the chapters that follow, to the ways in which emergent rules and practices relating to control

⁴⁸ For a discussion of subjects and objects more generally, see Bruno Latour, *An Inquiry into Modes of Existence: An Anthropology of the Moderns* (Cambridge, Mass.: Harvard University Press, 2013).

⁴⁹ On this subject, see Patrick Wolfe’s suggestive essay, “Land, Labor, and Difference: Elementary Structures of Race,” *American Historical Review*, 106 (June 2001): 866–905. Needless to say, race formation was never so simple as to correspond exactly to this tripartite model. For one thing, as recent research on the enslavement of indigenous people reveals, “Indians” very frequently became property. Andrés Reséndez, *The*

over land may have functioned to distinguish “settlers” from “natives” and from intermediate categories such as *mestizo* or *métis*. Of course, gender is also typically constructed in and through property regimes, as are family and kin relations. A fuller history of colonial property formation would have more to say than this book does about these fundamental axes of social differentiation and the creation of subjects.

Colonial property formation had devastating consequences for indigenous America, but that is not to say that it was the work of greedy and rapacious colonizers. Wealth and profit could accrue to some proprietors, though that was not actually a major factor impelling colonization in New France or New England through most of our period. More typically, property provided the material and spatial basis for a way of life. This, it might be noted in passing, is the meaning Hannah Arendt attaches to the term “property” in *The Human Condition*, a work in which, inspired by ancient Greek political culture, she meditates on the interplay of the private and the public realms.⁵⁰ Whereas “wealth,” expansive and unstable, was about the unrestrained accumulation of economic entitlement, “property” underpinned households and assured the participation of household heads in the life of the *polis*. The confusion of “property” and “wealth,” Arendt felt, was undermining the public life of post-war America. I would suggest it was otherwise in the early modern period: the colonial property formation examined in this book mainly concerned “property” in Arendt’s sense, rather than “wealth.” It underlay and secured the existence of settler households. This may sound benign, but it is not. We need to recall that those households were hardly egalitarian, in their internal structures or in their external relations. More to the present point, colonial property formation – even when “wealth” in the Arendt sense is a minor consideration – was certainly expansive and it necessarily entailed dispossession. Establishing the material basis for new settler households and polities undermined the foundations of indigenous households and polities. Its effects were frequently more severe than that: it could destroy life itself by depriving peoples of the means of subsistence.

Questions about sovereignty and legal jurisdiction are closely bound up in the study of property formation – not always and everywhere, for property is not necessarily dependent on the existence of states and formal

Other Slavery: the Uncovered Story of Indian Enslavement in America (Boston: Houghton Mifflin Harcourt, 2016).

⁵⁰ Hannah Arendt, *The Human Condition* (Chicago: University of Chicago Press, 1958), esp. ch. 8, “The Private Realm: Property,” and ch. 15, “The Privacy of Property and Wealth.”

judicial institutions – but where the state does appear, landed property is bound to be affected. Property formation as presented here revolves around the ways in which courts and governments create tenures, but also the ways in which property relations work to create and sustain courts and governments. Making states, making subjects and making space – property formation is intimately involved in all these connected processes.

Property formation has a pronounced spatial aspect. Since it is about the allocation of ground, it raises issues about how the land is to be apprehended and defined. Chapter 8 discusses the implications of the European “spatial revolution” that happened to coincide with the period when North America was being colonized, while Chapter 9 looks particularly at techniques of surveying land. The spaces of indigenous and colonial property were delineated in a wide variety of ways, and not always through a geometry of outer boundaries. Natives, in many cases, defined property more through reference to central points and lines than perimeters. While settlers may have been more inclined to favor a landscape of bounded spaces, their approaches to dividing the land could be strange and imprecise, far removed from the straight-line grid that became the norm in nineteenth-century settler societies.

The examination of property formation that follows is broadly comparative, moving back and forth between three distinct regions: the central uplands of Mesoamerica, where various Nahuatl-language peoples felt the effects of Spanish imperialism and colonization (New Spain); southern New England, where Algonquian-speaking peoples, known collectively as “Ninnimissinuok,” faced English colonizers; and the St. Lawrence Valley (Canada), at the heart of the imperial space called New France and home to the Innu and other indigenous nations. This particular selection is not free of an arbitrary quality – the case could be made for a study of, among other possible sites, Virginia, Martinique and Florida – but it does have several advantages. It includes a wide range of indigenous cultures and political organizations, as well as three of the principal colonies of three of the greatest colonizing powers of the period. (Regrettably, Brazil and the Portuguese Empire are neglected.) The combined early modern histories of New Spain, New France and New England provide a rich multiplicity of laws, customs, economies and natural environments for consideration. And of course the three sites have each been the subject of long-established and still vigorous currents of scholarship in history, but also in anthropology, geography, archaeology and other disciplines.

Colonial historiography, traditionally pursued as an aspect of Mexican, United States and Canadian history, has certainly provided a wealth of studies on aspects of colonization and property formation. Taken together, these national literatures provide the substance from which this book is crafted. The practice of examining the histories of New Spain, New England and New France separately, each as a colonial prelude to the history of a nation-state, (a practice in which my previous work has been deeply implicated) is highly problematic. The term “settler-colonial historiography” has been coined to describe this approach and to highlight the way in which the very framing of the field of study carries interpretive weight, tending to naturalize colonization and treat “settlement” as an inevitable step toward the emergence of a future nation-state.⁵¹ Where the history of property formation is concerned, there is an additional reason to be wary of the colonial/national approach. If only one European legal tradition is under consideration, a particular version of property in land can seem a normal and obvious condition, rather than a contingency that begs explanation. Thus, it seems to me, historians of New France may be too inclined to take the emergence of seigneurialism for granted, while historians of New England may be insufficiently curious about the peculiar implications of deeds and treaties of land surrender simply because these are so familiar; historians of New Spain arguably have similar blind spots about *pueblos de indios* and other colonial tenure forms. When these zones of colonization are brought together within a single analytic frame, differences and peculiarities (not to mention unsuspected similarities) come into view. My comparative method, such as it is, is partly a strategy for defamiliarizing the familiar.

What follows is not a systematically comparative analysis. For the most part, it does not involve hypothesis testing of the sort, “If condition A is said to have caused effect B in jurisdiction X, can we find evidence of effect B in jurisdiction Y where A is also present?”⁵² Systematic comparative history has been criticized for reifying units of analysis and exaggerating difference.⁵³ My use of comparison is more casual and circumstantial and

⁵¹ Patrick Wolfe, *Settler Colonialism and the Transformation of Anthropology: The Politics and Poetics of an Ethnographic Event* (London and New York: Cassell, 1999); Lorenzo Veracini, “Settler Colonialism: Career of a Concept,” *The Journal of Imperial and Commonwealth History* 41 (2013): 313–33.

⁵² William H. Sewell, “Marc Bloch and the Logic of Comparative History,” *History and Theory* 6 (1967): 208–18.

⁵³ Jürgen Kocka, “Comparison and Beyond,” *History and Theory* 42 (2003): 39–44; Eliga Gould, “Entangled Histories, Entangled Worlds: The English-Speaking Atlantic as a Spanish Periphery,” *American Historical Review* 112 (2007): 764–86.

I hope it gives due recognition to convergent as well as to divergent tendencies. I try to extract the substantive findings of scholarship from the confines of the national and disciplinary silos in which they have typically been produced and bring them into a larger conversation about property and colonization. Putting into play Nahua, Ninnimissinuok, Innu, Spanish, English and French dimensions of the history of property and colonization is not really a “methodological” move in the strict sense of the term; rather, it represents an attempt to deprovincialize this aspect of early modern history. “To call for comparison,” writes Raymond Grew, “is to call for a kind of attitude – open, questioning, searching – and to suggest some practices that may nourish it.”⁵⁴

⁵⁴ Raymond Grew, “The Case for Comparing Histories,” *American Historical Review* 85 (1980): 776. See also Chris Lorenz, “Comparative Historiography: Problems and Perspectives,” *History and Theory* 38 (1999): 25–39.

