

I

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 Nuhua 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, XVIe-XVIIe 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 Canary Islands 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.