

1 Introduction: Rethinking Sovereignty

Settlers in Indian Country seeks to foreground Native American conceptions of sovereignty and power in order to refine the place of settler colonialism in American colonial and early republican history. It argues that Indigenous concepts of sovereignty were rooted in complex metaphorical language, in historical understandings of alliance, and in mobility across a landscape of layered interconnections of power. Attending to contexts that do not typically figure in the study of early modern political thought, it seeks to illustrate themes of broad interest in comparative political theory. Specifically, it aims to reposition settler colonialism in relation to political thought by illustrating the interaction of colonial and Indigenous concepts of political power; to refine and complicate ‘statist’ and spatially bounded concepts of sovereignty and territory; and, finally, to shed light on the place of Indigenous concepts of historic sovereignty in juxtaposition to well-studied discourses of colonialism and imperialism in early America

This Element presents an account of political thought in historic context, focussing on the colonial Northeast of America during the eighteenth century. This is a space and period conventionally defined by the ‘imperial crisis’ that was driven by the deterioration of relations between the British Crown and thirteen of its twenty-six Atlantic colonies. This crisis culminated in the American Revolution, a process that produced a new politics that was republican in the sense that it emphasised civic ideals such as the rights of citizens, the rule of law, and the separation of powers. My aim here is to challenge the assumption that early American political thought formed in a context framed exclusively by debates within a British empire of law, producing an American empire of liberty. Colonial conceptions of power, rights, and sovereignty were not exclusively shaped within Anglophone imperial structures, but rather in the context of intercultural diplomatic relations with the Haudenosaunee, the ‘people of the Longhouse’ whom the French referred to as the Iroquois.

To make this argument, I draw on work by historians of Native America that has presented early America as a site of overlapping and contested ‘zones’ of sovereignty, in which colonialism was shaped by encounters with Indigenous power.¹

¹ Pekka Hämäläinen, ‘The Shapes of Power: Indians, Europeans, and North American Worlds from the Seventeenth to the Nineteenth Century’, in *The Contested Spaces of Early America*, ed. Juliana Barr & Edward Countryman (University of Pennsylvania Press, 2014), pp. 31–68; Jeffers Lennox, *Homelands and Empires: Indigenous Spaces, Imperial Fictions, and Competition for Territory in Northeastern North America, 1690–1763* (University of Toronto Press, 2017); Michael Witgen, *An Infinity of Nations: How the Native New World Shaped Early North America* (University of Pennsylvania Press, 2012); Kathleen DuVal, *The Native Ground: Indians and Colonists in the Heart of the Continent* (University of Pennsylvania Press, 2006); Richard White, *The Middle Ground: Indians, Europeans, and Republics in the Great Lakes Region, 1650–1815* (Cambridge, 1991).

This power can be seen most clearly in the context of diplomacy between Iroquoian peoples and colonial and imperial officials, and preserved in the rich documentary record of treaties and treaty councils. These councils – large gatherings of Native nations and colonial officials from across the Northeast – were regular events that consolidated and focussed the networked power of the Iroquois, revealing the reach of their influence through alliances, kinship, trade, and war. The records of diplomacy allow us to hear the voices of Iroquoian leaders and orators who articulated ideas of Indigenous sovereignty to their imperial and colonial audiences. These records also show us how these audiences, in turn, adopted and employed Iroquoian political metaphors in their communications with each other, infusing colonial ideas with Indigenous idioms.

The material record of diplomacy between Native polities and Anglophone colonial and imperial officials is vast.² In order to keep the argument and material under control, in what follows I focus on Iroquoian and Anglophone relations in New York. There are several reasons for this, the most obvious of which is that the principal towns, diplomatic centres, and villages of Iroquoia were within the bounds claimed by New York. The province was the site of the Covenant Chain alliance between the Crown and the Iroquois, and the home of Sir William Johnson, the superintendent of Indian Affairs for the northern district from 1756 to 1774. It was a principal node of diplomacy, commerce, and imperial power. The Iroquois were also the dominant Indigenous social formation of the Northeastern woodlands, with influence reaching into Canada, west into the Great Lakes and Ohio country, and into the south – the territories of the rival confederacy of the Cherokee. Theirs was an extensive domain, comprised of ‘small conquests’, which was insulated by a series of military ‘buffer zones’ within which they controlled the movement of people and goods through a long and complex diplomatic alliance with the English.³ This alliance

² Francis Jennings and William Fenton, eds., *Iroquois Indians: A Documentary History of the Six Nations and Their League* (Woodbridge, CT, 1984–1985). 50 microfilm reels; Alden T. Vaughan, gen. ed., *Early American Indian Documents: Treaties and Laws, 1607–1789*, 20 vols. (Washington, DC: University Publications of America, 1979–2004). Hereafter cited as *EALD*, followed by volume and page; Vine DeLoria and Raymond J. DeMallie, eds., *Documents of American Indian Diplomacy: Treaties, Agreements, and Conventions, 1775–1979*, 2 vols. (University of Oklahoma Press, 1999); Beth DeFelice, ‘Indian Treaties: A Bibliography’. *Law Library Journal* 107 (2015), 241–58; Charles D. Bernholz, ‘American Indian Treaties and the Supreme Court: A Guide to Treaty Citations from the Opinions of the Supreme Court’. *Journal of Government Information* 30 (2004), 318–431; Charles D. Bernholz, ‘The “Other” Treaties’. *Legal Reference Services Quarterly* 24 n. 3–4 (2005), 107–41; Charles D. Bernholz, *Kappler Revisited: An Index and Bibliographic Guide to American Indian Treaties* (New York, 2003); David H. DeJong, *American Indian Treaties: A Guide to Ratified and Unratified Colonial, United States, State, Foreign, and Intertribal Treaties and Agreements, 1607–1911* (University of Utah Press, 2015), p. 8.

³ Hämäläinen, ‘Shapes of Power’, pp. 45–6.

was very different in character to other relationships between Indigenous and colonial powers on the American continent. It involved the Crown as a personal and symbolic sovereign and was a preoccupation of the Board of Trade and imperial officials, demanding heavy commitments from an under-resourced imperial state. And it persists in present-day understandings of what Walter Bagehot called the ‘dignified Crown’, which is seen by the First Nations of Canada as the guarantor of their rights.⁴

Placing diplomacy at the centre of the frame counteracts the tendency to view Native Americans as stateless nomads who lacked ordered practices of power or rightful claims to territory. Writers on international law referred to Native Americans in wholly negative terms, and their place in histories of law has often been defined by the loss, rather than the exercise of sovereignty.⁵ This view has deep roots in texts that were written as colonies themselves were being settled. For Hobbes, ‘the savage people in many places in America’ had no recognisable government and existed in a perpetual state of war. In Locke’s treatises on government, they were ‘rich in Land, and poore in all the Comforts of Life’.⁶ And for Emer de Vattel, their ‘unsettled habitation’ and failure to improve their land served as the justification for its seizure by Europeans who ‘were lawfully entitled to take possession of it, and settle it with colonies’.⁷ A focus on intercultural diplomacy challenges these assumptions, moving us beyond the position that nascent international law principles ‘vindicated colonialism’, and toward a view that is centred on a ‘hybrid’ legal order that was infused with Indigenous assumptions about power, sovereignty, and alliance.⁸

⁴ Daniel K. Richter & James H. Merrell, eds., *Beyond the Covenant Chain: The Iroquois and Their Neighbours in Indian North America, 1600–1800* (Pennsylvania State University Press, 1987); Nathan Tidridge, *The Queen at the Council Fire: The Treaty of Niagara, Reconciliation, and the Dignified Crown in Canada* (Toronto, 2015).

⁵ Robert A. Williams, *The American Indian in Western Legal Thought: The Discourses of Conquest* (Oxford, 1990); Robert J. Miller, *Native America, Discovered and Conquered: Thomas Jefferson, Lewis and Clark, and Manifest Destiny* (University of Nebraska Press, 2008); Lindsay G. Robertson, *Conquest By Law: How the Discovery of America Dispossessed Indigenous Peoples of Their Lands* (Oxford, 2005); Stuart Banner, *How the Indians Lost their Land: Land and Power on the Frontier* (Harvard, 2005); Blake A. Watson, *Buying America from the Indians: Johnson v McIntosh and the History of Native Land Rights* (University of Oklahoma Press, 2012).

⁶ [Thomas Hobbes], *Leviathan*, ed. Richard Tuck (Cambridge, 1991), p.89; [John Locke], *Two Treatises of Government*, ed. Peter Laslett (Cambridge, 1960), p.296; Barbara Arneil, *John Locke and America* (Oxford, 1996), ch. 7.

⁷ Emer de Vattel, *The Law of Nations, Or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns* (1758), ed. Béla Kapossy and Richard Whatmore (Indianapolis: Liberty Fund, 2008), p. 216; S. James Anaya, *Indigenous Peoples in International Law* (Oxford, 1996), ch. 1; Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge, 2005), pp. 23–8.

⁸ Gregory Ablavsky, ‘Species of Sovereignty: Native Nationhood, the United States, and International Law, 1783–1795’. *Journal of American History* 106(3) (2019), 591–613;

While there is an extensive body of scholarship concerned with Indigenous responses to European imperialism, Native Americans do not readily figure in approaches to the history of early American political thought that take the development of republican constitutionalism as the central organising theme. Revolutionary America retains its position as one of the principal stages for the development of ideas of the rule of law, government by consent, and popular sovereignty that distinguish the Anglophone contribution to the broader evolution of democratic theory.⁹ The emergence of a republican political order after the Revolution is notable for its inherent colonialism in a Continental space in which its territories bordered, and gradually absorbed, British, French, Spanish, and Native American imperial domains. Outside its borders, the United States was territorially expansionist, while internally it retained a politics of racial exclusion. Both aspects of this posture were shaped by encounters with Native American conceptions of power, sovereignty and territory. Diplomacy, trade, and armed confrontations with Native peoples and others opened up a debate in the new republic over questions of ‘sovereignty, democracy, and community’. Similarly, the legal and juridical questions that occupied the newly established Supreme Court reveal the extent to which Native affairs shaped the development of federal law, and helped to refine key state powers, including war, treaty, and commerce.¹⁰

(Settler) Colonialism

The durability of paradigmatic accounts of colonial ideas, particularly those which took centre stage in studies of the ideological origins of the American Revolution, mean that ‘colonialism’ primarily exists as a concept that is associated with ideas about the formation of civil polities and prototypical forms of ‘state’.¹¹ Broadly speaking, there has been a reluctance to acknowledge the colonialism that is inherent in American projects of state formation and

J. Marshall Beier, ‘Forgetting, Remembering, and Finding Indigenous People in International Relations’, in *Indigenous Diplomacies*, ed. Marshall Beier (Palgrave, 2009), 11–27.

⁹ Richard Tuck, *The Sleeping Sovereign: The Invention of Modern Democracy* (Cambridge, 2015), ch. 4; James T. Kloppenberg, *Toward Democracy: The Struggle for Self-Rule in European and American Thought* (Oxford, 2016), chs. 2, 6–7; Steve Pincus, *The Heart of the Declaration: The Founder’s Case for an Activist Government* (Yale, 2016), ch. 3; Eric Nelson, ‘Prerogative, Popular Sovereignty, and the American Founding’, in *Popular Sovereignty in Historical Perspective*, ed. Quentin Skinner & Richard Bourke (Cambridge, 2016), 187–211; Mark Somos, *American States of Nature: The Origins of Independence, 1761–1775* (Oxford, 2019), chs. 5–6.

¹⁰ Paul Frymer, *Building an American Empire: The Era of Territorial and Political Expansion* (Princeton University Press, 2017), p. 8; Maggie Blackhawk, ‘Federal Indian Law as a Paradigm within Public Law’. *Harvard Law Review* 132 n. 7 (2019), 1800–42.

¹¹ Andrew Fitzmaurice, *Humanism and America: An Intellectual History of English Colonisation, 1500–1625* (Cambridge, 2003), chs. 3, 5; Alexander B. Haskell, *For God, King, and People:*

territorial expansion.¹² The proposition that the Anglophone inhabitants of Britain's Atlantic dominions were *colonisers* rather than *colonised* overturns the narrative of the founding as defined by principled resistance to imperial oppression.¹³ The second reason is rooted in work by historians of Native America that foregrounds Indigenous resilience and resistance, rather than the 'logic of elimination' proposed by Patrick Wolfe, a seminal, but latterly controversial, figure in the development of the paradigm of settler colonialism.¹⁴

The utility of settler colonialism as an analytic device to understand the political formation of early America has been less broadly applied than elsewhere, and has a particular intellectual genealogy. Here, the progenitor is Vine Deloria and a generation of historians influenced by him. Frederick Hoxie, for instance, argued that the study of colonialism assisted with the 'reframing of American Indian history'.¹⁵ Others have pointed to structural reasons for why settler colonialism has not been broadly embraced by historians of early America. In their introduction to a special issue of the field's most prominent journal, the guest editors offered two reasons for this: 'First, history as a field is not theoretically inclined', and that 'storytelling' was preferred as the ideal 'mode of expression'. The editors' second reason for why settler colonialism has not been taken up by early Americanists has to do with the 'enduring political and economic power of Native polities'.¹⁶ As the ethnohistorian Daniel Richter has argued, the 'multi-polar' struggle over land, contested by

Forging Commonwealth Bonds in Renaissance Virginia (University of North Carolina Press, 2017), ch. 4.

¹² For exceptions, see Aziz Rana, *The Two Faces of American Freedom* (Harvard, 2000); Adam Dahl, *Empire of the People: Settler Colonialism and the Foundations of Modern Democratic Thought* (Kansas, 2018).

¹³ Jack Greene, 'Colonial History and National History: Reflections on a Continuing Problem'. *William and Mary Quarterly* 64 n. 2 (2007), 235–50.

¹⁴ Patrick Wolfe, 'On Being Woken Up: The Dreamtime in Anthropology and in Australian Settler Culture'. *Comparative Studies in Society and History* 33 n. 2. (1991), 197–224; Patrick Wolfe, 'Settler Colonialism and the Elimination of the Native'. *Journal of Genocide Research* 8 n. 4 (2006), 387–409; Lorenzo Veracini, *Settler Colonialism: A Theoretical Overview* (Palgrave, 2010); Lorenzo Veracini, "'Settler Colonialism": Career of a Concept'. *The Journal of Imperial and Commonwealth History* 41 n. 2 (2013), 313–33; Edward Cavanagh & Lorenzo Veracini, eds., *The Routledge Handbook of the History of Settler Colonialism* (Routledge, 2016). The place of this trio as *de facto* framers of the paradigm has been challenged. See Jane Carey & Ben Silverstein, 'Thinking with and beyond Settler Colonial Studies: New Histories after the Postcolonial'. *Postcolonial Studies* 23 n. 1 (2020), 1–20, at 5–6.

¹⁵ David Meyer Temin, 'Custer's Sins: Vine Deloria Jr. and the Settler Colonial Politics of Civic Inclusion'. *Political Theory* 46 n.3 (2017), 357–79; Frederick E. Hoxie, 'Retrieving the Red Continent: Settler Colonialism and the History of American Indians in the U.S.'. *Ethnic and Racial Studies* 31 n.6 (2008), 1153–1167, at 1156; John Mack Faragher, 'Commentary: Settler Colonial Studies and the North American Frontier'. *Settler Colonial Studies* 4 n. 2 (2014), 181–91.

¹⁶ Jeffrey Ostler and Nancy Shoemaker, 'Settler Colonialism in Early American History: Introduction'. *William and Mary Quarterly* 73 n. 3 (2019), 363.

metropolitan and Native sovereignties and ‘incipient settler colonial projects’ created an environment in which settler colonialism could not ‘take coherent form’.¹⁷ It follows that analyses of the interaction of Indigenous peoples and settler populations tend to foreground the mixing of colonial with ‘Indigenous customary law’. Where standard accounts of settler colonialism posit the destruction and replacement of Indigenous sovereignty by colonial intrusion, the current approach among early Americanists is to argue that ‘settler and Indigenous violence became crucibles of sovereignty talk’, as an increasingly ordered territorial sovereignty ‘clashed with tenacious pluralities’.¹⁸ Settler polities were ‘suspended’ between ‘processes of colonization, aspirations to self-governance’ and the networks of the British diaspora.¹⁹

Historians of Native America have long argued that Native polities, by inserting themselves into inter-imperial conflicts, could ‘dictate the terms of settler colonialism’. Ethnohistorical approaches, meanwhile, have shown the degree to which local and cultural specificities actually ‘constituted and transformed’ settler law through the interface of ‘Indigenous and settler legal practice’. Far from being aloof and pre-political stateless nomads, Native polities displayed a ‘mastery of inter-imperial diplomacy that challenged everything that Europeans knew about claiming authority over territory and people’.²⁰ But this mastery was not founded on the successful adoption of European practices, but rather by the fact that Iroquoian diplomatic customs and protocols were the common language of interior diplomacy. As one historian has argued, ‘North American settlers had to deal with American Indian communities within the norms of borderlands diplomacy and thus acknowledge, at least in part, Indian sovereignty and Indian interests’.²¹ Diplomacy was an essential component of imperial statecraft, but its norms were not supplied exclusively by European understandings of the law of treaties. The language, rituals and customs of diplomacy within imperial and colonial settings were Indigenous.

Settlers in Indian Country

Therefore, this Element is an extended essay on how colonialism and the emergence of ideologies associated with republican states were shaped in

¹⁷ Daniel Richter, ‘His Own, Their Own: Settler Colonialism, Native Peoples, and Imperial Balances of Power in Eastern North America, 1660–1715’, in *The World of Colonial America: An Atlantic Handbook*, ed. Ignacio Gallup-Díaz (New York, 2017), p. 212.

¹⁸ Lisa Ford, *Settler Sovereignty: Jurisdiction and Indigenous People in America and Australia, 1788–1836* (Harvard, 2010), p. 3.

¹⁹ Ford, *Settler Sovereignty*, pp. 3, 4; Hämäläinen, ‘Shapes of Power’, p. 37.

²⁰ Ford, *Settler Sovereignty*, pp. 10, 11, 14.

²¹ Leonard Sadosky, *Revolutionary Negotiations: Indians, Empires, and Diplomats in the Founding of America* (University of Virginia Press, 2010), p. 8.

early America by interactions with Indigenous power and sovereignty.²² That requires that we do two things. The first is to acknowledge colonialism as an activity and ideology in early America, focussing not on colonies conceived as civic republics and spaces of peaceful property formation, but on violence, the appropriation of territory, and the framing of an account of sovereignty that combined the formation of a territorial empire with republican ideas of government.²³ Second, given that these ideas were framed and deployed in the context of relations between colonies, the British imperial state, and Native polities, an analysis of sovereignty requires that we try to recapture the nature of Indigenous power in this period, ideally by focussing on instances where Indigenous and colonial cultures interacted. In what follows, I locate this interaction in the sphere of intercultural diplomacy between Native groups and colonial and imperial officials. My aim is to add detail and nuance to our understanding of the political dynamic of early America, by placing interactions with Native polities into the local contexts that inform the development of sovereignty, states, and territorial claims – the central components of political thought in imperial locations.²⁴

For historians of Anglophone political thought, early America is fertile ground: a context whose intensity of public political argument is matched only by the period of the English civil war, itself a lodestar for eighteenth century writers on government. The big topics and themes in Anglophone political thought – natural rights and law, legal constitutionalism, contractualism, republicanism, self-government, the theorisation of free states and the critique of empire – were all debated at length in hundreds of political tracts, in texts such as Paine's *Common Sense*, and in the *Federalist Papers* that considered, as James Madison wrote in its first number, not the fortunes of a republic but 'the fate of an empire, in many respects, the most interesting in the world'.²⁵

The fate of the empire lay in the question of union between states that were sited on a Continent that contained multiple European and Indigenous empires. John Jay argued that the new republic should 'observe the law of nations' in its relations with its Continental neighbours, but he did not explicitly count Indian nations among them. Making a case for the federal control of military forces,

²² Charles W. A. Prior, 'Beyond Settler Colonialism: State Sovereignty in Early America'. *Journal of Early American History* 9 n. 2–3 (2019), 93–117.

²³ Charles W. A. Prior, 'Settlers Among Empires: Conquest and the American Revolution', in *Remembering Early Modern Revolutions: England, North America, France and Haiti*, ed. Edward Vallance (Routledge, 2018), 79–93.

²⁴ Lauren Benton, 'Made in Empire: Finding the History of International Law in Imperial Locations'. *Leiden Journal of International Law* 31 n. 3 (2018), 473–8.

²⁵ *The Federalist with Letters of 'Brutus'*, ed. Terence Ball (Cambridge University Press, 2003), p. 1.

Madison argued that the ‘savage tribes on our Western frontier ought to be regarded as our natural enemies’.²⁶ On face value, Madison seems to be endorsing the racial and spatial logic of settler colonialism, but we should be wary of his insistence on the separation of hostile peoples. Madison’s contemporaries were aware of and participated in diplomatic relationships with Native polities, with Benjamin Franklin suggesting in his draft Articles of Confederation (1775) that the United Colonies should recognise the territorial claims of the Iroquois, and maintain an ‘Alliance offensive and defensive’ by continuing the British model of the Covenant Chain.²⁷ Second, it is necessary to re-assess Madison’s spatial assumptions about the location of Indian power – arranged along and *outside* the frontiers of nascent American states, rather than entangled by non-territorial bonds of sovereignty, alliance, and commerce.

Settlers in Indian Country will position the diplomatic contexts of Indian power in relation to a body of recent work that examines questions of the ownership and occupation of territory, the formation of sovereignty and property, and the foundation of colonial legal orders in ways that emphasise settler agency, but which do not explicitly embrace settler colonialism’s logic of elimination.²⁸ It follows that the reality of Indian power should lead us to rethink the ways in which Indigenous polities confronted colonialism; how that colonisation was constrained and shaped by Indian sovereign and territorial claims; and the contexts in which colonial and republican state formation took place.²⁹ The character and conduct of diplomacy in the ‘peculiar political arena’ of early America reveals the complex jurisdictional politics that defined a set of inter-polity zones that were governed by diplomatic norms and practices that blended elements of consensus and conflict.³⁰

But the story of early America is not exclusively concerned with an isolated process of state formation. American settlerism conjures a vision of a persistent frontier, a ‘proxy for liberation’ and the engine of a process of westward expansion into spaces that are cleared of their Indigenous inhabitants and

²⁶ *Federalist*, p. 113.

²⁷ *The Declaration of Independence in Historical Context*, ed. Barry Alan Shain (Yale, 2014), p. 644.

²⁸ Craig Yirush, *Settlers, Liberty, and Empire: The Roots of Early American Political Theory, 1675–1775* (Cambridge, 2011); Andrew Fitzmaurice, *Sovereignty, Property and Empire, 1500–2000* (Cambridge, 2014); Bethel Saler, *The Settler’s Empire: Colonialism and State Formation in America’s Old Northwest* (University of Pennsylvania Press, 2014); Alan Greer, *Property and Dispossession: Natives, Empires and Land in Early Modern North America* (Cambridge, 2018).

²⁹ Rachel St. John, ‘State Power in the West in the Early American Republic’. *Journal of the Early Republic* 38 n. 1 (2018), 87–94.

³⁰ David Armitage, *Foundations of Modern International Thought* (Cambridge, 2013), p. 7; Benton, ‘Made in Empire’, pp. 475–6.

wholly transformed into ordered spaces of settlement and law.³¹ Instead, colonialism was shaped by Indigenous concepts of sovereignty and territory, and this interaction remains firmly embedded in modern liberal democracies whose political and legal orders are shaped by the colonial past.³² The modern reality is that Indigenous peoples, customs, languages, spaces, memories, histories, paths, and beliefs are firmly in place in post-colonial contexts. It follows that a history of colonial formation must account not simply for the persistence and adaptation of Indigenous power, but must also consider the ideas that framed this power.

This indigenisation of political thought helps us to move beyond a model of insular and closed off discourses that intersect minimally with the complexity of early America. Colonial political thought in the Anglophone setting is characterised by three dominant strands of ideas: the common law relationship of subjects and sovereign; the constitutional relationship of imperial centre and colonial periphery; and the humanist discussion of colonisation as a moral and civic project. The first deals with the question of rights under law and constraints on power, and while it did feature prominently in the debate on colonial taxation, it is also notably confined to a dispute within a single legal framework whose origins lay in the municipal law of the feudal and monarchical kingdom of England. The imperial constitution is, in essence, the common law expanded in scale to the level of empire, and concerns the jurisdictional relationship between metropolitan and colonial planes of law. Here, the law is less integrative than it is concerned with differentiating insiders from ‘outsiders’ – Scots, Irish, and the sweeping term ‘infidels’.³³ Civic humanism, which underpins republicanism, was a political language that promoted colonisation as a moral and civic project, in which Indigenous peoples existed outside the state of politics and therefore had to be first ‘civilised’ in order to be incorporated into the civic order.

To work their way around the structures of power in early America, historians have considered peripheries and centres, frontiers, and borderlands; they have faced east from Indian country, faced out of it, adopted standpoints at its centre and edges, or perched themselves at the vantage points of waterways and

³¹ Greg Grandin, *The End of the Myth: From the Frontier to the Border Wall in the Mind of America* (New York, 2019), p. 3.

³² Margaret Moore, ‘The Taking of Territory and the Wrongs of Colonialism’. *The Journal of Political Philosophy* 27 n.1 (2019), 87–106; Philip Petit, *Republicanism: A Theory of Freedom and Government* (Oxford, 1999), chs. 2–3.

³³ Edward Cavanagh, ‘Infidels in English Legal Thought: Conquest, Commerce and Slavery in Common Law from Coke to Mansfield, 1603-1793’. *Modern Intellectual History* 16 n. 2 (2019), 375–409; Richard Tuck, ‘Alliances with Infidels in the European Imperial Expansion’, in *Empire and Modern Political Thought*, ed. Sankar Muthu (Cambridge, 2012), pp. 61–83.

mountains. My interest here is not only in these spaces, but also in the kinds of interactions that took place in them, and how these interactions shaped languages of politics. As John Pocock has written, we should attend to how interactions ‘figured in, and helped shape, the discourse of each polity about itself, and further, whether they generated a discourse of their own’.³⁴ That is, political societies tell stories about their history as sovereign agents, and the relationship between Indigenous and colonial peoples was in one sense a meeting and melding of histories, which underpinned the interaction of various kinds of customary law, each with its own set of concepts and conventions.³⁵ The interactions of early America and their politics were centred on ‘common worlds’, expressed through shared and overlapping political languages, contrasting notions of sovereignty, and fluid and evolving political forms – alliances, colonies, egalitarian confederacies, multi-ethnic polities settlements, and states.³⁶

These relations took place in locales for the development of international law where states were in the process of formation, and power relations took place in mobile and shifting spaces of power, characterised by zones of overlapping jurisdiction.³⁷ Diplomacy was a site of the negotiation of power in a context where sovereign claims routinely cut across fluid and porous borders. As Lauren Benton has argued, ‘The history of interpolity relations in such zones [i.e. borderlands], as well as in areas once classified as belonging to “informal empire”, draws our attention to the important role of alliances and treaties in structuring the relation of European and Indigenous law’.³⁸ The politics of space also influenced the kinds of social formations that evolved and acted in a landscape that shaped politics in fundamental ways: kinetic and nomadic Indigenous empires, but also ‘states’ that were formed by processes of movement driven by trade, exchange, warfare, and alliance with Native peoples.

Finally, my aim in what follows is to refine and enhance the historical framework that serves as a point of reference for contemporary discussions of the persistence of colonialism in contemporary discussions of Indigenous political and territorial rights.³⁹ This might be described as the coexistence

³⁴ J. G. A. Pocock, *The Discovery of Islands: Essays in British History* (Cambridge, 2005), p. 135.

³⁵ Ford, *Settler Sovereignty*, p. 214, note 13. ³⁶ Hämäläinen, ‘Shapes of Power’, p. 50.

³⁷ Erez Manela, ‘International Society as a Historical Subject’. *Diplomatic History* 44 n. 2 (2020), 184–209.

³⁸ Benton, ‘Made in Empire’, p. 475.

³⁹ John Borrows and Michael Coyle, eds., *The Right Relationship: Reimagining the Implementation of Historical Treaties* (University of Toronto Press, 2017); Terry Fenge and Jim Aldridge, eds., *Keeping Promises: The Royal Proclamation of 1763, Aboriginal Rights, and Treaties in Canada* (McGill-Queen’s University Press, 2015); Michael Asch, *On Being Here to Stay: Treaties and Aboriginal Rights in Canada* (Toronto, 2014); Patrick Macklem & Douglas Sanderson, eds., *From Recognition to Reconciliation: Essays on the Constitutional Entrenchment of Aboriginal and*