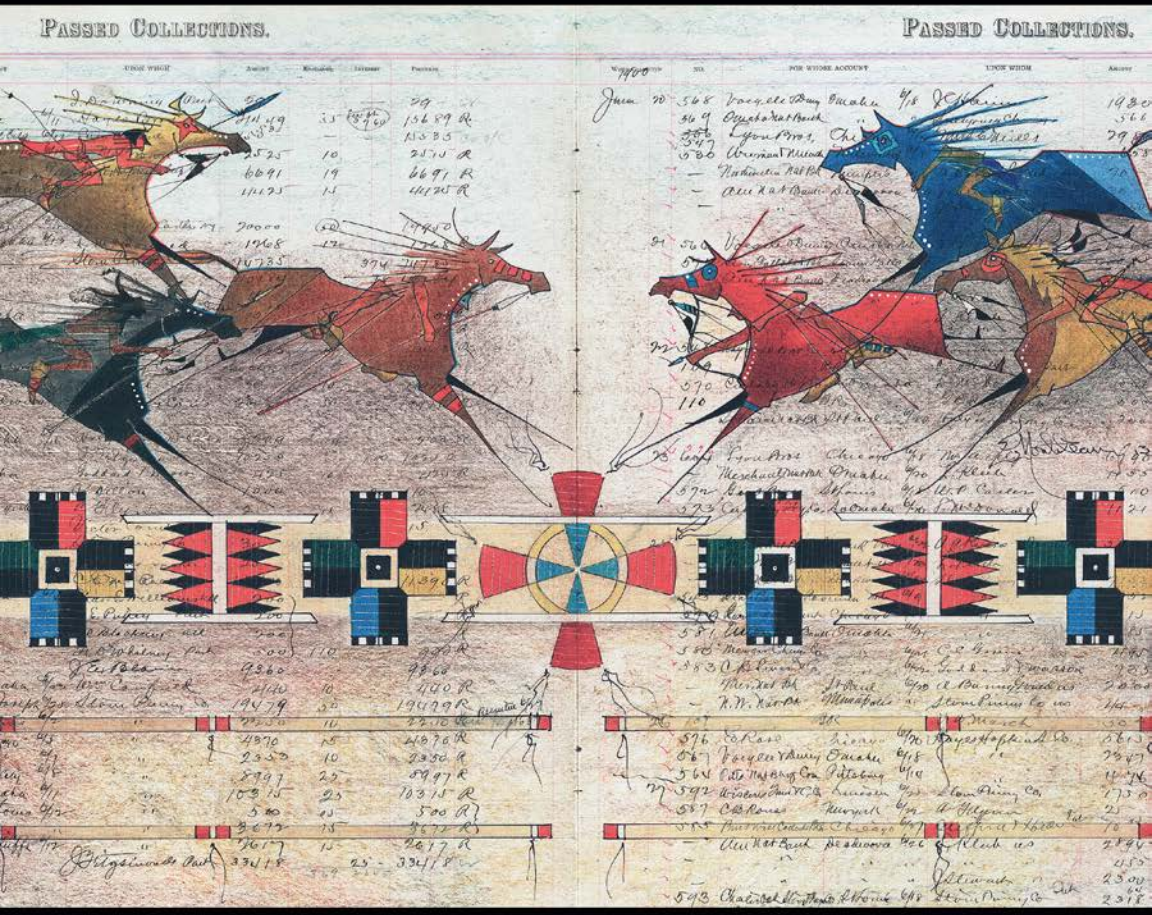
THEFT IS PROPERTY!



DISPOSSESSION *and* CRITICAL THEORY

ROBERT NICHOLS

THEFT IS PROPERTY!

RADICAL AMÉRICAS

A SERIES EDITED BY BRUNO BOSTEELS
AND GEORGE CICCARIELLO-MAHER

THEFT IS PROPERTY!

DISPOSSESSION & CRITICAL THEORY

Robert Nichols

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This work is dedicated to my mother.

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INTRODUCTION

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> The land is ours, by every natural right and every principle of international law recognized in relations among European powers. The land that is ours by every natural right was coveted by European powers. Seizure of our land for the use of their own people could not be justified by the law of nations or the principles of international law that regulate relations among European powers. So it became necessary to concoct a theory that would justify the theft of land.
>
> —GEORGE MANUEL (Shuswap), 1974

> Brother! We are determined not to sell our lands, but to continue on them. . . . The white people buy and sell false rights to our lands. . . . They have no right to buy and sell false rights to our lands.
>
> —SAGOYEWATHA (Seneca), 1811

No Justice on Stolen Land. This slogan is emblazoned on pins, posters, and banners at protest events and organizing meetings held by Indigenous peoples and their allies around the globe. It reflects the high stakes and normative force of these struggles, and marks in dramatic fashion the acceleration and intensification of conflicts over land use in recent decades. In the course of writing this book, an especially important instance of this mobilization was taking place: thousands of Indigenous peoples from North

America and beyond gathered at the Sacred Stone Camp in joint opposition to the Dakota Access Pipeline. An estimated $3.8 billion project, the pipeline is scheduled to transport between 470,000 and 570,000 barrels of crude oil per day over 1,200 miles, traversing the Missouri River immediately upstream of the Standing Rock Sioux reservation.[1] On October 23, 2016, Indigenous activists declared they were enacting *eminent domain* on the contested lands, claiming rights from the 1851 Treaty of Fort Laramie.[2] As Joye Braun, organizer with the Indigenous Environmental Network, stated, "If [Dakota Access Pipeline] can go through and claim eminent domain on landowners and Native peoples on their own land, then we as sovereign nations can declare eminent domain on our own aboriginal homeland."[3]

To truly understand the struggle at Standing Rock, we need to situate it in a longer history. For, although rare, this is not the only such major gathering. In 1851 ten to fifteen thousand Great Plains Indigenous peoples met nearby with representatives of the United States. Among other agreements, this historic gathering produced the Treaty of Traverse des Sioux and the first Fort Laramie Treaty, securing lands for the Dakota peoples in what was then the Minnesota Territory, as well as safe passage through "Indian country" for settlers on their way to California. By 1862, however, the United States was already beginning to abrogate its responsibilities. The Homestead Act of that year effectively opened up some 270 million acres of land west of the Mississippi for settlement by providing incentives for squatter-settlers. Subsequent encroachment on Dakota land quickly led to the 1862–64 Great Sioux Uprising. In this conflict, thousands of Dakota civilians were held in an internment camp at Fort Snelling (near where I write, in present-day Minneapolis-St. Paul), where hundreds perished of cold and starvation. Thirty-eight Dakota men were sentenced to death in the single largest penal execution in U.S. history.[4]

In 1868 a second Fort Laramie Treaty set aside large sections of Montana, Wyoming, and South Dakota for the Sioux Nation, including the sacred Black Hills (one of the last official treaties made before the 1871 Indian Appropriations Act declared a formal end to the process). After gold was discovered, however, thousands of settlers streamed into the area in direct violation of the treaty, sparking a second Great Sioux War (1876–77), during which Colonel Custer and the 7th Cavalry were famously defeated at the Battle of Greasy Grass (Little Bighorn). In response to this defeat, the U.S. Army undertook the mass killing of buffalo as a means of undermining the subsistence economy of the Plains nations. The conflict ended

with the Black Hills Acts of 1877 (known colloquially as the "Sell or Starve Act"), which demanded the Sioux relinquish control of the Black Hills in exchange for government rations to mitigate starvation.[5]

In 1887 the Dawes Act once more opened up tribal and reservation lands for sale by the federal government to settlers and, two years later, the United States again violated the Fort Laramie Treaty when it unilaterally broke up the Great Sioux Reservation into five smaller units and imposed private property ownership as a means of rendering the land more alienable. In response, the Oceti Sakowin took up the Ghost Dance, a religious movement aimed at reviving the spiritual foundations of their society. The U.S. Bureau of Indian Affairs called in the army to suppress the movement, leading to the 1890 assassination of famed leaders Crazy Horse and Sitting Bull, followed by the Wounded Knee massacre, at which the 7th Cavalry killed hundreds of Dakota civilians, mostly women and children.[6]

In 1924 American Indians were unilaterally declared citizens of the United States, ushering in a long period of "termination."[7] From 1945 to 1960, more than one hundred tribes and bands were officially dissolved and incorporated into the United States without their consent. During this same time, the Army Corps of Engineers built a dam on Lake Oahe, blocking the Missouri River on Cheyenne and Standing Rock Sioux reservation lands and submerging more Native land than any other water project in U.S. history.

In the 1960s and 1970s, a new wave of Indigenous activism emerged, led by the American Indian Movement (AIM), which was involved in the 1969 occupation of Alcatraz and the 1973 standoff of the Pine Ridge Sioux Reservation. Purposefully chosen as the symbolically charged site of the Wounded Knee massacre nearly one hundred years earlier, the conflict lasted seventy-one days until forcibly broken up by U.S. marshals, FBI agents, and other law enforcement officers.[8]

In 1980 the U.S. government admitted to having illegally seized the Black Hills and offered $120 million in compensation. The Lakota rejected the monetary offer and to this day insist on the return of their land.[9] In 1999 Bill Clinton became the first sitting U.S. president since Calvin Coolidge to meet with the Oceti Sakowin when he made a stop at the Pine Ridge Reservation. President Barack Obama followed suit in 2014 with a visit to Standing Rock. One year later, the U.S. Army Corps of Engineers began work on the Dakota Access Pipeline. A collection of Indigenous peoples, including the Lakota, Dakota, Osage, and Iowa nations, voiced their concerns with

the project at that time, saying, "We have not been consulted in an appropriate manner about the presence of traditional cultural properties, sites, or landscapes vital to our identity and spiritual well-being." In August 2016, the Standing Rock Sioux filed an injunction against further work. The parent company of Dakota Access LLC, Energy Transfer Partners, sued the Standing Rock Sioux chairman and other leaders for blocking construction, leading to the standoff. One of the first acts of the new Donald Trump administration was to give a green light to the project, setting the stage for renewed battles.

Standing Rock is only the most recent in a long series of conflicts. In countries such as Canada, Australia, New Zealand, and the United States (CANZUS), Indigenous peoples are currently involved in a wide range of protracted legal and political battles with their respective settler governments. Very often, these focus on the matter of use of and access to land, including control over natural resources development, extractive industries, and ecological protection. In what follows, I explore these struggles as part of a longer and larger set of historical processes that, following the usage favored by Indigenous activists and scholars themselves, I term *dispossession*. My aim is to explore the myriad conceptual and political challenges posed by these issues, historically and in the present. In so doing, I aim to reconstruct dispossession as a category of critical theory, one that may serve to mediate between critiques of capitalism and colonialism, with a particular focus on the late modern and contemporary Anglo settler world.

WHAT IS DISPOSSESSION?

Over the course of the last few decades, the concept of *dispossession* has been increasingly pressed into service by a wide range of contemporary critical theorists, including Étienne Balibar, Daniel Bensaïd, Judith Butler and Athena Athanasiou, Nancy Fraser, David Harvey, and Edward Said.[10] Most interestingly, they are joined by a new generation of Indigenous and Native American scholars for whom the term has had most purchase, for whom it does most theoretical work.[11] Found in the indexes of publications by such leading scholars as Joanne Barker, Jodi Byrd, Glen Sean Coulthard, Mishuana Goeman, J. Kēhaulani Kauanui, Audra Simpson, and Leanne Simpson—just as it is used in activist and social organizing contexts—*dispossession* is now indelibly written across an intellectual discourse and a political movement.[12]

At the most general and abstract level, in the intellectual and political field with which we are most concerned here, dispossession is typically used to denote the fact that in large sections of the globe, Indigenous peoples have not only been subjugated and oppressed by imperial elites; they have also been divested of their lands, that is, the territorial foundations of their societies, which have in turn become the territorial foundations for the creation of new, European-style, settler colonial societies. So dispossession is thought of as a broad macrohistorical process related to the specific territorial acquisition logic of settler colonization. As a result, within these parts of the world, Indigenous scholars such as Glen Coulthard (Yellowknives Dene) and Audra Simpson (Kahnawà: ke Mohawk) frequently define their peoples' experience of colonialism as simply a "form of structured dispossession."[13]

As dispossession has taken a more central role in debates over colonization, property relations, racial capital, and slavery and its afterlives, a number of tensions and outright conflicts have emerged between differently positioned communities and modes of analysis.[14] While such conflicts may reflect genuinely contradictory interests, they also emerge from misapprehension since shared terms of critique frequently mask distinct and divergent histories, intellectual contexts, and traditions of interpretation, all of which feed polysemic conceptual intension. As with most useful terms of political articulation, the concept of dispossession can be mobilized in a variety of manners, for diverse and competing purposes. Its appeal and utility resides precisely with its protean quality. Moreover, in its most common usages, the term dispossession is clearly not intended as a neutral description of a historical process but rather is used simultaneously to describe and critique. In this dual operation, the term takes on diverse normative valences. Following from this, however, certain conceptual difficulties arise.

In any study that employs a single word or concept as its fulcrum, there is a danger of conceptual reification. It is easy to be lulled into believing that because a term is used across a range of contexts, there must be some single, unified meaning undergirding them all. As thinkers from Wittgenstein to Foucault have cautioned, this is more often than not an illusion. A purely nominalist approach would avoid this by amassing a catalog of every use of the term, considering any particular application of a term as valid as the next. By contrast, one could also attempt to construct an ideal normative theory of the concept, which would state the necessary and sufficient conditions for the application of such a general term.[15] The study undertaken here takes a different tack. Although I use the concept of dispossession as a gravitational

center, this is really an analysis of a "space of problematization" (in Foucault's language) rather than a singular concept. The problem-space in question brings together shifting configurations of property, law, race, and rights and has been previously examined in a variety of languages (including expropriation and eminent domain) and in diverse normative registers.

One concern stands out most prominently. To speak of dispossession is to use a negative term. It is "negative" both in the ordinary language sense (i.e., pejorative) but also in the more philosophical sense, in that it signals the absence of some attribute. Most intuitively, a condition of dispossession is characterized by a privation of possession. In this obvious, ordinary, and commonly used sense of the term, dispossession means something like a normatively objectionable loss of possession, essentially a species of *theft*. Inasmuch as this is implied by the concept, however, a new set of conceptual and practical complications arise. For such a formulation appears, first, generally parasitic upon a background system of law that could establish the normative context in which a violation (e.g., theft) could be recognized, condemned, and punished. Second and more specifically, the term seems necessarily appended to a proprietary and commoditized model of social relations. Insofar as critical theorists generally seek to leverage the category of dispossession as a tool of radical, emancipatory politics in the critique of extant legal authority and proprietary relations, recourse to this language thus seems potentially contradictory and self-defeating.

In the Anglo settler colonial countries of Canada, Australia, New Zealand, and the United States, this concern has taken on a very specific form. In this context, Indigenous peoples have often been accused of putting forward a contradictory set of claims, namely, that they are the original and natural owners of the land that has been stolen from them, *and* that the earth is not something in which any one person or group of people can have exclusive proprietary rights. The supposed tension between these claims has been exploited to significant success by a number of critics, particularly right-wing populists in these societies, who view white settlers as the true owners of these lands, both collectively (through the extension of territorial sovereignty and public law) and individually (through the devices of private property).

The Indigenous social and political theorist Aileen Moreton-Robinson (Goenpul Tribe of the Quandamooka Nation) has recently provided a concrete instantiation of this logic and the stakes of its apprehension. As part of a more general investigation into the diverse manifestations of what she terms the "possessive logic of white patriarchal sovereignty," Moreton-

Robinson analyzes the so-called history wars in her native Australia.[16] Sparked by the publication of Keith Windschuttle's *The Fabrication of Aboriginal History*, this debate centered on his polemical claim that the colonization of Australia was fundamentally a nonviolent process that eventually benefited its Indigenous inhabitants. As Windshuttle put it, "Rather than genocide and frontier warfare, British colonization of Australia brought civilized society and the rule of law."[17] Of most relevance to our purposes here, however, Windshuttle has also asserted that at the point of contact with Europeans, Australian Aborigines lacked any conception of "property," or perhaps even of "land" as a discreet entity in which one could claim property.[18] Aileen Moreton-Robinson unpacks the logic of the argument: if Indigenous peoples "did not have a concept of ownership . . . there was no theft, no war, and no need to have a treaty."[19]

Although formulated in more sophisticated and sympathetic terms, a range of academic treatments has voiced similar concerns. Work by the legal and political philosopher Jeremy Waldron provides a case in point. In a series of essays covering more than a decade, Waldron questions the underlying coherence of the very idea of an "indigenous right." In particular, he has explicitly raised the objection that, inasmuch as Indigenous rights appear to rest upon claims to "first occupancy," they are often appeals to untenable and unverifiable chains of ownership back to "time-immemorial."[20] By eschewing precision in the defining of "indigeneity," Waldron moreover warns, proponents import an "ineffable, almost mystical element" to the term, the ascription of which leads to the "rhetorical heightening of the unexceptional fact of having been here first."[21] Although Waldron's argument derives from a specific contractualist tradition of liberal analytic thought, it finds an unlikely resonance with a set of more radical left critics. Nandita Sharma and Cynthia Wright, for instance, voice similar concerns with the "autochthonous discourses of 'Native' rights" in which Indigenous peoples are "subordinated and defined (by both the dominated and the dominating) *metaphysically* as being *of* the land colonized by various European empires."[22] Similar unease with the trajectory of Indigenous political critique has been voiced by important contributors to critical race theory.[23] In each of these cases, the concern is that Indigenous peoples' claims to "original ownership" are untenable, politically problematic for their implications on other, non-Indigenous communities, or both.

One could say much more about these contemporary disputes. Indeed, many Indigenous and non-Indigenous scholars alike are currently engaged in these heated debates. Initially, however, I wish simply to flag how such

concerns drive at a basic conceptual ambiguity at the heart of dispossession. Critics wish to catch Indigenous peoples and their allies on the horns of a dilemma: either one claims prior possession of the land in a recognizable propertied form—thus universalizing and backdating a general possessive logic as the appropriate normative benchmark—or one disavows possession as such, apparently undercutting the force of a subsequent claim of dispossession.[24] And indeed, in one sense at least, this critique does highlight a curious juxtaposition of claims that often animate Indigenous politics in the Anglophone world, namely, that the earth is not to be thought of as property at all, and that it has been stolen from its rightful owners.

This book responds to this challenge, first, by providing an alternative conceptual framework through which to view dispossession and, second, by substantiating this as relevant to the actual historical development of Anglo settler colonialism and Indigenous resistance. I argue that, in the specific context with which we are concerned, "dispossession" may be coherently reconstructed to refer to a process in which new proprietary relations are generated but under structural conditions that demand their simultaneous negation. In effect, the dispossessed come to "have" something they cannot use, except by alienating it to another.

This process has been notoriously difficult to apprehend because it is novel in a number of important ways. First, dispossession of this sort combines two processes typically thought distinct: it transforms nonproprietary relations into proprietary ones while, at the same time, systematically transferring control and title of this (newly formed) property. In this way, dispossession merges commodification (or, perhaps more accurately, "propertization") and theft into one moment. Second, because of the way dispossession generates property under conditions that require its divestment and alienation, those negatively impacted by this process—the dispossessed—are figured as "original owners" but only *retroactively*, that is, refracted backward through the process itself. The claims of the dispossessed may appear contradictory or question-begging, then, since they appear to both presuppose and resist the logic of "original possession." When framed correctly however, we can see that this is in fact a reflection of the peculiarity of the dispossessive process itself. In the extended argument of this book, I plot this movement as one of *transference*, *transformation*, and *retroactive attribution*. In the interests of giving this peculiar logic a name and as a means of differentiating it from other proximate processes, I theorize this specifically as *recursive dispossession*.

Recursion is a term that is used in a variety of fields of study—most notably, logic, mathematics, and computer science—each of which employs its own specific, technical definitions.[25] At a general level, however, these different technical and discipline-specific uses of the terms share the general sense of a self-referential and self-reinforcing logic. Recursion is not, therefore, simple tautology. Rather than a completely closed circuit, in which one part of a procedure refers directly back to its starting point, recursive procedures loop back upon themselves in a "boot-strapping" manner such that each iteration is not only different from the last but builds upon or augments its original postulate. Recursion therefore combines self-reference with positive feedback effects. (If it has a geometric form, it is the helix, not the circle.) In the context with which we are concerned here, dispossession can rightly be said to exhibit a "recursive" structure because it produces what it presupposes. For instance, in a standard formulation one would assume that "property" is logically, chronologically, and normatively prior to "theft." However, in this (colonial) context, theft is the mechanism and means by which property is generated: hence its recursivity. Recursive dispossession is effectively a form of property-generating theft.

The conclusion I draw from this is that dispossession can be reconstructed as a core term of critical theory by attending to the unique set of historical processes to which it is appended. My concern with doing so is both practical and theoretical. The project is motivated by a sense that the predicament of dispossession is a real problem for Indigenous peoples (and their allies), who seek to leverage a critique of these ongoing processes but often find they must do so in a manner that is constrained by the dominant vocabularies available to them. Thus, one practical objective is to diagnose the sources of this dilemma, while remaining cognizant of the ways in which Indigenous peoples have thwarted its constrictions (and continue to do so). On a second level, the book is also animated by an interest in a set of more abstract theoretical considerations. In this register, I develop a conceptually innovative rendering of dispossession, one that offers resources to critical theorists more generally in our shared project of understanding and critiquing colonialism, capitalism, and modern property relations in their global context.

Before delving into and unpacking the details of this argument, two qualifications are in order. They pertain to scope and method, respectively. I wish to emphasize that this is not a book about colonization in the whole.

Colonization typically entails a complex array of different processes not mentioned here, including labor exploitation, enslavement and racial domination, gendered and sexual violence, cultural defilement, and the usurpation of self-governing powers, to name only a few. It also entails cases of theft in the perfectly ordinary sense. This book makes no attempt to survey all these elements, let alone subject them to effective critique. Instead, I attend to one particular process that has been historically essential to the colonization process in the Anglo settler societies (which form the primary empirical locus of my concern) but which has yet to receive a systematic conceptual reconstruction. If I focus here on one subsystem within this broader complex, then, it is not because it is exhaustive but because it is distinctive. Moreover, while it is my hope and intuition that the concept of recursive dispossession may be of some use in the critical analysis of other processes beyond the Anglo settler world, I leave this possible extension to others.

Regarding method, this work is intended as a contribution to critical theory. What this entails is, however, itself a matter of endless debate. Those who identify with the designator typically recognize narrow and broad senses. The narrow definition (most often written with capitalization: Critical Theory) is identified with the Frankfurt School of German philosophy and social theory, and includes such figures as Max Horkheimer, Theodor Adorno, Herbert Marcuse, Jürgen Habermas, Alex Honneth, and so on. The classic definition associated with this school comes from Horkheimer, who wrote that a "theory is critical to the extent that it seeks human 'emancipation from slavery,' acts as a 'liberating . . . influence,' and works 'to create a world which satisfies the needs and powers' of human beings." Critical theorists "seek 'human emancipation' in circumstances of domination and oppression. This normative task cannot be accomplished apart from the interplay between philosophy and social science through interdisciplinary empirical social research."[26] As James Bohman points out, however, because Critical Theorists aspire to "explain and transform *all* the circumstances that enslave human beings," the methods and interpretive languages of Critical Theory have expanded and proliferated to take account of a much wider range of social pathologies (and their corresponding resistance movements) than classical Frankfurt School thinkers ever envisioned.[27] Thus, a broader definition has emerged, now pluralized and relatively detached from the specific methodological commitments of the Frankfurt School (and written without capitalization). The feminist philosopher and social theorist Iris Marion Young provides an apt characterization of this expanded view when she writes:

> Critical theory is a normative reflection that is historically and socially contextualized. Critical theory rejects as illusory the effort to construct a universal normative system insulated from a particular society. Normative reflection must begin from historically specific circumstances because there is nothing but what is, the given, the situated interest in justice, from which to start. . . . Unlike positivist social theory, however, which separates social facts from values, and claimed to be value-neutral, critical theory denies that social theory must accede to the given. Social description and explanation must be critical, that is, aim to evaluate the given in normative terms.

While it is considered quite damning for contemporary political philosophy to evince only empirical insight at the expense of normative confusion, Young points us to the inverse dangers as well: "Good normative theorizing cannot avoid social and political description and explanation. Without social theory, normative reflection is abstract, empty, and unable to guide criticism with a practical interest in emancipation."[28]

I will not say much more about this here as this is best worked out through the substantive debates contained within the book, except to say that this framework rejects the disciplinary division of labor that has emerged within political theory between normative and historical-descriptive analysis. As it currently stands, "normative theory" is generally taken to concern itself with the largely abstract and decontextualized inquiry into ideal standards of rightness, goodness, justice, and the like, as well as the meta-ethical investigation into the background moral language that makes such claims intelligible in the first place. By contrast, historical approaches largely eschew such normative evaluation in favor of descriptive inquiry for its own sake. This bifurcation has, however, produced some troubling tendencies when articulated through the study of empire, imperialism, and colonization. This project offers an alternative. Here, the normative and explanatory power of this argument is dependent on reframing the relation between concepts and historical processes. It presses into service concepts such as dispossession, which order and explain the historical material and offer normative resources for its critique. But these concepts are also themselves the *products or effects* of the very processes they seek to define, explain, and critique. Most obviously, what we mean by dispossession is necessarily related to conceptions of possession, property, theft, expropriation, and occupation, each of which is, at least in part, indebted to the history of colonization. There is, therefore, another level on which the theme of recursivity

operates, namely, in the relation between historical processes and the social theory meant to explain and critique them. The subtext then is that the following analysis of dispossession functions as a means to interrogate the relationship between *historical-description* and *conceptual-explication* with an eye to demonstrating the tensions between their respective methods and aims of inquiry, while nevertheless insisting on the necessity of both for critical theory.

One consequence of Young's expanded definition of critical theory is that we begin to see normative concepts as immanent to particular, historically and sociologically located struggle. To understand a concept requires then that we reconstruct the struggle of which it is a part. In what follows, I draw upon an eclectic mixture of thinkers—anarchists, feminists, Marxists, critical race, and Indigenous theorists alike. In doing so, one aim is to show how Indigenous thought can be put into conversation with other languages of critical theory, including genealogical and dialectical traditions. I do so not because Indigenous political thought requires external resources to correct or complement it (one major aim of this work is to demonstrate the novelty and coherence of this work). Rather, the work of conceptual translation is undertaken here because those working within a wide range of different forms of critical theory continue to impute to Indigenous peoples a mystifying exoticism that belies their intellectual contributions—essentially continuing to treat them as "peoples without history." By undertaking something of a conceptual translation of the terms of Indigenous critique, I hope to draw attention to the potential connections and imbrications of these distinct theoretical languages, aiding us in the composition of a new constellation of critical theory under the rubric of dispossession and counterdispossession.

More specifically, I contend that the range of semantic resonance and conceptual intension characteristic of "dispossession" is symptomatic of the distinct historical processes out of which it has emerged. Two are of particular importance here. As I unpack at length in chapter 1, the critical import of the concept of dispossession emerged, on the one hand, out of the upheaval and transformation of land tenure within Europe—the dismantling of feudalism and slow, uneven emergence of capitalist private property and commodity markets in "real estate." On the other hand, this process took place alongside and in relation to a second context: the territorial expansion of European societies into non-European lands and, in the specific case of Anglo settler expansion, the construction of new systems of liberal-capitalist land tenure in the absence of a dominant European feudal system.

This expansionist system of land appropriation and property generation serves as a second horizon of meaning through which theories of dispossession have been articulated. As such, the colonial world is not simply an interesting "case study" for a general theory of dispossession. Rather, alongside and in conjunction with the critique of European feudalism, it is the most significant context to frame the development of original debates over dispossession and expropriation. In short, the colonial world is not an *example* to which the concept applies but a *context* out of which it arose. Since virtually no work of critical theory has even attempted to reconstruct the historical context out of which contemporary Indigenous struggles have emerged, scholars of this ilk persistently mischaracterize and malign these struggles. If this is true, however, then a proper critical-theoretic approach to these questions will not proceed by applying the concepts and methods of critical theory (however broadly conceived) to Indigenous struggles against colonialism. Rather, it will take seriously those struggles as themselves always already voicing a mode of critique.

CHAPTER OVERVIEW

Chapter 1 offers two genealogies of the concept of dispossession as a tool of social critique and radical politics. It begins by examining its role in eighteenth- and nineteenth-century struggles against European feudal land tenure. Particular attention is paid to the shifting meanings of the concept (and related terms such as *eminent domain* or *expropriation*) in liberal, republican, anarchist, and Marxist iterations. The second half of the chapter turns to the use of the term in Indigenous struggles against colonization. Through a reconstruction of arguments by Indigenous scholars and activists, I seek to show the coherence and novelty of their formulation. The chapter concludes by substantiating this argument by providing specific historical examples in the form of nineteenth-century Anglo settler property law concerning squatters and homesteaders.

Chapter 2 builds out the underlying philosophical architecture of my understanding of recursive dispossession through a critical engagement with Karl Marx and Marxism. I turn here to a close reading of Marx's writings on primitive accumulation in *Capital: Volume 1*, and the subsequent renovation and use of the category by contemporary critical theorists. Examination of these debates enables us to interrogate the more general relation between historical-descriptive and conceptual-explicative forms of

analysis, as well as between categories of expropriation and exploitation, labor and land.

Chapter 3 investigates the history of Indigenous resistance to dispossession as an enacted and embodied mode of structural critique. The first section of the chapter mobilizes resources from various contributions to critical theory (broadly conceived) in order to interrogate the very idea of "structural critique," which leads me to an analysis of the Hegelian-Marxist language of *alienation* and *diremption*. The chapter evaluates the utility of this language for articulating the relation between structures and subjects in the context of dispossession. The second section offers a selective history of Indigenous critiques of dispossession in the nineteenth and early twentieth century. The focus here is on the normative claims of Indigenous peoples—claims that express an experience of injustice—but also how the very activities of claims-making give new shape and content to the subjectivities of the claimants, in this case, the political identity of "Indigenous." The chapter concludes with reflection on the *belatedness* of normative evaluation.

Chapter 4 turns to the Black radical tradition, where dispossession also functions as a key concept, albeit more often in relation to the body than to land. I begin with an argument that critical-theoretical treatment of dispossession in this sense has been plagued by a familiar unease, since it too appears to presuppose a commitment to possession, this time in the form of self-ownership or "property in the person." The chapter then rereads key thinkers in the history of Black political thought—from Frederick Douglass to Patricia Williams and Saidiya Hartman—as a means of reframing the debate. I contend that Black political thought offers crucial resources to a critique of dispossession by highlighting the source of the enduring ambivalences concerning the concept: a sliding historical backdrop that gives variable configurations of race, rights, legal personhood, and property their concrete content. The final two sections explore the intuition that notions of *antiwill* may serve as a possible link between Black and Indigenous intellectual traditions. In this way, incorporating Black political thought not only complements but also completes the broader analysis of this book.

In addition to summarizing and recapitulating the overarching theoretical argument, the conclusion also considers possible alternative modes of organizing the relation between land, law, property, and power. The chapter examines how Māori activists in Aotearoa/New Zealand are—as part of a global Indigenous movement—experimenting with new ways of ordering human relationships to the land by, for instance, according legal personhood

to the land, thereby removing it from the sphere of ownership altogether. The chapter concludes with preliminary remarks on how the circuit of dispossession is being unraveled and fashioned into something new.

In sum, although the following chapters all focus on some aspect or another of dispossession, each also uses this as an occasion to consider broader questions in social and political theory. These include examination of the relationship between state and market formation (chapter 1); historical and analytical modes of critique (chapter 2); subjectivity, normativity, and structural analysis (chapter 3); and race and rights (chapter 4). In this way, *Theft Is Property!* supplements its narrow focus on the concept of dispossession with an expanded range of more general and enduring topics of critical theoretic inquiry.

ONE

That Sole and Despotic Dominion

> There is nothing which so generally strikes the imagination, and engages the affections of mankind, as the right of property; or that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe. And yet there are very few, that will give themselves the trouble to consider the original and foundation of this right.
>
> —WILLIAM BLACKSTONE, *Commentaries on the Laws of England*, 1765

This chapter develops two genealogies of dispossession. The first, presented in section I, is a largely intra-European account whereby the concept emerges in relation to a host of shifting proximate terms, such as expropriation, confiscation, and eminent domain. I argue that although the term originally operates within very long-standing and abstract debates concerning the nature of property per se, by the turn of the nineteenth century it takes on a much narrower, practical function as a tool of critique in relation to battles against feudalism. Section II turns to a second context: Indigenous struggles against colonization. In this part of the chapter, I seek to differentiate this conception from the first by attending to its unique recursivity. The

chapter concludes in section III by substantiating this argument by providing specific historical examples in the form of nineteenth-century Anglo settler property law concerning squatters and homesteaders.

I

In Western European legal and political thought, there is widespread and long-standing recognition of the right of the sovereign to appropriate the property and assets of subjects, forcibly if necessary. Rather than finding a single unifying concept under which to subsume this notion, one encounters instead a complex and confusing array of terms that vary according to time, location, custom, and vernacular. For the purposes of analytic treatment, however, this cacophony can be roughly organized into a set of four linguistic "families" in modern English that, while overlapping and interrelated, can help parse distinct conceptual inflections. They include expropriation, confiscation, eminent domain, and dispossession.

The Latinate term *expropriation* was introduced into European vernacular languages by the revival of Roman legal vocabulary by medieval civil and canon jurisprudents in the eleventh and twelfth centuries. Since then, it has come to name the right of the sovereign to appropriate property for the sake of the "common good" in some sense or another (*publica utilitas*, *communis utilitas*, *commune bonum*, etc.). The paradigmatic expression of this power has long been the compelled seizure of land required for the building and maintenance of public infrastructure such as roads or castle walls. For many centuries, of course, it was the sovereign who held ultimate interpretative power over who counted as within the "public" or what was in the "common good." As a result, expropriation was a highly flexible power; it could be expanded or contracted to suit a variety of schemes.[1]

Precisely because expropriation has had this variable scope, it has also had a retributive function. It this way, it has bled into *confiscation.* Derived from the Latin *confiscare*—"to seize for the public treasury"—this term refers to the coercive seizure of property from subjects for the purposes of punishment. It has been used, for example, to strip criminals of their assets in the wake of conviction for crimes, or as retribution for political and religious insubordination. For instance, during the American Civil War, the Union passed two "Confiscation Acts" (1861, 1862) as a means of seizing southern lands and slaves as a punitive response to treason.[2] Confiscation is sometimes treated as a species of expropriation, since legal enforcement

might reasonably be thought a function of serving the "common good." The two remain nevertheless partially distinct since confiscation commonly singles out a particular individual or group of individuals on the basis of their actions or standing relative to the sovereign. It is a mode of punitive forfeiture, tailored to a specific case.[3]

In 1625 the Dutch jurist Hugo Grotius intervened in these debates and in so doing coined a new term. In *On the Law of War and Peace*, generally considered to be a foundational text in the history of international law, he introduced the term *eminent domain* as part of his argument that "through the agency of the king, even a right gained by subjects can be taken from them in two ways, either as a penalty, or by the force of eminent domain [*dominium eminens*]. But in order that this may be done by the power of eminent domain, the first requisite is public advantage; then, that compensation from the public funds be made, if possible, to the one who has lost his right."[4] Grotius did more than introduce a novel term, however. He also helped shift the register of the debate. His key contribution, followed by later thinkers such as John Locke and Samuel von Pufendorf, was to connect the specific right of expropriation to a general theory concerning the origin and nature of property *as such*. If the sovereign has a particular right to seize property for the common good, this would seem to presuppose a superior claim on his part. Hence "eminent domain" has come to be used (rather confusingly) as both an act and as the underlying form of title that justifies that act. But how did the sovereign acquire that title in the first place?

One answer to this question was provided by various feudal theories of title hierarchy. In this framework, the sovereign holds a special right of expropriation because his title has *priority*, in both senses of the term: it was both older and superior. In his famous compendium of English common law (1765–79), William Blackstone summarized the feudal framework in the following way: "that the king is the universal lord and original proprietor of all the lands in his kingdom; and that no man doth or can possess any part of it, but what has mediately or immediately been derived as a gift from him, to be held upon feodal services."[5] Claims of this sort appear to have been strongest in medieval and early modern France, as well as on the Iberian Peninsula, where expropriation was justified as an exercise of seigniorial power.[6] In a different idiom, this was part of Robert Filmer's defense of absolutist monarchy in England, famously pilloried by Locke in *The Two Treatises*.

Within these rather expansive theories of expropriation, special attention was paid to the matter of "originary title," that is, the question of how one could acquire a proprietary interest in something that had no previous owner, for which there was no prior claimant.[7] In medieval and early modern European jurisprudence, this came to be known as the problem of res nullius.[8] Standing behind this concept is a relatively simple intuition: an object with no prior owner becomes the property of she who takes control over it first, who is said to have a right of *preemption.* Partially through the Roman revival, the idea that "preemptive acquisition" was a qualitatively distinct form of proprietary claim entered into European civil and canon law. Explaining and justifying this distinct moment was important, it was thought, because all subsequent property claims were derivative of this "originary" moment. The matter touched upon very grand theoretical questions, such as how humans could come to assert legitimate private property claims in an originally common inheritance (from God), even absent "any express Compact of all the Commoners" (as Locke put it),[9] but the matter was also put to very practical purposes. In the early modern English context, for instance, it validated novel acquisition over previously unclaimed or unused lands (for instance, by the draining of swamps). So the question of "originary possession" served a dual function, as part of a narrative about the origins of civil society and property per se and as a topical and practical intervention into the property relations of the present. In this context, concepts of expropriation emerged as a means of explaining the sovereign's prerogative to forcibly appropriate property and assets from subjects. The sovereign had a right of expropriation because he or she was the rightful inheritor of the originary possession of the land.

Grotius's theory of eminent domain was motivated in part by a desire to displace this feudal theory of original possession. For him, although the sovereign still possessed a special right of expropriation, this had to be justified on different grounds. Rather than a seigniorial power, eminent domain was part of a contractualist, delegation theory of sovereignty. The sovereign holds the right to seize assets for the public good not in virtue of personally possessing a superior title but rather in light of his being empowered to adjudicate and legislate over the common good. Eminent domain was an extension of governmental authority, exercised on behalf of subjects who held an equiprimordial natural right to property. Among other contributions, this theory provided an independent normative benchmark by which to distinguish legitimate from illegitimate forms of expropriation. Subjects

were empowered to ask whether any particular exercise of expropriation or eminent domain was authentically undertaken for the common good.

Eminent domain remained for several centuries a relatively minor language of property seizure. It was used by a host of legal and political theorists—from Pufendorf to Emer de Vattel and Denis Diderot—but never became the dominant idiom, least of all in English.[10] This changed in the latter half of the eighteenth century, however. At that point, Anglo settler elites in British North America were searching for intellectual resources that might help them in their bid for greater autonomy from imperial London. As a result, they reached for continental European theorists who had been relatively overlooked in Britain. The result was that the language of "eminent domain" entered into legal and political theory of Anglo-America and, to this day, remains the dominant way to express the idea of compulsory seizure of private assets for the public good in the United States (unlike in Great Britain, where it still has little traction).[11]

Anglo-American thought of this period is driven in no small part by a desire to defend the power of eminent domain on more purely liberal-Lockean grounds; that is, the sovereign holds this power only because he is acting as a representative and executor of the common will. One way to establish these liberal bona fides was to exaggerate the distinction between modern, liberal notions of eminent domain and Roman, medieval, or early modern feudal conceptions of expropriation. The standard form of this argument holds that, since the modern power of eminent domain is expressly about *overriding* individual private property interests, it cannot be said to have existed until such interests were already recognized. Hence, early American theorists of eminent domain commonly assert that, in this technical sense, it did not exist "before the title of the individual property owner as against the state was recognized and protected by law." On this basis, modern eminent domain can be differentiated from earlier theories of expropriation in which "the right to take land for public use was merged in the general power of the government over all persons and property within its jurisdiction."[12]

Under close inspection, however, this clean division does not hold up. One way to render their overlap visible is simply to note that, in the vast majority of cases, the sovereign right of expropriation carried a corresponding duty to compensation. Across medieval and early modern Europe, widespread convention held that subjects were owed fair recompense for their sacrifices to the common good, however necessary these sacrifices might be. This is tantamount to recognition that subjects, however "common" they

might be, held some valid proprietary interests that were being overridden. Those whom a specific act of expropriation disadvantaged were, after all, part of the collective in whose name it was being enacted. (One significant exception to this general rule was the case of expropriation as a form of punishment, which is why confiscation remains a partially distinct term of art.) In short, the general form of the argument across this period was that sovereigns held a right to expropriate not predominantly because they held ultimate and primordial title to the land but because they had a special responsibility to care for the community as a whole and to rule for its common good.

This framework provided two normative benchmarks: expropriation must be for the sake of the "common good" and attended by fair compensation. These two features are important because they also provide leverage for a critique of illegitimate expropriation. This is where our final term enters the discussion, since *dispossession* has most often been used to mean "unjust expropriation." The contemporary term can be traced backward through the Middle English *disseisine* to the Anglo-Norman *dessaisine* (itself a variant of Old French). For many centuries, these terms were used to name forms of wrongful seizure or removal. This was, in a literal sense, a condition characterized by a deprivation of *seizine*, meaning possession of land or chattel. The term has very old roots as well. For instance, in the Magna Carta of 1215, section 39 states, "No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will be proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land."[13] In the original Latin, the first line is "Nullus liber homo capiatur vel imprisonetur aut disseisiatur." Although the term *disseisiatur* is sometimes rendered as "stripped," it is more literally "disseised" or, in modern English, "dispossessed." This etymological link endured for many centuries in English legal and political thought. It was used by Hobbes in *Leviathan* (1651)[14] and, much later, remained evident in the 1833 *Assize of novel disseisin*, which dealt with recovering lands "recently dispossessed" from the plaintiff.[15]

We have then a clutch of concepts: expropriation, confiscation, eminent domain, and dispossession. Although overlapping, intersecting, and highly mutable, when taken together these terms nevertheless compose a scene regarding the shifting powers of property in the early modern European world. Collectively, they express a dual desire: to name the legitimate right of the sovereign (and his delegates) to seize property for the common good

and, conversely, to condemn the abuse of this power. Whereas eminent domain is typically used only in service of the former positive sense, dispossession has more often operated in the latter, critical register. Most confusingly, expropriation has long been employed for both.

As I have already indicated, although each of these terms refers initially to a specific question of property acquisition, each is already implicated in broader theories of political legitimacy. This became all the more explicit as the concept of dispossession was expanded and radicalized in the late eighteenth and early nineteenth centuries. This is an important period in the story that occupies our primary concern here because it was at this point that it became possible to argue not simply that the sovereign had performed a specific act of illegitimate property seizure but that sovereignty was *itself* the effect of a massive act of "unjust expropriation."[16]

The entry point for this expanded notion of dispossession was the central role that struggles over *land tenure* held in the context of revolts against feudalism. Rising republicanism of the mid to late eighteenth century led to an increased concern with delegitimizing the very *idea* of a permanent landed aristocracy. In the service of this critique, republican thinkers reached back to a rich (albeit quasi-mythological) Greco-Roman tradition, which placed great emphasis on the virtues of fixed agricultural property, not only for the property holders but also for the political community as a whole. Fixed agricultural holdings, especially when held in small units by independent farmers, were thought to be the fount of republican excellence. Such farmers were relatively autonomous in both a material and ethical sense: their unmediated access to land could provide them not only basic subsistence but also a medium for virtuous labor. Modern republicanism could critique feudalism on the basis of its perversion of this relationship, since the majority of landholders were no longer independent farmers but proprietors of large estates funded by rent. This concern is quite clear in the analysis of Jean-Jacques Rousseau, for instance, who was most critical of the kind of large landholdings that formed the foundation of the European nobility; but, as we shall see, it can also be seen in a host of later anarchist and utopian socialist thinkers, from Marx to contemporary critical theory.[17] So, although such questions entered into early modern European legal and political thought as an extension of very general and abstract questions about property as such, they soon came to function as tools in an urgent contemporary political struggle.

In this, the emphasis shifted from criticizing this or that particular act of unjust expropriation (e.g., as implausibly for the sake of the common good) toward a critique of feudal aristocratic rule as itself founded upon a massive act of dispossession. Because the language of expropriation had long been entangled in debates over the origins of property as such, many of those who would later seek to use it as a critical weapon against the feudal estates backdated the event of dispossession to "time-immemorial" and the first moment of property formation. They therefore did not necessarily view the landed aristocrats of their own time as the primary *agents* of expropriation but rather as the *inheritors* of an original injustice, which had taken place in some long-distant past. This is most clear in the words of Rousseau, who famously claimed:

> The first man who, having enclosed a piece of ground, to whom it occurred to say *this is mine*, and found people sufficiently simple to believe him, was the true founder of civil society. How many crimes, wars, murders, how many miseries and horrors Mankind would have been spared by him who, pulling up the stakes or filling in the ditch, had cried out to his kind: Beware of listening to this imposter; You are lost if you forget that the fruits are everyone's and the Earth no one's.[18]

The fact that Rousseau bound the origins of civil society together so tightly with this quasi-mythological original expropriation meant that his argument generated divergent and contradictory responses. Some, such as many anarchists of the nineteenth century, called for the radical restructuring of state and society through the total abolition of actually existing property relations. Others contended that, precisely because human society as such was so tightly bound to an original expropriative act, the institutions of feudal tenure must be defended on the basis that abolition would entail the unraveling of civilization itself. A third position equivocated, calling for more moderate reform of existing institutions, accompanied by complex schemes that might compensate the rural peasantry, who, in their eyes, were the inheritors of the original dispossessed.

Thomas Paine's rather overlooked work "Agrarian Justice" (1797) is an illustrative case of the latter position.[19] In it, Paine argued that there was no natural or original case of "property in land," an institution that, for instance, he thought absent from biblical societies. This changed with the advancement of cultivation. Cultivation permitted individuals to improve the land in such a way that it came to be transformed far beyond its original state. Those improvements were sown back into the earth, producing further

increases in productivity. This generated inequalities, which eventually congealed into landed aristocracy. In one of the first instances of the English term being used in these debates, Paine claimed that the resulting land monopoly had "*dispossessed* more than half the inhabitants of every nation of their natural inheritance, without providing for them, as ought to have been done, as an indemnification for that loss, and has thereby created a species of poverty and wrechedness [*sic*] that did not exist before."[20]

As one can see, there are in fact two normative concerns operating within Paine's account. He is concerned, first, with the original moment of dispossession as intrinsically objectionable. As Paine puts it, in nature there is "no such thing as landed property." Those who first claimed it had "no right to *locate as [their] property* in perpetuity any part" of the land.[21] Second, this original act of theft enabled a set of resultant evils, namely, widespread poverty among the decedents of the original dispossessed. So, for Paine, dispossession was objectionable both intrinsically and consequentially.

"Agrarian Justice" was written while Paine was living in the midst of revolutionary France. He had at this point already served in the French National Assembly and had gone through a trial that nearly led to his execution. The text came out of a set of proposals he wrote at the time arguing in favor of a basic inheritance right, which he framed as compensation for the effective exclusion of the masses from the ownership of land. It was part of a reformist agenda that sought to bridge radical and conservative positions. For Paine, although the aristocracy had certainly taken advantage of its monopoly privilege, current holders of land titles were not themselves directly responsible for the context itself, in either a moral or legal sense. "The fault," as he put it, "is not in the present possessors. . . . The fault is in the system, and it has stolen imperceptibly upon the world, aided afterwards by the Agrarian law of the sword." The key then was to transform the underlying system of ownership, ideally "without diminishing or deranging the property of any of the present possessors," a process that might require "successive generations."[22] Paine's proposed solution was a new taxation system that would serve a compensatory and redistributive function, providing indemnification to the dispossessed for their regrettable, albeit unavoidable, historic loss. This general compensatory approach to the exclusion of the rural poor from landholding enjoyed significant support in the eighteenth and early nineteenth centuries. It played a role in utopian socialist projects aimed at giving the poor opportunities to return to agrarian living or, failing that, to receive support in the form of Poor Law redistributions. In Great Britain, it eventually led to the *Return of Owners of Land* (1873), a modern

"Doomsday book" project that sought to document the concentration of aristocratic land ownership in that country.[23] As shall be discussed at length in the sections to come, it also played a role in the justification of settler colonization schemes abroad, which held out similar promises of return to independent self-rule through individualized landholding, perhaps finding its purest theoretical advocate in Thomas Jefferson.

Debates of this sort reached something of a zenith in the classical anarchism of the mid to late nineteenth century. At that time, several prominent thinkers (including Pierre-Joseph Proudhon and Peter Kropotkin) advanced the claim that modern European nation-states were the emanations of acts of massive theft, specifically the theft of land from the rural peasantry. As Proudhon put it at that time: "Through the land the plundering of man began, and in the land it has rooted its foundations. The land is the fortress of the modern capitalist, as it was the citadel of feudalism, and of the ancient patriciate. Finally, it is the land which gives authority to the government principle, an ever-renewed strength, whenever the popular Hercules overthrows the giant."[24] As we can see here, like Rousseau, these thinkers envisioned the original partition of the earth to constitute an ancient violation, a "plundering." And, like Paine, they were attentive to its contemporary ramifications. Unlike liberals such as Paine, however, they drew a more radical conclusion, expressly repudiating the notion that dispossession could be remedied "without diminishing or deranging the property of any of the present possessors." Instead, they concluded that modern property relations were illegitimate in a more general sense, since other forms of inequality were derivative of the originary seizure of communal land. Hence, the famous slogan of nineteenth-century anarchists: *Property is theft!*[25] In this, terms such as *expropriation* came to play an increasingly important role in naming this ongoing, structured theft. By the end of the nineteenth century, the term had expanded and radicalized to the point that Kropotkin could worry only of "not going far enough," that is, of "carrying out expropriation on too small a scale to be lasting." Instead, he argued in his 1892 text, *The Conquest of Bread*, that "expropriation should be general," equating it with "a universal rising."[26]

In sum, then, the concept of expropriation entered into European legal and political thought as a means to stabilize and legitimize extant power relations and sovereign authority. It was, however, simultaneously inverted and redeployed as a tool of social criticism, that is, to destabilize and transform power and property. In this, it was joined to a host of other concepts, most notably dispossession and eminent domain. There is a discernable

shift in the transition from early modern to late modern European thought (from roughly the early seventeenth century to the late nineteenth), in which the terms came increasingly to be freed from their original uses and set to new, more radical and critical purposes. Eventually, it became possible and even plausible to use these as terms in the condemnation of established property relations rather than in their vindication. Perhaps most dramatically, it was eventually possible to accuse the sovereign not merely of a specific act of illegitimate expropriation but of himself being the effect of a prior dispossession: the *sovereign as thief*.

Marx represents something of a turning point in this critical history. Although initially impressed by the anarchist critique,[27] Marx eventually came to view this analysis as inadequate and improperly formulated. By positing that classical, feudal, and modern forms of domination all emanated from the same fount (i.e., land appropriation), anarchists generated a falsely abstract and ahistorical conception of "expropriation," one that failed to grasp the specificity of modernity and capitalism. Moreover, in hitching their critique to the language of theft, they had adopted a restrictively legal and moralistic category, one that in fact presupposed and naturalized a similarly abstract and ahistorical conception of property. For Marx, the anarchist slogan "Property is theft!" was therefore self-refuting, since the concept of theft presupposes the existence of property.[28] Even before Marx arrived at this conclusion, Max Stirner made a similar observation. In his major work, *The Ego and Its Own* (1844), he wrote: "Is the concept of 'theft' at all possible unless one allows validity to the concept 'property'? How can one steal if property is not already extant? What belongs to no one cannot be *stolen*; the water that one draws out of the sea he does *not steal.* Accordingly property is not theft, but a theft becomes possible only through property."[29] In effect, these critics were pointing out that property must be logically, chronologically, and normatively prior to theft. The latter cannot be foundational to either property relations or civil society more generally.

In the shuttling back and forth between anarchist and Marxist positions on the question of property and theft, we can observe an interesting correlate movement of conceptual and linguistic translation. Within classical anarchism, the French term *expropriation* came to function as a placeholder for the processes of large-scale "theft" that were viewed as constitutive of the modern state system itself. When Marx engaged these debates, he used both the Germanic term *Enteignung* and the Latinate *Expropriation*, somewhat inconsistently.[30] Finally, and somewhat confusingly, when *Das Kapital* was translated into English, the relevant terms were often, but incon-

sistently, rendered as *dispossession* (sometimes used interchangeably with expropriation, sometimes as distinct). From this point on, the latter term enters English-speaking debates and now enjoys wide circulation across a variety of critical traditions and thinkers, from David Harvey to Judith Butler.

As these key terms were translated linguistically, so too were they renovated conceptually. Anarchist thinkers had posited that the seizure of communal lands was itself a violence committed against the feudal peasantry by the aristocratic nobility, and that this was essentially theft: it was a coercive and illegitimate transfer of property from the original owners. Although Marx continued to speak of *Expropriation* and *Enteignung*, he changed the meaning of these terms when he provided a more abstract definition. For him, dispossession came to refer to the initial "separation-process" (*Scheidungsprozeß*) that separated "immediate producers" from direct access to the means of production, thus forcing them into new labor conditions, now mediated by way of the wage.[31] This implied a conceptual shift away from viewing dispossession in terms of "theft," strictly speaking. Whereas the original anarchist argument presented the rural peasantry as the original "owners" of the land, Marx sought to shear this critique from its normative investment in property.

In the next chapter, we will unpack the logic of Marx's engagement with the concepts of expropriation and dispossession in greater detail. For now, it suffices to highlight two results of this broader critique of anarchist thought. First, these categories were slowly displaced as tools of radical politics, becoming narrowly legalistic terms. The expansive normative and critical sense with which Rousseau, Paine, or Proudhon spoke of dispossession, for instance, was collapsed into the earlier, more technical and legalistic categories of expropriation and eminent domain with which we are familiar today (serving now, somewhat ironically, to legitimate state seizure of private property). Second, insofar as the category did persist as a tool of social criticism, it was subsumed beneath other, more fundamental concepts.[32] The historical result of this has been that, within the more Marxian-inspired lineages of critical theory, the question of dispossession has been subordinated to other concerns, specifically its role in generating a class of proletarianized workers. In terms of a historical-descriptive narrative, dispossession moves from being a story of "originary theft" toward a more localized claim about the rise of the modern capital relation. In the terms of normative theory, it loses any sense of its intrinsic injustice, and is instead rendered objectionable only in terms of its consequences,

specifically the way it enables exploitation and/or class domination (points to which I will return).

II

The concept of dispossession has enjoyed a renaissance of sorts. As was outlined in the introduction, it has come to be seen as a useful analytic device in contemporary debates surrounding colonialism (in both its historical and present-day manifestations), particularly in the Anglo settler world. In this new usage, echoes may be heard of the previous intra-European debates sketched above. Most obviously, in its deployment by Indigenous peoples, dispossession retains connotations of "land theft" long associated with struggles against European feudalism, albeit transposed now to name the specific territorial acquisition logic of settler colonization. However, as is hopefully clear by now, when the term *dispossession* migrates into discussions on colonization, a certain danger emerges. On the one hand, it is potentially problematic to adopt the classical anarchist strategy of construing dispossession as a case of straightforward theft since this leaves one vulnerable to both traditional objections from the Marxian camp and more opportunistic critiques from the right (discussed in the introduction). On the other hand, however, the route provided by the Marxist reply to anarchism may also prove inadequate, since this drags the heart of the whole matter away from expropriation toward exploitation. It would seem very odd indeed to suggest that the dispossession of Indigenous peoples from their lands is problematic because it enables their exploitation as laborers, since this is empirically not a very accurate description of the experience of colonization faced by many Indigenous peoples (especially in the Anglo settler world), but more to the point, it seems to distort the underlying logic of these struggles.

I contend that this dilemma is a function of the paucity of historical reconstructive work of the actual institutions of landed property in the Anglo settler world and their impact on the development of Indigenous traditions of resistance and critique. In short, we must understand more precisely how landed property came to function as a tool of colonial domination in such a way as to generate a unique "dilemma of dispossession," which is not reducible to the one experienced by European radicals.

Before turning to that alternative genealogy, however, it is important to note that, just as the term had a complex variety of uses and proximate

terms in the European debates, so too it does in this (colonial) context. Indeed, an alternative route around the above dilemma is to point out that, for many Indigenous peoples, dispossession is not really about possession at all. In this strategy, although the *word* is used to describe something specific about the territoriality of Indigenous social and political orders or its role in settler colonization, the "possessive" part of dispossession is rendered rather more incidental. In this case, we might really mean something like deracination or desecration. The first of these terms denotes a form of "uprooting" and carries connotations of displacement and removal. It can have literal and more metaphorical uses (as is the case with, say, dislocation) and has a certain intuitive appeal since the expropriation of the territorial foundation of a society will clearly have a massively negative, disruptive effect on that society. Dispossession qua deracination carries its own ambiguities and dangers, of course. It may, for instance, suture indigeneity to territorial fixity, an issue I will not explore here.[33] However, the language of deracination does seem at least to lead us away from implying that that relationship to land must in its original form be a propertied one.

At other times when people use the term *dispossession* in these contexts, they seem to really mean something like *desecration*. In this valence, Indigenous peoples often raise a concern with the degradation or defilement of some object of concern whose moral worth cannot be measured in purely anthropocentric terms. What is interesting about this framework is that the primary object of injury has changed. Whereas deracination, theft, exploitation, and coercion are all things that happen to the human inhabitants as a result of land appropriation, desecration implies that the Earth itself is the injured party. This is not to say that there cannot be some additional injury to the human inhabitants, but this shifts to the level of a secondary effect. Consider the following passage from the Mohawk legal scholar Patricia Monture-Angus:

> Although Aboriginal Peoples maintain a close relationship with the land . . . it is not about control of the land. . . . Earth is mother and she nurtures us all. . . . Sovereignty, when defined as my right to be responsible . . . requires a relationship with territory (and not a relationship based on control of that territory). . . . What must be understood then is that Aboriginal request to have our sovereignty respected is really a request to be responsible. I do not know of anywhere else in history where a group of people have had to fight so hard just to be responsible.[34]

What is motivating about this rendering is the novel way in which the claims and relationships here have been reversed from the standard proprietary model. Monture-Angus provides us with a clear example of an argument that does not rest on a normative commitment to property in land but still leverages a strong critique of territorial acquisition. The important element is that she has converted a traditionally rights-based claim into a duty-based one. As she construes it, Aboriginal title is a claim about the necessity of being responsible to something greater than oneself, that is, the Earth itself. This seems to get us out of some of the complications of the strictly proprietary use of dispossession and brings us closer to the desecration sense of the term.

I explore these alternative formulations in greater detail in later chapters.[35] Let us set them aside for the moment, however, in order to give our original problematic a more thorough treatment. If I do so, it is not because the rendering given by thinkers such as Monture-Angus is not important or convincing. Rather, we may wish to explore alternatives because, for instance, not all Indigenous peoples and communities will view their relationship to the Earth in this way. What is more, as any engagement with the actual writings and works of such people reveals, there is a palpable sense in which Indigenous communities in the Anglo settler world have experienced, and continue to experience, colonization as a form of theft. Notwithstanding all the complications just raised, then, there is a certain claim here to the effect that *this land is stolen*, a claim that cannot be simply sidestepped if we wish to remain responsive to the specific historical experience at stake. We may wish then to persist in grappling with the language of theft out of an interest in engaging these claims as they are presented to us, perhaps precisely because the issue at hand does not fit neatly into expected frames of reference. Continuing to speak of dispossession qua "theft of land" would then not simply be important as part of a rhetorical strategy, or as a principle of solidarity (although these may also be important considerations). Rather, it would be worth retaining these terms because they in fact express an appropriate and conceptually complex apprehension of the nature of problem at hand.

Part of what continues to motivate the use of the term *dispossession* in these contexts, I contend, is the real sense that colonization (especially settler colonization) does involve a unique species of theft for which we do not always have adequate language. First, dispossession of this sort combines two processes typically thought distinct: it transforms nonproprietary relations into proprietary ones while, at the same time, systemati-

cally transferring control and title of this (newly formed) property. It is thus not (only) about the *transfer of* property but the *transformation into* property. In this way, dispossession creates an object in the very act of appropriating it.

How exactly does this work? How can dispossession be said to fuse the making and taking of property? The answer depends on clarifying what it means to "make" property. Part of the confusion around this derives from the persistent ambiguity in the ordinary language sense of property. Most of the time, when we speak of our "property," we think of a collection of objects: cars, houses, clothing, and the like. However, as almost all critical-theoretical treatments of the category begin by reminding us, in point of fact, property does not refer to a set of things. Rather, it refers to a species of *relations*.[36] To claim property in something is, in effect, to construct a relationship with others, namely, a relation of exclusion. Most often, to assert property in something is to make an enforceable claim to exclude someone from access to some thing. The fact that property is really a form of social relation (and not a particular kind of object) is made most dramatically visible when we consider that there need not be any physical tangible entity in which the claim is lodged. You can have property in an idea, a technique for doing something, even an expectation. The object in which you have a claim need not be, therefore, a physical entity. But it must be cognizable as a distinct juridical object, something that can in principle be rendered the repository of an enforceable claim against others. So "making" property refers not to the creation of a new material object but to a new juridical and conceptual object—an abstraction—that serves to anchor relations, rights, and, ultimately, power.

In this context we are concerned with how "land" was rendered as "property." Although it may first appear as a perfectly obvious, empirical object, "land" is in fact a concept, and a highly abstract one at that.[37] We are essentially talking about taking a portion of the Earth's surface—excluding the subsurface and troposphere beyond some often vaguely formulated or unspecified distance—and bundling a complex diversity of proprietary claims within it such that a person could, in principle, acquire control over all objects and activities within that zone. As a legal and marketable object of this sort, land in this sense is a highly culturally and historically specific object in which one could invest property claims. It is not the case that all societies—even most societies—have had such a concept, let alone a set of legal and political institutions to enforce claims around it, or a market through which it could be traded.

As we shall see in periodic historical reconstructions throughout this book, when European colonizers encountered the diverse societies of the so-called New World, they frequently found that Indigenous peoples had no conception of land in this abstract and narrow sense. (Rather than viewing this in terms of a simple lack, many Indigenous thinkers have considered it a positive feature of their societies that they did not partition Earth in this manner.[38]) Accordingly, the process of dispossessing them entailed a rather complex gesture of ascribing this peculiar property form to them but in such a way as to facilitate its divestiture. Put more generally, we can say that dispossession is a process in which novel proprietary relations are generated but under structural conditions that demand their simultaneous negation. Those impacted by this process—the dispossessed—may even come to attach to these new relations, experiencing them (or elements of them) as a positive development in the sense that the process entails a nominal expansion of their proprietary rights; that is, they have gained a new form of property (in this case, "land"). However, they can also come to experience a deep conflict between the abstract form of the proprietary right and the conditions for its realization. The reason for this is that the dispossessive process has also changed background social conditions such that the actualization of the proprietary right in question is necessarily mediated in such a way as to effectively negate it. In effect, the dispossessed may come to "have" something they cannot use, except by alienating it to another.

This formulation helps explain the paradoxical phenomenon we find in the history of settler colonialism of colonizers who simultaneously affirm and deny Indigenous proprietary interests in land. In the long and complex history of the European colonization of the (now) Anglo settler world, we of course find numerous examples of colonial figures who simply deny outright the very possibility of Indigenous property in land, typically as a function of Indigenous peoples' supposedly lower levels of socioeconomic development, rationality, techniques of cultivation, enclosure, and the like. As has been well documented, thinkers from Vattel to Locke to Immanuel Kant have all doubted whether Indigenous peoples have ever had the socioeconomic and technological development required to truly take possession of land. Alongside these blanket denials, however, we also find various forms of partial recognition and selective affirmation of Indigenous proprietary interests. Historically, settlers have routinely affirmed certain forms of Indigenous property rights because they have recognized that, in a consolidating colonial-capitalist context, Indigenous peoples can only actualize their property rights through alienation.[39] The Lakota (Standing

Rock Sioux) philosopher Vine Deloria Jr. pointedly summarizes this feature of dispossession in his landmark 1969 work, *Custer Died for Your Sins*.

> One day the white man discovered that the Indian tribes still owned some 135 million acres of land. To his horror he learned that much of it was very valuable. . . . Animals could be herded together on a piece of land, but they could not sell it. Therefore it took no time at all to discover that Indians were really people and should have the right to sell their lands. Land was the means of recognizing the Indian as a human being. It was the method whereby land could be stolen legally and not blatantly. . . . Discovery negated the rights of the Indian tribes to sovereignty and equality among the nations of the world. It took away their title to their land *and gave them the right only to sell*.[40]

Deloria is putting his finger here on a peculiar nominal or "negative property" right enjoyed by Indigenous peoples in colonial contexts: the right "only to sell." In phrasing matters this way, Deloria is drawing upon a long and rich heritage (discussed at greater length in chapter 3). Above all, he lays bare the specific mechanics of dispossession, whereby Indigenous property is only cognizable by Western law in and through its alienation.

It serves to recall that the standard form of a property right is a tripartite conjunction of exclusive rights to acquisition, use and enjoyment, and alienation.[41] In the context of evolving forms of settler colonial capitalism, however, the structure of "Indigenous property" emerged as an already paradoxical conjunction, a truncated form of property that could only be fully expressed in the third moment, that is, alienation. In other words, *it is fully realized only in its negation*. This is what Deloria is pointing to in saying that "Indians" have only a "right to sell." In this case, Indigenous peoples are not fully excluded from holding property per se but instead have come to possess an empty or truncated proprietary interest, one that cannot be actualized except through divestment.

This is why the claims of Indigenous peoples may appear question-begging from our standpoint in the present. Indigenous peoples are figured as the "original owners of the land" but only *retroactively*, that is, refracted backward through the process itself. In this case, then, Indigenous original propertied interests in this object called "land" are only rendered cognizable in a retrospective moment, viewed backward and refracted through the process of generating a distinct form of "structurally negated" property right in it. The original proprietary interest is only visible after it has been lost. Viewed in this way, Indigenous claims to the land are not mistaken

or confused at all but rather reflect the paradoxical fact that, in this context, possession does not precede dispossession but is its effect. Rather than avoid the problem of a negatively defined concept, we should therefore highlight precisely the *recursive* logic at work here as the essential feature of the specific process under consideration.

In sum, the recursive movement at work here may be plotted as one of *transformation* (making), *transference* (taking), *and retroactive attribution* (belated ascribing). When worked out in relation to this specific context, this reformulated conception helps us avoid some of the false dilemmas sketched above since it can name a process of dispossession without presuming an original possession or requiring a theory of "first occupancy." Contrary to Stirner's direct assertion, what belongs to no one can in fact be stolen. It is to the long and sordid history of this peculiar mode of theft that Indigenous authors and activists are referring when they employ the language of dispossession today.[42]

Ultimately, however, if we are to conceive of dispossession as consisting in a relationship between a juridical structure of right and the social context that actualizes that system of right in a "negative" manner, we cannot remain at the level of theoretical assertion. It must be demonstrated, not stipulated. A full account will need to explain both that de jure structure and its de facto actualization. We will need to demonstrate precisely how proprietary interests can be "structurally negated" by a background social context. It is to this background horizon that we now turn.

III

Settler colonialism in the Anglophone world has always been inextricably linked to a transformation in human relations to land. The eventual "rise of the Anglosphere"—particularly dramatic in the nineteenth century—was a "metaphysical revolution."[43] In and through this process, land came to be understood as something that could be not only individuated in measured, discrete units but also abstracted and registered in legal codes that could be circulated, traded, and pledged. As these ciphers were organized into a "market," their relation to the actual physical spaces they were meant to represent was increasingly attenuated. As historian John Weaver puts it, "By an astonishing conceptual revolution, worked out in both old- and new-world settings, the most tangible and non-moveable property conceivable was organized into interests and condensed into paper assets that, in

good market conditions, could be cycled quickly from person to person, person to corporation, corporation to corporation, corporation to person, and so on."[44] This was a process that took place in both "old" and "new" world settings, in Europe and its colonies. It was part of the global process that Karl Polanyi theorized as the "Great Transformation," which he linked (albeit in peripheral ways) to colonization.[45] What makes the Anglo settler colonial world such a unique and important lens through which to study this, however, is that it was a space where state formation and market formation not only took place simultaneously—the emergence of a modern legal, governmental apparatus was coeval with the emergence of a market in land—but also that this was done in explicit opposition to Indigenous forms of life that presented radically distinct and divergent visions of the relationship between human societies and the lands on which they lived. Thus, the structure of property in land that took hold in the Anglo settler world was systematically oriented toward the dispossession of Indigenous peoples in a unique and noncontingent manner.[46]

That Anglo settler colonialism is inextricably linked to the emergence of a market in land is most obviously true in the case of the United States. As one contemporary economist rather unapologetically boasts: "America has always been a nation of real estate speculators. . . . Real estate speculation was an integral part of the 'winning of the west,' the construction of our cities, and the transformation of American home life, from tenements to mini-mansions."[47] In one sense, this is correct. Many of the leading figures of the American Revolution made their fortunes in real estate speculation. They specialized in acquiring vast swaths of land from a public entity (originally from the Crown), parceling it out and selling it to smaller investors at large profits. This group included George Washington, Benjamin Franklin, and Thomas Jefferson but also lesser-known figures such as Robert Morris, Nathaniel Phelps, Oliver Gorham, and other influential financiers of the revolutionary period. Through land speculation companies such as the Ohio Company, the Vandalia Company, and the Loyal Land Company before it, the Anglo settler elite of the eighteenth and nineteenth centuries was built upon the commercial trade in land.[48]

There were huge amounts of money to be made in the earliest rounds of land acquisition and sale. In the early 1790s, Alexander Hamilton estimated that 30 cents per acre was a fair price for government frontier land. Only a few short years later, the 1796 congress considered a $2 minimum sale price to be reasonable.[49] By 1850 New York State land was valued at $29 per acre. Adjusted to contemporary prices, that is a change from

approximately $7.50 to $35 to $854 in sixty years.[50] The role of government was to regulate and control the pace of expansion so as to prevent the formation of real estate bubbles, which could cause recessions when they burst. Periodic real estate collapses did, of course, bankrupt many (including Robert Morris, who was imprisoned for his debts in 1798) and by 1819 left an estimated $21 million owed to the federal government from defunct land speculators, approximately $12 million of which was linked to the newly opened Alabama territory alone.[51] The U.S. government responded with a variety of relief measures, including releasing new forms of credit available for the purchase of public land.[52] The most important credit policy of the boom period between 1797 and 1819 was the Land Act of 1800, which enabled purchasers to acquire public land by fronting a mere one-twentieth of the initial cost.[53]

The great Chicago land boom and bust of the 1830s and 1840s is often held up as an exemplary case of the general pattern of U.S. westward expansion through speculation. In the 1820s, there was virtually no market for land in that area of the frontier, and thus land was effectively worthless as a commodity.[54] By 1830 it was some of the most expensive real estate on the continent and, by one estimate, increased by nearly 40,000 percent in that decade alone.[55] In 1840 a partial collapse of this bubble generated a wave of foreclosures by the Bank of Illinois, which itself promptly declared bankruptcy in 1842.[56] In the thirty years following the initial land boom, Chicago's population went from a few hundred to approximately 109,000 inhabitants. In the next thirty years after stabilizing the land market, it repeatedly doubled, reaching 1.1 million by 1890.[57]

The Civil War did little to slow westward expansion. It was during this period that Congress passed the Morrill Act, setting aside huge swaths of newly acquired public lands for the establishment of a network of new land grant universities, and the Pacific Railroad Act, which provided private companies with an estimated two hundred million acres of Indigenous land, often in direct contravention of treaty obligations.[58] Indigenous peoples were slowly brought into the land market but only under highly unequal terms, often through agreements that today would be recognized as forms of predatory lending.[59] For example, the Choctaws were forced by such pressures to sell a majority of their lands for $50,000 in 1805. The Chickasaws followed suit soon after, releasing all their land north of the Tennessee River for $20,000.[60]

Both the public and private sides of the new economic order were deeply enmeshed in the emerging land market. Private individuals could

make huge profits, but the federal government was also dependent on sales. As Roxanne Dunbar-Ortiz puts it, in the first few decades of U.S. independence, "land became the most important exchange commodity for the accumulation of capital and building of the national treasury."[61] This created tensions between different aspects of the state building process, that is, between territorial expansion, capital accumulation, and the rule of law. This often played out in terms of competition between government agents (such as surveyors, bureaucrats, and auctioneers), homesteading squatters, and financier-speculators, consideration of which necessarily engages broader questions of how to theorize the relationship between state and capital formation in settler colonial contexts. These different agents had distinct and often mutually conflicting immediate goals and objectives. However, over long-term cycles, they were nevertheless able to generate a certain resonance (even if not total consonance) between their different projects so as to produce a relatively stable effect: dispossession.

Once set into motion, the dispossessive logic of settler colonization proved difficult to control. Issuing a warning in the precise vocabulary with which we are here concerned, the secretary of war under George Washington, Henry Knox (no friend to Indigenous peoples generally), argued in 1789 that, because Indigenous peoples were prior occupants, they "possess the right of the soil. It cannot be taken from them unless by their free consent, or by the right of conquest in case of a just war. To dispossess them on any other principle, would be a gross violation of the fundamental laws of nature, and of that distributive justice which is the glory of a nation."[62] Echoing and concretizing this sentiment, in 1785 Congress issued a proclamation forbidding unlawful settlement and authorizing the secretary of war to remove those in the breach.[63] In 1806 the term *squatter* was used for the first time in congressional debates to refer to the growing problem of claims obtained outside the formally recognized and legally sanctioned process.[64] Formal, legislative prohibition peaked in the form of the Intrusion Act of 1807, which forbid U.S. citizens not only from unlawfully taking possession or making settlements but also from surveying, designating boundaries, or even marking trees in such a way as to facilitate a future claim. It moreover reauthorized the president and his officials "to employ such military force as he may judge necessary and proper" to remove offenders.[65]

Congress faced two obstacles in its attempt to curtail settler expansion by legislative means. First and foremost, legislative control over illegal squatting was practically unenforceable. By the early nineteenth century, settlers had grown in numbers and technical competences to be an independent

social force that could effectively overrun the state in its official capacity. This was proven time and again as the new republic struggled to enforce its frontier laws. Army officers were sent out to the countryside, charged with handing out and collecting fines as well as enforcing foreclosures and jail sentences. In July 1827, federal troops were sent into Indian land in Alabama, where they forcibly removed squatters, burning their homes and crops. Repeated periodically throughout the 1830s and 1840s, this came to be known as the "Intruders' War."[66] Among other difficulties of enforcement, soldiers were generally sympathetic to squatters, not a surprise given that cheap frontier land was a common reward for service.

The second problem was more abstract. State measures against intrusion relied on a clear understanding of the *legality* of settlement for their consistent application and enforcement. Here we encounter a unique conceptual problem. Anglo settler states have historically faced a complicated gesture of simultaneously avowing and disavowing the rule of law, that is, of squaring their reliance on extralegal violence as constitutive to their founding and continued expansion with their self-image as distinctly free societies governed by the rule of law. The distinction between legality and illegality that operates in the land acquisition process of a settler state is particularly fraught and unstable. It requires positing the state as the legitimate source of law, while acknowledging, even fostering, the extralegal mechanisms that make this possible. On the one hand, the state is figured as the originator of law, which is meant to secure its validity and its distinctiveness from other nonstate forms of coercion (which have not been publicly validated and thus cannot avail themselves of the status of law). On the other hand, the state itself must arise out of extralegal force, for there is no prior law that can validate founding itself; that is, to draw upon the language of Walter Benjamin, a shift from law-preserving to law-positing violence (*rechtserhaltende* to *rechtsetzend Gewalt*).[67] In Anglo settler societies, the solution to this has often been to redeem the validity of founding through a *recursive mechanism*, one that sees the state acting "as if" it is a source of publicly validated law until such time that it properly becomes one (a point on the horizon that is, of course, ever receding). The state's claim to a monopoly over legitimate violence exhibits a performative quality: the assertion is an act that works to make reality conform to the aspiration.

Consider the Intrusion Act of 1807, which expressly applied to squatters on already acquired public lands, that is, illegal possession *within* the extant ambit of U.S. law. However, since squatters, by definition, do not observe the bounds of law, the act acknowledged that they were also found

in land "not previously recognized and confirmed by the United States." These were squatters beyond the territorial bounds of the United States but nevertheless (and somewhat inexplicably) within the reach of the law. The act equivocates then between two different problems. One way to express this tension is through a distinction between *illegality* and *extralegality*. Whereas squatters on recognized and claimed U.S. public lands are clearly located within a sphere of illegality—itself readily cognizable and justiciable by the law—squatters beyond the territorial bounds of the extant state are in a space of *extralegality*. Their activities are "outside" U.S. law but not necessarily in conflict with it. The slippage between these two is vexing from a legal standpoint (for instance, as a problem of justiciability) yet especially productive and integral to the dispossessive process, since the prohibition against squatting in lands "not yet recognized" as within the bounds of the state presumptively figures these lands as awaiting incorporation, as *potential but not yet fully actualized* public lands. In this way, the lands beyond the frontier are merely at a temporally earlier stage in the recursive process of legitimation by which public lands came to be subsumed beneath settler state law, since even the territory from which the law currently speaks (the settler metropole) is but a previous era's quasi-legal frontier lands that have been retroactively validated. As such, we see judges and jurists of early nineteenth-century America struggling with the issue of frontier illegality not only as a problem of enforcement but of law's ultimate legitimacy. As one Mississippi federal judge complained in a letter to President James Madison: "How can a jury be found in Monroe County to convict a man of *intrusion*—where every man is an *intruder*?"[68]

The solution to this was to incorporate a measure of illegality into the operation of the law, an illegality that, it was hoped, could be retroactively redeemed through a recursive device. In the early nineteenth century, this took the form of *preemption*. The word *preemption* refers to a preference or prior right of acquisition by a specific claimant, typically the occupant. In the early colonial period, it referred to a right claimed by one European power against others to "first occupancy," assigning a special status to the original "discoverer" of a new territory. In the wake of U.S. independence, the principle was recognized by the Continental Congress and reformulated to apply to settlers on the western frontier. Effectively, it gave squatters a right of first bid on territory they occupied, often at a significantly reduced price, provided they had dwelled on the land for a given period of time and had sufficiently "improved" it. In the period between staking an initial claim and redeeming that claim through purchase, squatters were deemed

"tenants at will."[69] If they sufficiently improved the land and raised enough capital eventually to buy it from under themselves at auction, they were effectively exonerated of the crime of trespass. If not, the state could remove them and sell the lands to more worthy competitors. In this way, a gray zone of illegality was preserved within the confines of the law itself in the form of delayed or belated enforcement: the distinction between an "illegal squatter" and "valid tenant at will" could only be known in light of the retrospective gaze.

Between 1799 and 1838, thirty-three special or temporary preemption acts were passed.[70] Originally contained as clauses within legislation whose primary intent was to restrict illegal squatting (e.g., within the Intrusion Act of 1807), such provisions were expanded and formalized in their own right over the course of the 1820s, 1830s, and 1840s. In 1830 the first properly titled "Preemption Act," which included a general pardon for all inhabitants of illegally settled lands, was passed by Congress. Initially intended to be a temporary measure, it set a new precedent. By that point, settlers recognized that they could effectively disregard the previous Intrusion Act since there was a high degree of probability they would simply be exonerated by later preemption legislation.[71] In practice, then, the strange recursive relation between the Intrusion and Preemption Acts actually encouraged illegal settlement. By 1835 the preemption bill was coming up for renewal as frequently as annual appropriations.[72]

In 1841, revisions to the policy of preemption sought to remove its awkward retroactivity. From that point on, Congress did not even consider settlement prior to purchase as trespass per se, subject to some provisos. "Homesteaders" (as they were now more positively deemed) had to be the head of a family, a widow, or a single man over twenty-one years of age and a citizen of the United States (or current applicant for citizenship). They could not already be the proprietor of 320 acres or more of land in any state or territory, and must reside on the plot in question and "improve" it.[73] In this way, the Preemption Act not only gave legislative cover for squatting; it continued the Lockean ideal of restricting appropriation based on good standing, improvement, and sufficiency.

Squatters, homesteaders, and "tenants at will" thus came to possess a sui generis form of right—the retroactively legitimized, quasi-legal claim of preemption. As a hybrid racial-legal category of people, "Indians" possessed a corollary form of right that, not coincidently, was also referred to as "preemption." In the 1820s and 1830s, American Indian law came to codify

"Indians" as those who did not possess full rights to sovereignty and land ownership.[74] Theirs was a sui generis right of "occupancy" or "tenancy" and, in this sense, was not entirely dissimilar to squatter rights. The Indian form of preemption was, however, the inverted mirror reflection of that accorded to settler homesteaders. Whereas homesteaders possessed the preemptive right to *purchase*, Indians held the preemptive right to *sell*. This truncated property right (i.e., the right to alienate) was, in effect, one of the first "Indigenous rights."

This does not mean that individuals once coded as "Indians" could never purchase land. It did require, however, that they could not legally own "homesteads." For instance, legislation from 1865 provided for the first time the possibility for some Indians to receive homesteads under the 1862 Homestead Act.[75] An 1875 appropriations bill expanded and further entrenched this possibility but did so only through an explicit requirement that said Indians had "abandoned" their "tribal relations" (including providing "satisfactory proof of such abandonment").[76] An 1884 revision to this further clarified that "Indian homesteads" would be held in trust by the federal government for twenty-five years. The Dawes Act came into effect in 1887 and, for the forty-seven years it was in effect, it provided the legislative mechanism by which approximately 90 million additional acres of lands were appropriated from Indigenous nations and distributed to "homesteaders"—an area larger than present-day Germany.[77] In his extensive documentation of this process, the historian David Chang concludes, "Allotment combined the making of land into private property and the taking of that private property from Indians."[78] In a strict sense definitional, then, "Indians" alienated proprietary claims to land, whereas "homesteaders" actualized them. A single person could perform both roles but not at the same time: one was *either* an Indian *or* a homesteader.

Attending to the movement of Intrusion→Preemption→Homesteading enables us to specify and concretize what it means to say that new property rights in land "left no room for the Indians" or were "predicated upon their dispossession and dehumanisation."[79] Moreover, we can better grasp the recursive logic of dispossession that made this possible. First, we can observe in it a kind of bootstrapping procedure that generates legal possession out of avowedly extralegal seizures. The admixture of legality and illegality inherent in this expressed itself in both spatial and temporal terms, as both a zone and a time, as the *frontier* and the *waiting period* between initial trespass and retrospective redemption through purchase.[80] By Congress's own

lights, extralegal seizure was the primary mechanism by which the United States expanded and consolidated its underlying system of proprietary title: theft quite literally produced property.

Second, this gives us a clear glimpse of the reconfigured relation between state and market. While the new republic attempted to deploy the traditional mechanisms of state control to contain the socioeconomic processes unleashed in the decades following independence, sending military and police agents to restrict illegal squatters, this proved ultimately futile. Paradoxically, the state was both a central agent of market formation and in thrall to it. The land market that was created over the course of the nineteenth century did not spring out of thin air as a model of self-organizing economic relations. Rather, it was a construct generated as much by the coercive power of the state apparatus as by "private" interests and individuals. The new market for land was, after all, predicated on the military conquest of Indigenous peoples, their forced removal from the territories in question, and their de jure and de facto exclusion from the market through legislation explicitly designed to ensured Indians could not compete with white settlers when it came time to (re)purchase land at auction. At the same time, however, state officials quickly found they could not fully contain or control market forces once they took hold. They could not fully control squatters, nor the proliferation of "Claims Clubs," which colluded to drive down land prices through collective bidding—practices that gained increased respectability and legal protection through such organizations as the National Land Association (founded in 1844 by George Henry Evans) and the Free Soil Party (active from 1848 to 1852). What, after all, was the United States itself if not a particularly large and well-armed claims club? Thus, we find less a colonization process driven by state demands for territorial sovereignty *or* economic drives for capital accumulation than a complex meeting of both. The two were interwoven since, much as government officials might complain of meddlesome squatters, settlers were the primary mechanism by which the state was able to convert frontier land from a threatening external wilderness to a fiscal resource and national asset.[81]

Third and finally, we have begun to identify the mechanism of transmission by which the dispossessive process became a global phenomenon. Although initially wary of following the U.S. model, British colonial administrators in other regions of the world took note of the wealth and power it was capable of generating.[82] The new market in land, they recognized, was inherently (not contingently) expansionist and could not be controlled by agreements between gentlemen statesmen. One was either forced to adapt

or risk being drowned by the wave of "manifest destiny." Thus, the dispossessive process begun in the new U.S. republic pressed upon colonization processes elsewhere, reshaping Anglo settler policy across the globe into an increasingly convergent form. As John Weaver puts it, "'The expansionary drive of American culture' was not just American."[83] It is beyond the scope of the present study to provide a full treatment of this complex field, but two brief illustrative examples from Canada and Aotearoa/New Zealand will be useful.

The success of the U.S. model of territorial expansion placed immediate pressures on the Canadian colonies, which were under constant threat of being overtaken by the republic to the south from the time of the revolution through much of the nineteenth century. Not only was the United States more populous and more powerful; it was also a more attractive destination for many European migrants precisely due to the high availability of land. Additionally, the Canadian example is often held up in contrast to that of the United States, in part because, in the majority of the country at least, the territorial acquisition process operated through a series of treaties signed between Anglo colonial officials and Indigenous leaders.[84] These came in two waves. From 1871 to 1877, Treaties 1 through 7 secured the southern half of the western "prairie" provinces. Then, from 1899 to 1921, Treaties 8 through 11 incorporated a vast expanse of land in the northern half of those provinces, plus portions of what is now British Columbia, Ontario, the Northwest, and Yukon territories. Since these were highly formal, ceremonial affairs between the official representatives of the Crown and those of the respective Indigenous nations, they seem to have more to do with agreements between nations than transactions between subjects, more about sovereignty than property. In one respect, this is true. These agreements were understood to operate on this nation-to-nation basis, and in many cases still are. Considered from the standpoint of high constitutional theory, the treaty system governing Indigenous-Canadian relations has been regarded as a model of cooperation and consent.[85] Viewed from the vantage of political economy, however, the Canadian and U.S. models converge in important ways.

Colonial administrators in "British North America" have long understood that the agreements between sovereigns would be practically meaningless if they were not able to move large numbers of settlers into disputed regions so as to practically displace Indigenous peoples' presence and

forestall U.S. annexation. For this, they needed more than treaties between sovereigns; they needed property. Property served as both a legal mechanism to anchor Crown title materially and an economic incentive to motivate (re)settlement. Thus, although "the Canadas" retained a distinctive legal and political system, it was not long before administrators there realized that grafting this onto an American-style system of landed property ownership would be vital to maintaining and expanding British North America.[86]

This largely took the form of transitioning from a feudal and seigneurial "land grant" system to a market system of direct purchase and sale. An early moment in this transition arose in the late 1830s. In 1838 the Whig politician and eventually governor general and high commissioner of British North America, John Lambton, 1st Earl of Durham, was sent to the Canadian colonies to investigate the 1837–38 rebellions there. Accompanied by Edward Gibbon Wakefield and Charles Buller, the trio eventually composed a *Report on the Affairs of British North America*, commonly known as *Lord Durham's Report.* Much of the report contained recommendations for changing the governance structure of the Canadas, and it is generally credited with ushering in "responsible government" through the devolution of powers to local, elected legislatures. What concerns us here, however, are the sections of the *Report* dealing with land tenure. On this front, Lord Durham observed:

> The system of the United States appears to combine all the chief requisites of the greatest efficiency. It is uniform throughout the vast federation; it is unchangeable save by Congress, and has never been materially altered; it renders the acquisition of new land easy, and yet, by means of price, restricts appropriation to the actual wants of the settler; it is so simple as to be readily understood; it provides for accurate surveys and against needless delays; it gives an instant and secure title; and it admits of no favouritism, but distributes the public land amongst all classes and persons upon precisely equal terms. That system has promoted an amount of immigration and settlement of which the history of the world affords no other example.[87]

Accordingly, the report recommended transitioning the Canadian land appropriation and distribution system to mimic that of the United States. Since the landed gentry had a greater hold on the Canadas than was the case in the more republican-oriented nation to the south, this took some time. However, over the next decades, the public lands system was radi-

cally transformed. By 1872 the new government of Canada formalized this in the Dominion Lands Act, which was extensively copied from the U.S. Homestead Act of 1862.[88] From that point on, the Canadian landed property system began to substantially converge with that of the United States.

One major irony of this transition was that, although the model for a homesteading market in land came from the United States, colonial administrators in British North America (later Canada) were wary of adopting it for fear of being overtaken by waves of American citizens moving north. In other words, they recognized that de jure changes to the legal system of land acquisition and distribution could potentially lead to their de facto annexation by the United States.[89] British colonial administrators knew this well because it was precisely what they were attempting to do vis-à-vis Indigenous peoples. Just as had occurred south of the (newly formed) border, landed property incentivized the mass movement of Euro-American settlers and, also like the U.S. case, the demographic shift had a corresponding effect on legal interpretation. As the "treaty rights" of Indigenous peoples increasingly came into conflict with the public and private law of Anglo settlers, they were incrementally hollowed out and subordinated to settler interests.[90] In short, dispossession did not proceed through macro assertions of sovereignty but through microlevel practices that worked to dismantle one infrastructure of life and replace it with another.[91] Beneath and beyond the lofty agreements encoded in the treaties, Canadian administrators worked to destroy the economic foundation of Indigenous societies, using starvation to drive them into submission.[92] It was also at precisely this time that legislation codified the legal-racial category of "Indian," which included property restrictions for those unwilling to adopt European ways or unfit for full enfranchisement.[93] Together, these measures produced several waves of resistance, including the Red River Rebellion in 1869–70 and Northwest Rebellion in 1885 by Métis, Cree, and Assiniboine peoples. These resistance movements were defeated by Canadian military and police forces and—again following the U.S. model established in the Dakota Wars—led to the largest public mass execution in Canadian history: the Battleford hangings.[94]

This hybrid public/private form of dispossession was given full judicial backing in the Canadas in *St. Catharines Milling and Lumber Co. v. R* (1888). In that case, the majority (explicitly citing Vattel, Montesquieu, and Adam Smith) held that Indian title should be understood as "mere occupancy for the purposes of hunting." It could not be taken in the sense of full

tenure, for the Indigenous peoples "have no idea of a title to the soil itself. It is over-run by them rather than inhabited." In a succinct articulation of the "negative" logic of Indigenous proprietary interests, the court concluded that aboriginal title was "a right not to be transferred but extinguished."[95] The court clearly ascribed to "Indians" a certain right that could only be actualized through alienation. Even the dissenting opinion did not dispute the underlying negative nature of aboriginal title. Justice J. A. Patterson objected to the majority, writing that Indigenous peoples should be "admitted to be the rightful occupants of the soil, with a legal as well as a just claim to retain possession of it, and to use it according to their own discretion." He even contended that this constituted a form of sovereignty "in a certain sense." When pressed to elaborate upon this "certain sense," Patterson clarified, however, that he meant only that Indigenous peoples "might sell or transfer [the land] to the sovereign who discovered it." They were still rightfully "denied authority to dispose of it to any other persons, and, until such a sale or transfer, they were generally permitted to occupy it as sovereigns de facto."[96] This decision remained the principle legal decision on aboriginal title in Canada until the 1970s.

The convergence of U.S. and British modes of dispossession was not restricted to North America. Rather, as John Weaver points out, as the colonies turned from land grants to land sales, distinctions between British and American settler colonies eventually "consisted principally of instrumental details; no longer did they express a fundamental divergence in convictions about land, social order, and power."[97]

The case of Aotearoa/New Zealand illustrates this point all the more.[98] Although Europeans had had knowledge of the Aotearoa islands since the seventeenth century, concerted efforts at colonization did not begin until the early nineteenth century. British colonists were initially impressed with Māori levels of sociocultural development, often contrasting them favorably with the Australian Aborigines, whom they held in lower regard. Of particular importance was the widespread practice of settled agriculture among the Māori, which the British took as a sign of civilizational development. Consequently, British colonial administrators generally accepted that the Māori held proprietary rights to the land and that Aotearoa was not, in any meaningful sense, vacant or unclaimed land. As Ernst Dieffenback reported in 1843: "Every inch of land in New Zealand has its proprietor."[99] The result of this recognition was that the British colo-

nial government there expanded its territory primarily by acquiring land through purchase—acquisition by agreement, not by "occupation alone."

Within this general framework, two serious obstacles remained. First, as historian Stuart Banner explains, although the British generally recognized that the Māori had *some* preexisting system of property, the radical difference of that system continued to elude and frustrate them. The Māori did not tend to allocate property rights to land through a geospatial "grid" system, as was common in the Anglophone world. A particular Māori person could not "own" a discrete and distinct zone of space, over which they could exercise exclusive control. Instead, property rights were traditionally allocated on a functional basis. Individuals—or, as was more common, families—could claim a proprietary interest to a certain kind of activity within a circumscribed context, for example, a right to fish from *this* stream, or collect fruit from *that* tree, at this time of year, and so on. Since proprietary interests were functional in this way, they overlapped and coexisted in the same geographic space. Moreover, since they were typically apportioned based on familial lineages, recitation of genealogy was more important to the reconstruction of one's property rights than British geospatial techniques of enclosure, fencing, and mapping. British colonists of the period frequently expressed frustration at their inability to grasp the myriad interlay of proprietary claims within a single space and, in particular, the difficulty in bundling them together so as to acquire total control over all objects and activities within a single zone of space (as was their own custom). As E. G. Wakefield complained to a committee of the House of Commons: "The right of individual property has never existed in New Zealand."[100]

The second problem was determining the extent of Māori territorial claims. Although many British colonial administrators were willing to concede that the Māori possessed proprietary interests in the land, which could not be unilaterally revoked without some cause, they disagreed over whether those interests extended to all of New Zealand or only to those parts that the Māori were physically occupying and "improving" at the time of contact with the Crown. Even the 1840 Treaty of Waitangi, meant to clarify such matters, left considerable ambiguity on this point. For while it did confirm that the Māori were to enjoy "full exclusive and undisturbed possession" of their lands, it did not specify *which* lands fell under that designation. By the late 1840s, the general consensus among British colonial elites was that the Māori could only lay claim to truly "possess" lands they had enclosed and cultivated in good Lockean fashion. As Earl Grey, the

new secretary of state for the colonies, put it in 1846, the Māori had legitimate claims "to that portion of the soil, which they really occupied," that is, where they "practised to a certain extent a rude sort of agriculture." This, he was clear, was very limited: "The savage inhabitants of New Zealand had themselves no right of property in land which they did not occupy."[101] In the end, then, the colonial government did recognize some Māori rights to land but only by a narrow, British standard.[102]

After the 1840s, the strategy switched to affirming Māori rights to land so as to secure the mechanism of transfer by direct purchase. By 1865 this included direct purchase from individuals; it no longer required the collective assent of the tribe (despite the fact that, by then, the British had grasped that Māori property rights were not individuated in such a way that a particular individual could sell off a geographic space by him- or herself). A confusing mess of purchases resulted, which generated nearly endless appeals. Of the 9.3 million acres of land originally submitted to review by dispute tribunals, 8.8 million acres were deemed to have been transferred improperly.[103]

In response to this confusion, the Crown began to assert its right of preemption more aggressively. It effectively imposed a monopoly over sales, prohibiting settlers from engaging in private purchases directly from the Māori. This reaped enormous financial benefits for the Crown, which made huge profits by serving as the go-between in settler-Maori land sales of the 1840s and 1850s. This also meant, however, that settlers were eager to circumvent the system and buy more cheaply directly from Māori without colonial intervention (and without taxation on sales). At the same time, the Crown worked hard to prevent the Māori from forming a single organization that could control and regulate sales from their end. British colonial officials were highly adept at playing one tribe against another, a policy that often included the selling of weapons to enemy groups.

The Māori recognized that the British monopoly over the point of sale was to their great disadvantage and that, if they could coordinate a similar monopoly, they might be able to slow the land appropriation process and exercise more effective control over it. To this end, different Māori tribal groups began to converge and coordinate such that, by the late 1850s, they were able to orchestrate an effective moratorium on land sales in the North Island. In direct response to this, the British changed tactics in two important ways. First, they altered the market for land. After 1865, colonial authorities began to impose high tariffs on land transactions. Māori sellers were expected to pay these indirect costs, which severely undercut their

profits and bargaining position. By contrast, the government artificially subsidized the process on the buyers' end, effectively preventing the Māori from passing on new costs to settlers. The second tactic was borrowed from a very old imperial playbook. British colonial officials sold muskets to favored Māori tribes, while imposing a moratorium on sales to those who resisted the new market measures. The resulting military asymmetries generated intense intra-Māori rivalry and, eventually, war. To some degree this was a continuation of an older strategy. Between 1807 and 1845, an estimated three thousand battles had already been fought between various Māori groups in the so-called Musket Wars. This intensified again in the 1860s, however, when the British focused on breaking up efforts by Māori leaders to halt land sales through the "King movement." When full-scale war finally broke out, one Māori commentator, Teni te Kopara, summed up "the cause and the evil" in one word: "land."[104]

The overall effect of this twin strategy was devastating for the Māori, who lost control over the vast majority of territory, with little monetary benefit to show for it.[105] British colonial officials could boast on two fronts. They had acquired almost the entirety of New Zealand and had done so not through force and conquest but through contract and purchase. If the Māori were resentful or regretful, this was interpreted as a symptom of their own failure to transition to modern economic realities. As Attorney General Robert Stout explained, Māori dispossession was due to the fact that "the Natives cannot equal the Europeans in buying, or selling, or in other things. They have not gone through that long process of evolution which the white race has gone through."[106]

In less than one hundred years, British colonizers had managed simultaneously to convert the underlying property regime of Aotearoa and transfer ownership of it. As Banner argues, if they were able to do so, it was a function of two attributes the British possessed that the Māori lacked. First, the British were able to effectively organize themselves as a single actor within the emerging land market, whereas the Māori were splintered into several smaller units. This generated a structural asymmetry in the bargaining relationship, such that transfer was, in the long run, unidirectional. This would appear to be an attribute of the market system itself. However, it was ultimately generated by a second, extra-economic attribute. As Banner points out: "The market looked the way it did because the British were powerful enough to design it and to rebuff Maori efforts to impose a different structure. That power rested on the military and technological superiority that allowed the European states to colonize much of the world

rather than vice versa. The British had the muscle to select exactly which property rights they would enforce and how they would be enforced."[107] As a result, although the dispossession process in New Zealand operated primary through a market mechanism, it was no less a function of coercive force than the more openly-declared wars and thefts that characterized the Australian or U.S. cases. In effect, the British constructed a set of legal, political, and economic institutions in which the Māori literally could not refuse to alienate their rights. Consent was legible only as assent to this system of self-extinguishment.

The above analysis provides specific, concrete examples of how the emergence of a system of landed property in the United States, Canada, and New Zealand came to serve as a tool of dispossession in those locales. These examples are, however, neither exhaustive in detail nor comprehensive in scope. Much more could be said about each case, and the cases could be expanded to include (at least) Australia or South Africa. What I have provided is, however, sufficient for the immediate aims of my argument. For we have established two important claims. First, one can now readily observe that, despite the internally complex and heterodox field of Anglo settler legal and political thought, a relatively uniform effect is nevertheless observable with regard to the impact these processes had on Indigenous peoples. While the United States, Canada, and New Zealand have very different formal modes of authorizing and anchoring their legal claims to territory, the actual situation on the ground as experienced by Indigenous peoples in these different locales reveals considerable overlap. This matters because it offers an important rejoinder to the concern that anticolonial critique imposes a false uniformity and coherence upon Western legal and political thought, and "in so doing slips into precisely the kind of rationalist universalism that it decries."[108] In this case, the problem lays not in the uniformity of de jure assertions but in the convergent de facto materializations. This cannot be understood without taking into account the political-economic processes that actualize settler colonial legal and political claims, nor without reorienting the vantage point one brings to bear upon the whole and including Indigenous perspectives (points that are unpacked in greater detail in chapter 3).

Moreover, we are in a better position now to see why there are, in fact, two contexts and two conceptual lineages behind the language of dispossession: one European and one Anglo-colonial. In the first, dispossession

operates as a conceptual tool in describing and critiquing the transition from feudalism to capitalism. In the latter, it functions to analyze how the expansion of Anglo-European systems of land ownership worked as a tool of "legalized theft" in the apprehension of Indigenous territory. Through a variety of these methods and techniques, over the course of the nineteenth century alone, Anglo settler peoples managed to acquire an estimated 9.89 million square miles of land, that is, approximately 6 percent of the total land on the surface of Earth in about one hundred years: the single largest and most significant land grab in human history.[109] An additional complication remains, however. These are not *parallel* stories that run in isolation from one another but rather intertwined and practically co-constituting. What remains then is to think them in tandem, which is the aim of the next chapter.

TWO

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Marx, after the Feast

> Man's reflection on the forms of social life and consequently, also, his scientific analysis of these forms, takes a course directly opposite to that of their actual historical development. He begins, *post festum*, with the results of the process of development ready to hand before him. The characters . . . have already acquired the stability of natural self-understood forms of social life, before man seeks to decipher not their historical character (for in his eyes they are immutable) but their meaning.
>
> —KARL MARX, *Capital: Volume 1*

In his 1944 masterpiece, *The Great Transformation*, Karl Polanyi analyzed the role that the "commercialization of the soil" played in the emergence of modern capitalism. As he rightly noted, this required a distinct and troubling transformation in human relations to the earth: "What we call land is an element of nature inextricably interwoven with man's institutions. To isolate it and form a market for it was perhaps the weirdest of all the undertakings of our ancestors."[1] In the previous chapter, I sought to demonstrate that the process Polanyi identified gave rise to a new conceptual vocabulary, one in which a very old terminology of dispossession, expro-

priation, and eminent domain was put to new, critical purposes. Debates surrounding the transition from feudalism to capitalism in Western Europe provide therefore the first context in which the political radicalization of dispossession took place. As we saw, however, there is a second lineage of dispossession at play. As Anglo settler societies expanded and consolidated their hold on Indigenous lands beyond Europe, dispossession also came to operate as a tool of critical-theoretical analysis in relation to colonialism and its attending forces of displacement and domination.

Although these two lineages of dispossession are analytically distinct, they have always also been practically intertwined. It is therefore necessary to consider how we might compose a relation between the two. This task is complicated by the fact that already existing analysis of these processes has tended to take the second field as merely an application or extension of the first. For instance, although Polanyi refers to the "field of modern colonization" as the site where the "true significance" of the commercialization of the soil "becomes manifest," nowhere does he pause to reflect on the considerable challenges that attend transposing from one context to another.[2] Likewise, when English historian E. P. Thompson sought to make sense of the great "enclosures of the commons" in early modern Europe, he made similar parenthetic reference to the colonialism without appreciating the distinctiveness of the latter terrain.[3] One might also point to Carl Schmitt's influential *Nomos of the Earth*, which presents land grabbing (*Landnahme*) as constitutive to the emergence of the modern global order but treats the non-European world as merely a blank sheet on which European modes of territorial organization stamp themselves.[4] In each of these highly influential contributions to the study of land as a unit of political and legal theory, the colonial world is presented as a field of application. Accordingly, the conceptual vocabulary that derives from their respective studies (commercialization, enclosures, and land grabs) is developed initially to name some feature of intra-European historical development. The colonial world is thus treated as an *example* to which the original concepts apply rather than a *context* out of which a proximate yet distinct vocabulary may arise.

Rather than follow this model, I have argued that we ought to consider the two lineages of dispossession as analytically distinct yet practically intertwined. If that is a minimally plausible rendering, then it remains to clarify how one might compose the relation between the two in such a way as to retain their distinctive characteristics while nevertheless highlighting their connections. In my view, one invaluable resource for doing just this is the dialectical tradition of critical theory and, in particular, Marx and

Marxism. This does not mean that we can simply adopt critical theory's framework of analysis wholesale; to echo Frantz Fanon, it should always be "slightly stretched."[5]

A turn to this tradition of analysis is partially motivated by the fact that dialectics is so commonly concerned with just such a relation of connection/distinction. This chapter takes up this task by considering various relations of connection/distinction that are of direct relevance to the substantive concerns of this book, including the relation between the general law of accumulation and primitive accumulation (sections I and II), exploitation and expropriation (sections II and III), and labor and land (section IV). Beyond these substantive contributions, however, dialectical thinking is useful here for its methodological concern with recursivity.

How we relate distinct historical processes such as intra- and extra-European forms of dispossession is partially a function of which historical contexts we take to be their paradigmatic or "classic" cases and, by implication, which others we take to be derivative or secondary. This prioritization is, in turn, a function of the historical efficacy of these same processes in generating the contemporary horizon of meaning. Thus, our contemporary conceptual vocabulary is indebted to the very processes it is meant to describe and critique. There is, therefore, another level on which the theme of recursivity operates. Not unlike Hegel before him, Marx argued that critical theory is always recursive in this fashion. As the epigraph to this chapter highlights, Marx was alive to the fact that, since forms of social life and the characters who populate them are products of the very historical processes they seek to apprehend in thought, critical inquiry appears to arrive *post festum*—after the feast—running counter to the actual course of historical development. One aim of this chapter is to explore this theme more fully, but now at a higher level of generality. Here, I consider the general implications for thinking through recursivity, not only between theft and property, or law and illegality, but also more generally between historical processes and the conceptual categories used to describe and critique them. The vehicle for doing so shall be to fold the question back upon Marx and Marxism itself, suggesting that this intellectual and political tradition must be read at once as an effect of dispossession and tool in its critical apprehension.

The chapter tackles this interrelated set of problems through an explication of the category of "primitive accumulation" in Marx and Marxist thought more generally. The chapter unfolds as follows. Section I reconstructs Marx's original theory of primitive accumulation and the role that

the category of dispossession played therein. In section II, I turn to more contemporary "revisionist" accounts of Marx's original theory, many of which seek to correct his supposedly Eurocentric bias by extending the category to include a range of non-European (colonial) contexts. I critique this move, arguing that disaggregating and reformulating the idea of primitive accumulation is more useful than simply extending it to a new field. Sections III and IV undertake this work first by freeing the concept of dispossession from its historically subordinated role within the broader theory of primitive accumulation, restoring it to a category of critical theory in its own right, and second by considering how the category of land is subsequently rethought from this new vantage.

I

Within the Marxian tradition, the concept of dispossession has often been subordinated to other categories of analysis. One important task in the conceptual renovation of the concept will be therefore to situate it in relation to these other key concepts. I begin here with a close examination of *Capital: Volume 1* (1867), particularly the chapters on so-called primitive accumulation, for, although Marx employs the terms *Expropriation* and *Enteignung* in some of his earlier, more journalistic writings, his most extended and systematic analysis is found in the concluding sections of *Capital*.[6] To understand the impetus and underlying motivation behind Marx's account of primitive accumulation, we first need to take an additional step back and consider another proximate term of critical theory: exploitation.

A relationship of exploitation is, in part, an asymmetrical relationship of governance in which subordinate partners have little effective control over determining the conditions of the relation and thus over the conditions of their own lives. It is therefore a relationship of power. But it is also the *employ* of this hierarchical relationship for the compulsory transfer of benefit from the subordinate partner to the agent or agents in a position of superiority. Exploitation mobilizes the creative-productive powers of subordinates for the well-being and improvement of governing parties. So it is not only a relationship of power: it is also a specific mobilization of that relationship for the purposes of what can be thought of as a kind of systematic, coercive transfer of benefit, effectively a form of theft.[7]

There have been all manner of exploitative relationships in history, including the paradigmatic examples of the relationship between master and

slave in the world of classical antiquity, or the feudal relationship between lord and vassal. According to Marx, however, there are (at least) two features that make the exploitative relationship characteristic of capitalism qualitatively unique.[8]

First, under capitalism, workers are nominally free. In a proper free market society, no worker is overtly compelled to contract herself into any particular employment relationship, nor indeed to enter into employment at all. Workers contend with one another in a free market to fix a competitive price to their labor, but no one dictates directly that any particular worker must accept any particular position or condition of employment. Workers under capitalism are therefore governed through a peculiar kind of abstract freedom, namely the freedom to choose within a range of exploitative relationships, even while they cannot reject the background structuring condition of exploitation as such. This is why it is consistent with a range of liberal political rights. In *Capital*, Marx repeatedly calls the modern proletariat *vogelfrei*, denoting this peculiar condition that combines a form of freedom with extreme vulnerability.[9]

Second, capitalism can be distinguished from previous exploitative relations by the specific transfer of benefit it engenders. Workers labor to create all manner of commodity products, and they are separated from these items by the way in which production is organized under modern capitalism. The division of labor and the highly decentralized and mediated nature of production effectively operate to alienate workers from the products of their labor. Direct alienation from the material objects of labor is not, however, itself distinctive to capitalism. The classical slave or feudal serf also labored under conditions not of their making to produce items from which they were alienated. The distinctiveness of capitalism lies in the fact that workers do not merely produce commodity objects. In fashioning objects under these specific working conditions, they also produce and are alienated from *surplus value* in a highly abstract form (i.e., money). Money, as the medium of their exploitation, is qualitatively distinct because it serves as the representation of surplus value. This permits the partner in the position of control (the owners of the means of production) to reinvest surplus value itself, allowing for its *self-valorization.* Exploitation, combined with the self-valorization of surplus value, is the basis of true capital and is expressed by Marx as the *general law of capital accumulation*.[10]

While the majority of Marx's writings are devoted to explicating these very broad points, *Capital* adopts a unique method for doing so, namely, the critique of political economy. Marx essentially adopts the highly idealized

picture of capitalism handed down by the liberal economic theories that had developed by his time to explain the creation of wealth in this new form of social organization. So we find in *Capital* Marx periodically taking on board such abstractions as a frictionless world of commodity circulation, or a closed national monetary system without foreign intervention, or an ostensibly "free" market in labor. The point of this method is clear: if Marx can demonstrate that capitalism requires systemic exploitation even under these highly idealized circumstances, and that this exploitation produces internal contradictions and crises that capitalism cannot resolve using resources only internal to it, then he will have revealed capitalism to be intrinsically flawed. This would foreclose the common rejoinder that one hears up to the present, that is, that various economic crises are merely the result of an imperfectly realized capitalism, the solution to which is a purer realization of the ideal.

So the first and most important objection Marx lodges against traditional bourgeois political economy is that it fails to properly grasp the systematically exploitative nature of the capital relation and, as a result, cannot properly grasp the source of capitalism's contradictions and tendency toward crisis.[11] There is, however, a secondary objection to the main body of political economy. Marx also argues that traditional political economy cannot account for the *origins* of the capital relation. If capitalism can be characterized by a form of social organization in which one class of people "freely" contracts its labor power out to another class, then it will be important to liberal political economists that the background conditions that enable this "free" exchange be themselves explainable and defensible. Liberal thinkers typically construe this background story as the general emancipation of the lower classes from the bonds of feudalism. People are thought to have a "natural" inclination for self-determination, expressed primarily in the desire to produce, barter, and trade, which was stifled and distorted by the feudal system of command and obedience. The destruction of feudalism was the emancipation of this latent, natural *homo economicus*.

To this, Marx lodges a powerful objection in two parts: the traditional account is (1) a form of circular reasoning that (2) presents an empirically inaccurate portrait of the historical development of the West. Liberal political economy essentially projects backward into the feudal era a latent but stifled proto-capitalist agent. For Marx, however, this amounts to circular reasoning because the kind of self-interested, contractual agency projected backward onto the precapitalist world in fact presupposes the very social context (i.e., a market society) it is meant to explain. Retrospectively

projecting a kind of latent capitalist laborer who pursues the sale of her own labor on a free market as a means of explaining the dissolution of feudalism is clearly inadequate since it presumes, rather than explains, a context of action in which such an agent would exist and behave in this manner. So while traditional political economy can make clear sense of the processes by which some people sell their labor power under conditions of exploitation while others extract the surplus value of this laboring activity in the form of capital, reinvest it, and profit from this cycle, it cannot explain why some people are in the former category while others are in the latter. Without a true explanation, we are forced to make recourse to a crude mythology of a humanity divided along moral lines: that is, the original class division is a function of the "diligent, intelligent, and above all frugal élite" winning out over the "lazy rascals" who waste their time away in "riotous living" (*C*, 873). In lieu of a true analysis of these initial conditions, then, the traditional political economists resort to mythology: their historical narrative "plays approximately the same role in political economy as original sin does in theology" (*C*, 873). For the political economists, it suits their theological telling of the beginnings of capitalism in "original sin" to construe the coexistence of capital and wage labor as the product of a "social contract of a quite original kind" (*C*, 933). The notion of an "original contract" as a metaphorical device to represent the beginnings of capital construes the differentiation of classes as the result of a *moment of decision* in which "the mass of mankind *expropriates itself* [*expropriirte sich selbst*] in honour of the 'accumulation of capital'" (*C*, 934).[12] Bourgeois thinkers can then employ this morality tale of self-dispossession as a device to import tacit consent onto their own aims, in other words, the restructuring and subsequent naturalization of the European world as a "market society" that has emancipated labor from its premodern, feudal bonds.

Marx clearly thinks that this "self-dispossession" reading of the origins of capitalism is historically inaccurate. Therefore, in the eighth and concluding section of *Capital*, he drops the immanent critique of political economy to provide his own empirical-descriptive account of the actual historical emergence of capitalism. In this moment, the general methodology of *Capital* shifts. The only way out of the above circular reasoning is to posit an agentic intervention that is not itself the *product* of normal market relations as the classical political economists envision them but is instead a *precondition* for them. This amounts then to a necessary breach of the general method of conceiving of the capital relation as a totality, since it requires bringing in explanatory devices not contained within the ideal,

closed system envisioned previously. These other explanatory features are not contained with the *general law of capitalist accumulation* but are instead what Marx terms *primitive accumulation*. Reference to primitive accumulation as the actual history of capitalism's originary formulation breaks the circular logic of traditional political economy's idealism, thus completing the critique undertaken in the bulk of *Capital*: "The whole movement . . . seems to turn around in a never-ending circle, which we can only get out of by assuming a primitive accumulation . . . which precedes the capitalist accumulation; an accumulation which is not the result of the capitalist mode of production but its point of departure" (*C*, 873). In the first instance, then, primitive accumulation is logically entailed by the general law, although it cannot be given a complete account from that standpoint alone. An account of primitive accumulation is required by the general law because it is only logical for self-interested agents to contract their labor out to another class of people in exchange for a percentage of the total value produced if those same laborers do not have direct access to the means of production itself (which would enable them to reabsorb all the value produced by their labor): the "capital-relation presupposes a complete separation between the workers and the ownership of the conditions for the realization of their labour" (*C*, 874). So the kind of sociality envisioned (a market society) presupposes the separation of producers from the means of production but cannot itself explain how or why this would occur.

More ambitiously, Marx also provides his own empirical-descriptive account of primitive accumulation. Although he does not offer a general systemic overview, following the work done by numerous subsequent commentators (especially Rosa Luxemburg's influential account), we can identify four component parts to his story. They are (1) dispossession, (2) proletarianization, (3) market formation, and (4) the separation of agriculture from urban industry.[13] It is my sense that Marx himself did not clearly separate out these distinct elements because he largely saw them comprising a general package: they hung together as parts of a composite whole. A quick gloss on the tale told by Marx is perhaps helpful in demonstrating how these four elements relate to one another.

Prior to the rise of capitalism, European feudal societies were held together by a chain of hierarchical relations, at the bottom of which stood serfs and peasants. Communities of peasants were subordinated beneath various feudal lords in a relationship not unlike a modern protection racket; that is, they would pay a portion of the products of their labor (directly in the form of goods such as grain, or indirectly through forced,

statue labor, most famously the *corvée* in France) in exchange for protection from other lords.[14] Although serfs would have to pay these dues to their superiors, they otherwise had relatively direct access to the basic material conditions necessary for the reproduction of themselves and their communities. They could access common lands for the purposes of collecting wood, growing and gathering crops, or hunting. They were what Marx calls by the somewhat ambiguous category "immediate producers" (an issue I return to later). Feudal nobility frequently faced the problem of how to compel these immediate producers to pay tithes, hence the need for various forms of overt, "extra-economic" violence (e.g., harassment by officers of the state, imprisonment, torture, war, etc.). This also caused periodic peasant uprisings and rebellions against nobility who overzealously prosecuted this essentially exploitative tithe relationship.

The long, internally complex process of primitive accumulation changed all of this by first subjecting the feudal commons to various rounds of "enclosures." Lands were partitioned and closed off to peasants who had for hundreds of years enjoyed rights of access and use. This meant that peasants could no longer rely on the commons as the means for the basic reproduction of their communities (i.e., food, shelter, clothing, etc.). In these moments, they were subjected to *dispossession*—that is, they lost their immediate relation to the means of the reproduction of social life (e.g., the common lands).

This expropriation was intimately linked to a second component: *proletarianization*. Without direct access to the common lands that once had sustained their communities, the feudal peasantry found themselves unable to fulfill their obligations to the landed nobility, nor indeed to maintain the material reproduction of their families and communities. The only possession left to the peasant was his own personhood, so peasants contracted themselves into waged employment for the first time, selling their labor directly. They were still producers, but now their production was mediated by way of the wage.

Third, the emergence of a class of people engaged in the selling of their labor produced for the first time a *market*, that is, a competitive system in which laborers would vie with one another to set a price on the abstract unit of labor time. Now spending their days in the service of an employer, and finding themselves without direct access to the commons, these peasants also soon found that they no longer had the time or the means to produce a whole host of subsistence items they once created directly for themselves and their communities. Thus, demand was created for a market

in items such as food, clothing, shelter, and later, as the accumulation of capital permitted, for luxury items as well.

Fourth, the formation of a market in labor and commodities had implications for the *geospatial organization* of populations. The emergent competitive labor pool meant that feudal peasants had to move wherever employment could be found. Hence, dispossession and proletarianization were also directly related to urbanization and the separation of agriculture from industry.[15] In a characteristic dialectical move, Marx views this as a process of separation and recomposition. Agriculture and industry are disembedded from their "primitive" organic combination in the feudal family and village, and are separated only to be reconnected in a new, highly mediated manner, a process that transforms both human labor and the natural world around us.

> The capitalist mode of production completes the disintegration of the primitive familial union which bound agriculture and manufacture together when they were both at an undeveloped and childlike stage. But at the same time it creates the material conditions for a new and higher synthesis, a union of agriculture and industry on the basis of the forms that have developed during the period of their antagonistic isolation. Capitalist production collects the population together in great centres, and causes the urban population to achieve an ever-growing preponderance. This has two results. On the one hand it concentrates the historical motive power of society; on the other hand, it disturbs the metabolic interaction between man and the earth, i.e. it prevents the return to the soil of its constituent elements consumed by man in the form of food and clothing; hence it hinders the operation of the eternal natural condition for the lasting fertility of the soil. . . . Capitalist production, therefore, only develops the techniques and the degree of combination of the social process of production by simultaneously undermining the original sources of all wealth—the soil and the worker. (*C*, 638)

Finally, Marx emphasizes time and time again that the definitive characteristic of this four-fold process of primitive accumulation was its violence. Contrary to the idyllic tales of traditional political economy, Marx's narrative is a horror story. In actual historical fact, capitalism does not emerge from the struggle of the masses to achieve the honor of contracting themselves into the services of their new employers. Rather, it is born of a protracted battle in which artificial, "extra-economic" state violence was employed to separate immediate producers forcibly from their relatively

unmediated access to the primary means of production (i.e., common lands) so that they might be compelled to sell their labor under deeply asymmetrical conditions, effectively contracting into their own exploitation. As Marx famously puts it, the history of primitive accumulation is written "in letters of blood and fire" (*C*, 875); "capital comes dripping from head to toe, from every pore, with blood and dirt" (*C*, 925–26). Peasants, serfs, and all manner of "immediate producer" actively resisted this forced construction of a market society," but they lost the longer war. Marx emphasizes this point because he wishes to make clear his objection to the traditional narrative, which paints this transition as though it were the natural result of agitation by self-interested proto-economic agents.

II

For nearly 150 years now, critical theorists of various stripes have attempted to explicate, correct, and complement Marx's account of primitive accumulation. This is perhaps especially true of Marxism in the English-speaking world. Whereas French and German interpretative traditions have tended to focus more on the formal, conceptual categories of *Capital*, Anglophone debates have attended more closely to Marx's historical-descriptive account, perhaps due to the privileged role that England plays in the historical drama staging the bourgeois revolt against feudalism, the early emergence of capitalist relations, and the subsequent industrial revolution. The enclosures of the English commons and transformation of the rural peasantry into an industrial work force serves, after all, as the primary empirical referent from which Marx derives his conceptual tools. From Paul Sweezy and Maurice Dobb in the 1950s, to Christopher Hill, C. B. Macpherson, and E. P. Thompson in the 1960s, to Perry Anderson and Robert Brenner in the 1970s, these "transition debates" have focused on the accuracy and adequacy of Marx's history of early modern England.[16] Here, however, let me focus more on the general conceptual framework, specifically, the relationship between primitive accumulation and the general law of accumulation, and on the nature of the violence envisioned within each.

A major point of contention with regard to the theory of primitive accumulation has been the sense given in *Capital* that primitive accumulation is best thought of as a *historical stage* eventually supplanted by the general law of capitalist accumulation—what we can call the "stadial interpretation." The primary reason why this has been contentious is that it implies

a corresponding stadial succession in the *forms of violence* engendered by capitalism.

There are many sections in *Capital* in which Marx gives one the impression that we ought to interpret primitive accumulation as a historical stage, overtaken and superseded by the true, mature, general law of accumulation once a full and complete capitalist system is in place. As mentioned above, Marx's primary example of primitive accumulation is the series of "enclosures of the commons" that took place in England and Scotland, primarily in the seventeenth century. While acknowledging some variation in the historical experience of different countries and regions, Marx does designate this English version the "classic form" (*C*, 876) and certainly suggests that, by his own time, this process had *ended*. He expressly relegates it to the "pre-history of capital" (*C*, 928).

In a certain sense, Marx's own argument centrally depends on the interpretation of primitive accumulation as a historically completed stage. His argument requires this because of the role it plays in the account of the general law of accumulation under the fully developed form of the capital relation. As discussed in the first section of this chapter, Marx argues that the proper functioning of the capital relation is predicated upon systematic exploitation. Exploitation of the sort described above is the normal state of affairs; it is intrinsic to how capitalism produces wealth rather than a side effect or a distortion. But if it is so systematic and widespread, then why does it require such elaborate unmasking by Marx in the first place? Why can't the people who labor under this system of exploitation recognize it as such?

To explain this obfuscation, one needs an account of something like ideology or hegemony. Marx has argued that one of the distinctive features of capitalism as a system of exploitation is that it operates through the nominal freedom of the exploited. Laborers "freely" contract into their own exploitation, experiencing this as an actualization of choice and free will because they lack an analysis of how this context of choice was established in the first place or a vision of how it might be replaced by another. Capitalism is "naturalized" when one accepts only the range of possibilities within immediate view without recognizing the background structuring conditions of this range as the product of an arbitrary and historically contingent set of circumstances. But for this ideological normalization story to be plausible, Marx must assert not only that mature capitalism does not require overt "extra-economic" violence but also that the period when such violence was required has faded from immediate consciousness. Although

capitalism's prehistory is dripping in blood, once the fundamental capital relation is established, extra-economic force is thought to fade away. It is replaced by the "silent compulsion of economic relations [*der stumme Zwang der ökonomischen Verhältnisse*]," which "sets the seal on the domination of the capitalist over the worker. Direct extra-economic force [*außerökonomishe, unmittelbare Gewalt*] is still of course used, but only in exceptional cases" (*C*, 899). Even the immediate consciousness of the previous period of violence has been largely erased; hence, for instance, Marx's insistence that, by "the nineteenth century, the very memory of the connection between the agricultural labourer and communal property had, of course, vanished" (*C*, 889). This is why the very idea of a primitive accumulation seems to necessitate a stadial interpretation: a stadial account explains our "forgetting" of capitalism's birth in blood and fire.

It is also perhaps clearer now why the stadial interpretation has been so controversial and vexing. Critics have raised objections not only with the historical periodization but also with the very idea that the overt, extra-economic violence required by capitalism is surpassed and transformed into a period of "silent compulsion" through exploitation. Peter Kropotkin, for one, vigorously objected to the "erroneous division between the *primary* accumulation of capital and its present-day formation."[17] For Kropotkin and his anarchist-collectivist movement, the framing of primitive accumulation as a historical epoch was more than a side concern; it spoke to the central question of the relationship between capitalism and the state form itself.[18] Rejecting the "silent compulsion" thesis, Kropotkin argued that capitalism required the use of continuous, unmediated and unmasked violence to maintain its operation. As a result, he also rejected any attempt at working within bourgeois capitalist political systems, favoring direct action and the immediate creation of noncapitalist spaces of work and life (a position that has split anarchists and Marxists from the First International [1864–76] to the present).[19]

In a different way, this was also central to Rosa Luxemburg's work. In her germinal 1913 text, *The Accumulation of Capital*, Luxembourg famously reworked the concept of primitive accumulation into a continuous and constitutive feature of capitalist expansion. In her rendering, primitive accumulation is transposed from Marx's "prehistory" of capital to a central explanatory concept in the apprehension of imperialist expansionism. As she put it then, "The existence and development of capitalism requires an environment of non-capitalist forms of production. . . . Capitalism needs non-capitalist social strata as a market for its surplus value, as a source of

supply for its means of production and as a reservoir of labour power for its wage system. . . . Capitalism must therefore always and everywhere fight a battle of annihilation against every historical form of natural economy that it encounters."[20] So, for Luxemburg, not only does overt, political violence persist; it takes on "two faces." *Within* Europe, "force assumed revolutionary forms in the fight against feudalism," whereas *outside* Europe, this force "assumes the forms of colonial policy."[21] The importance of Luxembourg's innovation, therefore, resides with her ability to draw a variety of distinctive manifestations of political-economic transformation, upheaval, and violence into a single analytic frame—the constitutionally expanding field of imperial capitalism. At least at this general level, this basic insight has endured and found resonances with a wide range of subsequent thinkers.[22]

In more recent times, debates within feminist and postcolonial theory have revived this question. The intertwining of empire, primitive accumulation, and extra-economic violence has, unsurprisingly, played a central role in the emergence of an entire tradition of postcolonial Marxism, particularly in India. Ranajit Guha's landmark *Elementary Aspects of Peasant Insurgency in Colonial India* (1983) set the tone for these debates. As the title of his subsequent work, *Dominance without Hegemony* (1998), makes all the more explicit, Guha and the entire subaltern studies movement took issue with the occlusion of imperial domination in favor of the Western Marxist experience of hegemony. They argued that, contrary to the traditional Marxist (but especially neo-Gramscian) account, the most advanced, "mature" accumulation of capital coexisted alongside and necessarily required the kind of overt state violence Marx had supposedly relegated to its "prehistory." There was no historical transition from extra-economic violence to silent compulsion, only a geographical displacement of the former to the imperial periphery.[23]

In the context of this discussion, one would be remiss in not mentioning the work of Silvia Federici. Federici's *The Caliban and the Witch* deserves a place alongside *The Accumulation of Capital* as a coruscating appropriation of the concept of primitive accumulation. Federici delves into the dense archive of state and capital formation from the thirteenth to the seventeenth century in order to correct for Marx's blindness toward gender as a central axis of social organization and control, demonstrating how violence against women is congenital to capitalism's formulation.[24] Reconstructing the early history of capitalism from the standpoint of women as a social and political class, while always subtended by a racial and imperial horizon, Federici entirely reworks primitive accumulation as a category of analysis.

Her conclusion confirms that of Kropotkin, Luxemburg, Guha, and others, "A return of the most violent aspects of primitive accumulation has accompanied every phase of capitalist globalization, including the present one, demonstrating that the continuous expulsion of farmers from the land, war and plunder on a world scale, and the degradation of women are necessary conditions for the existence of capitalism in all times."[25]

The North American Indigenous (Dene) political theorist Glen Coulthard has also recently engaged in a critical reconstruction of primitive accumulation, expressly designed to shift the focus toward the *colonial relation*. In his work, Coulthard seeks to strip Marx's original formulation of its "persistently Eurocentric feature[s]" by "*contextually shifting* our investigation from an emphasis on the *capital-relation* to the *colonial-relation*."[26] In this contextual shift, Coulthard draws resources from Marx's own writings, noting that after the collapse of the Paris Commune in 1871, Marx began to engage in more serious empirical and historical investigations of a variety of non-Western societies. The so-called ethnographic notebooks, written between 1879 and 1882, are filled with such studies, including lengthy treatment of communal property and land tenure. These writings, when combined with the revisions that Marx made to the 1872–75 French edition of *Capital* and his periodic comments on the Russian *mir*, or communal village form, present us with a significantly altered picture of Marx.[27] Marx searches here for an alternative to the relatively unilinear account of historical development given in his earlier works, suggesting that capitalist development could take a variety of different paths, and at the least implying the possibility of alternative modes of overcoming capitalism and implementing socialist systems of social organization. This rethinking rebounded back upon Marx's own understanding of the theory of primitive accumulation. Perhaps most famously, in an 1877 letter to Nikolay Mikhailovsky, Marx reiterated that "the chapter on primitive accumulation [in *Capital: Volume 1*] does not pretend to do more than trace the path by which, in Western Europe, the capitalist order of economy emerged from the womb of the feudal order of economy." If one wished to undertake a parallel study of similar such processes in Russia or the United States, for example, Marx speculated that one would find them "strikingly analogous." Nevertheless, although we may study "each of these forms of evolution separately and then compar[e] them," Marx cautioned against undo theoretical extrapolation: by this comparative method, "one will never arrive at . . . a general historico-philosophical theory, the supreme virtue of which consists in being supra-historical."[28]

If revisionist accounts of primitive accumulation have slowly gathered steam over the past 150 years, they have exploded in the past decade or so, particularly in the field of critical geography. This explosion has, however, also caused a certain conceptual shattering, throwing forth a range of ambiguously related companion concepts such as "accumulation by displacement," "dispossession by displacement," "accumulation by encroachment," and "accumulation by denial."[29] Perhaps most influentially, David Harvey speaks of "accumulation by dispossession." While offered as a synonym for primitive accumulation, in Harvey's rendering dispossession is essentially a stand-in for *privatization*: "the transfer of productive public assets from the state to private companies," especially as a result of the supposedly overaccumulation of capital in neoliberal times.[30] The category is thus shorn from any connection to the transition debates, or indeed from any particular connection to land.

In the now rather fragmented conceptual field responding to Harvey, three broad approaches appear. The first defines primitive accumulation in terms of the processes by which the "outside" of capital comes to be incorporated within it. It is thus an essentially spatial framework but one that often oscillates between the metaphors of "frontiers" and "enclosures." Whereas the former denotes the outside boundary of capital, and is inescapably tied to colonial imaginaries, the latter invokes more a sense of encirclement and physical (if not also metaphorical) gating, fencing, and partition.[31] A second framework emphasizes "extra-economic means" as the definitive feature of primitive accumulation. For instance, Michael Levein defines "accumulation by dispossession" as "the use of extra-economic coercion to expropriate means of production, subsistence or common social wealth for capital accumulation."[32] As this formulation highlights, the linking of primitive accumulation to "extra-economic means" demands consideration of the politics/economics distinction and (unlike the first framework) does not necessarily pertain to the expansion of capital into new societies and spaces, but it may take place entirely "within" capital's existing sphere of influence. Finally, a third framework emphasizes the *object* of appropriation. This is most evident in the large literature that defines primitive accumulation in terms of "land grabbing."[33] It is this emphasis on land—and its relation to the other elements of primitive accumulation—that I explore further below. For the moment at least, we can say that while the above elements may hang together in some specific formulations (i.e., extra-economic land acquisition on the frontier of capital), they need not do so. Considerable disagreement persists therefore when it comes to

identifying which element is decisive in demarcating primitive accumulation as a distinct category of analysis.

Among the myriad complexities of these debates, two matters stand out most prominently: (1) Is primitive accumulation best thought of as a historical stage of capitalist development or as a distinct modality of its ongoing operation? (2) Does the supposed "silent compulsion" characteristic of capitalist exploitation constitutionally depend on the continual injection of "extra-economic" violence? The first is about the relation between the general law of accumulation and primitive accumulation; the second refers to the forms of violence they imply. From Marx's own later writings, through to Luxemburg, Guha, Federici, and Coulthard, and much of the critical geography framework, this has generally been resolved by shifting the *temporal* framework provided in *Capital* to a *spatial* one: we are no longer operating with a distinction between mature capital and its prehistory but with a distinction between core and periphery, colonizer and the colonized.

On the one hand, it seems intuitively correct to suggest that the extra-economic violence engendered by capitalism has not been superseded historically by the emergence of the supposedly more "mature" features of the general law of accumulation, that is, the silent compulsion of exploitation. Capitalism's entanglement in expansionist, imperial war is too widespread, systematic, and ongoing to be relegated to a prehistory. On the other hand, however, characterization of this dimension of capitalist expansion and reproduction as "primitive accumulation" places considerable strain on the coherence of that term of art. Specifically, such reformulations drive a wedge between the *conceptual-analytic* and *empirical-descriptive* functions of the concept.

Tensions between these two functions are, of course, already latent within Marx's original formulation. Marx sought to provide an empirical-historical description of the actual processes of capital formation in Western Europe from the seventeenth century to his own time in the mid-nineteenth. In this descriptive register, the primary empirical case is that of England. However, this description then goes on to serve a *conceptual-analytic* function as a paradigmatic or "classic form." It thus provides the basis for the general theory or formal model that, while originally rooted in the specific historical experiences of early modern England, exceeds and transcends this particular case. In this second, formal register, other cases can be evaluated as better or worse approximations of the ideal. Since Marx expressly analogizes between the prehistory of European capital

and the non-European, noncapitalist world existing in contemporaneous time with his own theoretical formulations in *Capital* (e.g., the colonial periphery of the mid-nineteenth century), a certain historicist tendency is disclosed, providing fodder to important postcolonial criticisms to emerge subsequently.[34]

Ironically, reformulations of Marx's original thesis along the lines of the work discussed above have tended to compound, rather than resolve, such tensions. By expressly grouping the diversity of extra-economic violence manifest at the peripheries of capitalism under the general heading of primitive accumulation, such work has only exaggerated and expanded the historicist tendency already implicit in *Capital*. After all, if the extra-economic violence of the imperial peripheries is an instantiation of primitive accumulation, then we should expect its empirical content to conform to the "classic case" of seventeenth-century England. This requires a large generalization across space and time, threatening to empty the term of its original content. As political theorist Onur Ulas Ince has pointed out, however, in a drive to expand the descriptive extension of primitive accumulation (what it *covers*), its conceptual intension (what it *means*) has become less precise and clear.[35]

In an effort to avoid a theory of primitive accumulation that smacks too much of the stages of development theses characteristic of Eurocentric nineteenth-century philosophical anthropology, subsequent commentators have elided the fact that at least in one important respect the developments that took place in Western Europe in the seventeenth and eighteenth centuries were in fact qualitatively unique. Specifically, primitive accumulation in Western Europe took place in a global context in which no other capitalist societies already existed. Whatever analogies between capital formation in Europe and non-European societies obtain, this fact attests to a singular event that could never again take place. All other, subsequent experiences with primitive accumulation were dissimilar from Marx's "classic case" in this specific respect (at least). And this had enormous implications for the shape, speed, and character of capitalist development in all other locales, because in all other places, it was structurally affected by already existing capitalism in Western Europe. Put differently, while the original framework attempts to explain the strange alchemy of capital's emergence out of *noncapital*, subsequent focus shifts to the subsumption of noncapital by *already existing* capital. This is why colonial policy of the nineteenth or twentieth century is not analogous to primitive accumulation in seventeenth-century England. The spatial expansion of capital through

empire does not, in fact, represent a return to capitalism's origins so much as a succession of qualitatively unique spatio-temporal waves, simultaneously linking core and periphery.[36]

Consequently, I submit then that primitive accumulation cannot be coherently extended to define a feature or dimension of contemporary capitalism without considerable reconstruction of its conceptual intension. In order to preserve the insight with regard to the persistence of extra-economic violence but avoid the problems of an overly generalized extension of primitive accumulation, what is required is, first, a *disaggregation* of the component elements of primitive accumulation in favor of an analysis that contemplates alternative possible relations between these elements. Marx largely treats the four elements of primitive accumulation as one modular package: he explicates the violence of dispossession as a means of explaining the other elements of proletarianization, market formation, and the separation of agriculture and industry. Subsequent debates have largely taken on this model, treating the four elements as though necessarily interconnected, focusing debate on whether their initial formation (and the overt violence required for their emergence) has been superseded or remains alive today. This leads one to the (mistaken) expectation that all cases of primitive accumulation should express this four-fold structure. Thus, my first postulate here is that, by treating primitive accumulation as a modular package of interrelated processes, the category becomes overdetermined by the specific historical form originally given by Marx.

My second basic postulate is that, rather than adopt a general extension of primitive accumulation, we are better served by reworking the category of Enteignung originally formulated therein. Enteignung—variously translated as "dispossession" or "expropriation"—is a narrower and more precise term of art than primitive accumulation. More to the point, it comes closer to grasping the original intent of the revisionist theories of primitive accumulation: naming a form of violence distinct from the silent compulsion of exploitation. Rather than working with a distinction between general versus primitive accumulation, then, I commend working with a distinction between exploitation and dispossession. By disaggregating primitive accumulation, we allow for the possibility of relating exploitation and dispossession in a variety of ways rather than assuming they hang together in the manner envisioned by Marx's "classic form." We can now return to a more direct explication of the concept of dispossession in *Capital*, with an eye to extricating it from the general theory of primitive accumulation.

III

At the most general level, Marx employs the concept of dispossession to denote the "separation process" (*Scheidungsprozeß*) by which "immediate producers" (*unmittelbare Produzenten*) are detached from direct access to the means of production.[37] Marx's most basic and frequent example of this is the separation of peasant agricultural producers from direct access to publicly held land, or "commons." Through his use of the terms *Expropriation* and *Enteignung*, Marx thereby teaches us something about his views on land, nature, and locality or territorial rootedness (a point we shall return to below). Marx uses a variety of formulations to elaborate upon the idea, but a favorite phrasing is that dispossession entails the "theft of land." *Capital* is replete with words like *Raub* (robbery) and *Diebstahl* (theft) as instantiations of *Expropriation* and *Enteignung.* Marx also occasionally uses these terms more or less interchangeably with *Aneignung*, which translators have frequently rendered as usurpation, although appropriation is probably more helpful, since it retains the direct link to expropriation, proprietary, and indeed property.

While evocative (and thus popular in contemporary debates), the phrase "theft of land" is indeterminate in a variety of ways.[38] Both key words need unpacking. The former term seems to imply a normative basis for the critique (i.e., denoting a kind of offense or violence), while the latter suggests its natural object. But what exactly is meant by *theft* here and in what sense can it pertain to *land*? Is this meant only as a specific example, relevant to seventeenth-century enclosures and/or nineteenth-century colonialism, or is it the necessary and fundamental expression of a general dispossessive logic in capitalist development across time and space? And what of the conjunction joining them? Is the key element theft, with a variable object, or is land the decisive element, subject to various kinds of appropriations? And, perhaps most obviously, how can Marx continue to speak of the "theft of land" without falling prey to the same problems he identified with the anarchist theories of expropriation discussed in chapter 1, namely, the question-begging normative investment in already existing property relations?

Marx does not directly address these questions in *Capital*, in large part because he does not think it necessary for the success of his argument. Although he does provide some key resources for analyzing the distinctiveness of dispossession as a form of violence, Marx is not interested in expropriation for its own sake. Instead, dispossession is analyzed in *Capital*

instrumentally, that is, as a means of explaining other phenomena, especially proletarianization and class formation. This is apparent even in his analysis of the violent expulsion and "clearing process" implied by dispossession. In his account of the transformation of the Scottish highlands, for instance, Marx emphasizes that "the last great process of expropriation of the agricultural population from the soil [*Der letzte große Expropriationsprozeß der Ackerbauer von Grund und Boden*]" is "the so-called 'clearing of estates,' i.e., the sweeping of human beings off them. All the English methods hitherto considered culminated in 'clearing'" (*C*, 889). Citing Robert Somers's *Letters from the Highlands*, Marx even expressly links this clearing process to environmental destruction and colonial expansion: "The clearance and dispersion of the people [*Die Lichtung und Vertreibung des Volks*] is pursued by the proprietors as a settled principle, as an agricultural necessity [*landwirtschaftliche Betriebsnotwendigkeit*], just as trees and brushwood are cleared from the wastes of America or Australia; and the operation goes on in a quiet, business-like way, etc." (*C*, 893).[39] However, Marx proceeds to interpret this process of dispossession as causally linked to the other component elements of primitive accumulation, especially proletarianization: "In the eighteenth century the Gaels were both driven from the land and forbidden to emigrate, with a view to driving them forcibly to Glasgow and other manufacturing towns" (*C*, 890–91). Marx is quite clear that the purpose of this dispossession process is precisely to drive landed peasantry into disciplinary waged-labor relations. Elsewhere, he confirms this:

> Thus were the agricultural folk first forcibly expropriated from the soil, driven from their homes, turned into vagabonds, and then whipped, branded and tortured by grotesquely terroristic laws into accepting the discipline necessary for the system of wage-labour. (*C*, 899)

> The intermittent but constantly renewed *expropriation and expulsion* [*Expropriation und Verjagung*] of the agricultural population supplied the urban industries, as we have seen, with a mass of proletarians. . . . The thinning-out of the independent self-supporting peasants *corresponded directly with the concentration of the industrial proletariat*. (*C*, 908, emphasis added)

In other words, we can see that Marx views the violence of dispossession in light of the other constitutive elements of primitive accumulation, namely, proletarianization, market formation, and urbanization. *Expropriation und Verjagung* emerge as key concepts for him in these moments but only in-

strumentally as the means of explaining proletarianization. The enclosures of the commons and the clearing of the land are undertaken *in order that* a labor market will emerge.

This formulation is, however, vulnerable to the same criticisms Marx lodged against the traditional political economists. Proletarianization cannot be the motivational impetus behind the enclosure of the commons since this would, again, presume the very context it is meant to explain. Marx comes close to committing this error at times because he does not always clearly differentiate between *functional* and *explanatory* accounts.

While the enclosures of the commons may have significant explanatory power when it comes to documenting the formation of an urbanized class of waged laborers, it is an altogether different matter to claim this as its *purpose* or *function*. On Marx's own terms, it cannot be the function of dispossession to generate a proletariat, at least not in the original case. We must qualify with "in the original case" here, because it *is* possible to envision a nontautological functionalist account of dispossession relative to proletarianization *after* the original formation of a capitalist society. From that point on, the demand for new labor may in fact be a significant factor in subsequent enclosures and dispossessions.

To clarify the distinction, consider two archetypal agents of dispossession in *Capital*: the Duchess of Sutherland and E. G. Wakefield. Marx pillories the first for her appropriation of 794,000 acres of land and subsequent expulsion of the Scottish clans who had lived on them "from time immemorial" (*C*, 891). However violent this process of dispossession was, it was not undertaken *in order to* produce a class of vulnerable waged proletariat, even if this was the effect. E. G. Wakefield, however, is an entirely different case. The English colonial advocate did expressly and intentionally work to dispossess both Indigenous peoples and independent agrarian settler-producers *in order to* generate and maintain a pool of vulnerable waged laborers in the colony of New South Wales, and could do so precisely because previous iterations of dispossession had *already* generated a proletariat.[40] Although both processes of dispossession are related to proletarianization *in some way*, they are also importantly different in a manner that alters the overarching conceptualization of primitive accumulation. In the move from Sutherland to Wakefield, we also move from an explanatory account of the dispossession-proletarianization connection to a functionalist one.

My postulate here is that the causal linkage between dispossession and exploitation in Marx's original formulation is underdetermined. It is not the case that that dispossession is always explainable in terms of its function

relative to proletarianization, a matter that is obscured by the modular conception of primitive accumulation in both its original and revisionist forms. It is, however, possible to recast dispossession as a distinct category of violent transformation independent of the processes of proletarianization and market formation.[41]

IV

As we have already seen in the previous chapter, "land" is a complex and mercurial legal construct. It is likewise a surprisingly evasive philosophical concept. Reading Marx's writings on primitive accumulation, dispossession, and expropriation gives us another set of tools for unraveling this nest of issues. In this respect, I consider Marx's most important contributions to be methodological. Generally speaking, when Marx turns to define key concepts, he does so dialectically, meaning that he does not provide an ideal, analytic definition of the term but rather attempts to grasp the multisided processes in which they are embedded. For instance, primitive accumulation is defined in relation to the general law of accumulation, and expropriation in relation to exploitation. This method of conceptual explication can also be usefully extended to consider the very category of "land" that, for Marx, is dialectically intertwined with labor. In other words, rather than define land as wholly outside of human intervention (i.e., as pristine "nature"), or as merely another product of labor, Marx helps us grasp how it can be between these, can be a *medium* of expression. This, in turn, will help clarify the distinctive violence associated with dispossession.

The phrase *Grund und Boden* appears periodically throughout *Capital*, but it is a phrase that stands in need of some unpacking. On the one hand, as we have already seen, terms like *land*, *ground*, *earth*, and *soil* are used in their ordinary-language senses to refer to various material objects in the simple sense. It is in this sense that Marx speaks from time to time of the "theft of land." Land here appears to be little more than another kind of commodity, reworked by capitalism, and subject to the same forces we would expect to find in the struggle over any other resource.[42] In other moments, however, Marx is more careful—expressly working to demonstrate that land is not, in fact, simply another object of production and circulation. In those moments when Marx speaks to the distinctiveness of land, he typically does so in a voice more reminiscent of his earlier, so-called philosophical-anthropological writings. In these passages, the land appears

as a category derived from a classical Hegelian idiom of "man and nature." In short, *Land* is dialectically related to the category of *Labor*. Consider the formal definition of labor from chapter 7 of *Capital*: "Labour is, first of all, a process between man and nature, a process by which man, through his own actions, mediates, regulates and controls the metabolism between himself and nature. He confronts the materials of nature as a force of nature" (*C*, 284). Labor in this precise sense is said to be "an exclusively human characteristic," because "man not only effects a change of form in the materials of nature; he also realizes [*verwirklicht*] his own purpose in those materials" (*C*, 284). This definition is clearly rooted in a Hegelian framework, with its emphasis on the external objectification of the will: "During the labour process, the worker's labour constantly undergoes a transformation, from the form of unrest [*Unruhe*] into that of being [*Sein*], from the form of motion [*Bewegung*] into that of objectivity [*Gegenständlichkeit*]" (*C*, 296). From this general definition, Marx proceeds to disarticulate the labor process into three component parts: (1) purposeful activity, (2) the object on which that work is performed, and (3) the instruments of that work (*C*, 284). We are left then with a labor process composed of *activity*, *object*, and *instrument*.

It is in the context of this discussion of labor that we find a more formal and conceptually precise definition of land. In the formal sense given by *Capital*, land is not merely another product of labor (a commodity) but is rather a special kind of *instrument* or *medium* of labor. (In the tripartite division above, it is number 3, not 2.) Marx writes:

> An instrument of labour is a thing, or a complex of things, which the worker interposes between himself and the object of his labour and which serves as a conductor, directing his activity onto that object. . . . Leaving out of consideration such ready-made means of subsistence as fruits, in gathering which a man's bodily organs alone serve as the instruments of his labour, the object the worker directly takes possession of is not the object of labour but its instrument. Thus nature becomes one of the organs of his activity, which he annexes to his own bodily organs, adding stature to himself in spite of the Bible. *As the earth is his original larder, so too it is his original tool house.* It supplies him, for instance, with stones for throwing, grinding, pressing, cutting, etc. *The earth itself is an instrument of labour*. (*C*, 285, emphasis added)

So, rather than relating land back to other commodities, in this formulation it is clearly seen as a component of the broader category of "nature." It

is part of "the earth itself." In some cases, it seems that the term *land* is being used to designate that element of nature yet to be transformed directly by human laboring activity. In these moments, land is deployed paradoxically as both an *instrument of labor* and as that which stands *outside of labor*. Land is, "economically speaking, all the objects of labour furnished by nature *without human intervention*" (*C*, 758). Such apparent contradictions can only be resolved by grasping them dialectically, that is, by relating them to the more general category of nature. It would take us too far from our specific objectives here to provide a complete explication of the concept of nature in Marx, but it is nevertheless important to note that the status of the land as both inside and outside of the labor process reflects Marx's broader conceptualization of nature as something "outside" of humanity, or at least nonidentical with it (i.e., that which humanity confronts and transforms) and, at the same time, the totality of all that exists (thereby encompassing humanity as well). Marx's innovation was in recasting the moment of encounter with nature from a contest with an unhistorical, homogenous substratum to an already historically mediated element of human practice. Nature is not eternally self-same but is itself the product of previous generations of human praxis. As a result, it has a necessarily temporal and historical character.[43]

Marx's use of the term *land* is therefore clearly intended to link labor and nature. However, it is not synonymous with either of these. For land in its specificity designates a relationship to *place*. The metabolic international of humans and nature is rooted in and mediated through particular locales, and this territorial specificity gives form to a society's labor process. This is reflected in the simple observation that to relocate an entire human community to some other place is to fundamentally and irrevocably transform it (moreover, most people view their homelands as nonfungible, to the point that adequate compensation cannot, even in principle, be given for their irredeemable loss or destruction). So, just as we can affirm the Hegelian-Marxist point that human communities do not interact with nature in a historical vacuum, we must add that neither do they encounter it in a *spatial* one. Land then is best grasped here as an intermediary concept—situated between labor and nature, between activity and object—designating the spatial and territorial specificity of this mediation. Importantly, while this spatiality can be shaped and reworked by human praxis, it is not reducible to that activity. The land mediates laboring activity through a set of spatial relations that are not themselves the product of human will but rather a set of worldly circumstances in which we find ourselves. This is why it

functions as a mediator; it retains something of the natural world. (This is the reason, for instance, that Karl Polanyi insisted land was really only a "fictitious commodity."[44]) While land can clearly be commodified in certain respects (bought, sold, traded, rented, stolen, etc.), it nevertheless must also be grasped in its distinctiveness if we are to understand the nature of dispossession.

In sum, then, Marx makes a number of significant contributions to thinking about dispossession that renders his account superior to theorizing by Rousseau, Paine, Proudhon, or Kropotkin. First, Marx does not frame dispossession in terms of an "originary theft." Rather than thinking of it as a process that generates property (or civil society) *as such*, Marx considers it as part of a historically specific transition from one form of social organization to another. Second, while retaining the sense that dispossession pertains first and foremost to *land*, Marx offers a more sophisticated and elaborated analysis of the term, understood here not as an object that stands wholly outside human social relations but grasped dialectically as a mediating category between "humanity" and "nature" but situated within a multisided composite "form of life." In chapter 3, I argue that Indigenous thinkers have, over the centuries, formulated versions of these two points quite independently and in an even more apt form, in part because the struggles over land have been central, rather than peripheral, to their concerns. Their account is moreover superior because it is not burdened by the third feature of Marx's framework, namely, the generally subordinated role that dispossession plays therein, subsumed as it is beneath categories such as primitive accumulation, class domination, and exploitation. In a highly ironic twist, however, contemporary work that continues to be inspired by Marx has generally *rejected* the first two (valid) contributions and *affirmed* the third (problematic) one.

The "analytic Marxist" framework of G. A. Cohen provides an illustrative case in point. Analysis of his *Self-Ownership, Freedom, and Equality* (1995) functions as useful contrast, both in terms of how one might relate exploitation and expropriation but also more generally in terms of methodological approach (in this case, contrasting dialectical to analytic methods of critical inquiry).

Cohen argues that we have legitimate grounds to critique expropriation because of the way it makes exploitation possible, even likely. Although he recognizes that the unequal distribution of the means of production might

be regarded as unjust on "independent grounds," in Cohen's reading, it is "thought unjust by Marxists chiefly because it forces some to do unpaid labour for others."[45] In this reformulation then, the relation between exploitation and expropriation is explicitly circular. Cohen argues that it can be true both that exploitation is "unjust because it reflects an unjust distribution" *and* that the original "asset distribution is unjust because it generates that unjust extraction."[46] At first glance, this seems confused since both key concepts appear fundamental from the standpoint of the other. But we can relatively easily decode this seemingly tautological formulation by showing that the two poles are fundamental in different senses, namely, in *causal* versus *normative* ways. On Cohen's rendering, exploitation is wrong on fully independent grounds, because the coercive extraction of value is indefensible in and of itself. By contrast, dispossession—defined here as the unequal distribution of access to the means of production—is not normatively wrong in a similarly self-standing manner. Dispossession is only objectionable inasmuch as it enables the kind of coercive transfer characteristic of exploitation. Thus, dispossession is causally but not normatively fundamental. The unequal distribution of access to productive resources in, say, land is not *intrinsically* unjust, at least not in one sense of the word. It is not intrinsically unjust because it is possible to imagine scenarios in which such inequality would diminish, rather than enable, exploitation. However, in order to prevent his thesis from becoming tautological in the wrong way, Cohen must posit *as a matter of fact* that dispossession is exploitation-enabling: "Such a distribution [of unequal access to the means of production] is intrinsically unjust because its injustice resides in its *disposition* to produce a certain effect, a disposition which might not be activated."[47]

There are many things to commend in this approach and much more could be said about it. Provisionally, however, we can at least observe that there are a number of reasons why we might find this approach unsatisfactory for our purposes here. Like many approaches within the Marxist tradition, this perspective takes exploitation to be primary, considering dispossession only secondarily.[48] This approach assumes that the two issues are related in a teleological manner. Dispossession is causally primary, whereas exploitation is normatively so. This is somewhat compounded by the ideal, normative theory perspective employed in the specific example of G. A. Cohen's work, in which the categories are largely lifted out of their original historical and social context. However, this commitment to a certain methodological individualism and decontextualism distorts some of the main issues at stake.

The general aim of Cohen's work is to provide a sufficiently coherent, analytic reconstruction of (what he takes to be) the core of Marxism in a manner that will render it intelligible and convincing to other Anglo-American political philosophers (but especially Robert Nozick, Ronald Dworkin, Joseph Raz, John Rawls, etc.). The specific aim of the work is to provide a critique of the idea of self-ownership at the heart of Nozick's libertarian defense of private property (and, in Cohen's view, also covertly at the heart of some versions of Marxism), coupled with a revised account of normative force of the concern with exploitation. Cohen's investigation is thus motivated by and indeed, as I shall argue below, to some extent structured in terms of, the libertarian attempt to defend inequalities generated by private property and "free" market exchange. In particular, his account is generated by an interest in undermining the foundational role that the concept of self-ownership plays in some Marxist accounts of exploitation since, on his rendering, this positions Marxism dangerously close to libertarian arguments, especially those of Nozick. Since Cohen is motivated by an interest in undermining recourse to concepts of "property in the person," he wishes to show that exploitation is not necessarily derivative from dispossession, in either the causal or normative ways. For to say that exploitation obtains *only* in virtue of dispossession is (implicitly or explicitly) to endorse the notion that matters related to the differential distribution of anything beyond original productive resources (e.g., powers, talents, and luck) are incidental to and apart from the problem at hand. That would seem to lend credence to the idea of self-ownership and hence, tangentially at least, to libertarian arguments.[49]

In setting up the basic problem here, Cohen has adopted the broad framework of analysis of his principle interlocutors, namely, normative political philosophers of various liberal and libertarian stripes. What these approaches have in common is a certain methodological individualism and decontextualism. One begins by imagining a counterfactual scenario involving two historically and socially dislocated individuals engaged in some transaction. Through this thought experiment, one clarifies the basic moral intuitions at stake with regard to such matters as "fair" agreements, transfer of goods, and so on. Once the underlying principles have been established, one can then return to the actually existing world and deploy the appropriately clarified and general moral principles as tools of critique. So, when Cohen envisions the relationship between expropriation and exploitation, he imagines a scenario in which person A and person B confront one another. In step 1 of their interaction, access to productive resources is

distributed unequally (expropriation), such that A gains a monopoly over the means of production. In step 2 of their interaction, person A can now coerce a systematic transfer of value from person B, despite the fact that B is nominally free, because B has no real viable alternative (exploitation or starvation). In this case then, the original expropriation at step 1 has enabled the exploitation at step 2, and the wrongness of the coercive transfer at step 2 is revealed as such in light of the fact that it is predicated upon the unequal expropriation at 1. Expropriation is wrong because it enables exploitation. Exploitation is wrong because it is coercion that requires expropriation; that is, it would not function in the presence of viable alternatives.

The issue with this kind of formulation of the matter is not so much that it is wrong on its own terms (although it may also be that) but rather that it is partial. Its partiality derives from the manner in which it abstracts from the concrete specifics of matter, in two senses. First, the framing of the problem of expropriation and exploitation here proceeds as though the movement into a capitalist system of private property and markets arises out of a zero point in time, that is, as though no previously existing normative order exists. Expropriation is conceived of as a moment in time, and one that arises more or less *ex nihilo.* Expropriation is not thought to replace any previously existing property arrangements, and thus whatever violence can be associated with it must be violence that is future oriented, in the sense that it applies to what happens as a result of this originary moment. In this way, the whole framework of expropriation (and primitive accumulation more generally) comes to serve as a kind of Marxist version of the social contract thought experiment of an exit from the state of nature. It is envisioned here to exist in the time/space of something like Rawls's original position. But this is clearly not the intention or function of the analysis of primitive accumulation in its original iteration. As we have just seen, primitive accumulation is not Marx's story of the origins of property as such, much less the origins of civil society. It is the historically specific account of the origins of *capitalism*. Transposing this discussion into an original position scenario is, ironically, to adopt a position much closer to that of Rousseau, Paine, or Proudhon than to Marx. Moreover, it obscures the factual circumstances we are concerned with here—that is, the rise of capitalism as a historical form of life that colonizes and consumes actually existing alternatives.

Second, and for related reasons, Cohen imagines the "expropriated" and the "exploited" to be *one and the same.* In the formal restatement above,

person B is unfairly denied access to the means of production relative to person A. As a result, *this same* person is placed in an unfair bargaining position, which enables their exploitation. In this scenario, B can complain that the exchange of labor for wages undertaken at the second stage is unjust—even if she "freely" contracts into it—because the situation in step 2 is predicated upon the unequal distribution undertaken at step 1. Person B would not rationally accept such a transfer of value except under these circumstances, which were not her making. Thus, we have reason to complain that the situation envisioned in step 2 is normatively suspect. But again, there is no reason to suppose that this is the relation between expropriation and exploitation in the actual historical scenarios we are trying to grasp and subject to critique. As I have argued in the last chapter, not only is it entirely possible to imagine cases in which expropriation does not lead directly to proletarianization, this is in fact *the historically dominant phenomenon in vast portions of the world.* In the colonial context, we routinely find cases of expropriation without exploitation. In such a context, the two processes are still related to one another but not in a linear or teleological manner, such that those subject to the first pass directly into the conditions of the second. In sum then, both of these two elements of Cohen's formulation are abstractions that differ significantly from the original impetus behind the terms *Expropriation* and *Enteignung* in Marx's analysis. While perhaps interesting from a moral philosophy standpoint insofar as they may clarify intuitions about fairness under *those* conditions, Marx did not have these circumstances in mind—nor, I think, should we.

Finally, the ahistorical analytic approach leads to persistent equivocation about the proper object of expropriation, specifically, whether it must retain something of its original orientation to *land.* Most critical theorists today would, I suspect, view the original focus on landed property as an antiquated feature of the original eighteenth- and nineteenth-century debates. As we have already seen, this focus on land has been obviated in the work of David Harvey. In a recent exchange between Michael Dawson and Nancy Fraser, expropriation emerges as a key category of analysis, but its original relation to land-based struggles is likewise obscured. There, Dawson and Fraser rightly point to the deep collusion of capitalist development and forms of coercive expropriation while nevertheless equivocating on its proper object. Recognizing that the expropriation of land and natural resources has been central to this story, both ultimately define expropriation in terms of a relation to labor. As Dawson puts it, the core problem

here is that "racially expropriated labor never becomes 'free labor' in the classic Marxist sense."[50] Or in Fraser's formulation, "expropriation works by *confiscating* capacities and resources and *conscripting* them into capital's circuits of self-expansion. . . . The confiscated assets may be labor, land, animals, tools, mineral or energy deposits—but also human beings, their sexual and reproductive capacities, their children and bodily organs."[51] As we can see, both Dawson and Fraser recognize that although expropriation aims at a wide range of targets, its ultimate function is to mark a (largely racialized) distinction of "*free subjects of exploitation*" and "*dependent subjects of expropriation*."[52]

This distinction is useful and generative. And yet, in their attempt to consider the widest range of possible objects of expropriation, Dawson and Fraser leave certain fundamental problems unresolved. For while we may say that labor, land, animals, tools, and so on are all targets of expropriation, what that means as a matter of critique remains unclear. If someone coercively appropriates my labor, my body, or my sexual and reproductive capacities, they are targeting my *personhood* in some importantly direct way. But if they dispossess me of my land, tools, or natural resources, they are divesting me of the material objects that mediate my relation to the world, and it would appear at least that the critique of this "separation process" can only get off the ground if those material objects are, in some sense or another, *properly mine* in the first place. Thus, we are back to the original problem with the concept of dispossession: its investment in prior forms of proprietary relations.

Consider again the "classic" Marxian formulation. Whereas *exploitation* is the accumulation of surplus value generated by the capital relation itself, *expropriation* is original appropriation of the means of production. This is, of course, a highly abstract formulation that appears to avoid the problems of overly specifying a particular historical configuration of the forces of production (i.e., it does not name any specific mediation tools). The "means of production" is a category that is highly variable in content, containing almost anything depending upon the historical and sociological specifics. It can include everything from factory equipment and tools to computers and other electronic devices. However, all those objects are themselves the *products* of previous cycles of labor. They may function as the means of production in specific contexts, but their unequal distribution is not itself necessarily the function of a dispossessive logic. Rather, inequality in such goods can be more easily explained as the fruits of exploitation. In order for dispossession to be a *distinctive* category of capitalist violence (e.g., not

reducible to exploitation), we must be clearer in our use of the abstract formulation. The unequal access here must, in other words, ultimately refer to some element contained within the concept of "means of production" that is not reducible to the products of labor itself. As already intimated above, this irreducible element is the contribution of the productive powers of the natural world. If, for instance, we follow Marx's logic back through the various particular manifestations of the means of production, we arrive at the insight that the "separation process" at the heart of dispossession is a separation of the bulk of humanity from the productive power of nature. As he put it in the *Grundrisse*, "all production is appropriation of nature on the part of an individual within and through a specific form of society." However, the specific and necessary component of capitalist production is the "(1) *Dissolution* of the relation to the earth—land and soil—as natural condition for production—to which [the worker] relates as to his own inorganic being; the workshop of his forces, and the domain of his will . . . [and] (2) *Dissolution of the relations* in which he appears as *proprietor of the instrument*."[53] "Land" is the name given to this irreducible element in Marx's particular formulation in *Capital* because it was the most visible and concrete manifestation of this dual-sided dissolution/appropriation in the specific immediate contexts that most shaped his thought.[54] This can be obscured by the fact that we also speak of land as the means of production for one particular kind of laboring activity, namely, agricultural. Hence, possible confusion resides in the fact that the term is used both as *one example* of the means of production (e.g., on par with tools) *and* as the original fount of all other, secondary means of production. A properly reconstructed account of dispossession must preserve the original insight of the latter while, at the same time, transcending the limitations of the former. The reformulated account highlights that "land" is not a material object but a mediating device, a conceptual and legal category that serves to relate humans to "nature" and to each other in a particular, proprietary manner. This is why dispossession can be said to create its own object of appropriation: dispossession generates and then monopolizes a distinct medium of human activity in the world via the legal and conceptual construct "land." In so reformulating the question, we must move beyond the particular expression given by Marx, not only the nineteenth-century portrait of land as bound distinctly to agricultural production but also the notion that its appropriation is "originary" in a temporal sense, that is, as an event in time or a stage of development. What follows from this is that dispossession comes to name a distinct logic of capitalist development grounded

in the appropriation and monopolization of the productive powers of the natural world in a manner that orders (but does not directly determine) social pathologies related to colonization, dislocation, and class stratification and/or exploitation, while simultaneously converting the planet into a homogeneous and universal means of production.

THREE

Indigenous Structural Critique

> You ought to hear and listen to what we women shall speak, as well as the sachems; *for we are the owners of the land,* AND IT IS OURS!
> —Unnamed Woman, Seneca, 1791

> Property in the forms of leases, jurisdiction, fee simple, and numerous other ways of prescribing land have had a profound material significance on Indigenous people—at times it has been a matter of life and death.
> —MISHUANA GOEMAN, Seneca, 2008

> I do not believe that it is only by chance that we identify ourselves in relationship to the land we come from, the land we belong to. The land—the territory—defines who we are and how we relate to the rest of the world.
> —SUSAN HILL, Mohawk, 2017

This chapter examines what it might mean to consider the history of Indigenous resistance to dispossession as an enacted and embodied mode of structural critique. It is organized into two main sections. Section I mobilizes resources from various contributions to critical theory (broadly

conceived) in order to examine the very idea of "structural critique." I argue that such analysis is characterized, first and foremost, by synoptic evaluation: structural critique is concerned with the overall effect of a set of historical processes, which are not reducible to any one particular instance within. So conceived, structural accounts of this sort are, however, frequently challenged by their need to account for both continuity and change over time. With direct reference to the particulars of dispossession, I refer to this as the problem of *process*: how can dispossession be both different over various iterations in time and space and yet also plausibly the same, singular structure? My intuition is that responding to this challenge requires focusing attention on the subject-constituting function of historical processes. When we reorient the problem in this way, we decisively refine the question: continuity or change *for whom*? This permits us to grasp how a structure can be both mercurial (for some) and stable (for others). As a means of articulating this complex intersection of subject formation and structural critique, I turn to resources from the Hegelian-Marxist tradition, specifically the concepts of *alienation* and *diremption*. In my usage, the first refers to a form of impersonal domination whereby humans come to be controlled by institutions that are, ironically, of their own creation (in this case, the market and property relations that have transformed the earth into a universal ownership grid). The second refers to the splitting of humanity into constitutively antagonistic and hierarchically ordered categories (in this case, the relations of colonizer and colonized, settler and native). Taken together, these express concern for how we dominate *ourselves* and, through how we dominate ourselves, how we also dominate *each other*. The chapter thus evaluates the utility of this language for articulating the relation between structures and subjects in the context of dispossession.

Section II returns us to the words of Indigenous peoples themselves. It does so with the aim of excavating the relationship between normativity and subjectivity as it subtends Indigenous peoples' structural critique of dispossession. The focus here is on the normative claims of Indigenous peoples—claims that express an experience of injustice—but also how the very activities of claims-making give new shape and content to the subjectivities of the claimants, in this case, the political identity of "Indigenous." A historical survey of Indigenous political mobilization in the nineteenth and twentieth centuries is the means here for exploring the idea that internal disagreement over the precise normative locus of critique can coexist with the emergence and solidification of the subject of that critique. Through a historical reconstruction of various modes of Indigenous critique, I aim

to show how in this context normativity is thus related, but not reducible, to subjectivity (why a thing is wrong, and for whom). The chapter concludes (sections III and IV) with reflection on the *belatedness* of normative evaluation, by which I mean to highlight the fact that the critique always comes "after the fact" in the sense that it is motivated and informed by social group categories that are themselves produced by the very processes under consideration.

I

A structural critique of dispossession is characterized by synoptic evaluation: we are not concerned here with one particular event or action taken in relative isolation but rather with the overall effect of a macrohistorical process. In the case of dispossession, this is complicated, however, by the *processual* nature of the phenomenon under description. In framing the matter in this way, I am building off the "structural" critiques of settler colonialism and anti-Black racism found in work by Patrick Wolfe and critical race feminists such as Angela Davis and Ruth Gilmore, respectively. Consideration of the specificity of dispossession as a process will, however, also require some departure from this previous analysis.

One of the most influential and compelling accounts of settler colonialism comes to us from the work of historian Patrick Wolfe.[1] In Wolfe's formulation, settler colonialism expresses an underlying "logic of elimination." The logic unfolds as follows. Unlike other kinds of imperialists, who are often content to leave non-European peoples to live in conditions of dependency and subordination to an imperial center, settlers move with the intention to establish permanent European-style societies abroad. To accomplish this, settlers need access to land, which speaks to motivation. As Wolfe puts it: "Whatever settlers may say—and they generally have a lot to say—the primary motive for elimination is not race (or religion, ethnicity, grade of civilization, etc.) but access to territory. Territoriality is settler colonialism's specific, irreducible element." Gaining this access to land requires the wholesale elimination of native inhabitants. This elimination can, and often does, proceed through genocide. However, in other cases, it operates through forced removal, assimilation, and "statistical reduction" (i.e., the use of racialized taxonomies that convert Indigenous political orders into biopolitical "populations" highly susceptible to gradual dissolution over time). Thus, while not all settler colonial projects have been

genocidal per se, all have been eliminatory. Wolfe summarizes this in characteristically terse and clear terms: "Settler colonialism has both negative and positive dimensions. Negatively, it strives for the dissolution of native societies. Positively, it erects a new colonial society on the expropriated land base—as I put it, settler colonizers come to stay: invasion is a structure not an event."[2]

Wolfe's characterization of settler colonialism as "structure not event" brings to light a number of important features of the phenomena under description. First, it demands a synoptic view. To speak of "structures" is to highlight the systemic effects of a set of social processes, which are more than the mere aggregation of the individual actions taken within. In this way, Wolfe's characterization of settler colonialism dovetails with parallel developments in critical race theory on the idea of "structural racism." For instance, in her landmark study of the U.S. carceral system, *The Golden Gulag*, Ruth Gilmore defines racism as "the state-sanctioned or extralegal production and exploitation of group-differentiated vulnerability to premature death."[3] What is important about this definition for our purposes here is the way that Gilmore dispenses with the methodological individualism of standard "normative theory" approaches to racism. For her, racism is not reducible to the actions or beliefs of individuals when taken in isolation. Instead, we are authorized to call a social formation "racist" whenever we observe long-standing patterns of group-differentiated vulnerability. This is the nature of "systemic" or "structural"—rather than merely individualist—racism. In an analogous fashion, Wolfe invites consideration of the settler colonialism in this sense.[4]

This matters for the normative evaluation of dispossession because it serves as a caution against conflating a macrohistorical process with any particular, individual instantiation of it. We saw that, over the course of the nineteenth century, Anglo settler societies managed to acquire a total of 9.89 million square miles of land, a gain of nearly 6 percent of the total land on the surface of Earth. Techniques of land acquisition were multifold. Anglo settlers obtained new territory from Indigenous peoples in these areas by annexation, purchase, temporary lease or rent, military occupation, squatting, and settlement. These diverse techniques were equally complex when viewed from a normative standpoint. Some clearly required violence, coercion, and fraud. Other methods were more peaceful, transparent, and based in norms of reciprocity, requiring mutual agreement and consent. Complicating matters even further, appropriation techniques often oscillated between the former and the latter. One of the principle architects of

dispossession in the late nineteenth century, U.S. president Theodore Roosevelt, gives clear expression to its dual-sided character.

> Nor was there any alternative to these Indian wars. . . . Here and there, under exceptional circumstances or when a given tribe was feeble and unwarlike, the whites might gain the ground by a treaty entered into of their own free will by the Indians, without the least duress; but this was not possible with warlike and powerful tribes when once they realized that they were threatened with serious encroachment on their hunting-grounds. Moreover, looked at from the standpoint of the ultimate result, there was little real difference to the Indian whether the land was taken by treaty or by war. . . . No treaty could be satisfactory to the whites, no treaty served the needs of humanity and civilization, unless it gave the land to the Americans as unreservedly as any successful war.
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> As a matter of fact, the lands we have won from the Indians have been won as much by treaty as by war; but it was almost always war, or else the menace and possibility of war, that secured the treaty. . . . Whether the whites won the land by treaty, by armed conquest, or, as was actually the case, by a mixture of both, mattered comparatively little as long as the land was won.[5]

As Roosevelt points out, contract and conquest went hand in hand. Even when European and Indigenous peoples were able to arrive at mutually acceptable terms by which to govern the relations between them—often codified in ceremony and treaty—conflicts of interpretation over those terms often led to additional rounds of violence and the seizure of new lands. Conversely, many mechanisms for the acquisition of land by consent arose only after long periods of conflict. In these cases, once Indigenous peoples had had their economies destroyed, their populations decimated by war, disease, and famine, or persevered through decades of threatening violence, the surviving communities "freely" transferred their lands to settler colonizers in exchange for protection, subsistence, and the like.

If we were to analyze this as a sequence of discrete events, the normative evaluation of these diverse moments of land acquisition would be thus highly variable, heterodox, and contingent upon the specific circumstances of the exchange. Perhaps above all, it would depend on the *temporal window* through which we examined the phenomena: my "unforced" agreement today may look very different if we consider the preceding events that led me into such a condition that agreement eventually appears as my last best option. If, however, we step back and view dispossession not simply

as the aggregation of these individual acts but rather as a macrohistorical process, evaluated from within a larger temporal window—say, the entirety of the nineteenth century—we begin to see features of it that remain occluded from view in the microscale, individualist perspective. And these structural features have normative implications. For instance, when considering the course of the nineteenth century as a whole, one cannot help but be struck by the relatively *uniform effect* of all these different micropractices. Despite important differences in the legal and political orders found across Canada, Australia, New Zealand, and the United States, a remarkably similar system of dispossession emerged across these spaces. Hence, by the end of the nineteenth century, it was relatively routine to speak of the "true colonies" of the Anglosphere as constituting a single analytic frame.[6] In the course of constituting this "mini world system," Indigenous peoples were effectively divested of the territorial foundation of their societies, which, in turn, became the territorial foundation of the new settler societies. So despite the different techniques, methods, and justifications involved in the diverse exchanges, the results were relatively uniform. As Roosevelt himself noted, "looked at from the standpoint of the ultimate result, there was little real difference to the Indian whether the land was taken by treaty or by war."

Structural analysis of the sort proffered by Wolfe and Gilmore is indispensable to understanding the overall impact of systems of domination such as settler colonialism and white supremacy. It represents an advance over the generally Kantian model of normative theory that has come to dominate much contemporary moral and political philosophy. In this latter framework, interactions are envisioned primarily as exchanges between isolated individuals encountering each other in a temporally and socially abstracted world of exchange. The normativity of the exchange is evaluated as a function of *intent*, not effect, and thus also in relative isolation from the historical processes that structure the context of the encounter in the first place, or link it to a chain of similar events and exchanges. This leads to a fallacy of division: the assumption that what is true for the whole must be true of all or some of the parts. Denuded of any social theory that can make sense of the tone and tenor of context, these moralistic evaluations lack the tools to evaluate colonialism, white supremacy, and the like as "systems" or "structures" rather than as a kind of exchange between individuals or the aggregation of such exchanges.[7]

To make this clearer, we might draw an analogy to the concern with gentrification. Gentrification names a certain socioeconomic process: it

attempts to describe what is happening in a very general sense, say, the socioeconomic transition of a neighborhood. This process involves a complex diversity of different actual manifestations. People retire and sell their stores to higher-end companies. Stores go out of business and are replaced by others. Empty warehouse space is converted into lofts or studios for artists and young professionals. Tenants are forcibly evicted from their long-term rental units so the building may be converted into condos. A fire destroys a local bar that was a center of social activity for lower-income patrons, only to be replaced by a yoga studio or high-end clothing store. The point is that these can all be taken as instances of gentrification when viewed from the macrosociological perspective since they all contribute to the overall effect—the displacement of lower-income (usually racialized) people, benefiting white capital. But the macrosociological descriptor is importantly ambivalent about the moral injury involved in each individual case. So, if we object to gentrification as a whole, it does not mean we think each specific event is a moral equivalent—that each micro interaction is necessarily morally objectionable when taken in isolation.

In attending to the specificity of dispossession, however, there is one additional feature I would like to highlight that is relatively occluded by the language of "structure," namely, the processual nature of the phenomenon. By this, I mean to underscore the dynamic, amplificatory features of dispossession, which I have already theorized under the sign of *recursivity*. As explained in chapter 1, in characterizing dispossession as recursive, I seek to draw attention to an oddly self-referential logic inherent in the process. Generating its own conditions of possibility, dispossession entails producing property out of systemic theft. Recall, however, that recursion is not simple tautology. Rather than a completely closed circuit, in which one part of a procedure refers directly back to its starting point, recursive procedures loop back upon themselves in a "boot-strapping" manner such that each iteration is not simply a repetition of the last but builds upon or augments its original postulate. Recursion therefore combines self-reference with positive feedback effects. This feature is occluded by the language of "structures," which cannot account for dynamism within endurance. After all, while dispossession may have some "structural endurance" over historical time, this is more than mere static persistence. The Michi Saagiig Nishnaabeg scholar Leanne Simpson puts the point thus: "I understand settler colonialism's present structure as one that is formed and maintained by a series of *processes* for the purposes of dispossessing, that create a scaffolding within which my relationship to the state is contained. . . . I experience

it as a gendered structure and a *series of complex and overlapping processes* that work together as a cohort to maintain the structure."[8] Relating this insight back to the historical analysis of previous chapters, we can note that the rounds of dispossession that took place in the United States during the first half of the nineteenth century were not just *replicated* in later locales as techniques of land acquisition spread to Canada, Australia, and New Zealand; they were *augmented* and *amplified* elsewhere. Viewed as a set of processes, we can better observe a "feedback loop" or "ratchet effect" at work: early cycles of territorial acquisition came to enhance the conditions for additional rounds in a self-reinforcing manner, particularly as advances in communication and transportation technology allowed Anglo settler populations to conceive of themselves, and eventually effectively operate as a relatively integrated transnational community. I contend then that, over the course of this period, individual moments of land acquisition were connected and transformed by one another in a way that generated a qualitatively new, integrated global phenomenon—namely, the world market in land—whose defining properties were not reducible to its composite parts when studied in isolation at any particular point in time. Dispossession can thus be used to name a historical process with supervenient properties, which has important implications for both descriptive and normative analysis. This characterization is preferable then to one that juxtaposes structure versus event, since it specifies the mediation between structure and event by accounting for how various individual "events" of dispossession related to one another in recursive fashion.[9]

Let us turn now to the following proposition: that dispossession might be usefully conceived as a historical process of diremption within systemic alienation. What does this mean and what comparative difference does it make to frame the matter in this manner? In using these terms, one immediately signals a Hegelian-Marxist provenance. The term *alienation* derives from the German *Entfremdung*, which is also occasionally translated as "estrangement." Diremption is one possible translation of the Hegelian term *Entzweiung*, which has also been rendered into English as "sundering." In its most literal translation, *Entzweiung* means to split in two, but in a more general sense it can denote forcible separation. In more quotidian German, it can also mean simply divisiveness or quarrelsomeness.[10] Both terms are, in their philosophical uses, highly abstract and deeply contested. Let me say more about how they are employed here.

The notion of alienation in Hegelian-Marxism has historically been associated with a strong philosophical-anthropological claim about the underlying "essential nature" of humanity, from which we have supposedly become estranged. Marx originally spoke of alienation in terms of estrangement from our *Gattungswesen*, or species-being.[11] A century and a half of work across of variety of philosophical traditions has called into question this essentialist and romantic conception of alienation. Most recently, philosophers and political theorists have worked to reconstruct the concept in a nonessentialist manner. These "postmetaphysical" accounts of alienation posit not that we are estranged from our ahistorical essence but that we can still use the term to refer to the experience of being estranged from forms of social and economic organization that are, ironically, of our own construction. These processes are neither entirely foreign to us, nor can they be effectively integrated into our current self-understanding or brought under our effective control.[12] Rahel Jaeggi has provided a recent comprehensive exploration and reconstruction of the term along precisely these "postmetaphysical" lines. In her formulation, which I follow here in its general form, alienation must be reconstructed in *formal* terms. Previous accounts (such as is found in Rousseau, or in Marx's early writings) tended to operate with a *substantive* definition, one that demanded a corresponding account of the positive condition from which one had become alienated. Accordingly, such formulations exhibit a propensity for essentialist and perfectionist orientations. By contrast, formal accounts examine the dynamic relations of appropriation that are productive of oneself in relation to the world. In this register, the distinction between alienated and unalienated modes of being is not one between a pregiven "authentic" self and a distorted or "inauthentic" one but between more and less operative relations of continuous self-interpretation and self-appropriation. Alienation is thus reworked and reformulated as "a relation of relationlessness."[13]

Iterations of this concern with systemic or structural alienation have been widespread across a range of European thinkers for some time now. They had particular traction in the nineteenth century, often traveling under the broad heading of "impersonal domination." There were many variations on this theme, but the underlying basic concern was that humans had created forms of social and economic organization that had effectively eclipsed our collective capacity to control and direct them. These "systems" or "structures" were thought to have come to dominate us through the way they shape, channel, and delimit the range of possible ways of thinking and acting available to us in an arbitrary and capricious manner. Importantly for

many of the diagnosticians of these structures, no one in particular necessarily had to design them, nor could any one individual or collective group effectively control them. They were thus thought of as both *autonomous* and *anonymous*, two features that could distinguish them from previous forms of personal domination. There is, therefore, a certain irony inherent in the concern with this impersonal domination since the agent of our oppression is a creature of our own making.

We can find in the work of Alexis de Tocqueville and John Stuart Mill clear examples of this concern under the heading of "social tyranny." Tocqueville's *Democracy in America* famously warns of a "supreme power" that

> extends its arms over society as a whole; it covers its surface with a network of small, complicated, painstaking, uniform rules through which the most original minds and the most vigorous souls cannot clear a way to surpass the crowd; it does not break wills, but it softens them, bends them, and directs them; it rarely forces one to act, but it constantly opposes itself to one's acting; it does not destroy, it prevents things from being born; it does not tyrannize, it hinders, compromises, enervates, extinguishes, dazes, and finally reduces each nation to being nothing more than a herd of timid and industrious animals of which the government is the shepherd.

This bureaucratic form of impersonal rule, Tocqueville repeatedly reminds, is a form of "servitude." It is perhaps even more powerful than overt, personal, and directly coercive forms of control because, under this "soft" and "gentle" rule, we conscript ourselves into its power under the mistaken belief that, because it is a system of our own making, it must be one over which we maintain effective control: "Each individual allows himself to be attached because he sees that it is not a man or a class but the people themselves that hold the end of the chain."[14]

Directly influenced by Tocqueville, John Stuart Mill also warned of a "social tyranny more formidable than many kinds of political oppression."[15] In particular, Mill was concerned with how the highly mediated nature of mass, representative democracy facilitated the domination of minorities by majorities through the depersonalized apparatus of government and bureaucracy, as well as via the more informal mechanisms of the public sphere (such as broadsheet newspapers). The problem of social tyranny had, however, a second and more insidious face for Mill. The highly mediated, depersonalized, and decentralized forces of the new social systems required

of mass democracies also come to exercise a semiautonomous form of rule over the population as a whole. In other words, Millian social tyranny is not only about the domination of the majority over the minority; it is also about the domination of society over the individuals that constitute it. In discussing the latter face of impersonal domination, Mill tends to anthropomorphize "society" as an agent that acts independently of the individuals who, in effect, both constitute and are constituted by it, precisely to highlight the semiautonomous nature of social systems. Because "society can and does execute its own mandates . . . it practices a social tyranny more formidable than many kinds of political oppression."[16] This qualitatively new form of danger requires a qualitatively new defense of liberty, a defense against "the tendency of society to impose, by other means than civil penalties, its own ideas and practices as rules of conduct on those who dissent from them."[17]

In sum, then, Tocqueville and Mill exhibit concern for a form of "impersonal domination" with two faces, which I will call *alienation* and *diremption.* The first refers to the sense of estrangement and loss of effective control by the society as a whole over its own forms of organization—the domination of *us by ourselves*. The second refers to the internal division of society as a function of the processes unleashed in the first—the domination of *some by others*.

The importance of Marx's analysis of capitalism partially resides in his effort to combine these two elements. For Marx, capitalism is characterized as a system of social and economic organization that operates in a semiautonomous manner, giving rise to new forms of impersonal domination. Modern bourgeois society is "like the sorcerer, who is no longer able to control the powers of the nether world whom he has called up by his spells."[18] At the same time, this form of social and economic organization also leads to an internal division, which expresses itself as *class domination* and *exploitation.* So capitalism has elements of both alienation and diremption. And yet the relationship between these is not always consistent or clear. The emphasis Marx accords to each varies depending on the specific objective at hand. This has given rise to interminable cycle of debates within Marxism over their relative normative weight, as well as the causal relation between them (i.e., whether impersonal domination generates class domination, or vice versa). For instance, in his well-known and highly influential contribution to Western Marxism, Moishe Postone argues that a cogent critique of capitalism can be constructed around the idea that, as a historically

specific form of social organization, capitalism is characterized by a unique form of social domination in which the whole of society is captured by its own socioeconomic processes. As he puts it: "Social domination in capitalism does not, on its more fundamental level, consist in the domination of people by other people, but in the domination of people by abstract social structures that people themselves constitute."[19] In my terminology here, this is an account of "formal alienation." This stands in stark contrast to the "analytic Marxism" of G. A. Cohen (discussed at length in chapter 2), who dismisses all such talk of alienation and social domination and insists that the normative core of a critique of capitalism must reside in the concern for the exploitative relation between groups of people organized as classes.[20]

In the latter half of the twentieth century, a variety of thinkers attempted to transpose this talk of alienation and impersonal domination into ecological language. This included many deep ecologists—often deriving philosophical resources from Heidegger—but it also increasingly implicated Western Marxism. In *The Dialectic of Enlightenment*, Max Horkheimer and Theodor Adorno gave an account of a set of modernizing processes that emphasized the general estrangement of humanity from the natural world as a product of the rationalization process at the heart of Western modernity.[21] Since their time, there has been a veritable explosion of concern for how capitalism fuels ecological destruction, species collapse, and climate change—central now to the current debates over the "Anthropocene." In each of these cases, the concern is with how our social, economic, and (now) ecological systems of organization have effectively overrun our capacity to control and direct them. Operating now as a set of relatively autonomous and anonymous systems, we have become alienated from them, not in the high metaphysical sense (alienation from our species-being) but in the more prosaic sense: they comprise fundamentally estranged modes of self-construction and self-appropriation.[22]

Across these diverse efforts to reformulate alienation and estrangement in nonmetaphysical terms, one common feature comes to the fore. As theories of impersonal domination move toward greater reliance on *alienation* as their core normative concern, they tend to drift away from *diremption*. That is to say, the more we frame the problem of capitalism or anthropogenic climate change, for example, as one of impersonal domination of humanity by its own constructions, the greater the temptation to obscure the simultaneous splitting of humanity into constitutively antagonistic and hierarchically ordered categories. In short, focus on how we dominate *ourselves* comes to elide concern for how we dominate *each other*.[23]

We need not resolve such debates here. For our purposes, what matters is simply that, at least since Marx's own time, capitalism has been variously characterized as a system of *impersonal domination with internal division*. The normative critique of this therefore relies on concern for both alienation and diremption. This is relevant because our concern with dispossession is both conceptually and empirically indebted to this formation. The concepts we draw upon to articulate the features of dispossession are, in part, derived from these debates over capitalism more generally. This is not coincidental. Rather, it is because the processes themselves are also related. Conceptual derivation follows upon material entanglement. In other words, if dispossession exhibits many of the same features as capitalism more generally, it is not because it is analogous but because the two are already historically coupled.

I submit that a critique of dispossession can be coherently defined in these dualist terms, that is, as a problem of impersonal domination with internal division. By combining features of alienation *and* diremption, we are able to add analytic and historical specificity to our critique, which represents an advance over more generic concerns with commodification, privatization, primitive accumulation, or the "enclosures of the commons." While these other frameworks of analysis commonly raise concern with the aliening mechanisms of modern capitalist development, they routinely fail to enjoin this to a concern for the specific mode of diremption observable in recursive, colonial dispossession—namely, the formation of "Indians" as constitutively excluded subjects. We saw an instance of this previously in Polanyi's reference to the "commercialization of the soil" (see chapter 2). Although the terms *commercialization* and/or *commodification* share some overlapping features with dispossession, they remain both too general and too specific. They are too general in the sense that they are frequently used to describe a wide range of processes that cover such diverse phenomena so as to risk obscuring the specificity of dispossession in the colonial contexts that concern us here. They are, however, also too specific in their direct association with the Marxist tradition, which as we have already seen remains principally focused on the labor question, whatever additional resources it may offer for thinking through questions of land appropriation and colonization. Marxist theory displays a persistent tendency to reduce processes of colonial dispossession to that of capitalist commodification and enclosure, obviating the need for a robust examination of the specificity of settler expansion and Indigenous resistance on and through land.[24] Most obviously, generalized concerns with the commodification of land tend to

ignore the extent to which this process has been subtended by systematic transfer, loss, and group differentiation. It is not *only* that the earth has been commodified, privatized, and "enclosed" but that colonization generates a form of commodification so as to divest Indigenous peoples *in a distinct and particular way* of their ancestral homes. The duality of this process (propertization and systemic theft) is what the concept of dispossession is meant to capture.

By the same token, dispossession cannot be said to be controlled by any particular group of people at any particular point of time, at least not if by this we mean something like an extension of premodern relations of personal domination. Dispossession is a process by which huge swaths of the earth were transformed and apportioned into a private property grid system through systemic divesture from Indigenous peoples. This process was partially constructed and guided by colonial elites, but it was not "controlled" by them. Rather, as we saw in previous chapters, dispossession was the effect of a set of distinct—even at times competing—state and market forces. Although government and corporate elites developed legal, political, and economic tools to steer and profit from the dispossession of Indigenous peoples from their lands, even they could not fully contain or control these forces once they took hold. This is why, in his 1877 work *Ancient Society*, Lewis Henry Morgan can boast and lament the power of property in the same breath: "Since the advent of civilization, the outgrowth of property has been so immense, its forms so diversified, its uses so expanding and its management so intelligent in the interests of its owners, that it has become, on the part of the people, an unmanageable power. The human mind stands bewildered in the presence of its own creation."[25] By the late nineteenth century, it is possible to speak of modern property relations as an "unmanageable power" that "bewilders" even its own creators. Borne on the backs of squatters, settlers, surveyors, homesteaders, and frontiersmen—many of whom were the very same impoverished, displaced protagonists of Marx's tale of primitive accumulation in Western Europe (e.g., the Irish, the Ulster Scots)—global dispossession required no "managing committee."

Apprehension of the duality of this complex set of processes requires therefore that we think dialectically: despite—or perhaps because of—the decentralized, heterodox, and fluid nature of the various processes and mechanics of its articulation, dispossession had a relatively stable, predictable, and uniform effect on Indigenous peoples. It is to their tradition of resistance that I now turn.

II

The final component to viewing dispossession as a historical process entails highlighting the way in which it serves to constitute categories of group identification and subjectivity. The relevance of this should already be somewhat clear from the previous discussion of alienation and diremption. One feature that differentiates these two normative concerns is the respective standpoints of their critiques. Whereas alienation generally imagines a unified collective subject alienated from itself in some relevant way, the critique of diremption is more commonly partisan, envisioning the freedom of one subject in direct opposition to the tyranny of another. Marx's way to square these two forms of critique was to figure the struggle of the proletariat against the diremptive splitting of humanity (expressed as class domination and exploitation) as containing the potential for a universal human emancipation against the alienating tendencies of capital. In this way, a particularistic and partisan struggle could also become a universal one (the movement from *an sich* to *für sich*). One of the great theorists of diremption, Frantz Fanon, hinted at a similar movement in his suggestion that anticolonial struggle of the twentieth century was preparing the ground for a "new humanism." Like Marx before him, Fanon was concerned with interrogating the conditions under which a sectarian battle—in this case, the struggle of the colonized for their very survival against the eliminatory violence of the colonizers—could nevertheless facilitate the more general emancipation of humanity from the alienating conditions of white supremacist, imperial capitalism.[26] In the remainder of this chapter, I explore how we might think of Indigenous struggles against dispossession as similarly positioned, as partisan or sectarian struggles against a historical process that has targeted them *in particular* but which nevertheless contains a dimension of concern to us *in general*.

In the first 150 years of European colonial expansion in the Americas, Indigenous peoples predominately related to newcomers, and to each other, through precolonial modes of political identity and organization. Although Europeans often spoke of the "Indians" as though they were a single, unified civilization, Indigenous peoples themselves typically eschewed such generalizations, continuing to identify with their specific tribes, clans, and nations. As Kevin Bruyneel puts it,

> Only after centuries of European-based conquest, colonization, and settlement in North America did terms like *Indian* or *indigenous* gain any meaning at all by setting the collective identity of people such as the Cherokee, Pequot, Mohawk, Chippewa, and hundreds of other tribes and nations into contrast with the emerging Eurocentric settler societies. . . . The words *Indian* and *American Indian*, like *Native American*, *aboriginal*, and *indigenous*, emerged as a product of a co-constitutive relationship with terms such as *colonizers*, *settler*, and *American*.[27]

The continuation of intra-Indigenous and intra-European rivalry from earlier eras meant that commercial, diplomatic, and military lines of affiliation were dynamic and frequently crossed the supposed civilizational divide. Rather than "Europeans" encountering "Indians," for most of the sixteenth, seventeenth, and eighteenth centuries, English, French, Spanish, German, and Dutch powers jockeyed with each other to build connections to the Mohican, Mi'kmaq, Pequot, Ojibwe, and Innu peoples (to name only a few). Indeed, many Indigenous societies took advantage of this shifting field to gain dominance over their historic rivals.[28]

By the middle of the eighteenth century, this configuration began to shift dramatically. With the effective withdrawal of the Dutch from North American colonization in the 1660s, and the defeat of the French a century later, Indigenous peoples increasingly faced a unified English imperial front. Surging Anglo-settler populations followed this political consolidation in the late eighteenth century, augmenting the sense that an integrated Indigenous alliance might be needed to stem the tide of European expansion. Accordingly, over the late eighteenth and early nineteenth centuries, a qualitatively new form of pan-Indigenous political mobilization took place. The leaders of these movements are among the best known and most mythologized leaders of the era: Obwandiyag/Pontiac (Odawa) (c. 1720–69), Tecumseh (Shawnee) (1768–1813), Tenskwatwa (Shawnee) (1775–1836), Handsome Lake (Seneca) (1735–1815), and Neolin (Delaware) (b., d. unknown). As Mohawk historian Susan Hill notes, we know far less about the contributions of specific women, in no small measure due to distinctive sexisms of the era and in the compilation of the historical record.[29] The epigraph that begins this chapter is a case in point. Documents give us a glimpse of a Seneca woman in the late eighteenth century—someone who expressly emphasizes the important role that women play in the leadership structure of her society, admonishing U.S. officials to "hear and listen to what we women shall speak"—but the record does not provide any infor-

mation about the woman, not even her name.[30] Nevertheless, we know from a variety of Indigenous and non-Indigenous sources that women served as important figures in the pan-Indigenous spiritual movements of the eighteenth and early nineteenth centuries. Historian Gregory Dowd has, for instance, reconstructed the prophecies of a young Delaware woman who challenged the traditional (male) leadership in her own community for their accommodation to British ways.[31]

What unified these new leaders was their commitment to a form of pan-Indigenous spiritual and political renewal through a paradoxically figured "new traditionalism" purged of European influence. Although historians commonly refer to these movements as "nativist," they are perhaps better characterized as a form of *Indigenous syncretism*.[32] Leaders selectively drew from a range of previously distinct religious, cultural, economic, and political practices and creatively wove them together in the hopes of producing a new revivalist movement that would have broad appeal across Indian country. They argued that, whatever political rivalries had divided them historically, Indigenous peoples were united by a broadly shared form of life, undergirded by a spiritual vision that could be juxtaposed against the similarly unified European civilization and Christian religion. Together, they produced a late eighteenth-century "Great Awakening."[33]

In so doing, these thinkers were faced with reconciling a number of tensions and contradictions within their movements. First, their radical appeal to Indigenous tradition was, at least in one sense, not very traditional. Pan-Indigenous syncretism flew in the face of longer-established institutions and forms of association that frequently emphasized differences and divisions between various tribes, clans, and nations. Accordingly, the new prophets often faced fierce opposition from an older generation of leaders. Second, Indigenous syncretism tracked along a paradoxical dialectic of division and unity. Leaders of the movement were tasked with explaining how it could be true that the European form of life was both inferior and yet continually gaining ground. They responded by arguing that the rising European threat was not due to the superiority of the newcomer's civilization or religion—their guns and gods—but due to intra-Indigenous rivalry and division. As Dowd has argued, the new wave of pan-Indigenous spiritual revivalism that swept across the plains societies of the late eighteenth and early nineteenth centuries partially "depended upon its Indian opponents," since the new prophets "could attribute the failure of Native American arms not to British numbers, technology, or organization, but to the improper behavior of the accommodating Indians. As long as nativists

faced serious opposition within their own communities, they could explain Indian defeat as the consequence of other Indians' misdeeds." In this paradoxical way, "infighting extended the life of the movement."[34]

The prophets of pan-Indigeneity were also highly critical of Indians who adopted European ways, whom we might call "accomodationists." Accomodationists included people such as Alexander McGillivray of the Creeks and Joseph Brant of the Mohawks, two prominent leaders who deliberately opted to study in Euro-American schools, use Anglo names, own Black slaves, and generally adopt standard European customs of the time. Perhaps most infamously from the standpoint of the new prophets, accommodationists frequently converted to Christianity and encouraged it among their brethren. The spread of Christianity was particularly controversial because it cut against the new prophets' emergent theory of *polygenesis*: the belief that Indigenous peoples were created separately by their own distinct god, and thus were spiritually corrupted by conversion. The theory of polygenesis was one means by which the new prophets could emphasize the unity of all Indigenous peoples (contra older tribal leaders) and separation from Europeans (contra accomodationists).[35]

Indigenous syncretism produced a number of successes. One of the first examples of Native peoples consciously and expressly mobilizing resistance to dispossession on the basis of a shared Indigeneity can be found in Pontiac's War. From 1763 to 1766, a confederacy of Native nations rose up against British rule, destroying eight forts and killing or capturing hundreds of colonists. Partially in recognition of this pan-Indigenous resistance, the British Crown began to modify its claims and policies, including more substantial recognition of existing Indigenous legal and political orders.[36] Securing peace with neighboring Indigenous nations further enabled contraction and retrenchment. Between 1761 and 1776, the British Crown abandoned seven of the nine forts it held at the close of the Seven Years' War. On the occasion of abandoning "two such expensive and troublesome Forts," General Thomas Gage wrote of his "great pleasure." In this, Gage was reflecting "an increasingly skeptical mood towards landed empire within Britain."[37] Another well-known instance of pan-Indigenous unity occurred in 1768, the year that Cherokee and Shawnee leaders set aside generations of enmity, signed a peace treaty, and agreed to unite against Anglo-American expansion (only a half century earlier, the two nations had been embroiled in bitter conflict against one another).

By the mid-nineteenth century, pan-Indigenous politics began to wane. By that point, the new prophets struggled to generate the desired level of

native unity required for widespread, organized resistance to Anglo settler colonization. Waves of displaced peoples from the eastern territories were being driven onto the plains, creating heightened tensions and increased competition with local communities. For instance, the Crow and Cheyenne nations were steadily pushed west by competition with Dakota and Lakota peoples. Their divergent responses to this pressure neatly illustrate the dilemmas of pan-Indigenous politics during this period. Northern Cheyenne tribes eventually sided with their historic rivals, the Oceti Sakowin (aka, the "Great Sioux Nation"), to forge a unified front against Euro-Americans (later even fighting together in the famous 1876 Battle of the Greasy Grass). The Crow, by contrast, spurned unification and remained a nation apart.[38] In the nineteenth century, pan-Indigeneity remained a fragile and complex political process of continuous negotiation.

All of this is to say that Indigenous counterdispossession has always been a tradition of *argumentation*, not only externally (vis-à-vis Europeans) but internally as well. As such, it has never entailed substantive agreement on all issues but is rather composed of a shared space of concern, or form of problematization, which arises from a common experience of dispossession. This internal differentiation, it should be emphasized, in no way diminishes the force or import of the critique. It means only that Indigeneity is a *politics*: a contested terrain of discursive and material struggle that simultaneously unites and divides people as individuals and collectivities. In particular, what I wish to highlight here is that internal disagreement over the precise normative concern of critique can coexist with the emergence and solidification of the subject of that critique. Normativity is related to, but not determined by, subjectivity, which is why an emergent conception of "Indigenous" can serve as the vessel for a range of normative concerns. In the next section, I propose to examine more closely some exemplary figures in this internally complex tradition of argumentation as a means of unpacking its multiple logics.

Almost immediately after the U.S. Congress began to institutionalize the dispossessive process outlined in chapter 1, Indigenous peoples began to articulate a response. One early voice of opposition came from the Pequot author, minister, and political organizer William Apess (1798–1839), whose most prolific writing occurred during the late 1820s and 1830s. In 1828/29 he published his autobiography, *A Son of the Forest*, perhaps the first single-authored autobiographical work ever written by an Indigenous person.[39]

In 1831 he was appointed by the New York Annual Conference of the Protestant Methodists to preach to the Pequots and published *The Increase of the Kingdom of Christ*. Not long after that, *The Experiences of Five Christian Indians; or, An Indian's Looking-Glass for the White Man* appeared in print as well. In 1833 Apess went to Massachusetts, where he participated in a minor revolt of Mashpee peoples there, who rose up in defiance of settler attempts to usurp local decision-making processes within the community. For his role in the Mashpee uprising, Apess was arrested for disturbing the peace, sentenced to jail for thirty days, and ordered to pay a fine. His writings on the revolt include *Indian Nullification of the Unconstitutional Laws of Massachusetts* (1835), a work that cleverly appropriates the legal language of "nullification" away from its Euro-American context for his own purposes.[40] After publishing two more major works—*Eulogy on King Philip* (1836) and a second, much revised version of *The Experiences of Five Christian Indians* (1837)—Apess appears to have stopped writing. No record of other works can be found after 1838.[41]

William Apess is best characterized as an accommodationist. He went by an English name, converted to Christianity (even becoming an important Methodist minister), and generally adopted a European form of life. Still, he was a vociferous critic of Euro-American predations on Native lands. Apess's critique was thus predominantly an *immanent* one. Across his various works, Apess never tired of pointing out the profound hypocrisy of the Anglo settlers, particularly their fickle and opportunistic commitments to Christianity and the rule of law. This provided the normative basis of his critique, helping him point out what he called the "black inconsistency" at the heart of the Euro-American claim to racial and civilizational superiority. As Apess put it,

> If black or red skins or any other skin of color is disgraceful to God, it appears that he has disgraced himself a great deal—for he has made fifteen colored people to one white and placed them here upon the earth. . . . Now suppose these skins were put together, and each skin had its national crimes written upon it—which skin do you think would have the greatest? I will ask one question more. Can you charge the Indians with robbing a nation almost of their whole continent, and murdering their women and children, and then depriving the remainder of their lawful rights, that nature and God require them to have?[42]

In characterizing their societies as distinctly Christian and law-governed, Apess noted, Anglo-Americans committed themselves to a set of normative

principles that could then be leveraged in a critique of those same societies. As we can see here, his concerns were diverse and complex, including Anglo-America's deep entanglement in genocide, racism, and war. As we can also observe, he consistently opposed himself to dispossession: the wholesale *theft* of a continent is part of the "black inconsistency" of settler colonialism.

For an example of an external critique, we can turn to a figure from later years. Hin-mah-too-yah-lat-kekt, or Chief Joseph (c. 1840–1904), was the leader of the Wal-lam-wat-kain (Wallowa) band of the Nez Perce nation during a period of intense conflict with the U.S. government in the late nineteenth century, including the 1877 Nez Perce War. Hin-mah-too-yah-lat-kekt was a smart and adaptive leader, who drew both on specifically Wal-lam-wat-kain traditions as well as broader pan-Indigenous forms of identification and organization (for instance, allying himself with the Lakota chief Sitting Bull). In 1879 an autobiographical reflection on his life and political views was published under the heading "An Indian's View of Indian Affairs." There, Hin-mah-too-yah-lat-kekt gives expression to his peoples' (multiple) concerns with the dispossession process. He first narrates the dilemma that faced his father, Tuekakas (Old Chief Joseph or Joseph the Elder, c. 1785–1871), when the elder chief was forced to sell off large sections of his peoples' ancestral lands:

> My father, who had represented his band, refused to have anything to do with the council [of U.S. governor Stevens], because he wished to be a free man. He claimed that no man owned any part of the earth, and a man could not sell what he did not own. . . .
>
> Eight years later (1863) was the next treaty council. A chief called Lawyer, because he was a great talker, took the lead in this council, and sold nearly all the Nez Percés country. . . .
>
> In this treaty Lawyer acted without authority from our band. He had no right to sell the Wallowa (*winding water*) country.

He elaborates,

> The earth was created by the assistance of the sun, and it should be left as it was. . . . The country was made without lines of demarcation, and it is no man's business to divide it. . . . I see the whites all over the country gaining wealth, and see their desire to give us lands which are worthless. . . . The earth and myself are of one mind. . . . I never said the land was mine to do with as I chose. The one who has the right to dispose of it is the one who has created it.[43]

This is one of the clearest and most articulate statements on the dilemma of dispossession. Hin-mah-too-yah-lat-kekt recognized that he and his people were being pushed into either adopting a fully proprietary relation to the earth or losing it entirely to the Americans. He deftly objects here to both sides of the dispossessive process: the transformation of the land into property, and its divestment from his people.

Apess and Hin-mah-too-yah-lat-kekt obviously related to Euro-American society in very different ways. While Apess was appreciative of several features of the settler world and sought to accommodate himself to it in many ways, Chief Joseph was, by comparison, a "traditionalist." They were nevertheless united in their strong opposition to dispossession. Accordingly, I read their different ways of relating to settler society expressed as two different modes of critique. Since Apess largely adopted the prevailing normative structures of Anglo-America (Christianity and the rule of law in particular), he sought to leverage those for an immanent critique. By contrast, Chief Joseph operationalized a form-of-life critique, one that sought to discredit the Anglo-American way by juxtaposing it to another, external, superior standard: an ethic of care for the living earth.[44] Chief Joseph was unconcerned with whether dispossession was internally consistent with the established rules and norms of settler society; for him and the people for whom he spoke, it was inherently objectionable. As I interpret it, that both immanent and externalist modes of critique could coexist within the same tradition of Indigenous political critique is a function not of internal inconsistency but of the particular subject position of the critic relative to the processes under consideration (inside/outside).[45]

One of the more insightful—yet continually overlooked—thinkers along these lines is Laura Cornelius Kellogg (1880–1947). Kellogg was an Oneida leader, author, and political activist. A prolific author, she wrote across a range of genres, including poetry, short stories, and essays. Perhaps her most famous work of political analysis is *Our Democracy and the American Indian* (1920), an impassioned defense of Haudenosaunee (or Six Nations of the Iroquois) sovereignty and self-government. In this work, Kellogg decries the "million 'golden calves' of hypocrisy" to which the Anglo-Americans pray.[46] Paramount among these was their highly inconsistent and selective defense of private property. On the one hand, settlers venerated fee simple land ownership and continuously strove to convert native title into this form. On the other hand, however, they also deployed numerous legal and political devices to prevent Indigenous peoples from ever effectively actualizing a concomitant private property claim to the

land (for instance, by preventing Indians from mortgaging their proprietary interest in land for the purposes of raising capital). Kellogg referred to the process of generating this truncated form of fee simple ownership as "dissipation," and she decried the "lack of security of possession" it produced for Native peoples.[47] She moreover called upon her fellow Indigenous peoples to theorize this dilemma of possession and dispossession: "It is plain the Indian himself does not know what theory to advance to save himself and his possessions, but he realizes that the concrete thing he wants is to save them."[48]

Kellogg offered concrete, practical solutions to this impasse. Among her various accomplishments, she was a founding member of the Society of American Indians (1911–23), the first American Indian rights organization run by and for Indigenous peoples. The society provided an organizational structure for pan-Indigenous syncretism and spawned a revival of such movements. Throughout the 1920s and 1930s, Kellogg was most actively involved in promoting her "Lolomi plan." The plan involved Indigenous peoples apprehending the reservation and reserve system for themselves, turning it into a network of new, self-governing collectivities by placing land into corporate trust (to render it less alienable).

One of the important contributions that Kellogg makes to the Indigenous tradition of counterdispossession is the manner with which she explicitly grasped the need to forge pan-indigeneity by giving it an institutional structure, undergirded by a new political economy—a system she occasionally termed "Indian communism."[49] In this way, Kellogg highlights for us the *reconstructive* dimension of Indigenous political critique, that is, the extent to which pan-Indigenous identity is both made and found. This reconstruction is simultaneously forward and backward looking; it draws resources from the past to forge a new future. For instance, explicitly invoking the example of Tecumseh, who wanted to "nationalize the race," Kellogg insists on the need for the Indigenous "race" to "restore itself to some of its traditional philosophy" as a means by which to counter the traditional colonial policy of "divide and conquer."[50] She warns Natives against assisting Euro-Americans in their efforts to "create factions among the tribes": "Our solidarity will be threatened by them just so long as you do not wake up and refuse to allow them to represent you."[51] She expands upon this theme as follows:

> There have been times when I thought all one Indian had in common with another were ignorance and oppression. There have been times

> when I thought there were Indians and Indians ad infinitum. I had not then broken through the fastness of the wilderness, I had not then found the fraternity. The fraternity whose spirit cannot be broken by a million years of persecution, the fraternity who, regardless of ethnic culture of Bureau propaganda cannot be coerced into demoralization. The fraternity whom exile and "a reign of terror" have only strengthened. The fraternity to whom death is sweet if that is the price. My heart has not ached through the mountains in vain. The heroes of my childhood are not all gone from the earth. But, they are not begging and bean of politics with which to drag out a miserable existence. They are not around fawning upon the Paleface.[52]

Rarely has there been a more poetic and compelling articulation of the need to draw upon the past to forge a new form of pan-indigeneity in the face of this systemic threat. What we might draw from Kellogg's work then is the insight that dispossession is partially constitutive of the modes of subjectivity and forms of group identification (e.g., "settler," "native") it engenders, but it is not determinative. (As she puts it, Indigenous peoples have more in common than their shared oppression, but they do have that.) Accordingly, the tradition of Indigenous counterdispossession works both within and against this mode of subjectivation. This tradition of critique both refers to, and calls forth, an Indigenous subject who might bear it forward into the present. In this way, it is performative.

The three thinkers surveyed above, of course, do not exhaust the range of Indigenous political critique. They are chosen instead as exemplars of three different aspects of the tradition of counterdispossession.[53] William Apess was an accomodationist who nevertheless launched a trenchant immanent critique of the profound hypocrisies and "black inconsistencies" of Anglo-America. Hin-mah-too-yah-lat-kekt (Chief Joseph) was a traditionalist who articulated an external critique from the standpoint of an alternative form of life. Finally, Laura Kellogg developed a unique form of Indigenous syncretism, one that sought to forge a new pan-Native movement on the basis of a shared institutional structure of collective land ownership and development. Each opposed dispossession, albeit on different grounds. Each saw this critical opposition as part of their indigeneity.

The twentieth century has seen a remarkable rebirth and revival of Indigenous syncretism. As Miranda Johnson has extensively documented,

rounds of dispossession associated with the expansion of natural resource extraction industries in the 1950s, through 1980s generated new waves of pan-Indigenous legal and political mobilization. While rooted in local traditions and particular customary legal orders, these movements also saw a remarkable convergence of Indigenous political identity, now in a much-expanded "Anglo settler world." Over this period, Dene, Dakota, Haida, and Ojibwe peoples from North America were increasingly in direct, continuous communication with their counterparts around the world, in particular, the Anglophone South Pacific. This generated "a new definition of indigeneity," which "emphasized that indigenous peoples' identities were inextricably bound to the land." The politics that followed from this "yoked together place, history, and identity," and drew together otherwise far flung and disparately located communities who nevertheless had a basis on which to build a common struggle: they were "groups that had been dispossessed of much of their territory and wanted to re-establish connections to places of significance to them in order to restore a sense of who they were in the wake of dispossession."[54] Thus, although these struggles often emerged in relation to concerns with their specific national contexts, as Ojibwe scholar Sheryl Lightfoot has argued, this also generated a new form of Indigenous internationalism that amounts to a "subtle revolution" in the global order.[55] It is to this globalized Indigenous struggle against dispossession that author and activist George Manuel (Shuswap) referred when he coined the term "Fourth World."[56]

Today, Fourth World critiques of dispossession are enjoying a renaissance. The contributions of contemporary scholars such as Joanne Barker, Jodi Byrd, Nick Estes, Mishuana Goeman, J. Kēhaulani Kauanui, and Leanne Simpson are best understood against this long, historical backdrop. Two of the most important and influential contributions to these debates today include Glen Coulthard's *Red Skin, White Masks* and Audra Simpson's *Mohawk Interruptus.* These two works continue the Indigenous tradition of grappling with the dilemmas of dispossession and possession in their own ways. Coulthard's analysis draws on a range of Indigenous and non-Indigenous thinkers alike to highlight the endurance of a "form of structured dispossession,"[57] which continues to threaten the life and livelihood of his people in the context of a supposedly postcolonial era of multicultural recognition politics. Simpson moves between thick ethnographic dialogues with Haudenosaunee interlocutors and an analytically sharp genealogy of anthropology as a mode of ethnographic capture that supports "an ongoing structure of dispossession that targets Indigenous peoples for

elimination."[58] What stands out most about these two works as exemplars of the tradition of counterdispossession with which I am most concerned here is the extent to which both are self-consciously situated in the long-standing historical struggles of their respective communities. Coulthard's intervention builds upon and extends the Dene Nation's multigenerational resistance against exploitative and extractive natural resource "development" projects in the Canadian north, ultimately going back to the nineteenth century but intensified and accelerated since the 1970s. In Simpson's case, the analysis given in *Mohawk Interruptus* rests upon the still visceral, living memory of the 1990 bloody and highly sensationalized armed conflict between (in particular, but not limited to) the Mohawks of Kanehsatà: ke and Kahnawà: ke, on the one hand, and the military and police powers of the Canadian government, on the other. Colloquially known as the "Oka crisis," this standoff occurred when Mohawks resisted the desecration, commodification, and confiscation of their ancestral lands through the expansion of a nine-hole golf course into a funeral site. As these two works make dramatically clear, contemporary Indigenous social and political critique is standing on the shoulders of countless generations and is grounded in a project of fierce material and ideological resistance beyond the narrow confines of staid academic debates.

III

Indigenous peoples have always resisted dispossession. They have not, however, always done so *as* Indigenous peoples. Instead, the very idea of indigeneity was, in part, forged in and through this mode of resistance. One might even say that "indigeneity" is the name for that intervention, that interruption, which has historically prevented processes of dispossession from ever fully realizing themselves. This has been consistently obscured by the reduction of "indigeneity" to fixed, temporally frozen cultural substance.[59] In *The White Possessive*, the Indigenous (Goenpul) scholar Aileen Moreton-Robinson plots an alternative course of analysis, away from the ethnographic capture of "cultural difference" as an index of normative standing and toward an analysis of "the conditions of our existence and the disciplinary knowledges that shape and produce Indigeneity."[60] Paramount among these conditions is what she terms the "possessive logic of white patriarchal sovereignty," especially manifest in the juridical construction and regulation of property. As we have already seen, partially as a

function of this focus, the concept of dispossession operates as a key term of analysis in Moreton-Robinson's work.

The first key insight of this move has been to observe that "Indigenous peoples" are not found existing in a historical and sociological vacuum, defined by a specific cultural essence that remains fixed for all time. Rather, like all human groups, they are made in time and through historical processes. This point has been made time and again by Indigenous scholars themselves, who have repeatedly cautioned against the foreclosure of Indigenous agency through conscription into categories of identity that are, paradoxically, both too vacuous and too determinate. Some of the most important work on the problem of vacuity comes to us from the Chickasaw scholar Jodi Byrd. In *Transit of Empire*, Byrd analyzes how the category of "Indian" functions as an empty cipher, a vessel into which pour the hopes, fears, and aspirations for diverse political agents and agendas. As she plots its movement across a range of texts and debates, Byrd observes consistency in the very fact that this transit continues to foreclose direct grappling with the practices of *self*-determination within Indigenous modes of collective political action.[61] On the side of overly determined content, Delaware scholar Joanne Barker observes:

> "The Native," then, is put to work in many ways to represent specific political concerns and agendas. As a consequence, who is and is not included as native is contingent on the social contexts of its use. . . . The challenge, then, is not how to capture the truth or the essence of the Native in the category of the Native; it is not about which discourse "gets it right." Rather it is to think through the kinds of historical circumstances that have been created to produce coherence in what "the Native" means and how it functions in any given historical moment or articulatory act.[62]

In sum, as Byrd, Barker, and a host of other interlocutors have long documented, what it means to be "native," "Indian," or "Indigenous" is constituted in a set of deeply fraught political acts that entail navigating between the shoals of vacuity and determination.

Such debates over the politics of Indigenous identity are too large, complex, and rapidly shifted to be grasped in their entirety here.[63] Instead, I consider them only insofar as they are refracted through a much narrower issue: the critique of dispossession. If it can be properly said that indigeneity has been partially formed not only in the shared experience of being targeted by processes of dispossession but also in common resistance to it,

then indigeneity is already defined in part as critical praxis. Viewing it in this light permits us to reconceive the category of "Indigenous" as a political construct that emerged through a long process of learning, adaptation, and experimentation.[64] Approaching the matter in this way does not entail viewing indigeneity as a perfectly coherent, unified whole. That is precisely the point. Rather than a unitary subject, we have a "family resemblance" of different modes of resistance and forms of normative critique that, despite their internal diversity, nevertheless compose a recognizably distinct grammar of struggle. The point is not that all individual Indigenous people share precisely the same view on the matter. It only means that there is a recognizable Indigenous tradition of counterdispossession to which they can appeal—even in their disagreements with one another. In this way, "indigeneity" is no different from any other historically constituted grammar of politics, such as liberalism, feminism, or Marxism.

An additional qualification is in order. To say that indigeneity is made in and through historical processes such as colonization and dispossession is importantly not to claim that it is wholly *determined* by those processes. As an empirical collection of people, Indigenous peoples are not fully scripted into the roles and categories that interpolate them into prevailing systems of power; nor do they simply invert those systems in a clean dialectical reversal. Rather, Indigenous peoples have developed both immanent forms of dialectical critique, which exploit and overturn contradictions from within prevailing systems of power, and external, ontological, or "form-of-life" critiques that draw resources from their own intellectual, spiritual, and political traditions. As has been explored above, the most effective strategies often oscillate between these two poles, operating both internal and external to dominant systems of power.

These different modes of critique are manifest in the very terminology we draw upon. At one end of the spectrum, we can speak of "Indians"—a legal-racial category imposed upon whole categories of people without their consent (often even without their knowledge). At the other end, we have specific terms of collective self-expression, such as Kanien'kehaka, Nêhirawisiw, Māori, Diné, or Inuit (ᐃᓄᐃᑦ). Critique can be mobilized from either position. Immanent criticism of ascriptive categories such as "Indians" has the advantage of being able to mobilize large numbers of people into one struggle, since it builds upon the shared experience of colonial interpolation. For this same reason, however, it has the distinct disadvantage of being predominately *negatively* defined. On the other hand, drawing from the specific intellectual and political traditions of the Nuu-chah-

nulth or Pitjantjatjara has the advantage of being very *positively* defined (that is, associated with a thick set of determinate cultural, spiritual, linguistic practices). For that same reason, however, it makes coordination between groups more difficult, and thus collective self-determination all the more elusive. This is a dilemma that Fanon, among others, rightly pointed out as central to most anticolonial movements.[65]

In and through many centuries of struggle, the partial solution to this has been to foster categories that can mediate between these poles. *Indigenous* is just such a category. It speaks to a shared experience of colonization but also to a family resemblance of spiritual, cultural, and political commitments. This has been one mechanism by which specific nations, tribes, societies, and confederacies across a huge swath of time and space have self-consciously forged a common political project that consists both in opposing colonization in all of its forms and fostering alternatives to it grounded in plural visions of other worlds and other forms of life.

I have drawn upon this forging process as a site of critical theory, with specific reference to how it constitutes a tradition of counterdispossession, one not only distinct from but also in crucial ways superior to the prevailing European frames of reference. It is my contention then that anyone interested in understanding the historical development of the late modern and contemporary global order would do well to pay attention to this tradition because it contains indispensable resources for understanding dispossession at both historical-descriptive and critical-normative levels.

We are perhaps better positioned now to understand one final component of this analysis I should like to highlight: the *belatedness* of normative critique. In framing things this way, I am drawing upon language commonly found in Freudian theory and the Freudo-Marxist works of early Frankfurt School thinkers. In works such as *Project for a Scientific Psychology*, Sigmund Freud argued that trauma was characterized (at least in part) by the feature of *Nachträglichkeit*.[66] Lacking a direct English translation, this term has been variously rendered as "afterwardness," "belatedness," and/or "deferred action."[67] The core element here is that working through trauma involves wrestling with and reincorporating memory or after effects (not "the event" as such) and, as such, is necessarily structured by a certain retroactive, belated understanding. The traumatic event is partially constitutive of the subject at hand, who can only begin the work of repair from that now posttraumatic location. The effect of working through trauma is not to

"restore" the subject to some original purity—the picture of a pretraumatic self is likely a construct or projection of current circumstances—but to (re) constitute oneself in a manner that better enables the interminable tasks of self-interpretation and self-appropriation. In this sense then, wrestling with trauma is always belated.

In this work, I have argued that dispossession entails the large-scale transfer of land that simultaneously recodes the object of exchange in question such that it appears retrospectively to be a form of theft in the ordinary sense. Because of the strange recursive logic of this operation—in which theft precedes and produces property—those targeted by the process appear, contradictorily, to be demanding the return of a stolen object that is not property at all. In this, Indigenous peoples appear as the "original owners" of the land but only retrospectively, that is, refracted backward through the process itself. By now, it is hopefully clear that this is not contradictory but rather *belated*. By this I do not mean that Indigenous peoples and their allies come to object to any particular instance of dispossession once it is "already too late." People can and do anticipate new rounds of dispossession all the time. Nor am I suggesting that the dispossession of Indigenous peoples from their lands is a form of trauma, Freudian or other. Rather, I am arguing that apprehension of the particular meaning of dispossession in colonial contexts can benefit from deploying a concept of *belatedness*, one that parallels the analogous function of that term in other contexts. The utility of the term consists in the fact that it highlights how the condition for the articulation of the normative concern is structurally (rather than merely chronologically) "after the fact"—that is, refracted backward through the process itself—because the evaluative standpoint or subject position itself is partially constituted by the processes in question. The very terms of a critique of dispossession are located in situ to the processes under description, rendering "Indians" as claimants over an object (property in land) they seek to recover in such a way as to undo it. As I have attempted to illustrate, the historical processes in question (dispossession) are partially constitutive of the modes of subjectification and group identification at stake (Indigenous, Native, settler, etc.), which in turn bear upon and shape the standpoint or mode of normative evaluation and critique. The recursive structure of this feedback loop is entirely missed in ideal, analytic modes of "normative theory," which operate by reconstructing an idealized, hypostasized "original subject" who stands prior to the processes in question.

IV

Indigenous peoples have consistently and steadfastly denounced and resisted both the transformation of the earth into a proprietary grid and the systematic transfer of this land out of their hands and into the hands of white settlers. They have been effectively arguing that the earth belongs to no one in particular, and it was stolen from them. As I have been arguing throughout, while this appears contradictory, it is in fact an appropriate, conceptually complex response to the particular process under description. This critique contains simultaneous concern with alienation and diremption. It is a concern both with separation of humanity from the earth and the internal sundering of humanity into categories of "colonizer" and "colonized," "settler" and "Native." Rather than a weakness, the brilliance of the formulation lies precisely in its capacity to keep these two elements sharply in view at once. If there has been a relatively high level of consistency in this opposition, I suggest, it is not because Indigenous peoples are possessed by some ineffable connection to "the land." It is not, as some critics contend, because Native peoples are defined "metaphysically as being of the land." Rather, it is because these peoples—however otherwise different they are from one another—have two things in common: they have been made the targets of a single global process and they have fought it. When we actually undertake the work of reconstructing the historical conditions under which it has emerged, what follows is a story of the operation of Indigenous political critique as the dialectical inversion of—or, in the words of the Kanaka Maoli scholar J. Kēhaulani Kauanui, the "counterpart analytic" to—the dispossessive process itself.[68] Read in this light, Indigenous critique may be thought of less as a substantive identity category than as an oppositional praxis that emerged in dialectical fashion relative to a specific set of historical processes. If dispossession is already a negation, then Indigenous critique is the negation of that negation.

FOUR

Dilemmas of Self-Ownership, Rituals of Antiwill

> The socio-political order of the New World . . . with its human sequence written in blood, *represents* for its African and indigenous peoples a scene of *actual* mutilation, dismemberment, and exile. First of all, their New-World, diasporic plight marked a *theft of the body*—a willful and violent (and unimaginable from this distance) severing of the captive body from its motive will, its active desire.
>
> —HORTENSE SPILLERS, "Mama's Baby, Papa's Maybe"

> The experience of slavery had made *us* an *us*, that is, it had created the conditions under which we had fashioned an identity. Dispossession was our history. That we could agree on.
>
> —SAIDIYA HARTMAN, *Lose Your Mother*

In the preceding chapters, I argued that one important dimension of colonial expansion in the Anglosphere of the nineteenth and twentieth centuries has been recursive dispossession. Specifically, the dispossessive

processes through which a system of land ownership was generated in the Anglo settler world was recursive in the sense that it used a form of widespread and systemic theft as a means to generate property, thereby producing that which it presupposes. I suggested that this operated not simply by denying the proprietary interests of Indigenous peoples in their ancestral lands but, rather more paradoxically, by recognizing those interests in a highly idiosyncratic manner. In effect, Indigenous peoples came to possess a proprietary right that could only be fully actualized in the moment of its extinguishment, that is, by transferring it to another. This was a truncated, or "structurally negated," proprietary right. I moreover intimated that this generates an experience of disjuncture between the abstract form of the proprietary right and the conditions for its realization, between a juridical structure of right and the social context that actualizes and imbues that system of right with its political content.

In the course of this chapter, I intend to explore more fully why this peculiar mechanism was needed in the first place. If Euro-American colonizers were so convinced of the inferiority of Indigenous peoples and their forms of life, then why was it so important to gain their supposed consent through these complex mechanisms of preemption and property transfer? What explains the shift of territorial acquisition into the terms of contract and sale? These questions drive us back to larger concerns regarding the nature of agency, will, and consent under conditions of domination, which comprise the core preoccupation of this chapter.

In early modern colonial expansion, governing capacity was something of its own legitimating principle. If European (and later, settler) systems of governance were able to secure effective control over a given territory, that was already some evidence of their legitimacy. In an important sense, might made right. By the turn of the nineteenth century, this framework had come under attack from a number of angles for some time. Agitation by liberals, republicans, democrats, and various other radical movements meant that governing authority was increasingly thought to arise from the consent of the governed. This generated a number of serious contradictions for Anglo settler societies of the nineteenth century, however. While on an ideational level they may have been increasingly committed to principles of popular sovereignty and democratic consent, on a material level these same societies remained heavily dependent on land and labor that, only a generation or two earlier, their leaders had been openly boasting about acquiring through force and coercion. My postulate is that this contradiction was partially resolved (or at least mitigated) by developing what I shall call

here, following the work by Black feminist theorists, *rituals of antiwill*. By this I mean to point to a series of complex legal and political devices that worked to register the will and consent of racialized and colonized subjects through acts of self-abnegation. The goal was to establish a social and institutional context in which rights to personhood and possession (which were increasingly closely linked) could be extended to these subjects in ways that made them fully realizable only in and through their extinguishment. This yoked consent and coercion.

I pursue this set of claims here by way of an extended movement through the field of Black social and political thought. My rationale for doing so is two-fold. First, the Black radical tradition (broadly conceived) offers a distinct perspective on dispossession, which is of interest in its own right. In this way, the chapter supplements the analysis on Indigenous struggles by widening the aperture of investigation to take into consideration another grammar of dispossession. In this case, the primary locus of concern is not land but the body, self, or person. Not only is this the dominant manner in which dispossession would be spoken of in many strands of feminism, liberalism, Marxism, and critical race theory; it might even be assumed to have a certain logical priority over other, contending uses. As I explain in section II, in these traditions, the term *dispossession* is used to describe a particular violation of personal autonomy and/or bodily integrity. Critical-theoretical treatment of dispossession in this sense has been plagued by a familiar unease, however, since it too appears to presuppose a commitment to possession, this time in the form of self-ownership or "property in the person." The problem is that these latter notions remain highly contentious on both philosophical and political grounds, particularly because they are associated with the idea of self-alienation, that is, the ability to confer control over oneself to another and effectively contract into one's own exploitation or enslavement. As a result, the conceptual coherence and political utility of the language of "bodily dispossession" remains refractory and unresolved. In section III, I turn to Black political thought as a means of reframing the debate. Drawing upon a range of thinkers—from Frederick Douglass to Patricia Williams and Saidiya Hartman—I contend that Black political thought has not so much resolved the problem of dispossession and self-ownership as *transposed* it onto a different terrain of analysis. By shifting the discussion into a historical and political register—specifically, that of actual (rather than merely metaphorical) slavery and its afterlives—these thinkers have rendered the question more tractable. I reconstruct a "naturalistic" rather than idealist account of self-ownership from this intel-

lectual tradition. What emerges is less a concern for the (reified) meaning of self-ownership than an attentive focus on its *function*. Examination of function leads to the matter of context, which in turn enables us to diagnose the source of the enduring ambivalences concerning bodily dispossession: a sliding historical backdrop that gives variable configurations of race, rights, legal personhood, and property their concrete content. Section IV explores the intuition that notions of antiwill may serve as a possible link between Black and Indigenous intellectual traditions. This, then, is the second rationale behind incorporating Black political thought: equipping us with the notion of a ritual of antiwill not only complements but completes the broader analysis of this book.

I

Within the Black radical tradition (broadly conceived), the concept of dispossession has had a long-standing and widespread, yet curiously quiet and subsidiary role. It is widely employed as a term of art by such prominent thinkers as Saidiya Hartman and Fred Moten and even functions as a titular concept in a number of recent works.[1] Despite this, however, it has rarely been expressly theorized or given a systematic conceptual reconstruction. This shadow life of dispossession stems from a deep ambivalence attending the term, or so I shall argue.

In the first instance at least, within the Black radical tradition the concept of dispossession refers to a broad yet specific experience of alienation. In this register, it shares at least one main feature with uses in other critical traditions (e.g., Marxism): here, as elsewhere, dispossession gains its analytic purchase in contradistinction to exploitation. In this context, however, it arises out of a need to theorize the specific role of Black embodiment at the conjuncture of slavery and capitalism.

Long-standing Marxist historiography held that capitalism emerged in early modern Europe. As it eventually spread to extra-European locales, it was thought to dissolve relations of personal command and domination, replacing them with the "silent compulsion" of economic relations. On this view, then, slavery was antithetical to the capital relation.[2] Early work in the Black radical tradition pushed against this view. Perhaps most famously, Eric Williams sought to demonstrate the close internal relation between slavery and capitalist development, effectively arguing that the latter emerged (at least in part) on the wealth accumulated through the former.[3]

A subsequent generation, led by luminaries such as Cedric Robinson and Orlando Patterson, contested the wider parameters of this debate.[4] While acknowledging that "slavery was a critical foundation for capitalism," Robinson and others specifically objected to the way in which slavery had essentially been conceptualized as a form of hyperexploited labor.[5] That view, they argued, fails on a number of fronts. First, it is inadequate to its own task of apprehending the economic structure of slavery. Framing slaves as hyperexploited laborers reduces the production and circulation of value to the labor process in an improperly narrow sense. In particular, it fails to recognize that slaves were also *commodities*: capital was accumulated not merely by exploiting their labor but through their circulation as objects of property that, for instance, one could acquire cheaply (through forced reproduction) yet sell at high cost.[6] Among other developments, this new emphasis on the reproductive economy of slaves qua commodities helped bring gender and sexual violence to the fore of analysis.[7] Finally, the "hyperexploited labor" view missed the diverse variety of extra-economic infrastructures on which slavery depended. As a social and political institution, slavery has never been defined predominantly on narrowly economic terms: "Worker *qua* worker has no intrinsic relation to slave *qua* slave."[8] Those working within the intellectual tradition now known as Afro-pessimism have been especially concerned to disclose the operation of a distinct "libidinal economy" in which white subjects extracted value from the enslaved through the pleasures of torture and cruelty. Speaking from that vantage, for instance, Frank Wilderson has argued that the "gratuitous violence" of torture within the context of slavery was not, strictly speaking, gratuitous at all since it served a necessary productive function.[9]

Freeing the critique of slavery from an overly restrictive notion of exploitation has opened critical theorists to a richer language of affective detachment. Paramount among these has been the notion of natal alienation. In *Slavery and Social Death*, for instance, Orlando Patterson highlights the ways in which slaves were radically estranged from their own social contexts, even their own networks of familial association and support, through a host of legal, political, and social mechanisms that kept the enslaved in a near permanent state of isolation, a condition of "social death." Slavery, in Patterson's formulation, is "the permanent, violent domination of naturally alienated and generally dishonored persons."[10] This condition of alienation and degradation operated on both the individual and social group level. As Frederick Douglass remarks in his autobiography, individual enslaved persons often did not know their own parental lineage, kin relations, or

even birth dates, all of which generated a condition of self-estrangement.[11] Scaled up to the group level, the Middle Passage has been described as a great caesura, a radical severing from a rich and diverse communal history in such a way as to constitute the category of "Black" in relation to a world that can never been known or recovered yet one that pulls and calls those who live in the wake of this rupture.

It is to this experience of alienation that the language of dispossession in the Black radical tradition frequently speaks. As I understand it, this is how Saidiya Hartman intends the term when, for instance, she writes that "dispossession was our history"; when Shatema Threadcraft articulates the sexual violence inherent in the structure of anti-Black racism as generating a form of "dispossessed reproduction"; or when Marisa Fuentes describes enslaved African women as "dispossessed lives."[12] This is another kind of separation process, not the *Scheidungsprozeß* Marx envisioned but one that leaves subjects bereft of social world and historical memory. Another relation of relationlessness.

Beyond the above expansive use of dispossession, however, there is a second, narrower meaning attached to the concept. In this register, the term is used as a means of naming certain violations of personhood and bodily integrity. Speaking of *bodily dispossession* in this way draws Black political thought into conversation with other strands of critical theory. It is, for instance, predominantly in this sense that feminist philosophers Judith Butler and Athena Athanasiou and critical race theorists Brenna Bhandar and Davina Bhandar deploy the concept.

The idea of bodily dispossession has a certain intuitive appeal and may even be granted a certain logical priority over the land question, which has otherwise been the focus of this investigation. Critical-theoretical treatment of dispossession in this sense has been plagued by a familiar unease, however, and nearly every deployment of the concept is attended by a certain ambivalence. As Athanasiou expresses it, the notion of bodily dispossession may "reiterate the link between the human and ownership," generating a "central aporia of body politics: we lay claim to our bodies as our own, even as we recognize that we cannot ever own our bodies."[13]

It is perhaps helpful to parse this concern by separating it into two registers: one generic and one specific. The generic register echoes a concern we have already seen in previous chapters regarding dispossession in other contexts: insofar as (bodily) dispossession presupposes a relation of (self) possession, it appears to reinforce the very proprietary and commodified models of human personhood that these traditions commonly seek to displace or critique, in this case in the form of "property in the person" or self-ownership.

This general concern is motivated by a desire to loosen the grip of "possession" and "property" over our moral and political vocabulary. As many scholars have noted, in Western legal and political thought there is a tight relation between rights and property, between *ius* and *dominium*. So close is this association that the two are often spoken of as if virtually synonymous. It is not merely the case that property is considered an important species of right but rather the inverse: rights are legal constructs we routinely conceptualize as possessions of personhood, as objects of personal ownership. My rights are precisely that: *mine*.[14] The gravitation center of this has long been the notion of "property in the person" or, more simply, self-ownership.[15] The fount of this idea remains the oft-cited passages from Locke's *Second Treatise of Government*, where he posits that "every Man has a *Property* in his own *Person*. This no Body has any Right to but himself."[16] So powerful was this idea, C. B. Macpherson has argued, that it has become the organizing grammar of our political vocabulary. The resulting world of "possessive individualism," as MacPherson termed it, entails the view that the individual is proprietor of "his own person and capacities," such that political relations more generally come to be experienced as derivations of this core sense of self-ownership.[17]

Beyond this expansive and rather general worry with a commodified and/or proprietary reformulation of social, moral, and political life, however, a second, more concrete one emerges: the problem of *self-alienation*. Property is a legal construct that empowers certain subjects to claim exclusive control over a particular object of concern. What it means to have "exclusive control" is highly debatable, but it is generally taken to include the power to alienate.[18] If I own something, I would commonly understand that ownership to include the power to sell, gift, or otherwise divest the object from myself. So the right to alienate is part and parcel of the power of property. If rights are "property-like" in some important sense, then it would seem to follow that they too should be alienable. If I have a right to my life or liberty, then part of what it means to say that these are "mine" is to say that I can alienate them to whomever I choose. When articulated as a feature of "self-ownership," this has proven troubling and contentious for central figures in the history of Western legal and political thought, however, because it may be conceptually incoherent and/or generate outcomes that are morally or politically undesirable. Paramount among these disquieting outcomes has been the right to alienate one's own self. If my right to life is alienable in the manner of ordinary property, then I should be able to contract into my own servitude or slavery.

The problem of self-alienation has, for instance, been at the heart of many generations of debate over the problem of exploitation. Exchanges between G. A. Cohen and Robert Nozick are typically cited as emblematic in this regard.[19] Many liberals and libertarians such as Nozick have argued that the capacity to contract one's own labor out on a market is a core right. For them, this is an exercise of the right of self-ownership rather than a violation of it, because alienating my capacity to labor is not the same as alienating my personhood tout court. They even extend this beyond the phenomenon of "renting" oneself out (e.g., in the course of a day's work) to include "selling" oneself permanently. When, for instance, Nozick posed the question of whether "a free system would allow [the individual] to sell himself into slavery," he answered in the affirmative: "I believe that it would." Others have extended this to defend "a *civilized* form of contractual slavery."[20] By contrast, Marxist critics such as Cohen have contended that contracting into waged exploitation is not different in kind from self-imposed slavery, since the only real difference is the duration of the contract, which, at any rate, is itself merely a product of the negotiation between the two parties and not bound by external moral restriction. The logical extension of the liberal argument for self-ownership, they argue, is that no distinction can be found between contracting oneself out for a day verses a lifetime. Several decades of subsequent commentary and revision have not so much resolved the matter as exhausted it.

By concretizing the material stakes of the question, feminist theorists have been able to gain greater traction as well as clarify its stakes. As scholars such as Carole Pateman and Anne Phillips point out, it is not simply the case that women have categorically been excluded from the status of "property owner" in a variety of ways (although this is also true). They are also eager to raise concern with the myriad ways in which women have been rendered "property-like," that is, through processes of sexist objectification and commodification. When situated historically, these processes present a dilemma not unlike the one posed earlier, however (see introduction and chapter 1). Namely, over historical time, as social relations have become more generally proprietized and commodified, the denial of autonomy and control over one's life entailed by patriarchal forms of domination has increasingly been expressed and experienced as a loss of self-ownership. Sexist violations may then be experienced as an attack on the inherent "property in the person" of women. As a result, the question becomes: To what extent can feminist objectives of dismantling and replacing patriarchal rule be advanced by projects aimed at retaking, restoring, or properly realizing

this expectation of self-ownership? While some theorists view the language of self-ownership as indispensable—for instance, as part of a defense of women's bodily integrity in the context of sexual violence—others have found it inimical to feminist aims.[21]

The central conundrum remains. If I truly "own" myself in any meaningful sense, then should I be able to dispose of myself as well? If so, can this self-alienation be permanent (as in slavery) or merely temporary (as in renting oneself out)? For many, the ability to alienate oneself permanently—for instance, by selling oneself into slavery—appears not only morally suspect but also conceptually confused since it would entail an exercise of one's right in such a way as to effectively destroy the possibility of being a rights-bearing agent at all. Voluntary servitude appears then as a simultaneous exercise and negation of my rights to personhood.[22]

I shall make no attempt to resolve this conceptual puzzle, at least not as it has been previously staged. Instead, I propose first to transpose the debate into a different register. My intuition is that this problem has proven intractable because it has been posed in the wrong (or at least partial) way. Notions of self-ownership remain politically and philosophically indeterminate (and, consequently, so too does the idea of bodily dispossession) because the historical context against which they are set has been shifting beneath and behind the scenes. Caught in the flow of this transition, many historically subjugated populations have been (rightly) unsure what to make of the promise of self-ownership. This is the source of that deep ambivalence surrounding the language of "property in the person": it can be authentically experienced as liberation and restriction at once. Instead of generating (yet another) ideal theory of "property in the person" that would finally resolve the paradoxes inherent in the idea, I propose to explore the entanglements of self-ownership, alienability, contract, and consent as a stage on which the second-order connections between gender, race, class, and coloniality have played out historically. The richest set of intellectual resources for doing so can be gleaned from the Black radical tradition.

II

On May 24, 1886, the famed, formerly enslaved abolitionist Frederick Douglass gave a speech to the Annual Meeting of the New England Woman Suffrage Association in Boston. Extolling the virtues of the suffragette movement and defending their methods of vigorous "agitation," Douglass

sought to draw parallels between his own experience as an enslaved man and the plight of his (predominantly, if not exclusively, white) female audience. The core connection between these two otherwise distinct struggles was, he argued, the idea of self-ownership. His argument consisted, first, in positing that the Civil War was best framed as a struggle "over the question whether a man is the rightful owner of his own body." Second, Douglass asserted that the basic assertion of self-ownership originally made visible in the context of slavery provided a "whole encyclopedia of argument," which equally applied to the case of suffrage.[23] In spirals of rhetorical heightening, Douglass linked these disparate movements.

> The great fact underlying the claim for universal suffrage is that *every man is himself and belongs to himself*, and represents his own individuality, not only in form and feature but in thought and feeling. And the same is true of woman. She is herself, and can be nobody else than herself. Her selfhood is as perfect as perfect and as absolute as is the selfhood of man. She can no more part with her personality than she can part with her shadow. This fundamental, unchangeable, and everlasting condition or law of nature is, to some extent, recognized both by the government of the state and of the nation.[24]

To deny woman rights of self-ownership and suffrage was, Douglass summarized, to leave her in the condition of "a proscribed person."[25]

Seven years later, Douglass was invited to speak at the Carlisle Indian Industrial School. Founded in 1879 in renovated military barracks, Carlisle was the first federally funded off-reservation Indian boarding school in the United States and quickly became the model for hundreds of such schools across the Anglo settler world. The express aim of these institutions was, in the infamous words of Carlisle's founding director, General Richard Henry Pratt, "kill the Indian: save the man."[26] Douglass addressed the residents of Carlisle on Thursday, April 7, 1893. His speech, titled "Self-Made Men," was eventually printed and circulated as a pamphlet by the school press.[27] In it, Douglass not only again advanced the language of self-ownership; he extolled the virtues of labor as a medium for virtuous self-improvement and transformation: "My theory of self-made men is, then, simply this; that they are men of work."[28] Citing himself as an example, Douglass exalted work on the "property" of oneself as a means to self-emancipation, and goaded his audience toward the same.

The "Self-Made Men" speech was not written specifically for the Carlisle students. Douglass had given it many times before—by some estimates more

often than any other discourse from 1859 to the time of his death in 1895.[29] On this occasion, however, he did make an effort to tailor it specifically to his Indigenous audience. Douglass had been raised by his grandparents, Isaac and Betsy Bailey. Betsy Bailey was of Native American descent, a fact that Douglass directly referenced, associating himself with the children in attendance: "I rejoice beyond expression at what I have seen and heard at this Carlisle School for Indians. I have been known as a Negro, but I wish to be known here and now as an Indian."[30]

Although he innovated within the tradition, the language of self-ownership and virtuous self-improvement was of course not unique to Douglass. In his immediate sphere of influence, it was central to abolitionist theory long before Douglass made his visits to the suffragettes or the Indigenous students at Carlisle. For many decades, abolitionists had been making an argument to the effect that slavery was wrong because it violated inherent rights of self-ownership. For instance, in 1837, while working for the American Anti-Slavery Society, Edward Tyler published the pamphlet *Slaveholding a Malum In Se, or Invariably Sinful*, in which he contends:

> Self-ownership is an original endowment of every human being—the nucleus around which his other rights gather—the circumference within which they all lie. That every man is naturally the owner of himself—the proprietor of his body and mind—is one of those first truths, which need no argument to establish, which unperverted minds universally acknowledge, which is recognized in the phrases, common to all languages, *my* limbs, *my* body, *my* mind. This is the only right, or comprehends all the rights, original to man, inherent in human nature, the birth-rights of our race. All other rights depend on this for their validity.[31]

As Tyler makes clear, it is not simply the case that self-ownership was a sacred right; it was *inalienable*. Under no circumstances could it be lost or transferred to another. Even the deliberate or consensual alienation of self-ownership was, for Tyler and many abolitionists like him, impossible—a conceptual absurdity—since it would entail negating the very personhood upon which consent was premised: "Self ownership cannot be forfeited by crime; neither can it be alienated by any other act. It is inherent in human nature. It cannot be lost by birth, by gift, by contract, or by captivity."[32] Accordingly, regardless of how they had acquired those in their thrall, slave owners were *thieves* of their fellow humans.[33]

Part of what made the language of self-ownership appealing both to Douglass and to abolitionists more generally was, I suspect, its elasticity.

As we see in these speeches, through it Douglass was able to draw connections between white feminism, abolition and Black political thought, and Indigenous and anticolonial movements.[34] This was, however, an ambivalent and deeply fraught terrain. It threatened to recast these struggles into a vocabulary more amenable to the capitalist reorganization of social relations (the full implications of which could perhaps not yet be seen). Rather than reading Douglass as an unalloyed proponent of the idea of "property in the person" per se, I propose therefore to read him here as responding to a political predicament: a *dilemma of self-ownership*, which I take to be a specific instance of the more general *dilemma of dispossession* with which this book is centrally concerned.[35] Read contextually, the above speeches appear as markers in a broader set of transformations taking place over the course of the nineteenth century but extending into the present.

III

Although Frederick Douglass may have drawn upon it, contemporary Black political thought has been considerably less sanguine about the emancipatory potential of "property in the person." The intellectual tradition within Black social and political thought that has perhaps been most inimical to notions of self-ownership is Afro-pessimism. Although it has not been expressly theorized as such, we find in scholars working within this framework what might even be termed a (tacit and vexed) theory of bodily dispossession. Consider, for instance, the opening lines of Fred Moten's influential work *In the Break*.

> The history of blackness is testament to the fact that objects can and do resist. Blackness—the extended movement of a specific upheaval, an ongoing irruption that anarranges every line—is a strain that pressures the assumption of the equivalence of personhood and subjectivity. While subjectivity is defined by the subject's possession of itself and its objects, it is troubled by a dispossessive force objects exert such that the subject seems to be possessed—infused, deformed—by the object it possesses.[36]

In a later piece, coauthored with Stefano Harney, Moten even seeks to connect the condition of "being-slave" to questions of land tenure. The link, they posit (presumably signally a Lockean inheritance), is the imperative to improvement that frequently attends rights of self-ownership: "From the out-

set, the ability to own—and that ability's first derivative, self-possession—is entwined with the ability to make more productive. . . . For the encloser, possession is established through improvement—this is true for the possession of land and for the possession of self."[37] There are hints here of possible linkages and solidarities between Black and Indigenous struggles.[38]

An Afro-pessimist orientation suggests that Blackness can never be compatible with the ideal of the self-possessing individual. Moten's approach—shared by a number of other important contemporary theorists such as Jared Sexton and Frank Wilderson—emphasizes the radical exteriority of Blackness to normative conceptions of personhood. They draw upon a rich heritage. For instance, it was Fanon who decades earlier cried out, "Here I am an object among other objects," warning that the "white man wants the world. . . . His relationship with the world is one of appropriation."[39] Across great time and space then, it is fair to say that the Black subject has endured as, in Frederick Douglass's words, a "proscribed person." When we transpose this frame of reference into debates over "property in the person," it is easy to see where skepticism surrounding the idea and ideal of self-ownership would arise. From this vantage, projects within (white) feminism, liberalism, and Marxism appear as attempts to *reclaim* a status or standing, one that has been historically predicated upon the excision of Blackness from the category of personhood. Insofar as these (white) thinkers do not trouble the basic distinctions between whiteness and Blackness on which the relation between property and personhood has historically been structured, their projects appear less as radical challenges to a unjust status quo and seem instead aimed at recovering or restoring the expectations of racial privilege that have been partially thwarted by the inequities of patriarchy or waged-labor exploitation.

Thinking alongside Afro-pessimist thought, prevailing debates on the matter of self-ownership are rightly recast as internal to whiteness, a structure of racial governance most white theorists leave virtually untouched, even unmarked. Consider, for instance, how central the language of enslavement has been to the explication of property rights, especially the idea of self-ownership. For example, in the classic philosophical debate between Robert Nozick and G. A. Cohen, which set many of the terms of this analysis, when Cohen sets out to define what it means to say that one "owns oneself," he writes, "To own oneself is to enjoy with respect to oneself all those rights which a slaveowner has over a complete chattel slave" and the "crucial right of self-ownership is the right not to (be forced to) supply product

or service to anyone."[40] What does it mean to conceive of oneself as a *slave owner* over one's own person? For whom is this metaphor a useful tool for elaborating a normative ideal? It is truly remarkable (itself a sign of the pervasive whiteness of professionalized philosophy and political theory) that slavery can remain core to the lexicon of these debates without provoking systemic reflection on the *actual* institutions of enslavement, historically or in the present. Actual, nonmetaphorical enslavement remains largely ignored by the (white) feminist, liberal, and Marxist reflections on self-ownership, notwithstanding its common use as a term of art. More to the point, however, their uninterrogated, folk conception of slavery has left this work stalled over rather facile distinction between liberation *or* subjection, which in this particular context is supposed to map onto a dichotomy of possessor *or* possessed.

Beyond its generally myopic view of race, the problem with this orientation is that actual institutions of enslavement were rarely so simplistically or discernibly on one side of this divide or another. Even more to the point, as I elaborate below via Saidiya Hartman's groundbreaking work, the "afterlives" of slavery have centrally depended on a much more disquieting concomitant relation of liberty and subjection, possession and dispossession. Unfortunately, notwithstanding the importance of its interventions more generally, certain strands of Afro-pessimist thought have surprisingly reproduced this ahistorical dichotomy, albeit in an inverted form. Insofar as that critique leverages a strict binary opposition between white and Black, which is then mapped onto categories of possessor and possessed, it too lacks the necessary conceptual and methodological resources to grapple with the variegated texture of the race/property nexus. By positioning subjects on either side of an impermeable barrier (possessor and possessed), this framework can account for neither the historical mutability of that distinction nor the productive function of permeability across its membrane. As Patterson has argued at length, the figure of the slave has rarely, if ever, been an outsider in an *unqualified* sense: "Although the slave is socially a nonperson and exists in a marginal state of social death, he is not an outcaste."[41] Rather than ontologically exterior to personhood in some unqualified sense, historically, the utility of slavery has resided with its liminality: "The essence of slavery is that the slave, in his social death, lives on the margin between community and chaos, life and death, the sacred and the secular. Already dead, he lives outside the mana of the gods and can cross the boundaries with social and supernatural impunity."[42] Just as important,

the reductive and ahistorical nature of the "ontological dichotomy" view may fail to make sense of other, nonwhite subject positions or, what is worse, participate in their absorption to whiteness by relegating them to the side of the "privileged." This drives us toward increasingly antagonistic, zero-sum formulations that proceed from abstract and reified notions of priority, which dissolve into irresolution and inaction.[43] As I hope to have demonstrated through the previous discussion of recursive dispossession in the colonial context, however, rather than an impermeable barrier between possessor and possessed, we find instead a tangled skein.

In my estimation, an earlier generation of Black feminist theory remains a surer guide to navigating through the vexations of bodily dispossession and self-ownership, providing a sturdier bridge between critical race theory and Indigenous thought. What is most inviting about this body of scholarship is not simply the content of analysis but also its methodological dexterity. Black feminists such as Patricia Hill Collins, Kimberlé Crenshaw, Angela Davis, Cheryl Harris, and bell hooks have been so successful in grappling with the vicissitudes of race, rights, and property (and the relations between them) precisely because they have deftly avoided the temptations of reification that tend to plague more lofty "metaphysical" accounts.[44] Rather than speak of property or race *as such*, their work generally eschews such mystifications in favor of more textured empirical work. Taken collectively, theirs is what I would term a "naturalistic" approach to the problem.[45] Following their lead, I contend that it is politics and history—not ontology or metaphysics—that set the context of our concern, and thus also supply the tools of our critique.

As Cheryl Harris extols at length, property is not a reified thing but a cluster of social and historical practices.[46] Property does not refer to a set of things but to a species of relations.[47] To assert property in something is to make an enforceable claim to exclude someone from access to some thing. Understanding property as a mode of social organization is the first step in grasping its possibilities as a tool of domination. Apprehending property as a cacophonous array of social practices situated in a mutable context of power is necessary to wrestling with the enduring dilemmas associated with its use in radical political thought. For property configurations—including the notion of "property in the person"—can mean different things at different times and, indeed, even multiple things at once. That is why they are dangerous and ambivalent tools (as many powerful tools are).

Since (self) possession remains an uncertain ideal within Black political thought, dispossession remains a fraught weapon of critique. This is perhaps why the concept is so rarely explicitly theorized as such, despite its relatively widespread use.[48] One of the most astute yet overlooked engagements with the vexations of dispossession and self-ownership within the Black feminist tradition comes to us from legal theorist Patricia Williams. In works such as *The Alchemy of Race and Rights*, Williams tracks the oscillating need to claim property in oneself (to protect against sexual violence, to claim control over one's reproductive capacities, etc.) while remaining wary of the implications of this move. She summarizes this in a particularly dense and impactful paragraph: "Reclaiming that from which one has been disinherited is a good thing. Self-possession in the full sense of that expression is the companion to self-knowledge. Yet claiming for myself a heritage the weft of whose genesis is my own disinheritance is a profoundly troubling paradox."[49] In my reading, Williams is grappling here with one face of what I would term the dilemma of dispossession. She is not simply repeating the long-standing ambivalence about the philosophical coherence of self-ownership in white feminist, liberal, and Marxist traditions. Rather, she is drawing attention to a particularly acute dilemma that lays in slavery's wake.[50] For those who have historically been rendered objects of another's property, the violence of this objectification generates contradictory desires in the form of a simultaneous *disavowal of oneself as property* and *avowal of oneself as (self) proprietor*. The question endures: Does the violence of enslavement reside in the condition of being property per se or in being rendered property of *another*? Is the problem that one has been rendered an object of property or that one has been denied the status of (self-)owner?[51] If dispossession appears a useful term of art for the Black radical tradition, it makes sense that there is nevertheless something deeply unsettling in the normative implications behind affirming, *I am property*, even if now that property is *my own*. In a new guise, it risks becoming one more twist in what Hortense Spillers named "the moral and intellectual jujitsu that yielded the catachresis, person-as-property."[52]

If I am correct to suggest that the dilemmas of dispossession play out on the terrain of history, not ontology, then there is nothing to do but return to that field of analysis. Recovering the complexity and recurrence of the dilemma is, in this view, no longer about finding the (ahistorical) "right" answer. It rather consists in analyzing those analytic and practical tools that have given the problem a particular tractability in certain times and places where those caught in its vices have managed to pry it apart.

IV

As a number of scholars of the era have noted, the "long" nineteenth century was a period in which the contradictions of formal emancipation played out with particular fortitude.[53] Precisely as the field of formal legal and political rights was rapidly expanding to incorporate hitherto excluded social groups, these same rights were simultaneously being recoded, some would say hollowed out. As a result, inclusion into the formal sphere of law and public life came with diminishing returns. This was not simply because the content of those rights that had been so vigorously fought for was being emptied but also because being brought within their orbit came with new modes of governance. Inclusion was conscription. Accordingly, observers and participants of these processes became increasingly concerned with an experienced disjuncture between formal or abstract right and the social relations that imbued it with practical content. The tasks of critical theory became then not merely to observe a gap between the ideal and the real but rather to study the political function of this noncongruence, this disjunctive juridical subject.[54]

Analysis of this sort is often attributed to Marx. Perhaps most famously in "On the Jewish Question," he sought to demonstrate how the "political emancipation" of the Jewish community through the abolishment of formal discrimination in the realm of right was coextensive with the deepening of substantive inequalities outside of it. Marx held that these substantive inequalities were emblematic of new forms of social domination that, he predicted, would be even harder to dislodge in a world where liberation was increasingly experienced as "freedom from others." A crucial axis of this was, of course, property rights, which, while expanding in a nominal sense, were also being recoded as "the right to enjoy and dispose of one's possessions as one wills, without regard for other men and independently of society," that is, "the right of self-interest."[55]

In a similar vein, the Foucault of *Discipline and Punish* returned to the early nineteenth century precisely to demonstrate how a critique of the juridical subject of rights must attend to the network of social relations in which it is embedded that give it its content and life, one dimension of which was the new linkages between punishment and property (including the transformation of the convict into an object of property).[56] It is not a coincidence that Foucault drew so extensively upon Friedrich Nietzsche, especially *On the Genealogy of Morals*, a text centrally preoccupied

with how our vocabulary of morality and selfhood has been so captured by that of contract and debt. As Nietzsche so astutely pointed out, property was not just a set of institutions; it was part of a larger moral vocabulary in which we have become entangled.

> To inspire trust in his promise to repay, to provide a guarantee of the seriousness and sanctity of his promise, to impress repayment as a duty, an obligation upon his own conscience, the debtor made a contract with the creditor and pledged that if he should fail to repay he would substitute something else that he "possessed," something he had control over; for example, his body, his wife, his freedom, or even his life. . . . Above all, however, the creditor could inflict every kind of indignity and torture upon the body of the debtor; for example, cut from it as much as seemed commensurate with the size of the debt. . . . An equivalence is provided by the creditor's receiving, in place of a literal compensation for an injury (thus in place of money, land, possessions of any kind), a recompense in the form of a kind of *pleasure*—the pleasure of being allowed to vent his power freely upon one who is powerless, . . . the enjoyment of violation.[57]

Published in 1887, *Genealogy* appeared between Douglass's speeches to the suffragettes and the Carlisle Indian school.[58] Situating these texts alongside one another, a portrait of struggle emerges. The whole historical period appears as a battlefield in which the scope of rights and personhood is being expanded even as it is being reformulated in a new, punishing idiom. Above all, each of these thinkers (in their own distinctive ways) reveals that the nominal expansion of formal, juridical right may not only coincide with but can also facilitate the expansion of new forms of subjection and domination.

This movement exceeds the simple juridification of politics.[59] The language of dispossession usefully foregrounds a more specific feature, namely, the peculiar dual gesture of ascription and alienation that attends these processes. Hence, we find here a range of techniques that entail the imposition of a proprietary interest that can only be actualized through its simultaneous negation. The language of inclusion and exclusion cannot grasp the peculiar structure of this process, what Nietzsche calls its "logic of compensation."[60] For a more exact marker of this operation, we may look to a different discussion in Marx.

In at least one plausible Marxist interpretation of the transition from feudalism to capitalism in Western Europe, workers gained a new form

of property: property in their labor power. Under feudalism, serfs had no such proprietary claim over their own labor. Owned and controlled by forms of personal domination under aristocratic lords, serfs were not free to change employers or their form of employment (from, say, farmer to mason). In one sense, the collapse of feudalism ushered in a new proprietary right. Workers in capitalist economies "own" their labor power in a new way, which appears as a gain over their feudal counterparts. However, the background social conditions have changed in such a way as to effectively negate this new proprietary interest. Specifically, because workers in capitalist societies have no direct access to the means of production, they therefore have no way of *actualizing* a proprietary claim in their labor power, except, that is, by alienating it to someone else (in this case, by temporarily contracting it out to the owners of the means of production for a period of time and receiving a wage in return). As Marx put it, under such conditions, "property turns out to be the right, on the part of the capitalist, to appropriate the unpaid labour of others or its product, and the impossibility, on the part of the worker, of appropriating his own product. The separation of property from labour thus becomes the necessary consequence of a law that apparently originated in their identity" (*C*, 730).[61] We can say then that in these circumstances workers have a strange form of "negative property" in their labor power, the precise character of which comes to light when we read the de jure change against the de facto conditions of its actualization in its socioeconomic context.[62]

Marx failed to theorize in any systematic manner how race functioned as a key organizing grammar for this dispossessive process. Accordingly, he failed to see that what was at stake for many racialized and colonized subjects was not merely "negative property" but, more fundamentally, "negative personhood."[63] This is why the Black radical tradition is indispensable. In my view, there is perhaps no text that better gets at the shifting terrain of race, rights, and property in the nineteenth century than Saidiya Hartman's *Scenes of Subjection*. There, Hartman excavates the paradoxes of "enslaved personhood" as refracted through the medium of property in nineteenth-century America. As she points out, the slave was in many ways the paradigmatic "outside" of personhood, rendered as an object of property to be owned, used and abused, traded away or destroyed by her master. This structure of domination contained important caveats, however. Paramount among them: the slave could be treated as a legal person for the purposes of assigning criminal culpability. Hartman unpacks the logic of this selective recognition of "slave humanity" by pointing out that

it "nullified the captive's ability to give consent or act as agent and, at the same time, acknowledged the intentionality and agency of the slave but only as it assumed the form of criminality." As a result, the "recognition and/or stipulation of agency as criminality served to identify [slave] personhood with punishment."[64] Among other perversions, this led to the unusual possibility that a slave caught in the act of flight could be found guilty of effectively "stealing themselves," the absurdity of which was pointed out by abolitionist Henry Bibb when he observed, expressly echoing Proudhon, that "property can't steal property."[65] Hartman unpacks the twisting logics at work here, drawing explicitly upon the language of dispossession to do so: "The agency of theft or the simple exercise of any claims to the self, however restricted, challenged the figuration of the black captive as devoid of will. Stealing away ironically encapsulated the impossibility of self-possession as it exposed the link between liberty and slave property by playing with and against the terms of dispossession."[66] Elsewhere, Hartman confronts perhaps the darkest implications of this paradoxical standing of the slave through her excavation of the institutions of sexual violence and rape. As she points out, the normativity of sexual violence in the context of slavery "establishes an inextricable link between racial formation and sexual subjection." Here, the "consent" of enslaved and racialized women is rendered "intelligible only as submission."[67]

Postbellum circumstances reconfigured the terms of liberty and subjection but maintained a tight internal relation between them. If slavery had been a complex set of institutions that operated in a multiplicity of registers—political, economic, social, and cultural—"emancipation" was confined to the formal legal sphere. The inability and unwillingness of U.S. society to root out the multiple levels and causes of enslavement produced what W. E. B. Du Bois rightly called the "splendid failure" of reconstruction.[68] As a result of this failure, in the postemancipation era formerly enslaved Blacks found themselves "freed" in a paradoxical sense: while released from the formal bonds of slavery, they were also thrown out into an utterly hostile world of social domination and economic exploitation. Consider the account given by the iconic Ida B. Wells in 1893.

> The Civil War of 1861–5 ended slavery. It left us free, but it also left us homeless, penniless, ignorant, nameless and friendless. Life is derived from the earth and the American Government is thought to be more humane than the Russian. Russia's liberated serf was given three acres of land and agricultural implements with which to begin his career of

> liberty and independence. But to us no foot of land nor implement was given. We were turned loose to starvation, destitution and death. So desperate was our condition that some of our statesmen declared it useless to try to save us by legislation as we were doomed to extinction. . . . We were liberated not only empty-handed but left in the power of a people who resented our emancipation as an act of unjust punishment to them. They were therefore armed with a motive for doing everything in their power to render our freedom a curse rather than a blessing.[69]

There are at least two elements of Wells's analysis that stand out for our purposes here.

The first concerns the central role that land plays in her account of emancipation. This is undoubtedly a reference to the (in)famous promise of "forty acres and a mule." On January 16, 1865, General William T. Sherman issued Special Field Order No. 15, specifying that formerly enslaved families should be granted plots of forty acres in requisitioned lands in the Sea Islands and coastline south of Charleston. With this order, some 400,000 acres of privately held land would be forcibly confiscated from slave-owning families and redistributed. When Sherman later suggested the army would provide these families with mules to till the soil, it gave birth to the "forty acres and a mule" phrase.[70] The promise of this unprecedented downward reorganization of property was clear: African Americans would gain direct, unmediated access to the means of subsistence and production, thereby radically challenging their historic subordination to white property owners.[71] The stakes were enormous. As Eric Foner contends, "The prospect beckoned of a transformation of Southern society more radical even than the end of slavery."[72] The much-anticipated redistribution never materialized. Not only did the U.S. government abrogate its promise to African Americans, but a wave of "Black Codes" in the South went one step further, effectively preventing Blacks from owning or leasing land.[73] This leads to Wells's second point. It is not merely that postbellum life offered an inadequate or incomplete form of freedom. The continuity of enslavement is not her concern here. It is, rather, the manner in which freedom was "cursed": articulated in such a way as to produce a distinctly novel form of subjection, one that operated through responsibility without redress. Under these new conditions, the newly emancipated were expected to take individual responsibility for their self-improvement, even as the substantive inequalities and material conditions that made this practically impossible were being shielded from reconstruction efforts by

their placement in the newly forming sphere of the "social" (a realm characterized by noninterference from the formal institutions of the state and law). Adding to the burdens of the reconstruction era, emancipation was thought to have generated a *debt*. The Emancipation Proclamation was, in effect, a massive act of political manumission, which, as Patterson has documented, nearly always entailed a simultaneous continuation and mutation of the previous relationship. Speaking in comparative historical terms, Patterson points out that the similarities across societies that have institutionalized forms of manumission are striking: "Everywhere the freedman was expected to be grateful for the master's generosity in freeing him, however much he may have paid. This followed naturally from the universal conception of manumission as a gift from the master. . . . The relationship between ex-slave and ex-master was always stronger and always carried with it a certain involuntary quality that was quite distinctive. It cannot be viewed in isolate from the relationship it replaced."[74] In the eyes of much of postbellum white America, Black life owed its free circumstances to white agency, which explained and justified the subordination of the former to the latter even in a world of nominally free market exchange: "In short, to be free was to be a debtor—that is, obliged and duty-bound to others."[75] The terms of amortization were supposedly set by contract and consent, even while the bargaining position of the parties involved was set by a racialized hierarchy. Rather than frame emancipation from slavery as, for instance, generative of restitution and positive entitlement for the formerly enslaved, liberty came to be expressed as their right to contract into indefinite debt repayment. In effect, the formerly enslaved remained, in Ira Berlin's felicitous phrasing, "slaves without masters."[76]

The paradoxical entanglement of liberty and servitude in this era is condensed in section 1 of the Thirteenth Amendment (1865): "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." There is probably no one single sentence that has garnered more critical attention in the analysis of reconstruction and its contemporary reverberations. Most of this interest has been focused on the dependent clause, which famously introduces an exception to the general prohibition against slavery: "except as a punishment for crime." A number of commentators consider this the crucial element since it enables reenslavement through criminalization. From the Black Codes, to Jim Crow, to the new era of mass incarceration, this subclause has provided the red thread by which to trace the structural endurance of Black

subjection, despite its mutations of form.[77] Following Hartman, however, I would draw attention to a different component of the amendment. In expressly prohibiting "involuntary servitude" alongside slavery, the provision tacitly references and defends the category of *voluntary servitude*. What remains unspecified here, setting the stage for a series of political battles in the subsequent decades, is the precise content of these terms and the means of distinguishing them. The Reconstruction era represents a transitional moment, then, one in which the expansion and consolidation of near indefinite indenture and subjection of Black life in America no longer hinged upon the formal, legally sanctioned negation of Black capacity to consent, as in slavery. Instead, we find the construction of background social conditions (economic deprivation and social stratification) that make it all but impossible to avoid contracting oneself into "voluntary servitude." In this operation, the will of the subjected has been turned against them, used as a tool of their conscription into subordination and exploitation.

Patricia Williams has coined a particularly apt term for this: Black antiwill. In a reflection that expressly links the experiences of Black and Indigenous women, Williams writes, "One of the things passed on from slavery, which continues in the oppression of people of color, is a belief structure rooted in a concept of black (or brown or red) antiwill, the antithetical embodiment of pure will. We live in a society where the closest equivalent of nobility is the display of unremittingly controlled willfulness. To be perceived as unremittingly without will is to be imbued with an almost lethal trait."[78] Although Williams here frames "Black antiwill" as "unremittingly without will," elsewhere in her work, we can see that this frequently operates not through *absolute negation* (i.e., "you have *no* will") but through an odd partial or truncated will (i.e., "you have will, but it is only legible in a negative valence or register, that is, as acceptance of your subjection"). This "Black antiwill" resonates backward to the nineteenth century, through Hartman to Douglass. Taken together, these investigations into the amputated forms of will and consent in the context of extreme domination are pertinent because they move us beyond the articulation of racial and colonial domination in terms of a mere excision from the category of "personhood" or "property owner." Instead, Williams and Hartman direct our attention to the possible conjunction of domination and the nominal expansion of personhood rights, where the latter is truncated or organized in a "structurally negated form." This forms a conceptual bridge of sorts between rather abstract, ontological invocations of "dispossessive force" and

the more genealogical and historical-materialist analyses with which I am engaged here.[79]

This conceptual bridge may serve as a point of contact between Black and Indigenous struggles as well. Recent years have seen a spate of new research on the linkages between these two intellectual and political traditions. Taken together, what emerges is not a picture of two distinct and parallel processes but an interactive relation between them. For instance, as such scholars as Brenna Bhandar, Alyosha Goldstein, Shona Jackson, Barbara Krauthamer, Tiya Miles, Nikhil Pal Singh, Manu Karuka, and Patrick Wolfe have shown, racialization processes were woven throughout the creation of landed property in the nineteenth-century Anglosphere.[80] Returning to the discussion in chapter 1, for example, the same Homestead Act discussed there also categorically excluded freed Blacks. Likewise, although the 1848 Treaty of Guadalupe Hidalgo made U.S. citizenship possible for Mexicans who were forcibly incorporated into the republic through imperial annexation, it also established a legal framework for land ownership and settlement that simultaneously produced and protected white Anglo identity by creating the racial category of "Spanish American." Pueblo Indians and *genizaros* (formerly enslaved Indians) were denied the rights of communal land ownership they had enjoyed under Mexican law, while other Indigenous nations deemed too "savage" (such as Apaches, Comanches, Utes, and Navajos) were excluded from both Mexican and U.S. citizenship.[81]

Attending to the particular question of dispossession and self-ownership permits a new dimension of this connection to come to the fore: the imbrications of Black and Indigenous antiwill. Consider Alexander Weheliye's recent reading of the political history of habeas corpus in the United States.[82] Weheliye notes that the history of habeas corpus has been bidirectional. It has been used as a tool of emancipation as, for instance, when it was deployed as a means to free captured Africans in the famous *Amistad* case of 1839. At the same time, however, he cautions that "the benefits accrued through the juridical acknowledgment of racialized subjects as fully human often exacts a steep entry price, because inclusion hinges on accepting the codification of personhood as property."[83] Weheliye concretizes this claim through a reading of *Dred Scott* (1857), where, he notes, Chief Justice Roger Taney's infamous decision explicitly contrasts Black subjects with Native Americans, situating the latter in a superior position on

the basis of their ability to "become citizens of a State, and of the United States . . . if an individual should leave his nation or tribe, and take up his abode among the white population."[84] Weheliye is surely correct to note that this decision highlights the degree to which white supremacist governance has operated through a shifting and ever instrumentally mutable comparative taxonomy of racial classifications. Accordingly, the supposed "proximity to whiteness" inherent in the possibility of Indians gaining citizenship is properly read as a strategy of (self-)extinguishment: this is a personhood that can only be actualized through abnegation. It is worth noting in this regard that the same Chief Justice Taney also wrote the majority decision in *Martin v. Lessee of Waddell* (1842) some fifteen years before *Dred Scott*, in which he argued: "The English possessions in America were not claimed by right of conquest, but by right of discovery. . . . The Indian tribes of the new world were regarded as mere temporary occupants of the soil, and the absolute rights of property and dominion were held to belong to the European nation by which any particular portion of the country was first discovered." As a consequence, "whatever forbearance may have been sometimes practiced towards the unfortunate aborigines, with from humanity or policy, yet the territory they occupied was disposed of by the governments of Europe at their pleasure, *as if it had been found without inhabitants*."[85] There is perhaps no clearer single statement distilling dilemmas of dispossession than in the pairing of these two decisions. Black subjects are excised from the zone of personhood in and through the very same mechanism that ascribes personhood (including self-ownership) to Indians while, at the same time, defining the content of this latter personhood in terms that render it null, literally read as if it had never existed at all.

To recapitulate: there is a collection of different strands of critical inquiry (feminist, Marxist, etc.) that uses the language of dispossession to refer to a relation to the self, body, or personhood. Although many thinkers in these traditions continue to speak of dispossession in this way, there is considerable ambivalence haunting its use. This ambivalence is manifest in both a generic and specific register. Rendering personhood as "property-like" in some important sense, it is objected, is problematic insofar as it tightens the grip of that vocabulary on our moral and political imaginations generally and, more precisely, because it would seem to countenance forms of self-alienation, even self-enslavement. I contend that stated in this abstract

register, there is no definitive solution to the dilemma: the conceptual coherence of the language of "bodily dispossession" remains refractory and unresolved. Enduring ambivalence with the concept stems from the fact that these debates have a dynamic historical context. They are taking place against a shifting social context, one in which property and possession operate as modes of governance less and less in the manner of a strict binary division between possessors and possessed. Rather than a simple case of excision from the propertied, or theft in the simple sense, dispossession entails a rather complex set of gestures in which proprietary interests are both ascribed and alienated. Revealing the work of this requires, however, laying bear the relationship between a juridical structure of right and the social context that actualizes that right, the dynamic and productive relation between de jure and de facto.

V

To be dispossessed of oneself is not simply to be negated in one's personhood, nor even seized as an object of another's property, however important and reprehensible those other concerns may be. Instead, in the specific sense with which I use the terms here, to be dispossessed of oneself is to have a certain proprietary claim ascribed to one's personhood (a claim of self-ownership) under conditions that demand its simultaneous negation. It is, again, to come to "have" something in such a manner that this possession cannot be actualized except through alienation. This matters, I contend, because it is so central to framing the forms of subjugation and domination that flow from this act of alienation as "freely" given, that is, as an act of voluntary contract and consent. Not only is this mode of dispossession historically pervasive; it is perhaps *the* primary form in which domination operates today in these contexts, given widespread liberal commitment to the notion that subjugation can only be legitimate if it is entered into voluntarily. I contend that historicizing the question reframes it in such a way as to render it more tractable.

As I have argued, the late modern era of democratic expansion generated important contradictions for Anglo settler societies. Increasingly committed to a normative ideal of consent yet materially dependent on coercively appropriated land and labor, this contradiction was managed through *rituals of antiwill*. In this moment, the register of racial and colonial governance moved toward "voluntary" self-abnegation.

Extended analysis of the Black radical tradition permits us to bring this sharply into view, accomplishing two tasks at once. We are able to flesh out the diverse lives of dispossession within critical theory (broadly conceived) by elaborating an alternative grammar, one more concerned with bodily integrity and selfhood than with land or the nonhuman natural world. At the same time, however, this discussion returns us to Indigenous politics. It serves as a response to the question of why "structurally negated" property rights were extended to Indigenous peoples in the first place. Situated in relation to the preceding discussion, we can grasp these now as a form of "Indigenous antiwill." Set upon the same shifting historical backdrop as the one sketched above, Indigenous consent is registered and recorded in a manner that finds resonances with Black subjection.

The slow—but nevertheless discernable—shift in the mode through which property has served as an instrument of social organization and domination continues into the present. We have moved away from a form of governance in which racialized and colonized subjects are denied status or standing as property holders and/or treated as "property-like" in a variety of ways, toward a system in which governance operates through a more complex gesture of ascription and alienation. By the latter, I mean to highlight the way in which proprietary interests are ascribed to racialized and colonized subjects in such a way as to limit their actualization to moments of negation: voluntary servitude, self-alienation, or self-extinguishment. It has, accordingly, become harder for us to know what to make of the promise of possession.

Stated more formally, in the context of highly stratified and hierarchically ordered social relations, those in positions of relative power and privilege tend to view the codification of some object of interest under the rubric of "property" as a means of securing access and control to it. For them, property anchors and solidifies. Conversely, for those in positions of relative weakness and subordination, the rendering of something into a property form is frequently the first step to losing control over it, since it is also a way of making things more alienable and fungible. For the first, property is a congealing agent. For the second, it is a solvent. What matters then is less whether or not one has a proprietary interest in something but rather the background power relations that give property its specific valence in any given context.

Previous work has attempted to hold this background context largely at bay, presuming that it remains fixed and can thus serve as a stable reference against which to adjudicate the coherence of the terms in a purely philosophi-

cal register. The naturalistic view of rights given in, inter alia, Black feminist thought retrains our focus on the political function of the language of self-ownership, which in turn enables us to diagnose the proper source of enduring ambivalences concerning bodily dispossession: precisely that sliding historical backdrop that gives variable configurations of race, rights, legal personhood, and property their concrete content. As a result of this historical slide, we live today in societies governed by a moral vocabulary of contract, consent, and will but also one deeply steeped in the language of debt, property, and possessive individualism, so much so that it has become hard to imagine the former without the latter. Under these conditions, the extinguishment of rights to personhood and property must be imagined as a voluntary submission, something the subject has ultimately agreed to in some form. This undoubtedly takes many forms, from notions of tacit consent to be governed to the more complex rituals of antiwill discussed above. Tracking the mutations of this gives new tractability to that vexatious concept: dispossession.

CONCLUSION

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> The opposite of dispossession is not possession, it is deep, reciprocal, consensual *attachment*. Indigenous bodies don't relate to the land by possessing or owning it or having control over it. We relate to the land through connection—generative, affirmative, complex, overlapping, and nonlinear *relationship*. The reverse process of dispossession within Indigenous thought then is Nishnaabeg intelligence, Nishnaabewin. The opposite of dispossession within Indigenous thought is grounded normativity. This is our power.
> —LEANNE SIMPSON (MICHI SAAGIIG NISHNAABEG), *As We Have Always Done*

> From the standpoint of a higher economic form of society, private ownership of the globe by single individuals will appear quite as absurd as private ownership of one man by another. Even a whole society, a nation, or even all simultaneously existing societies taken together, are not the owners of the globe. They are only its possessors, its usufructuaries, and, like *boni patres familias*, they must hand it down to succeeding generations in an improved condition.
> —KARL MARX, *Capital: Volume 3*

In writing this book, I have endeavored to demonstrate how a set of historical processes related to the reorganization of landed property in the Anglophone colonial sphere of the nineteenth and early twentieth centuries

was attended by a concomitant transformation in the basic vocabulary of political life such that these same processes have come to be defined by a terminology that is significantly indebted to them. The long arc of the preceding chapters has worked to uncover how a dynamic and fragmentary set of legal processes regarding the classification of land as an object of ownership and exchange could serve as a medium for the articulation of categories of political identity such as "European" and "Indian," which not only eventually congealed into a structure of domination in which the latter was subordinated to the former but was also buttressed by a whole vocabulary that served to set the terms of its own critique. The end result of this has been that the language of property and possession now functions as a dominant mode of political expression to the extent that it has become difficult to voice opposition to these processes without drawing upon the conceptual and normative frameworks they have generated. This is the dilemma of dispossession.

My concern with this has been both practical and theoretical. On the first level the project is motivated by a sense that the predicament of dispossession is a serious, real world problem for racialized and colonized peoples (and their allies), who seek to leverage a critique of these ongoing processes but often find they must do so in a manner that is constrained by the dominant vocabularies available to them. Thus, I have sought to diagnose the sources of this dilemma while remaining cognizant of the ways in which racialized and colonized peoples have thwarted its constrictions (and continue to do so). Secondarily, the project is also animated by a set of more abstract theoretical considerations. In this register, I am concerned with the general implications for thinking through what I am calling *recursivity*, not only between theft and property, or law and illegality, but also more generally between historical processes and the conceptual categories used to describe and critique them. In other words, the proper object of study here has not been dispossession per se but rather the broader looping effect that organizes politics *as if* it were a matter of dispossession. As I have argued throughout, when Anglo settler colonizers reorganized property relations, they did not simply steal a stable, empirical object called "land" from Indigenous peoples. Rather, as they transferred control over the land, they also recoded its meaning, rendering it a relatively abstract legal entity. So, unlike ordinary cases of theft, dispossession created an object in the very act of appropriating it: making and taking were fused. When it comes time to adjudicate the critical claims by Indigenous peoples, then, ownership over this legal object is commonly attributed to them retroactively. As a result,

the claims of the dispossessed frequently appear contradictory or question-begging, since they appear to both presuppose and resist the logic of "original possession." In sum, the recursive logic at work in this movement can be plotted as transference, transformation, and retroactive attribution.

At the more general level, my concern has partially also been methodological. Much of what passes for contemporary critical theory fails, in my view, to pose, let alone adequately grapple with, the predicaments presented by the problems of recursive meaning. Despite near continuous invocations of historicity or the social embeddedness of thought, much critical theory today advances in a decidedly presentist, ahistorical, analytic mode. Meaning is assigned to terminology rather than reconstructed from the history of its uses. Although frequently posturing as political, this work often turns out to be meretricious: insofar as it fails to historicize the terms of present conflicts, it further tethers us to them. With these worries in mind, I have approached the current problematic not by constructing an ideal, analytic "theory of dispossession." Instead, my instinct has been to historicize the concept, to explore the cause and consequences of its rise as a term of art in critical theory and radical movements. Investigating this involves opening up questions pertaining to the relation between the figurative and the historical, or between modes of political articulation and those practices and institutional arrangements that anchor them and provide them with their substantive content. At this most general level, the project is concerned to explore the very form and function of critical theory.

The latent promise of historical-reconstructive critique is that it can help free us from the constrictors of the present. This often happens not by winning a contestation according to its original parameters but by moving obliquely to it. Complete consideration of how this is being done relative to dispossession would require at least another whole book-length study. It is not possible in the space of a conclusion to give it full treatment. Nevertheless, I think it important to conclude by turning to some of the more positive, creative responses that have emerged in reply to the predicaments sketched in previous chapters. If the preceding has mostly been about what it means to lose something that you never really "had" to begin with, these concluding thoughts will focus on what it means to reclaim something that was never really "yours."

In what follows, I highlight a set of relevant examples as instances of what I will term the *expressive insurgency* of Indigenous struggles. In referring to these as "expressive," I am highlighting their non-instrumental character. As I read them, Indigenous struggles have specific, concrete goals, which often

entail the (re)appropriation of particular objects of concern that have been lost in the process of colonial dispossession. This is the instrumental dimension of their politics. However, they also contain an expressive dimension, by which the form of political articulation is reconfigured on new terms. The first is about struggling *for* something; the second is struggling *over* that struggle. So political action is expressive if the mode of articulation already models the substantive content of its claims and ends. In characterizing this expressive politics as "insurgent," I mean to emphasize that these long-term struggles take place on a grossly asymmetrical field of contestation.[1] In featuring these practices and processes, my aim is not necessarily to endorse or promote any one of them in particular. Instead, my concern here is with reflecting on what is at stake theoretically and practically in these projects, aimed as they are at reconfiguring the very terms of dispossession.

I

Near the eastern coast of the island Te Ika-a-Māui (North Island), nearly 400 kilometers southeast of Auckland in Aotearoa/New Zealand, lives Te Urewera. An imposing figure, Te Urewera spans some 212,672 hectares (821 m^2) and is world-renowned for its beautiful lakes and forests. In addition to providing shelter and sustenance for countless species of nonhuman plants and animals, Te Urewera is home to the Tuhoe. Known as the "Children of the Mist" (they trace their ancestry to the spirit Hinepuhoku-rangi), the Tuhoe are an *iwi* (nation or tribe) of the Māori and have fiercely defended Te Urewera for centuries. They continue to do so today. Te Urewera is a unique personality in many ways, not least because it recently experienced a rebirth of sorts. For sixty years, it was a national park. In 2014 the park was dissolved and replaced by a new figure. Te Urewera was then recognized as a legal entity with "all the rights, powers, duties, and liabilities of a legal person."[2] Described as "a fortress of nature, alive with history . . . a place of spiritual value, with its own mana and mauri," Te Urewera is now recognized as possessing "an identity in and of itself," which inspires "people to commit to its care." Although all people are called to this work of care, particular duties are imposed on the Tuhoe, who, along with a board of governance, are charged "to act on behalf of, and in the name of, Te Urewera."[3] As of 2014, the territory within Te Urewera has ceased to be vested in the Crown and is no longer managed under the rubric of "conservation lands." Instead, the land is kept in a distinctive

inalienable fee simple form, held by Te Urewera itself.[4] In effect, Te Urewera exercises a form of self-ownership.

Although unique, Te Urewera is not alone. In 2017 it was joined by two other nonhuman legal persons: Mount Taranaki, a stunning, 2,518 meter tall volcanic cone mountain; and Whanganui, the third-largest river in Aotearoa. Each has been, or will be, accorded legal rights akin to those afforded human beings, protecting them from defilement and degradation.[5] Each has its defenders. In the case of Mount Taranaki, a coalition of eight local Māori tribes shares guardianship of the sacred mountain with the government of New Zealand.[6] The struggle to defend the river has been spearheaded by the Whanganui iwi, who view it as both their ancestral home and relative.[7] In the course of debates over the status of the river, Gerrard Alberta, lead negotiator for the Whanganui iwi, explained their position: "The reason we have taken this approach is because we consider the river an ancestor and always have. . . . We have fought to find an approximation in law so that all others can understand that from our perspective treating the river as a living entity is the correct way to approach it, as an indivisible whole, instead of the traditional model for the last 100 years of treating it from a perspective of ownership and management."[8]

Although recent developments are, in one sense, a continuation of nearly two hundred years of Māori resistance to British colonialism (the longer history of which was discussed in chapter 1), they are also more immediately the fruits of a particular reinvigoration of Māori activism in the 1960s and 1970s. Much of this political mobilization was organized around a return to the Treaty of Waitangi.[9] Signed in February 1840, the Treaty of Waitangi was intended to serve as the primary legal statement and normative guide regulating the relationship between the Māori and Pākehā (people of European descent, in this case the British). It was, however, all but totally ignored by British and New Zealand authorities for nearly one hundred years before being revived.

Written in both English and Māori, the two versions of the treaty have significant differences, which have led to long-standing conflicts of interpretation. Most famously, article 1 of the English text cedes (a) "all rights and powers of sovereignty" to the British Crown, while article 2 protects (b) "the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties" of the Māori but grants the British an effective monopoly over acquisition through the right of (c) "preemption." In the Māori version, however, article 1 confers "kāwanatanga" and "hokonga" to the British (also rendered as "governorship" and "sales") while

retaining "te tino rangatiratanga o ratou wenua o ratou kainga me o ratou taonga katoa" for the Māori. This latter phrase has been alternatively translated as "the unqualified exercise of chieftainship over their lands over their villages and over their treasures all" and, since its original signing, Māori leaders have contended that the treaty therefore affirms, rather than extinguishes, their ultimate governance over the space and underlying title to the land.[10] Conflicts of interpretation have periodically spilled out into physical violence, most spectacularly in the New Zealand Wars (1845–72) but also in lower-level clashes and standoffs through to the present.

Since the Treaty of Waitangi Act 1975 revived the document as a central guide governing Aotearoa/New Zealand, there has emerged no definitive resolution to the debate of whether Pākehā kāwanatanga (governorship) takes priority over Māori rangatiratanga (chieftainship), or vice versa. Despite the deadlock in this ongoing material and interpretative contestation, however, new figures have emerged on the field. Recognition of Whanganui River, Mount Taranaki, and Te Urewera as legal persons with interests that need to be protected and defended comes as a result of 140 years of struggle to hold the British and New Zealand governments to account, to restore right relations between Māori and Pākehā, and to reverse the terms of dispossession. It is revolutionary in terms of the implications for both decolonization and ecological revitalization. The result of these victories has been the emergence of a nascent regime of stewardship and care of the earth, guided by Indigenous leadership.

While developments in Aotearoa/New Zealand provide a particularly clear, concrete example of this combined resistance and innovation, they are not isolated from a broader set of global movements. The granting of legal personhood to the earth there comes on the heels of similar developments around the world. In Bolivia, for instance, the Ley de Derechos de la Madre Tierra (Law of the Rights of Mother Earth) was passed by Bolivia's Plurinational Legislative Assembly in December 2010. A longer, revised version was passed in October 2012 as La Ley Marco de la Madre Tierra y Desarrollo Integral para Bien (Framework Law of Mother Earth and Integral Development for Living Well). Together these laws define Mother Earth as a "sujeto colectivo de interés público" (collective subject of public interest) and empower a new ombudsman office (Defensoría del Pueblo) to prosecute cases in defense of both Mother Earth and the "life systems" (including human communities within their nonhuman ecosystems). In Canada, such mechanisms of legal innovation and inversion also proliferate, as Shiri Pasternak's extensive documentation of the struggles of

the Algonquins of Barriere Lake clearly demonstrates.[11] Meanwhile, in the United States, a coalition of five Indigenous nations is currently gearing up for a major confrontation with the federal government over the proposed radical reduction of Bears Ears National Monument.[12] What is emerging from these struggles is a distinct form of stewardship, one in which the historical relationship of Indigenous peoples is recognized but expanded to include a diverse range of human and nonhuman life. Collectively, these constitute an experiment in unraveling the proprietary logics of dispossession. One way to effect this transformation has been to designate the land formation (a space, river, mountain, or other topographical feature) as an animate entity, an "indivisible whole" or living form and legal person with its own rights and responsibilities.

II

Reflection on these examples drives us back to a question that was deferred in chapter 1. There, I noted that, in addition to the rather narrow and specific critique of colonial landed property systems as structures of "dispossession," there also exists a range of Indigenous intellectual resources that refuse the language of possession more completely by, for instance, drawing upon the language of deracination or desecration. These arguments frame the matter not in terms of possession and theft but as a one of care and responsibility. In the words of Mohawk scholar Patricia Monture-Angus, this is a "fight to be responsible."[13] Drawing upon his own context and history of struggle, Dene political theorist Glen Coulthard theorizes this as "grounded normativity," arguing that "indigenous struggles against capitalist imperialism are best understood as struggles oriented around the question of *land*—struggles not only *for* land, but also deeply *informed* by what the land as a mode of *relationship* ought to teach us about living our lives in relation to one another and our surroundings in a respectful, nondominating and non-exploitative way."[14] Coulthard's work finds confirmation in earlier writings by such central figures in Native American studies as Vine Deloria Jr. (Oglala Lakota) and Winona LaDuke (White Earth Ojibwe).[15] It has also been echoed by a host of non-Indigenous scholars from various disciplines.[16] Indeed, for many decades now, an impressive archive has been amassed that meticulously documents not only *that* many Indigenous societies have sophisticated institutions for apportioning ecological and territorial responsibility but also *how* and *under what conditions*

these institutions can be sustained, repaired, and renewed. This work is so extensive now that it has become almost trite to observe that millions of people on earth still do not consider the land to belong to them, but that they belong to it.[17] It is in light of this long history that I interpret the meaning of Leanne Simpson's words (which open this chapter) when she says, "The opposite of dispossession is not possession, it is deep, reciprocal, consensual *attachment*. . . . This is our power."[18] What all these movements and thinkers have in common is their insistence that we do not think of struggles over land only as conflicts of property and/or territory. Instead, we must also think of them as struggles over the very meaning of the relationship between human societies and the broader ecological worlds in which they are situated.

The stakes of current struggles could not be higher. Although these groups are relatively small minorities in their individual respective contexts, taken collectively, they have a global significance beyond their numbers. Indigenous peoples manage or have tenure rights over approximately thirty-eight million square kilometers, or one-quarter of the Earth's land surface. Found in at least eighty-seven countries on all inhabited continents, Indigenous title lands intersect "about 40% of all terrestrial protected areas and ecologically intact landscapes (for example, boreal and tropical primary forests, savannas and marshes)."[19] Given this, defending Indigenous systems of land stewardship will be key to long-term global ecological sustainability.

Grasping the meaning of these movements is a more complicated matter. This complication is inherent to the contestations themselves. In them, participants not only pursue different interests pertaining to the same object of concern; they also hold distinct and competing interpretations of the basic terms of reference. While state and corporate actors often frame them in relatively narrow terms (for instance, as matters of zoning or property ownership), Indigenous peoples frequently situate them in a significantly expanded frame, for instance, as the continuation of a centuries-long struggle against colonization, which implicates matters of culture, tradition, spirituality, and environmental stewardship. In cases where antagonists such as these share no background understanding of the nature of the disagreement itself, conflict seems intractable.

As I read them, movements to (re)animate the earth with forms of personhood and subjectivity are attempts to move obliquely to the settled (and settler) parameters of struggle. They are working to free us from the grip of a particular vocabulary, part of the process Joanne Barker (Delaware) terms "decolonizing the mind."[20] The full implications of such a move are not

yet visible to us, however. That is what it means to experiment with something truly radical, to engage the avant-garde. Perhaps as a function of this, these movements have also been met with considerable skepticism. The bulk of this resistance comes from fully unsympathetic critics: opponents who cling to the (now fanatical) belief that only *more* privatization and unregulated capitalist appropriation can save us from the twinned threats of growing material inequality and looming ecological collapse. These critics would call not for an order of care and responsibility but for a new allotment era, one that would break apart the remaining pockets of collective property and inalienable lands for individual, private ownership. As Shiri Pasternak has noted, for these thinkers capitalism is meant to salvage the legacies of colonialism.[21] There is, however, also a set of more sympathetic critics, those who support the *ideal* of releasing us from the grips of dispossession but may nevertheless question the method, language, and logic of movements for stewardship and responsibility toward the earth as a subject of care. Let me briefly consider three.

In the second half of the twentieth century, a large and unwieldy set of debates emerged in social, legal, economic, and political thought concerning the status of the (somewhat mythical) entity known as "the commons." The locus classicus of these debates remains Garrett Hardin's famous 1968 article, "The Tragedy of the Commons." There, Hardin proposed a game theoretic dilemma in which the free, spontaneous regulation of common resources seemed all but impossible. Since each individual person who has access to common resources is (supposedly) rationally driven to maximize his or her use of them, soon the commons are themselves depleted such that no one at all can benefit from them. In short, unrestricted access to communal resources leads to overexploitation. Accordingly, Hardin argued that, however unjust it may be by other measures, the extant system of private property ownership is the only practicable solution: "The alternative of the commons is too horrifying to contemplate. Injustice is preferable to total ruin."[22]

Decades of work on Hardin's sweeping (and almost entirely empirically unsupported) claims have attended to the deeply racist undertones of his concern with the "overbreeding" of impoverished "genetically defective populations."[23] They have likewise pointed out that Hardin's thesis (and the reception of the idea of a "tragedy of the commons" in popular discourse more generally) labors under the "fallacious assumption that 'common'

means 'unregulated.'" This untenable conflation is, however, belied by a surfeit of "historical and contemporary research that demonstrates the stringent, if not legally codified, regulations to which common property has been subjected."[24] Of particular importance in this regard is Elinor Ostrom's work on self-regulating cooperative action. In her landmark study, *Governing the Commons* (1990), Ostrom argues that "neither the state nor the market is uniformly successful in enabling individuals to sustain long-term, productive use of natural resources systems" and that "communities of individuals have relied on institutions resembling neither the state nor the market to govern some resource systems with reasonable degrees of success over long periods of time."[25] Although she took Hardin's methodological individualism and game-theoretic modeling to heart, Ostrom arrived at an entirely different conclusion: collectively built and maintained institutions that function to constrain and condition the behavior of egoistic individuals were both theoretically possible and empirically demonstrable. Accordingly, the so-called tragedy of the commons is not a foregone conclusion but rather the product of a very particular set of institutional conditions governing access, ownership, exclusion, and the like.

A wave of new research followed from Ostrom's study.[26] Perhaps most famously, Carol Rose provided an influential classification scheme for differentiating management techniques that could be employed to regulate common resources. Situated along a continuum from least to most stringent, they included (a) "do-nothing," or the absence of regulation; (b) "keepout" controls that merely determine *who* can access the resource in question; (c) "rightway" regulations that determine *how* users may exploit the commons; and (d) a full system of "property," which disaggregates the collective resource into individual entitlements. Inverting Hardin's paradigm, Rose argued that collective management techniques could lead to the "comedy of the commons," whereby open source use of shared resources could benefit all beyond what could be accomplished by them as individuals.[27]

In the 1990s and early twenty-first century, this rather narrow and technical debate in game theory literature was joined by a host of new contributions that were at once more methodologically eclectic and yet more politically focused. Prominent examples include E. P. Thompson's *Customs in Common*, the writings by the Midnight Notes Collective, and Michael Hardt and Antonio Negri's trilogy of *Empire*, *Multitude*, and *Commonwealth*.[28] Essentially neo-Marxist in political orientation, this work framed the essential matter as one of partisan struggle, pitting "the commons" against the persistent threat of privatization and "enclosures."

Viewed from the vantage of the current investigation, much of this previous work appears haunted by questions of colonialism and Indigenous resistance. Although ostensibly treating many of the same themes and objects of concern, debates over settler colonialism and the "global commons" have, until very recently, run along strangely distant parallel tracks.[29] From the standpoint of this history of emancipating the commons, Indigenous spaces of inalienable stewardship may seem either impracticable or, given their protectionist logic, even detrimental to more generalized efforts to retake the commons for all humanity. This group of critics would raise concerns then with the normative defensibility of "special" Indigenous claims to sacred spaces, claims that appear competitive with other, ostensibly more universal claims to recognition and redistribution.[30]

The source of this disjuncture may be the ambiguous relation between commons and colonization. David Schorr, for one, has argued that contemporary debates surrounding the commons frequently adopt many of Hardin's baseline presuppositions, even if they take issue with his final conclusions. Work by Ostrom, Rose, and other contemporaries continues to adopt folk theories of Indigenous property relations, which imagine "primitive peoples" to exist in premodern conditions of simple, unreflective communal resource use—what used to be called, in a different language at a different time, "primitive communism."[31] The result is a debate that continues to be organized around simplistic binary contrasts between, on the one hand, individualized private property and, on the other, rather generic and historically uninformed calls for a return to the commons.[32] What this oppositional pairing fails to countenance is the extreme mutability of colonial forms of dispossession. It ignores, for instance, the central role that forced collectivization played in imperial expansion, often operating alongside and in tandem with, rather than in necessary opposition to, privatization.[33] Even the most laudatory accounts of "public things" must come to terms with the fact that in a colonial context, these public things "may well be the results of prior thefts and appropriations."[34] Without taking this into account, we are driven toward an insufficiently differentiated normative preference for more "open access," which routinely invokes a rather amorphous and ill-defined collective subject or multitude, failing to take note of the incrustations of history and actually existing power relations.[35] Finally, such binary contrasts fail to contend with the possibility that Indigenous modes of relating to the land will not fit easily within either private or collective property systems because they will not simply rehearse the drama that has already unfolded in Western, European contexts. As the Māori

example above is meant to demonstrate, Indigenous responses to dispossession frequently reconfigure the relation between rights, property, and power in ways that do not sit neatly with received platitudes about privatization or the commons. They have generated and continue to sustain precisely those "institutions resembling neither the state nor the market" that Ostrom called us to identify and defend. As I hope to have shown by way of the exemplary case above, one important dimension of this has entailed moving obliquely to the logics of dispossession by adopting strategies that include treating the earth as a subject of moral concern, effectively a "person" who cannot be owned by anyone at all.

Other attempts to move obliquely to dominant debates over privatization and the commons have typically done so by recovering minor voices within European legal and political theory. This strategy is perhaps best modeled in the work of Italian philosopher Giorgio Agamben. For instance, in his work *The Highest Poverty*, Agamben develops an analysis of the Franciscan monastic practices in the twelfth and thirteenth centuries as modes of resistance to an increasingly juridical and proprietized mode of governance imposed on them by papal order of the time. The arrangement sought by the Franciscans mirrors in some ways the Indigenous politics discussed above, since the former also renounced property while nevertheless advancing specific duty-based claims of care and stewardship. Agamben draws upon this historical example as a means of exploring "how to think a form-of-life, a human life entirely removed from the grasp of the law and a use of bodies and of the world that would never be substantiated into an appropriation. That is to say again: to think life as that which is never given as property but only as common use."[36]

A more complete investigation of these alternative configurations of property within European legal and political thought might also include meditation on the diverse functions of the category of res nullius. Latin for "nobody's thing," in a general and abstract sense the category of res nullius has been used in the history of European legal and political thought to describe a range of unowned and unclaimed objects. It is, however, precisely the vacuity of this literal meaning that has made it a politically productive tool. In its historically dominant usage, the term refers to an object that does not *yet* have an owner. Res nullius in this sense is typically a temporary state of affairs: the object in question is awaiting a first claimant. In some jurisdictions, this sense lives on in private law in the form of bona vacantia:

goods that are without a particular property holder because they have been abandoned or otherwise disowned.[37]

There is, however, a second and more marginal history standing behind the concept of res nullius. The term has also been used to describe objects that lack an owner not because they have *yet* to be claimed but because they have been shielded from proprietary claims altogether or otherwise removed from the sphere of ownership. Importantly, this peculiar status of "ownerless property" did not prevent the assigning of special duties to protection and care to specifically designated individuals. The dominant instance of this was sacred spaces, such as temples or graveyards. While these spaces were not "owned" by anyone, they were placed under the care and protection of legally designated stewards.[38] For example, in Blackstone's *Commentaries on the Laws of England* (1765–69), he periodically considers the problem of how we can adjudicate cases in which an inappropriable object has been stolen or violated. The classic instance of this, for Blackstone, is grave robbery. In this instance, it would be odd to suggest that a simple case of theft has taken place, since a corpse is not property in the normal sense of the term. Generalizing from this case, Blackstone comments that "no larceny can be committed, unless there be some property in the thing taken."[39] No property ergo no theft. In this minor tradition of res nullius, then, we have a longstanding legal precedent for treating some spaces and objects of concern (e.g., temples, graveyards, the deceased) as unowned and unownable repositories of care and responsibility.

Resurrecting marginal traditions of European legal and political thought is no doubt a valuable endeavor, one that holds out promise for expanding our vocabulary in unexpected ways.[40] This strategy may indeed help us move beyond the dilemmas of dispossession found in previous chapters. The recovered history of inalienability and the inappropriable res nullius nevertheless also points us toward the dangers of reconstruction without interrogation of the parameters this implies. Close examination of this body of work again reveals how much the imperial and colonial horizon is kept at bay in order to stabilize this project of recovery. Consider, for instance, that the imperial idiom of terra nullius is, in effect, a narrower species of the more general res nullius and that, historically, the colonial function of the former has operated precisely by taking advantage of the conceptual ambiguities resident in the heart of the latter. It is worth recalling, for instance, that the first move in the defense of colonial appropriation found in Locke's *Second Treatise of Government* was to characterize the earth as an open commons. In so doing, Locke was adopting an older

language of common ownership to new purposes. When previous thinkers (such as those in the Thomist tradition) referred to the earth as part of the "common inheritance of mankind," they typically understood this to mean that each human possessed part of a collective title, which was held in trust by God's appointed agents (i.e., the sovereign). Locke inverted the meaning of this. His argument was that, while the earth was indeed held by all humanity in common, it was "common" only in a negative sense: it was not owned by anyone in particular and thus open to appropriation by each and all ("no body has originally a private dominion, exclusive of the rest of mankind").[41] In this way, Locke played with the diverse valences of these terms, redescribing "common inheritance" and "inappropriable" as "not-yet appropriated."[42]

In short, in their search for alternative normative horizons, many contemporary critical theorists continue to look backward to antiquity rather than sideways to non-Western forms of life. That major European intellectuals must reach back to Rome or early modern monasticism is surely symptomatic of a studious Eurocentricism. If we could look beyond the European horizon, we might notice that there are literally hundreds of millions of Indigenous peoples who have long cultivated a deep practice of care as counterdispossession and, unlike Roman law or medieval monasticism, these Indigenous forms of life endure in the present.

As is hopefully becoming clear by now, no particular legal or political form can be shielded from the abuses of power. Neither the commons nor an inappropriable res nullius is innocent relative to practices of domination. Nor should we expect incorruptibility from models of care, stewardship, and responsibility. This is the caution of the third "sympathetic critic." While organized systems of ecological projection and care do pose significant challenges to more prevalent proprietary frameworks, they are nevertheless also compromises with extant legal and political orders. Such projects often must appeal for legal protection from the very states that have historically dominated and dispossessed Indigenous peoples. They moreover risk reifying "nature" as a static object that can be protected and preserved rather than a dynamic set of living relations that exceed any particular legal codification, or as a "subject" who must prove its worth through the moral evaluation of personhood. David Delgado Shorter voices this concern when he argues that "calling something 'spiritual' or 'sacred' to win a land claim in a colonial court of law is an absurd tactic as the precedent in American

courts has tended toward the capitalist, and thereby object orientated, use and production of land for profit."[43] When Gerrard Alberta speaks of granting legal personhood to the Whanganui River as an "approximation in law" of a set of long-standing Māori normative commitments, he is perhaps drawing our attention to these dilemmas: the highly constricted and constrained—or, in Audra Simpson's words, "strangulated"—conditions of Indigenous political articulation.[44] This objection is perhaps the most challenging, since it strikes at the heart of questions of agency in the context of asymmetrical relations of domination.

These challenges drive us back to the basic question of form and content, of how legal and political forms function as mediating devices for social movements, and how change can be effected under highly constrained conditions. Structures of stewardship, care, responsibility, and legal personhood for land are not, in and of themselves, definitive solutions to the challenges facing us with regard either to ecology or the contemporary legacies of colonial dispossession. That is because each of these "solutions" enters into a field of power already saturated with meaning and striated by relations of domination. However, if these forms are imperfect approximations at justice, it does follow that they are useless or unnecessary. It may be that the radical potential of such movements does not reside exclusively in their achieving a narrow objective (e.g., the protection of this river or that mountain) but in the manner with which they challenge the broader vocabularies at work. Theirs is an expressivist politics of resignification, one that works to reconfigure the relation between subjects, objects, and the connections between them. Rather than entirely rejecting existing institutions, practices, and modes of signification, these projects work to disassemble and then reassemble their nodal features: law, rights, property, and personhood. These are imperfect, incomplete, and aspirational projects of collective resignification of the basic terms of political order.

III

We know from historical experience that expressive resignification can radically alter the terms of political struggle, but only when this politic is anchored in institutions and material practices. If this is correct, then the question is no longer *which* new forms are emancipatory but rather *under what conditions* they can so function. How can we ensure that new vocabularies and configurations of legal and political structure operate as we wish

them to? The specific answer to this will be highly localized, calibrated as it must be to the particular relations of power in a given time and place. A set of general postulates may perhaps nevertheless still help orient us.

If we are able to invent new configurations of property and power that are more emancipatory and just, it will not be because these forms in and of themselves can do the work of liberation. It will be, rather, because they are animated and energized by living social struggles. Here, the work of Joanne Barker is again useful. In her scholarship, Barker seeks to interrogate the "possibilities of *rearticulation*" in the legal idiom of collective rights to self-determination. Importantly, Barker shifts the framework away from the binary question of whether the law can be a medium for Indigenous self-determination to the more complex and variegated matter of when and under what conditions. As she puts it, "The question that lingers is not *why* Native peoples would use the law as a means of reformation . . . but *how*, in those uses, they seek to rearticulate their relations to one another, the United States, and the international community."[45] This approach cautions against reifying law (or property, for that matter) as the static, self-contained, and internally consistent object that it presents itself to be. Instead, our gaze is directed from the de jure to the de facto. No change in legal or political institutions will ever complete the work of actualizing justice since, as feminist scholar Neera Chandhoke points out in a different context, "justice has to be *realised*, even wrested from, imperfectly just states through forms of collective action."[46] In other words, if these new experiments in relating to the Earth eventually prove useful, effective, and just, then it will be because we have *made* them so through the labor of collective struggle.

To see this, it will be necessary and useful to distinguish between the instrumental and expressive functions of these novel forms of struggle. If I am correct to suggest that both of these aspects are at play in Indigenous movements such as the ones described above, then the success or failure of any particular moment or instantiation will be difficult to evaluate since the expressive dimension will have, in part, altered the success criteria themselves. Given the vast inequities of power that characterize Indigenous struggles against colonialism and dispossession, we can only expect partial, momentary, and tentative victories on the instrumental front. However, we may still hold out some hope that by keeping up the fight itself, Indigenous peoples may be transforming the constituent frame of reference. In this regard, I consider one of the most important features of Indigenous politics today to be its modeling of *expressive insurgency*: a long-term,

multigenerational struggle that operates under radically asymmetrical power conditions to reorient the very terms of contestation by forcing us to confront the possibility of relating to the earth as something other than an object to be possessed.

In good recursive fashion, I should like to close with the opening. The cover image for this book is a work by the Oglala Lakota artist Donald F. Montileaux (Yellowbird). It is an example of "ledger art," a distinctive style developed in the Plains region of the North American continent.[47] In the nineteenth century, Plains Indigenous peoples had little access to paper. What they could acquire was usually already used by Euro-American settlers, most frequently from deeds, titles, and accounting ledgers. Indigenous artists took these papers and painted over them, often in vibrant, graphic forms. In effect, they took the materials that had been used by settler colonizers to document dispossession and refashioned them into an expression of their own peoples' experiences and forms of life. In the twentieth century this work has been revived by a whole new generation. Contemporary examples depict both major historic themes (such as important battles) and also the quieter, quotidian practices of survival, care, and flourishing. Montileaux explains that his artistic mission is motivated by a desire "to portray the Lakota, the Native Americans, in an honest way. To illustrate them as people who hunted buffalo, made love, raised children, cooked meals, and lived."[48] As I read it, these artistic works are simultaneously *representations* and *instantiations* of expressive insurgency. They display and enact resistance. In and of themselves, they may not reconfigure overarching power relations, but they do sustain and vivify a people to continue the fight that will.

NOTES

INTRODUCTION

Epigraphs: George Manuel, in George Manuel and Michael Posluns, *The Fourth World: An Indian Reality* (Minneapolis: University of Minnesota Press, 2019), 55–56; Sagoyewatha, aka Red Jacket, "We Are Determined Not to Sell Our Lands," in *Great Speeches by Native Americans*, ed. Bob Blaisdell (New York: Dover, 2000), 47.

1 A point of clarification on terminology and naming. The "Great Sioux Nation" is one English rendering of the confederacy of the Oceti Sakowin, more literally the people of the "Seven Council Fires." The confederacy has historically been composed of several autonomous tribes that speak three different dialects, the Lakota, Dakota, and Nakota. My understanding of the Oceti Sakowin, their history and contemporary politics, is heavily indebted to the Lakota scholar Nick Estes, in particular *Our History Is the Future: Standing Rock versus the Dakota Access Pipeline, and the Long Tradition of Indigenous Resistance* (New York: Verso, 2019).

2 "Citing 1851 Treaty, Water Protectors Establish Road Blockade and Expand Frontline #NoDAPL Camp," Indigenous Rising, October 23, 2016, http://indigenousrising.org/citing-1851-treaty-water-protectors-establish-road-blockade-and-expand-frontline-nodapl-camp.

3 "Dakota Access Pipeline Opponents Occupy Land, Citing 1851 Treaty," Reuters, October 24, 2016, http://ca.reuters.com/article/topNews/idCAKCN12O2FN.

4 On controversies over use of the terms *genocide* and *concentration camp* in this context, see Waziyatawin, *What Does Justice Look Like? The Struggle for Liberation in Dakota Homeland* (St. Paul, MN: Living Justice Press, 2008), esp. chap. 1.

5 James Daschuk, *Clearing the Plains: Disease, Politics of Starvation, and the Loss of Aboriginal Life* (Regina: University of Regina Press, 2013).

6 James Mooney, *The Ghost Dance: Religion and Wounded Knee* (New York: Dover, 1973). For an analysis of how the long history of Wounded Knee intersects with the specific question of property and profit, see Nick Estes, "Wounded Knee: Settler Colonial Property Regimes," *Capitalism, Nature, Socialism* 24, no. 3 (2013).

7 On "compulsory enfranchisement" as a colonial tool, see Robert Nichols, "Contract and Usurpation: Compulsory Enfranchisement and Racial Governance in Settler-Colonial Contexts," in *Theorizing Native Studies*, ed. Audra Simpson and Andrea Smith (Durham, NC: Duke University Press, 2014).

8 Paul Chaat Smith and Robert Allen Warrior, *Like a Hurricane: The Indian Movement from Alcatraz to Wounded Knee* (New York: New Press, 1997).

9 Jeffrey Ostler, *The Lakotas and the Black Hills: The Struggle for Sacred Ground* (New York: Penguin, 2010).

10 See Étienne Balibar, "The Reversal of Possessive Individualism," in *Equaliberty: Political Essays* (Durham, NC: Duke University Press, 2014), chap. 2; Daniel Bensaïd, *The Dispossessed: Karl Marx, The Wood Thieves, and the Right of the Poor*, trans. Robert Nichols (Minneapolis: University of Minnesota Press, forthcoming); Judith Butler and Athena Athanasiou, *Dispossession: The Performative in the Political* (Malden, MA: Polity, 2013); Nancy Fraser, "Expropriation and Exploitation in Racialized Capitalism," *Critical Historical Studies* 3, no. 1 (Spring 2016); David Harvey, *The New Imperialism* (Oxford: Oxford University Press, 2005); Edward Said, *The Politics of Dispossession: The Struggle for Palestinian Self-Determination, 1969–1994* (New York: Random House, 1994). See also Catherine Kellogg, "'You May Be My Body for Me': Dispossession in Two Valances,' *Philosophy and Social Criticism* 43, no. 1 (2017).

11 Harvey, Butler, Athanasiou, and a host of commentators continually reference the hundreds of millions of Indigenous peoples who constitute the "Fourth World," but they rarely think with or alongside them. In Harvey's work, Indigenous peoples make a brief appearance in a long enumeration of the processes of dispossession, which are said to include "the commodification and privatization of land and the forceful expulsion of peasant populations; the conversion of various forms of property rights (common, collective, state, etc.) into exclusive property rights; the suppression of rights to the commons; the commodification of labour power and the suppression of alternative (indigenous) forms of production and consumption; colonial, neo-colonial, and imperial processes of appropriation of assets (including natural resources); the monetization of exchange and taxation, particularly of land; the slave trade; and usury, the national debt, and ultimately the credit system." The list expands: "Biopiracy . . . the pillaging of the world's stockpile of genetic resources . . . the escalating depletion of the global environmental commons . . . the commodification of cultural forms, histories, and intellectual creativity . . . the corporatization and privatization of hitherto public as-

sets," and so on. Harvey, *The New Imperialism*, 145, 148. For Butler and Athanasiou, their appearance is even more fleeting. We hear speak of "the dispossession of indigenous peoples and the occupation of Palestinian lands and resources," and of "prevailing assumptions about what constitutes land as colonial settler space," but these remain fragments, glimpsed only momentarily in a dense thicket of examples, comparisons, and analogies that operate in a frustrating range of locales and theoretical registers. Butler and Athanasiou, *Dispossession*, 11.

12 The concept of dispossession is central to work in settler colonial and Indigenous studies across a wide range of academic disciplines—including history, anthropology, political theory, performance studies, etc.—as well as in nonacademic, activist, and community organizing circles. For a small sample of the voluminous academic literature in which the term appears prominently, see Brenna Bhandar and Davina Bhandar, eds., "Reflections on Dispossession: Critical Feminisms," special issue, *Darkmatter* 14 (2016); Jean O'Brien, *Dispossession by Degrees: Indian Land and Identity in Natick, Massachusetts, 1650–1790* (Cambridge: Cambridge University Press, 1997); Julie Kaye, *Responding to Human Trafficking: Dispossession, Colonial Violence, and Resistance among Indigenous and Racialized Women* (Toronto: University of Toronto Press, 2017); Stephanie Fitzgerald, *Native Women and Land: Narratives of Dispossession and Resurgence* (Albuquerque: University of New Mexico Press, 2015); Allen Greer, *Property and Dispossession: Natives, Empires and Land in Early Modern North America* (Cambridge: Cambridge University Press, 2018); Lindsay Robertson, *Conquest by Law: How the Discovery of America Dispossessed Indigenous Peoples of their Lands* (Oxford: Oxford University Press, 2007); Adele Perry, "The Colonial Archive on Trial: Possession, Dispossession, and History in *Delgamuukw v. British Columbia*," in *Archive Stories: Facts, Fictions, and the Writing of History*, ed. Antoinette Burton (Durham, NC: Duke University Press, 2005); Paige West, *Dispossession and the Environment: Rhetoric and Inequality in Papua New Guinea* (New York: Columbia University Press, 2016). On the more activist side, in a series of blog posts, the Delaware scholar Joanne Barker connects recent violence against African Americans and Native Americans. See Joanne Barker, "Dispossessions in Ferguson," *Tequila Sovereign* (blog), August 21, 2014, https://tequilasovereign.com/2014/08/21/dispossessions-in-ferguson/.

13 Glen Sean Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis: University of Minnesota Press, 2014), 7. Audra Simpson defines settler colonialism as "an ongoing structure of dispossession that targets Indigenous peoples for elimination." Audra Simpson, *Mohawk Interruptus: Political Life across the Borders of Settler States* (Durham, NC: Duke University Press, 2014), 74.

14 For a set of sharp exchanges along these lines, see Bonita Lawrence and Enakshi Dua, "Decolonizing Antiracism," *Social Justice* 32, no. 4 (2005); Nandita Sharma and Cynthia Wright, "Decolonizing Resistance, Challenging Colonial States," *Social Justice* 35, no. 3 (2008–9); Jared Sexton, "The *Vel* of Slavery: Tracking the Figure of the Unsovereign," *Critical Sociology* 42, nos. 4–5 (2016); Iyko Day, "Being or

Nothingness: Indigeneity, Antiblackness, and Settler Colonial Critique," *Critical Ethnic Studies* 1, no. 2 (Fall 2015).

15 This approach is informed by James Tully, "Public Philosophy as a Critical Activity," in *Public Philosophy in a New Key*, vol. 1 (Cambridge: Cambridge University Press, 2008). I have paraphrased his gloss on Wittgenstein's objection to a general theory of language (26).

16 Aileen Moreton-Robinson, *The White Possessive: Property, Power, and Indigenous Sovereignty* (Minneapolis: University of Minnesota Press, 2015).

17 Keith Windshuttle, "The Fabrication of Aboriginal History," *New Criterion* 20, no. 1 (September 2001): 46. See also Keith Windshuttle, *The Fabrication of Aboriginal History* (Sydney: Macleay Press, 2002).

18 "Nowhere in the Tasmanian language, or indeed mindset, was there 'land' in the sense that we use it, that is, as a two-dimensional space marked out with definite boundaries, which can be owned by individuals or groups, which can be inherited, which is preserved for the exclusive use of its owner, and which carries sanctions against trespassers. In other words, in Tasmania there was nothing that corresponded to Frank Brennan's notion of 'land to which no other persons have any moral claim.'" Keith Windshuttle, "Chapter 11: *Mabo* and the Fabrication of Aboriginal History," *Upholding the Australia Constitution: Proceedings of the Samuel Griffith Society* 15 (2003): 120.

19 Moreton-Robinson, *The White Possessive,* 150.

20 I analyze this argument at length in Robert Nichols, "Indigeneity and the Settler Contract Today," *Philosophy and Social Criticism* 39, no. 2 (February 2013).

21 Jeremy Waldron, "Indigeneity? First Peoples and Last Occupancy," *New Zealand Journal of Public and International Law* 1 (2003): 57, quoting W. H. Oliver, "The Fragility of Pakeha Support," in *Kokiri ngatahi/Living Relationships: The Treaty of Waitangi in the New Millennium* ed. Ken S. Coates and P. G. McHugh (Wellington: Victoria University Press, 1988), 223.

22 Sharma and Wright, "Decolonizing Resistance, Challenging Colonial States," 121. This article is a reply to Lawrence and Dua, "Decolonizing Antiracism."

23 Sexton, "The *Vel* of Slavery." For a rejoinder, see Iyko Day, "Being or Nothingness: Indigeneity, Antiblackness, and Settler Colonial Critique," *Critical Ethnic Studies* 1, no .2 (Fall 2015).

24 For an argument that follows a similar logic, applied now to the Canadian context, see Tom Flanagan, Christopher Alcantara, and André Le Dressay, *Beyond the Indian Act: Restoring Aboriginal Property Rights* (Montreal: McGill-Queen's University Press, 2010).

25 For an overview, see Michael Corballis, *The Recursive Mind: The Origins of Human Language, Thought, and Civilization* (Princeton, NJ: Princeton University Press, 2011), chap. 1.

26 Max Horkheimer, quoted in James Bohman, "Critical Theory," in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Spring 2015 ed., http://plato.stanford.edu/entries/critical-theory/.

27 Bohman, "Critical Theory."

28 Iris Marion Young, *Justice and the Politics of Difference* (Princeton, NJ: Princeton University Press, 1990), 5. This approach to critical theory is resonant with that of James Tully; see Tully, *Public Philosophy in a New Key*, esp. vol. 1, part 1.

1. THAT SOLE AND DESPOTIC DOMINION

Epigraph: William Blackstone, *Commentaries on the Laws of England*, 9th ed., ed. William Sprague (Chicago: Callaghan, 1915), vol. 2, chap. 1, "Of Property in General."

1 My understanding of this historical context is indebted to Susan Reynolds, *Before Eminent Domain: Toward a History of Expropriation of Land for the Common Good* (Chapel Hill: University of North Carolina Press, 2010); Andrew Fitzmaurice, *Sovereignty, Property, and Empire, 1500–2000* (Cambridge: Cambridge University Press, 2014), esp. chaps. 1 and 2; Richard Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford: Oxford University Press, 1999), esp. chaps. 1 and 2; Peter Garnsey, *Thinking about Property: From Antiquity to the Age of Revolution* (Cambridge: Cambridge University Press, 2007). For more detailed comparative historical work on the reception of the idea of "expropriation" in the Classical Greek, Roman, and early medieval world, see *L'Expropriation/Expropriation*, Receuils de la Société Jean Bodin 67 (Brussels: DeBoeck Université, 2000). On the specific use of expropriation (and related terminology) in Roman law, see J. Walter Jones, "Expropriation in Roman Law," *Law Quarterly Review* 45 (1929); Fritz Schulz, *Classical Roman Law* (Oxford: Clarendon, 1951), part IV.

2 See Daniel Hamilton, *The Limits of Sovereignty: Property Confiscation in the Union and the Confederacy during the Civil War* (Chicago: University of Chicago Press, 2007); Silvana Siddali, *From Property to Person: Slavery and the Confiscation Acts, 1861–1862* (Baton Rouge: Louisiana State University Press, 2005).

3 The distinction here between expropriation and confiscation is indebted to Susan Reynolds, *Before Eminent Domain*, introduction. For two large, comparative studies, see Johan Boucht, *The Limits of Asset Confiscation: On the Legitimacy of Extended Appropriation of Criminal Proceeds* (Portland, OR: Hart, 2017); Malin Thunberg Shunke, *Extended Confiscation in Criminal Law: National, European, and International Perspectives* (Cambridge, UK: Intersentia, 2017).

4 Hugo Grotius, *On the Law of War and Peace* (Cambridge: Cambridge University Press, 2012), chap. 14, para. 7, 226.

5 Blackstone, *Commentaries*, 1:138, quoted in Reynolds, *Before Eminent Domain*, 102.

6 The framework of feudal hierarchy was particularly important in France. See *L'Expropriation/Expropriation*, chaps. II–V.

7 Language becomes awkward here, as it is nearly impossible to discuss the topic without imposing a contemporary framework of (subjective) rights to property. The extent to which we can ascribe such conceptual vocabulary to Roman law is itself a source of endless debate, which is not discussed here.

8 Considerable controversy persists over the extent to which res nullius can be spoken of as a category of Roman law itself, or only as a later development that has been retrospectively imposed onto the Roman world. Here, I follow Andrew Fitzmaurice, who argues that "the term *res nullius* is absent . . . in the Roman law discussions of occupation," while conceding that the idea is "implicit" therein. At any rate, the term was itself "employed in medieval civil law, but it was not a widely used and reified tool in the law of nations before the eighteenth century." Fitzmaurice, *Sovereignty, Property, and Empire*, 51.

9 John Locke, *The Second Treatise of Government*, 2nd ed. (Cambridge: Cambridge University Press, 1988), 286, § 25.

10 In *Encyclopédie*, Diderot cites Grotius, Pufendorf, and Montesquieu when he defines "le domaine eminent" as the sovereign's right to take property for the public good. See Denis Diderot and Jean le Rond d'Alembert, *Encyclopédie, ou, Dictionnaire raisonné des sciences, des arts et des métiers* (Paris: Briasson, 1751).

11 See Arthur Lenhoff, "Development of the Concept of Eminent Domain," *Columbia Law Review* 42 (1942); John Lewis, *A Treatise on the Law of Eminent Domain in the United States* (Chicago: Callagan, 1888); Philip Nichols, *The Law of Eminent Domain: A Treatise on the Principles of Which Affect the Taking of Property for the Public Use*, 2 vols., 2nd ed. (Albany, New York: Matthew Bender, 1917); Ellen Frankel Paul, *Property Rights and Eminent Domain* (New Brunswick, NJ: Transaction Books, 1987); William B. Stoebuck, "A General Theory of Eminent Domain," *Washington Law Review* 47, no. 4 (August 1972); Raymond Rice, "Eminent Domain from Grotius to Gettysburg," *American Bar Association Journal* 53, no. 11 (November 1967).

12 P. Nichols, *The Law of Eminent Domain*, 4. Around the turn of the century, Philip Nichols defines eminent domain as a collective power, ultimately held by the people as a whole, which, he complains, has been "seriously abraded . . . [and] subordinated in so many vital features to the rights of individual ownership . . . often without the express consent of the people" (4).

13 Peter Linebaugh, *The Magna Carta Manifesto* (Berkeley: University of California Press, 2008), appendix 1, 289. The original Latin reads: "Nullus liber homo capiatur vel imprisonetur aut disseisiatur aut utlagetur aut exuletur aut aliquo modo destruatur, nec super eum ibimus nec super eum mittemus nisi per legale iudicium parium suorum vel per legem terre."

14 E.g., "If one plant, sow, build, or possesse a convenient Seat, others may probably be expected to come prepared with forces united, to dispossesse, and deprive him, not only of the fruit of his labour, but also of his life, or liberty. And the Invader again is in the like danger of another." Thomas Hobbes, *Leviathan* (Cambridge: Cambridge University Press, 1996), 87.

15 G. O. Sayles, *The Medieval Foundations of England* (London: Methuen, 1966), 339; "Assize," in *Encyclopedia Britannica*, 11th ed., ed. Hugh Chisholm (Cambridge: Cambridge University Press, 1911).

16 At least this was true for sovereignty as it had been predominantly known and experienced by Europeans to that point.

17 As Alan Ryan summarizes the Rousseauian view: "Large property leads to corruption as the rich man tries to buy his fellow citizens; moveable property leads to corruption as it allows men to take their wealth wherever they choose, and it allows them to escape the censorship of their fellow citizens; the rise of money and commerce leads to corruption as it exacerbates these tendencies by creating a dependent urban mob who will follow the bidding of their corrupters." Alan Ryan, *Property and Political Theory* (New York: Basil Blackwell, 1984), 49.

18 Jean-Jacques Rousseau, *Discourse on the Origin and Foundations of Inequality among Men, or Second Discourse* (1755), in *Rousseau: The Discourses and Other Early Political Writings*, ed. Victor Gourevitch (Cambridge: Cambridge University Press, 1997), 161.

19 Thomas Paine, "Agrarian Justice," in *Rights of Man, Common Sense, and Other Political Writings* (Oxford: Oxford University Press, 1995). Its full title is "Agrarian Justice, Opposed to Agrarian Law, and to Agrarian Monopoly. Being a Plan for Meliorating the Condition of Man, Etc."

20 Paine, "Agrarian Justice," 419.

21 Paine, "Agrarian Justice," 418.

22 Paine, "Agrarian Justice," 420.

23 *Return of Owners of Land*, 2 vols. (London: Her Majesty's Stationery Office, 1873).

24 Pierre-Joseph Proudhon, *General Idea of Revolution in the Nineteenth Century* (1851; repr., New York: Haskell House, 1969), 195.

25 Cf. Pierre-Joseph Proudhon, *What Is Property?* (1840; repr., Cambridge: Cambridge University Press, 1993).

26 Peter Kropotkin, *The Conquest of Bread and Other Writings* (Cambridge: Cambridge University Press, 1995), 48, 65–66; Peter Kropotkin, *La conquête du pain* (Paris: Les Éditions invisibles, 2009), 28: "L'expropriation, tel est donc le problem que l'histoire a posé devant nous, hommes de la fin du XIXe siècle. Retour à la communauté de tout ce qui lui servira pour se donner le bien-être."

27 Some of Marx's earliest writings on the topic are found in his 1842–43 articles for the *Rheinische Zeitung*. See Karl Marx, "Debates on the Theft of Wood," in Bensaïd, *The Dispossessed*, appendix.

28 As he put it in an 1865 letter, the deficiency of Proudhon's work "is indicated by its very title. The question is so badly formulated that it cannot be answered correctly. . . . The upshot is at best that the bourgeois legal conceptions of '*theft*' apply equally well to the '*honest*' gains of the bourgeois himself. On the other hand, since '*theft*' as a forcible violation of property *presupposes the existence of property*, Proudhon entangled himself in all sorts of fantasies, obscure even to himself,

about *true bourgeois property*." Karl Marx, "Letter to J. B. Schweizer [5 Feb. 1865]," in Karl Marx and Friedrich Engels, *Collected Works*, vol. 20 (New York: Progress, 1985), 32.

29 Max Stirner, *The Ego and Its Own* (1844; repr., Cambridge: Cambridge University Press, 1995), 223.

30 The period of the 1872 French translation of *Das Kapital* is a telling transitional moment in this movement between Germanic and Latinate terms. In at least one edition of *Das Kapital* from 1872 (i.e., after the publication of the French translation), most of the references to "expropriation" have been replaced with "enteignung." So, for instance, the subtitle for part VIII, chapter 2, becomes "Enteignung des Landvolks von Grund und Boden" rather than "Expropriation des Landvolks von Grund und Boden." See Karl Marx, *Das Kapital* (Cologne: Anaconda, 2009). I have still not been able to determine why these changes were made. For a sense of the meanings behind these terms in Germany and Austria, see Rudolf Dolzer, *Eigentum, Enteignung und Entschädigung im geltenden Völkerrecht* (Berlin: Springer Verlag, 1985); Franz-Stefan Meissel and Paul Oberhammer, "Die Entwicklung des Enteignungsrechts in Österreich seit dem 18. Jahrhundert," and Markus Steppan, "Der Entzug des Nutzungseigentumes in den bäuerlichen Weistümern und den Landesordnungsentwürfen," both in *L'Expropriation/Expropriation*, Receuils de la Société Jean Bodin 67 (Brussels: DeBoeck Université, 2000).

31 E.g., "Der Prozeß, der das Kapitalverhältniß *schafft*, kann also nichts anders sein als der *Scheidungsprozeß des Arbeiters vom Eigentum an seinen Arbeitsbedingungen*, ein Prozeß, der einerseits die gesellschaftlichen Lebens- und Produktions-mittel in *Kapital verwandelt*, andrerseits die unmittelbaren Producenten in *Lohnarbeiter*. Die sog. *ursprüngliche Akkumulation* ist also nichts als der *historische Scheidungsprozeß von Producent und Produktionsmittel*." Karl Marx and Friedrich Engels, *Marx-Engels Gesamtausgabe* (Berlin: Dietz, 1975), II.5, *Das Kapital: Kritik der Politischen Ökonomie,* Erster Band (Hamburg, 1867]) (1967), 575.

32 This subsumption is unpacked in detail in the next chapter.

33 This issue is recently explored by the Biniza scholar Isabel Altamirano-Jiménez in *Indigenous Encounters with Neoliberalism* (Vancouver: University of British Columbia Press, 2013). On the other side of deracination, Audra Simpson frequently pairs dispossession with containment: e.g., "the political project of dispossession and containment, as it actually works to contain, to fetishize and entrap and distill Indigenous discourses into memorizable, repeatable rituals for preservation against a social and political death that was foretold but did not happen." Simpson, *Mohawk Interruptus*, 99; see also 16, 105.

34 Patricia Monture-Angus, *Journeying Forward* (Halifax: Fernwood, 1999), 36, quoted in Andrea Smith, "Native Studies at the Horizon of Death," in *Theorizing Native Studies*, ed. Audra Simpson and Andrea Smith (Durham, NC: Duke University Press, 2014), 222.

35 See chapter 3 and the conclusion in particular.

36 For a useful overview, see C. B. MacPherson, *Property: Mainstream and Critical Positions* (Toronto: University of Toronto Press, 1978), chap. 1.

37 See Derek Hall, *Land* (Cambridge, UK: Polity, 2013). This conceptual point is further elaborated in relation to Hegel and Marx in the next chapter.

38 For a useful unpacking of the various alternative meanings attached to the term from an Indigenous (Seneca) perspective, see Mishuana Goeman, "From Place to Territories and Back Again," *International Journal of Critical Indigenous Studies* 1, no. 1 (2008).

39 Notice, for instance, that *Johnson v. M'Intosh* (1823)—probably the single most important U.S. Supreme Court decision on Indigenous title—did not involve any Indigenous participation. Instead, it was a conflict between Anglo settler parties who had acquired their land from Indigenous peoples (in this case, the Piankeshaw Nation) in two different ways: direct purchase vs. government lease. Both claimants and plaintiffs had an interest in supporting a form of Indigenous property right but only to show that it had been alienated to them in the proper manner. In fact, there is evidence to suggest that no actual conflict between these settler claims took place and that it was entirely contrived to generate a justiciable case. See Johnson v. M'Intosh, 21 U.S. (8 Wheat.) 543, 5 L. Ed. 681, 1823 U.S. LEXIS 293; Robertson, *Conquest by Law*.

40 Vine Deloria Jr., *Custer Died for Your Sins*, rev. ed. (Norman: University of Oklahoma Press, 1988), 7, 30, emphasis added. For a recent, brilliant explication of Deloria's contributions to political theory, see David Temin, "Custer's Sins: Vine Deloria Jr. and the Settler-Colonial Politics of Civic Inclusion," *Political Theory* 46, no. 3 (2018).

41 For a philosophical elaboration of this idea, see G. W. F. Hegel, *Hegel's Philosophy of Right*, trans. and with notes by T. M. Knox (Oxford: Oxford University Press, 1967), §§ 53–70, pp. 46–57.

42 In this chapter, I have focused on the issue of property over that of sovereignty, on *dominium* over *imperium*. This is not to say that the latter is unimportant, or that a similar logic did not also there obtain. Consider Delgamuukw v. British Columbia [1997] 3 S.C.R. 1010, at 1017: "Aboriginal title is a burden on the Crown's underlying title. The Crown, however, did not gain this title until it asserted sovereignty and it makes no sense to speak of a burden on the underlying title before that title existed. Aboriginal title crystallized at the time sovereignty was asserted." And, of course, these two issues are deeply interrelated in any practical context.

43 On the rise of the Anglophone world in the nineteenth century, see James Belich, *Replenishing the Earth: The Settler Revolution and the Rise of the Anglo-World, 1783–1939* (Oxford: Oxford University Press, 2009). On the "metaphysical revolution," see John Weaver, *The Great Land Rush and the Making of the Modern World, 1650–1900* (Montreal: McGill-Queen's University Press, 2006), 93.

44 Weaver, *The Great Land Rush*, 92–93.

45 Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (1944; repr., Boston: Beacon, 2001), 187.

46 "It was in this context that British settlers first used the argument of occupation to make claims against both the Indians and the Crown. But just as the British diplomatic middle ground was a Frankenstein monster, so was the middle ground of property rights that was now created by the settlers. Rather than being based upon negotiation and accommodation, it left no room for the Indians; indeed, it was predicated upon their dispossession and dehumanisation." Fitzmaurice, *Sovereignty, Property, and Empire*, 189.

47 Edward L. Glaeser, "A Nation of Gamblers: Real Estate Speculation and American History," *American Economic Review: Papers and Proceedings* 103, no. 3 (2013): 2. This reflects a long-standing narrative of historical progress in the development of land policy in the United States; see, e.g., Marion Clawson, *Man and Land in the United States* (Lincoln: University of Nebraska Press, 1964); Marion Clawson, *Uncle Sam's Acres* (New York: Dodd, Mead, 1951). See also Charles Grant, "Land Speculation and the Settlement of Kent, 1738–1760," *New England Quarterly* 28, no. 1 (1955).

48 Richard T. Ely, "Land Speculation," *Journal of Farm Economics* 2, no. 3 (1920).

49 Payson Jackson Treat, *The National Land System, 1785–1820* (New York: E. B. Treat, 1910).

50 Glaeser, "A Nation of Gamblers," 10. See also Paul Frymer, *Building an American Empire: The Era of Territorial and Political Expansion* (Princeton, NJ: Princeton University Press, 2017); Gordon Chappell, "Some Patterns of Land Speculation in the Old Southwest," *Journal of Southern History* 15, no. 4 (1949).

51 Treat, *The National Land System*.

52 Murray Rothbard, *The Panic of 1819: Reactions and Policies* (Auburn, AL: Ludwig von Mises Institute, 2007).

53 Purchasers were then expected to pay up to one-fourth within forty days of purchase, and the remainder in annual installments, beginning two years after the purchase date.

54 Thomas Greer, "Economic and Social Effects of the Depression of 1819 in the Old Northwest," *Indiana Magazine of History* 44, no. 3 (1948).

55 See Homer Hoyt, *One Hundred Years of Land Values in Chicago* (Chicago: University of Chicago Press, 1933). Adjusted to 2012 prices, land is estimated to have increased from approximately $800 to $320,700 per acre from 1830 to 1836. Adjusted values are from Glaeser, "A Nation of Gamblers," 17.

56 On the Chicago boom and bust, see Robert Siller, "Historic Turning Points in Real Estate: Presidential Address," *Eastern Economic Journal* 34, no. 1 (2008).

57 Belich, *Replenishing the Earth*, 345.

58 Roxanne Dunbar-Ortiz, *An Indigenous Peoples' History of the United States* (New York: Beacon, 2015), 140.

59 K-Sue Park, "Money, Mortgages, and the Conquest of America," *Law and Society Inquiry* 41, no. 4 (2016).

60 Dunbar-Ortiz, *An Indigenous Peoples' History*, 97.

61 Dunbar-Ortiz, *An Indigenous Peoples' History*, 124. See also Woody Holton, *Unruly Americans and the Origins of the Constitution* (New York: Hill and Wang, 2007), 14.

62 Knox goes on to argue that the United States will be able to more effectively and cheaply acquire lands from the "Indian Tribes" through a mixed approach, one that uses coercion but primarily as a means to force contract and sale: "As the settlements of the whites shall approach near to the Indian boundaries established by treaties, the game will be diminished, and the lands being valuable to the Indians only as hunting grounds, they will be willing to sell further tracts for small considerations. By the expiration, therefore, of the above period, it is most probable that the Indians will, by the invariable operation of the causes which have hitherto existed in their intercourse with the whites, be reduced to a very small number." Henry Knox, "Report on the Northwestern Indians (June 15, 1789)," in *A Century of Lawmaking for a New Nation: U.S. Congressional Documents and Debates, 1774–1875*, American State Papers, *Indian Affairs*, 1:13–14, https://memory.loc.gov/ammem/amlaw/lwsplink.html.

63 "Congress in 1785 felt compelled to issue a proclamation forbidding unlawful settlement and authorized the Secretary of War to remove those who had settled on the public domain in violation of the law. . . . In 1791 a congressman stated that 300,000 families (highly exaggerated) had settled south of the French Broad and Big Pigeon rivers in present eastern Tennessee." Everett Dick, *The Lure of the Land: A Social History of the Public Lands from the Articles of Confederation to the New Deal* (Lincoln: University of Nebraska Press, 1970), 50. See also Amelia For, *Colonial Precedents of Our National Land System*, Bulletin of the University of Wisconsin, History Series II, no. 2 (Madison: University of Wisconsin, 1910).

64 Dick, *The Lure of the Land*, 51.

65 Act of March 3, 1807, "An Act to prevent settlements being made on lands ceded to the United States, until authorized by law," in *A Century of Law-Making for a New Nation: Congressional Documents and Debates, 1774–1875*, 9th Congress, 2nd Session (Washington, DC: Annals of Congress, 1807), http://memory.loc.gov/cgi-bin/ampage?collId=llac&fileName=016/llac016.db&recNum=640.

66 Dick, *Lure of the Land*, 53.

67 Walter Benjamin, "The Critique of Violence," in *Reflections: Essays, Aphorisms, Autobiographical Writings* (New York: Schocken Books, 1978), 277–300. For an application of Benjamin's distinction to U.S. colonial violence against Indigenous peoples, see Joan Cocks, "The Violence of Structures and the Violence of Foundings," *New Political Science* 34, no. 2 (2012).

68 Judge Harry Toulmin to the president, January 20, 1816, in *The Territorial Papers of the United States, Mississippi Territory,* vol. 6, ed. Clarence Carter (Washington, DC: Government Printing Office, 1938), 644–47, cited in Dick, *Lure of the Land*, 53. One is put in mind here of the famous line from Bertolt Brecht's *Threepenny Opera*, spoken by the criminal Macheath: "What is the robbing of a bank compared to the founding of one?" Bertolt Brecht, *The Threepenny Opera* (1928; repr., London: Methuen Drama, 2005), act 3, sc. 3.

69 Dick, *The Lure of the Land*, 51. See also William Lester, *Decisions of the Interior Department in Public Land Cases* (Philadelphia, 1860), 28–30.

70 I have consulted the following Congressional legislation in the composition of this section: Ordinance of April 23, 1784, in *Journals of the Continental Congress, 1774–1789*, ed. Worthington C. Ford et al. (Washington, DC, 1904–37), 26:275–79; Ordinance of May 20, 1785, in *Journals of the Continental Congress, 1774–1789*, ed. Worthington C. Ford et al. (Washington, DC, 1904–37), 28:375–82; Ordinance of July 13, 1787, in *Journals of the Continental Congress, 1774–1789*, ed. Worthington C. Ford et al. (Washington, DC, 1904–37), 32:332–43; Ordinance of May 26, 1790 (1st Congress), 1 Stat. 123; Act of March 3, 1801 (6th Congress), Ch. XXIII, 2 Stat. 112–14; Act of April 25, 1812 (12th Congress), Ch. LXVIII, 2 Stat. 716–18; Act of September 4, 1841 (27th Congress), Ch. XVI, 5 Stat. , 453–58; Act of September 27, 1850 (31st Congress), Ch. LXXVI, 9 Stat. 496–500; Act of July 17, 1854 (33rd Congress), Ch. LXXXIV, 10 Stat. 305–6; Act of July 22, 1854 (33rd Congress), Ch. CIIL, 10 Stat. , 308–10; Act of March 2, 1855 (33rd Congress), Ch. CXXXIV, 10 Stat. 626; Act of March 3, 1855 (33rd Congress), Ch. CCVII, 10 Stat. , 701–2; Act of May 20, 1862 (37th Congress), Ch. LXXV, 12 Stat. 392–93; Act of March 3, 1865 (38th Congress), Ch. CIX, 13 Stat. 530–32; Act of March 3, 1865 (38th Congress), Ch. XXVII, 13 Stat. 541–63; Act of June 21, 1866 (39th Congress), Ch. CXXVII, 14 Stat. 66–67; Act of March 3, 1873 (42nd Congress), Ch. CCLXXVII, 17 Stat. 605–6; Act of March 3, 1875 (43rd Congress), Ch. CXXXII, 18 Stat. 402–20; Act of February 2, 1887 (49th Congress), Ch. CXIX, 24 Stat. 33–36 ["The Dawes Act"]; Act of March 3, 1891 (57th Congress), Ch. DLXI, 26 Stat. 1095–103. See also Dick, *The Lure of the Land*, 56; Lester, *Decisions*, 64–65.

71 Dick, *The Lure of the Land*, 56; Lester, *Decisions*, 64–65.

72 Roy Robbins, *Our Landed Heritage: The Public Domain, 1776–1936* (New York: Peter Smith, 1950), 50.

73 Robbins, *Our Landed Heritage*, 89–90.

74 See *Johnson v. M'Intosh*; Robertson, *Conquest by Law*.

75 On homesteading and allotment possibilities for Indians, see Act of March 3, 1865 (38th Congress), Ch. CIX, 13 Stat. 530–32; Act of March 3, 1865 (38th Congress), Ch. XXVII, 13 Stat. 541–63; Act of May 20, 1862 (37th Congress) Ch. LXXV, 12 Stat. 392–93 ["The Homestead Act"].

76 Act of March 3, 1875 (43rd Congress), Ch. CXXXII, 18 Stat. 402–20. The litany of funding provisions for "Indian relations" in this appropriations bill is a veritable survey of the range of U.S.-Indigenous relations at the time. It includes specific funding provisions for the "suppression of Indian hostilities" in Montana; educational and social benefits and subsistence monies for the Seminole, Kickapoo, Navajo, Apache, and Northern Sioux; the sale of bonds to the Pottawatomie and Choctaw; and the forced removal of the Pia Ute.

77 Act of February 2, 1887 (49th Congress), Ch. CXIX, 24 Stat. 33–36 ["The Dawes Act"].

78 David Chang, "Enclosures of Land and Sovereignty," *Radical History Review*, no. 109 (Winter 2011): 108. See also David Chang, *The Color of the Land: Race,*

Nation, and the Politics of Landownership in Oklahoma, 1832–1929 (Chapel Hill: University of North Carolina Press, 2010).

79 Fitzmaurice, *Sovereignty, Property, and Empire*, 189; see also 172.

80 Patrick Wolfe has called this waiting period the "lethal interlude." Patrick Wolfe, "Settler Colonialism and the Elimination of the Native," *Journal of Genocide Research* 8, no. 4 (2006): 393.

81 "To the frontiersman, whether orderly settler or venturesome 'squatter,' the land was a not a fiscal resource but a potential national asset which his own enterprise and resourcefulness alone could capitalize for the nation." Chester Martin, *Dominion Lands Policy*, ed. Lewis Thomas (Toronto: McClelland and Stewart, 1973), 118.

82 My understanding of the comparative dimensions of these processes has been greatly aided by the work of Brenna Bhandar. See, in particular, Brenna Bhandar, "Possession, Occupation and Registration: Recombinant Ownership in the Settler Colony," *Settler Colonial Studies* 6, no. 2 (2016); Brenna Bhandar, "Title by Registration: Instituting Modern Property Law and Creating Racial Value in the Settler Colony," *Journal of Law and Society* 42, no. 2 (2015); Brenna Bhandar, "Property, Law, and Race: Modes of Abstraction," *UC Irvine Law Review* 4, no. 1 (2014).

83 Weaver, *The Great Land Rush*, 19. Weaver is citing, and correcting, Donald Worster, *Dust Bowl: The Southern Plains in the 1930s* (New York: Oxford University Press, 1979), 87.

84 This is not true of important regions in the country. In some parts of Eastern Canada, as well as the majority of British Columbia in the west, no such formal treaties were signed. On the distinctiveness of the latter case, see Paul Tennant, *Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849–1989* (Vancouver: University of British Columbia Press, 1990).

85 E.g., C. E. S. Franks, "Indian Policy: Canada and the United States Compared," in *Aboriginal Rights and Self Government*, ed. Curtis Cook and Joan Lindau (Montreal: McGill-Queen's University Press, 2000), chap. 9; J. R. Miller, *Compact, Contract, Covenant: Aboriginal Treaty-Making in Canada* (Toronto: University of Toronto Press, 2009).

86 Lillian Gates, *Land Policies of Upper Canada* (Toronto: University of Toronto Press, 1968).

87 Martin, *Dominion Lands Policy*, 119.

88 The Dominion Lands Act, 35 Vic. c.23 (1872). There were some differences between the two pieces of legislation. The Canadian law only applied to male farmers; it allowed for the purchase of more adjacent lands than the U.S. version and contained specific provisions against settling lands near railroad lines or other key public lands. Martin, *Dominion Lands Policy*, esp. chap. 7, "The Free-Homestead System: The Background in the United States," 116–27. As Martin goes on to elaborate: "In any event the direct influence of the United States, by precept and example, was too powerful in the early seventies to be withstood. Their experience

in dealing with many of the same problems on a much larger scale was a veritable quarry for Canadian policy. Not only were the chief problems—expansions, transportation, settlement—the same, but many of the policies that were appropriated, the nomenclature applied or misapplied to them, the analogies, usually false and misleading, that were cited for federal control, were to be found ready-made in the United States." Martin, *Dominion Lands Policy*, 117.

89 Gates, *Land Policies of Upper Canada*, esp. chaps. 14–16.

90 Sidney Harring, *White Man's Law: Native People in Nineteenth-Century Canadian Jurisprudence* (Toronto: University of Toronto Press, 1998).

91 Cole Harris, "How Did Colonialism Dispossess? Comments from an Edge of Empire," *Annals of the Association of American Geographers* 94, no. 1 (2004).

92 Sarah Carter, *Lost Harvests: Prairie Indian Reservation Farmers and Government Policy* (Montreal: McGill-Queen's University Press, 1990); Daschuk, *Clearing the Plains*.

93 An Act to Encourage the Gradual Civilization of Indian Tribes in This Province, and to Amend the Laws Relating to Indians, 20 Vic. c.26 (1857); An Act Respecting the Civilization and Enfranchisement of Certain Indians, 22 Vic. c.9 (1859); An Act to Amend and Consolidate the Laws Respecting Indians (1876) ["The Indian Act"]. I have analyzed this process of "compulsory enfranchisement" in Nichols, "Contract and Usurpation."

94 Eight Indigenous men were hanged: Kah-Paypamahchukways (Wandering Spirit); Pah Pah-Me-Kee-Sick (Walking the Sky); Manchoose (Bad Arrow); Kit-Ahwah-Ke-Ni (Miserable Man); Nahpase (Iron Body); A-Pis-Chas-Koos (Little Bear); Itka (Crooked Leg); Waywahnitch (Man Without Blood). For analysis from an Indigenous perspective, see Howard Adams, *Prison of Grass: Canada from a Native Point of View*, 2nd ed. (Markham, ON: Fifth House Books, 1989).

95 St. Catharines Milling and Lumber Company v. R, CanLII 3, 13 SCR 577 (1887); UKPC 70, 14 App Cas 46 (1888), 49. See also Harring, *White Man's Law*, chap. 6.

96 *St. Catharines Milling*, 69.

97 Weaver documents the main steps in transitioning to sales in Canada. Weaver, *The Great Land Rush*, esp. 213–14. On the specific convergence of property laws, see John McLaren, A. R. Buck, and Nancy Wright, eds., *Despotic Dominion: Property Rights in British Settler Societies* (Vancouver: University of British Columbia Press, 2005). On the more general convergence of U.S. and British imperial methods, see Julian Go, *Patterns of Empire: The British and American Empires, 1688 to the Present* (Cambridge: Cambridge University Press, 2011).

98 In this section, I draw from work by historians Stuart Banner, James Belich, and Miranda Johnson. See Stuart Banner, *Possessing the Pacific: Land, Settlers, and Indigenous Peoples from Australia to Alaska* (Cambridge, MA: Harvard University Press, 2007), esp. chaps. 2 ("New Zealand: Conquest by Contract," 47–83) and 3 ("New Zealand: Conquest by Land Tenure Reform," 84–127); James Belich, *New Zealand Wars and the Victoria Interpretation of Racial Conflict* (London: Penguin, 1998); Miranda Johnson, *The Land Is Our History* (Oxford: Oxford University

Press, 2016). See also P. G. McHugh, Richard P. Boast, and Mark Hickford, *Law and Confiscation: Essays on the Raupatu in New Zealand* (Wellington, NZ: Victoria University of Wellington, 2016).

99 Banner, *Possessing the Pacific*, 59.

100 Banner, *Possessing the Pacific*, 57, citing BPPNZ, I Commons 42, W. L. Rees, *Reports of Meetings Held, and Addresses Given, by Mr. W. L. Rees, in Poverty Bay and Tologa Bay, upon the Subject of Native Lands* (Gisborne: Henry Edwin Webb, 1879).

101 Banner, *Possessing the Pacific*, 62.

102 Recent commentators have tried to narrow the gap between these two traditions. As one New Zealand judge put it, trying to explain the potential overlaps between the English common law system and that of the Māori: "It has always struck me for example that even amongst English people in talking, what they say is not necessarily what their own society as a body politic believes in, for example, I don't know whether you own your own house, but if you did and I asked, '*do you own your own house?*' you would probably say '*Yes, I own my own house.*'. . . Yet the underlying belief system is that you don't, you hold it in fee simple. . . . You in fact hold it in fee from the Crown which has a larger authority over you, you have the right to use it but you don't absolutely own it, it is not an allodial title. . . . There is something bigger above you." Johnson, *The Land Is Our History*, 150–51.

103 Banner, *Possessing the Pacific*, 67.

104 Banner, *Possessing the Pacific*, 83.

105 The violence and uncertainty of this protracted period of war should not be underestimated. As James Belich has shown at length, Victorian visions of a smooth and certain victory of "civilized" peoples over "savages" is historically inaccurate. For extended periods of time, over many conflicts in the nineteenth century, the Māori held the upper hand. It was only in the 1863–64 Waikato War, when the British committed an additional eighteen thousand troops, that the Māori were forced into subservience. Belich, *New Zealand Wars*.

106 Banner, *Possessing the Pacific*, 125.

107 Banner, *Possessing the Pacific*, 126–27.

108 "A paradox of the postcolonial critique of liberalism, and of its critique of Western political thought more broadly, is that it argues for a relatively coherent European political and legal understanding of international society and the non-European world, and in so doing slips into precisely the kind of rationalist universalism that it decries." Fitzmaurice, *Sovereignty, Property, and Empire*, 13.

109 See also Weaver, *The Great Land Rush*.

2. MARX, AFTER THE FEAST

Epigraph: Karl Marx, *Capital: Volume 1*, trans. Ben Fowkes (London: Penguin Books, 1976), chap. 1, section 4, 168; hereafter cited as *C*, page #. Unless otherwise noted, references to the original text are from Karl Marx and Friedrich Engels,

Marx-Engels Gesamtausgabe, II.5, *Das Kapital: Kritik der Politischen Ökonomie,* Erster Band (Hamburg, 1867) (1967).

1 Polanyi, *The Great Transformation*, 187.

2 Polanyi, *The Great Transformation*, 187.

3 For a survey and critique of the language of "enclosures" as applied to the colonial context, see my conclusion.

4 Carl Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, trans. G. L. Ulmen (New York: Telos, 2006); *Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum*, 2nd ed. (Berlin: Duncker and Humblot, 1974). A *nomos* is, in Schmitt's rendering, the "first measure of all subsequent measures" (Schmitt, *The Nomos of the Earth*, 67). Schmitt differentiates this into two key aspects: *Landnahme* and *Landteilung*, or land appropriation and land division. However, in later works, he expands this to the tripartite configuration of appropriation, distribution, and production. Appropriation refers to the original acquisition or taking (*Nehmen*) of land, how it comes to be under the jurisdiction of a particular political order; distribution refers to the manner of internal division (*Teilen*) within that order; and production is the work done on and to the land (Schmitt's word for this is *Weiden*, literally pasturage). So Nehmen, Teilen, and Weiden are said to be the three fundamental modes of relating to the earth underlying any particular spatial order (or nomos) listed in descending chronological and normative order. Original appropriation must take place before internal division, which in turn sets out the possibilities of production. Extrapolating from Schmitt, we might also consider these three different standpoints from which to view "land": as the spatial or jurisdictional extent of sovereignty and public law, as a juridical object of private law, and as an object of use value and/or exchange value. In short: sovereignty, property, and economy.

5 "This is why a Marxist analysis should always be slightly stretched [*légèrement distendues*] when it comes to addressing the colonial issue." Frantz Fanon, *The Wretched of the Earth* (New York: Grove, 2004), 5.

6 The two main contexts in which Marx discusses expropriation prior to *Capital* are his 1842 articles for the *Rheinishe Zeitung* on *die Holzdiebe* and his episodic remarks on Ireland. See Bensaïd, *The Dispossessed*, appendix. On Ireland, see Kevin Anderson, *Marx at the Margins: On Nationalism, Ethnicity, and Non-Western Societies* (Chicago: University of Chicago Press, 2010), chap. 4. Marx also discusses Ireland in *Capital*, 854–70.

7 In one of his more famous formulations, Marx refers to capitalism as based in "the theft of alien labour time," but since labor time is the medium of expressing labor power, this is tantamount to saying that the capital relation is predicated upon the systematic theft of labor power. See Karl Marx, *Grundrisse* (London: Penguin Books, 1993), 705. Elsewhere, Marx even suggests that paying the worker a "fair'" wage (i.e., relatively to the value of her labor power) is still tantamount to theft: "Although equivalent is exchanged for equivalent, the whole thing still remains

the age-old activity of the conqueror, who buys commodities from the conquered with the money he has stolen from them" (*C*, 728).

8 I am aware, of course, that the debate within Marxism over "exploitation" is vast, complex, and hardly settled. In discussing exploitation here, I am not intervening into this other field but rather using it purely to set up a contrast with the problem of expropriation or dispossession. My understanding of exploitation in Marx's *Capital* has been greatly assisted by William Clare Roberts's discussion in *Marx's Inferno: The Political Theory of "Capital"* (Princeton, NJ: Princeton University Press, 2017), esp. chap. 4.

9 *Vogelfrei* is often rendered as "free as a bird" in English, although this is limited since it retains little of the negative connotations Marx intended. The German phrase does connote independence but also vulnerability, especially as a result of being cast out from normal society, i.e., alone and/or subject to being "hunted down." In English common law, the phrase *caput great lupinum* is something of an equivalent. Literally, "may he be a wolf's head" or "may his be a wolf's head," the phrase condemned subjects to the status of outlaw and pariah. It is the origin of the modern English phrase "a lone wolf." See Colin Dayan, *The Law Is a White Dog* (Princeton, NJ: Princeton University Press, 2011), 30.

10 Capital appears in the moment of the emergence of the self-valorization (*Selbstverwertung*) of money (*C*, 255).

11 I have purposely avoided the normative evaluation of exploitation as this is not my focus here.

12 "Mit einem Wort: die Masse der Menschheit *expropriirte sich selbst* zu Ehren der 'Accumulation *des* Kapitals'" (*MEGA*, II.5, 613). In at least one German edition (based on the 1872 edition of *Das Kapital*), this has been changed to "*enteignete sich selbst*" (Marx, *Das Kapital*, 710).

13 Rosa Luxembourg, *The Accumulation of Capital* (1913; repr., New York: Routledge, 2003), 349–50.

14 For a provocative use of the analogy between state formation and organized crime, see Charles Tilly, "War Making and State Making as Organized Crime," in *Bringing the State Back In*, ed. Peter Evans, Dietrich Rueschemeyer, and Theda Skocpol (Cambridge: Cambridge University Press, 1985).

15 We have here a nascent theory of "uneven development": "A consistent foundation for capitalist agriculture could only be provided by large-scale industry, in the form of machinery; it is large-scale industry which radically expropriates the vast majority of the agricultural population and completes the divorce between agriculture and rural domestic industry, tearing up the latter's roots, which are spinning and weaving. It therefore also conquers the entire home market for industrial capital, for the first time" (*C*, 912–13). On "uneven development," see Neil Smith, *Uneven Development: Nature, Capital, and the Production of Space*, 3rd ed. (Athens: University of Georgia Press, 2008).

16 For a critical overview of these debates, see Ellen Meiksins Wood, *The Origin of Capitalism: A Longer View* (New York: Verso, 2002).

17 Peter Kropotkin, "Western Europe," in *The Conquest of Bread and Other Writings*, 221.

18 This emphasis on state power is perhaps the main reason why expropriation is the primary category of analysis in *The Conquest of Bread*. For instance, in a section that reads as though commentary on the contemporary Occupy movement (especially in the United States, where such focus has been placed on struggles over housing and foreclosures), Kropotkin writes in *Conquest of Bread* that "earnest revolutionists will work side by side with the masses, that the abolition of rent, the expropriation of houses, may become an accomplished fact. They will prepare the ground and encourage ideas to grow in this direction; and when the fruit of their labours is ripe, the people will proceed to expropriate the houses without giving heed to the theories which will certainly be thrust in their way—theories about paying compensation to landlords, and finding first the necessary funds. . . . For the expropriation of dwellings contains in germ the whole social revolution" (77, 81).

19 "While combating the present monopolization of land, and capitalism altogether, the anarchists combat with the same energy the state, as the main support of that system. Not this or that special form, but *the state altogether*." Kropotkin, "Anarchism," in *The Conquest of Bread and Other Writings*, 235. In 1876 Kropotkin met with German Lopatin, one of the two men to translate *Capital* into Russian. In their discussion, Kropotkin raised concerns about the basic theoretical claims underpinning Marx's analysis of capital, especially the labor theory of value. To this, Lopatin is reported to have replied that "the theory of value was not important" and that "Marx's main task was *to establish the historical origins of capital*." For Kropotkin at least, this reading shifted the emphasis away from the critique of political economy and toward the matter of primitive accumulation. See Kropotkin, "Western Europe," 221. (The first foreign translation of *Capital* was the Russian edition, a translation started by German Lopatin and completed by Nikolai Frantsevich Danielson, published in 1872.) Later, after the Russian Revolution, Kropotkin would write directly to Vladimir Lenin pleading the case for a decentralized, anarchist communism over against the authoritarian state socialism he feared was taking root. See Peter Kropotkin, "Message to the Workers of the Western Work," "Two Letters to Lenin," and "What Is to Be Done?," in *The Conquest of Bread and Other Writings*, 248–59.

20 Luxemburg, *The Accumulation of Capital*, 348–49.

21 Luxemburg, *The Accumulation of Capital*, 349.

22 For instance, Luxemburg's work earns unexpected praise from Hannah Arendt on precisely this point regarding primitive accumulation. See Hannah Arendt, *Imperialism: Part Two of the Origins of Totalitarianism* (New York: Harvest, 1979), 27–28. For a less surprising contemporary use, see David Harvey, *The New Imperialism* (Oxford: Oxford University Press, 2003).

23 Ranajit Guha, *Elementary Aspects of Peasant Insurgency in Colonial India* (Delhi: Oxford University Press, 1983); Ranajit Guha, *Dominance without Hegemony*

(Cambridge, MA: Harvard University Press, 1998). See also Vivek Chibber, *Postcolonial Theory and the Specter of Capital* (New York: Verso, 2013), for a recent reinvigoration these debates.

24 More recently, Nancy Fraser has provided a renewed analysis of the feminist insight that the reproduction of social life constitutes a constitutive outside to capitalist accumulation in its primary mode (i.e., the exploitation of waged labour), explicitly drawing analogies to Rosa Luxemburg and the reworked theory of primitive accumulation. See Nancy Fraser, *Fortunes of Feminism: From Women's Liberation to Identity Politics to Anti-Capitalism* (New York: Verso, 2013).

25 Silvia Federici, *Caliban and the Witch: Women, the Body, and Primitive Accumulation* (New York: Autonomedia, 2004), 12–13. In my analysis of primitive accumulation as an ongoing feature of capitalist reproduction and expansion, I have also benefited greatly from the following works: Robin Blackburn, *The Making of New World Slavery* (London: Verso, 1997); Glen Coulthard, "From Wards of the State to Subjects of Recognition? Marx, Indigenous Peoples, and the Politics of Dispossession in Denendeh," in *Theorizing Native Studies*, ed. Audra Simpson and Andrea Smith (Durham, NC: Duke University Press, 2014); Massimo De Angelis, "Separating the Doing and the Deed: Capital and the Continuous Character of the Enclosures," *Historical Materialism* 12, no. 2 (2004); Massimo De Angelis, "Marx and Primitive Accumulation: The Continuous Character of Capital's 'Enclosures,'" *The Commoner*, no. 2 (September 2001); Todd Gordon, "Canada, Empire, and Indigenous Peoples in the Americas," *Socialist Studies* 2, no. 1 (2006); Onur Ulas Ince, "Primitive Accumulation, New Enclosures, and Global Land Grabs: A Theoretical Intervention," *Rural Sociology* 79, no. 1 (March 2013); Michael Perelman, *The Invention of Capitalism: Classical Political Economy and the Secret History of Primitive Accumulation* (Durham, NC: Duke University Press, 2000); Retort Collective, *Afflicted Powers: Capital and Spectacle in a New Age of War* (New York: Verso, 2005).

26 Coulthard, *Red Skin, White Masks*, 10.

27 See, in particular, Kevin Anderson, "Marx's Late Writings on Non-Western and Pre-capitalist Societies and Gender," *Rethinking Marxism* 14, no. 4 (2002); Gareth Stedman Jones, "Radicalism and the Extra-European World: The Case of Karl Marx," in *Victorian Visions of Global Order: Empire and International Relations in Nineteenth-Century Political Thought*, ed. Duncan Bell (Cambridge: University of Cambridge Press, 2007).

28 Karl Marx, "A Letter to NK Mikailovsky," in *Selected Writings*, by Karl Marx, ed. David McClelland (Oxford: Oxford University Press, 1987), 618. Marx makes the same point in his "Letter to Vera Zasulich," in *Selected Writings*, 623–27.

29 For a discussion of these, and key references, see Werner Bonefeld, "Primitive Accumulation and Capitalist Accumulation: Notes on Social Constitution and Expropriation," *Science and Society* 75, no. 3 (July 2011); Jim Glassman, "Primitive Accumulation, Accumulation by Dispossession, Accumulation by 'Extra-economic Means,'" *Progress in Human Geography* 30, no. 5 (2006); Derek Hall,

"Primitive Accumulation, Accumulation by Dispossession and the Global Land Grab," *Third World Quarterly* 34, no. 9 (2013); Derek Hall, "Rethinking Primitive Accumulation: Theoretical Tensions and Rural Southeast Asian Complexities," *Antipode* 44, no. 4 (2012). Two oft-cited discussions on these distinctions include a special issue of *The Commoner*, no. 2 (September 2001), featuring contributions from the Midnight Notes Collective, Massimo De Angelis, Werner Bonefeld, Silvia Federici; and a special issue of *Rethinking Marxism* 23, no. 3 (July 2011), with contributions from Sandro Mezzadra, S. Charusheela, and Gavin Walker.

30 Harvey, *The New Imperialism*, 161.

31 On the "frontier" metaphor, see Anna Lowenhaupt Tsing, *Friction: An Ethnography of Global Connection* (Princeton, NJ: Princeton University Press, 2005); Sandro Mezzadra, "The Topicality of Prehistory: A New Reading of Marx's Analysis of 'So-Called Primitive Accumulation,'" *Rethinking Marxism: A Journal of Economics, Culture and Society* 23, no. 3 (2011). For influential renderings of "enclosures," see E. P. Thompson, *Customs in Common* (New York: Merlin Press, 1991); *Midnight Notes*, no. 10 (1990).

32 Michael Levein, "The Land Question: Special Economic Zones and the Political Economy of Dispossession in India," *Journal of Peasant Studies* 39, nos. 3–4 (2012): 940.

33 E.g., Wendy Wolford, Saturnino M. Borras Jr., Ruth Hall, Ian Scoones, and Ben White, "Governing Global Land Deals: The Role of the State in the Rush for Land," *Development and Change* 44, no. 2 (2013); Saturnino M. Borras Jr. and Jennifer C. Franco, "Global Land Grabbing and Trajectories of Agrarian Change: A Preliminary Analysis," *Journal of Agrarian Change* 12, no. 1 (2012).

34 For an influential critique of this historicism, see Dipesh Chakrabarty, *Provincializing Europe* (Princeton, NJ: Princeton University Press, 2000).

35 Ince, "Primitive Accumulation," 106.

36 This point has already become apparent through the historical examples given in chapter 1.

37 "Der Prozeß, der das Kapitalverhältniß *schafft*, kann also nichts anders sein als der *Scheidungsprozeß des Arbeiters vom Eigentum an seinen Arbeitsbedingungen*, ein Prozeß, der einerseits die gesellschaftlichen Lebens- und Produktions-mittel in *Kapital verwandelt*, andrerseits die unmittelbaren Producenten in *Lohnarbeiter*. Die sog. *ursprüngliche Akkumulation* ist also nichts als der *historische Scheidungsprozeß von Producent und Produktionsmittel.*" Karl Marx and Friedrich Engels, *Marx-Engels Gesamtausgabe* (Berlin: Dietz, 1975), II.5, *Das Kapital: Kritik der Politischen Ökonomie,* Erster Band (Hamburg, 1867]) (1967), 575.

38 E.g., Peter Linebaugh, *Stop, Thief! The Commons, Enclosures, and Resistance* (Oakland, CA: PM Press, 2014).

39 Robert Somers, *Letters from the Highlands; Or, The Famine of 1847* (London: Simpkin, Marhsall, 1848).

40 Marx, *Capital: Volume 1*, chap. 33. To see the intentionality behind Wakefield's analysis, one need only read his 1849 work, *A View of the Art of Colonization* (repr.,

Cambridge: Cambridge University Press, 2010), which is expressly offered as a theory of systematic colonization.

41 It is "independent" of the processes of proletarianization and market formation only in the sense given here—in other words, analyzable as a separate variable that can be configured in relation to these other categories in a variety of ways, , not a priori determined by them.

42 Even here, however, we should be careful not to impose a false chain of equivalence. To say that land can be conceptualized as a commodity is not to say that it is a commodity *like any other.* The very conception of "commodity" already denotes a mysterious dual-sided character, disclosed dialectically. Commodities are expressed as both use value and exchange- value, and in this sense all commodities must be both *alike* and *unlike.* So to notice that the land can be a commodity is not to deny the possibility (indeed, the certainty) that land must retain some trace of its use value, making it both *like* other commodities and also importantly *unlike* them.

43 My understanding of Marx on "nature" is indebted to Alfred Schmidt's *The Concept of Nature in Marx* (1962; repr., New York: Verso, 2014), as well as the discussion of this work in N. Smith, *Uneven Development*, and John Bellamy Foster, *Marx's Ecology: Materialism and Nature* (New York: Monthly Review Press, 2000).

44 Polanyi, *The Great Transformation*, chap. 6.

45 G. A. Cohen, *Self-Ownership, Freedom, and Equality* (Cambridge: Cambridge University Press, 1995), 146. It should be noted that Cohen (and others working in this tradition) does not typically use the term *dispossession*. Rather, he tends to speak of the "unfair" or "unequal" original distribution of "productive resources." For instance, Cohen writes:

> In the standard Marxian version . . . the exploitation of workers by capitalists, that is, the appropriation without recompense by capitalists of part of what workers produce, *derives entirely from the fact that workers have been deprived of access to physical productive resources* and must therefore sell their labour power to capitalists, who enjoy a class monopoly in those resources. Hence, for Marxists, capitalist appropriation is rooted in *an unfair distribution of rights in external things*. The appropriation has its causal origin in *an unequal distribution of productive resources*, and it suffices for considering it unjust exploitation that it springs from that initial unjust inequality. (119, emphasis added)

We can see here that although Cohen does not speak directly about dispossession or primitive accumulation, he nevertheless gives us an interpretation of it, choosing to speak instead of "unfair" and "unequal" distribution of "external things" and, most importantly, of "productive resources."

46 Cohen, *Self-Ownership*, 197.

47 Cohen, *Self-Ownership*, 201.

48 It is also worth noting that Cohen does not view exploitation as *only* arising from something like primitive accumulation or expropriation. He argues that it is perfectly possible to imagine the exploitative relationship characteristic of capitalism effectively without any prior moment of primitive accumulation, calling this "cleanly generated capitalist relationships" (Cohen, *Self-Ownership*, 161).

49 "Hence the Marxist contention that the capitalist exploits the worker depends on the proposition that people are the rightful owners of their own powers" (Cohen, *Self-Ownership*, 146). Even those Marxists who remain untroubled or uninterested in the problem of self-ownership might nevertheless find the above clarification useful since it does seem to have some bearing upon what normative vision might guide a postcapitalist society. Arguably, if it were possible to found a society on a radically egalitarian distribution of access to the means of production, that society would still need to determine what it would do with inequalities that would inevitably arise subsequently through a variety of other means. Marx does suggest, at least in the early or transitional stage of socialism (i.e., before full communism), that people would receive benefits and socially produced goods "*proportional* to the labour they supply": Karl Marx, "Critique of the Gotha Programme," in Karl Marx and Frederick Engels, *Selected Works in One Volume* (London: International Publishers, 1968), 324. Cohen calls this the "socialist proportionality principle" (*Self-Ownership*, 123). This certainly seems to leave room for unequal distribution of social goods, since Marx recognizes unequal individual endowments. In the few glimpses we get of Marx's vision for a full communist society, this shifts entirely. In the most famous of these passages, we are told that although each will produce according to his abilities, each will receive "according to his needs," thus expressly not proportionate to contribution (not an argument from desert). Cohen's interpretation of this is that Marx is relatively unconcerned about sorting this out through something like a "theory of (post-capitalist) justice" because he is so convinced that, by this point, scarcity itself will be overcome and, as a result, everyone will be able to basically have as much of what they wish without loss to others. Marx states that the development of productive forces will make competition "superfluous," which some have interpreted as the answer to why he thought the very problem of justice would be overcome (i.e., that conflict would be rendered obsolete, therefore theories of justice too) (Cohen, *Self-Ownership*, 132, 153). Cohen's attempt to explicate these abstract normative questions from the standpoint of a possible postcapitalist society is so far removed from my own approach—which aspires to keep it as close as possible to a concrete historical and social theory of modernity—that it is difficult to meaningfully engage this argument in a summary form here.

50 Michael Dawson, "Hidden in Plain Sight: A Note on Legitimation Crises and the Racial Order," *Critical Historical Studies* 3, no. 1 (Spring 2016): 151.

51 Fraser, "Expropriation and Exploitation," 166.

52 Fraser, "Expropriation and Exploitation," 169.

53 Marx, *Grundrisse*, 88, 497.

54 Paine made a similar point, arguing that private property in land is a function of a certain practical impossibility, namely, of "separating the improvement made by cultivation from the earth itself, upon which that improvement was made." Land and labor have become dialectically intertwined, as two faces of the same historical process of improvement. We can distinguish these two features but only analytically, for it is no longer possible to identify in any *particular* plot of land the element of it remains "outside" human labor, even while we recognize as a matter of principle that this endures as a feature of it (since we otherwise cannot account for how it exists *at all*). Paine concludes therefore that, although the common right of all to the earth and the individual right to the fruits of one's labor remain "distinct species of rights," they have "become confounded" in all practical terms. This general analytic claim is combined with a historical narrative. Paine, "Agrarian Justice," 418.

3. INDIGENOUS STRUCTURAL CRITIQUE

Epigraphs: Unnamed Woman and Red Jacket (Seneca), "We Are the Owners of This Land, and It Is Ours!," in Blaisdell, *Great Speeches by Native Americans*, 35; Goeman, "From Place to Territories and Back Again," 28 (for a more extended analysis of these ideas, see Mishuana Goeman, *Mark My Words: Native Women Mapping Our Nations* [Minneapolis: University of Minnesota Press, 2013]; Susan Hill, *The Clay We Are Made Of: Haudenosaunee Land Tenure on the Grand River* (Winnipeg: University of Manitoba Press, 2017), 5.

1 Wolfe's work on this question spans some twenty years. Here, however, I focus on one article as it is a particularly succinct condensation of his project as a whole.

2 Wolfe, "Settler Colonialism and the Elimination of the Native," 388.

3 Ruth Gilmore, *The Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (Berkeley: University of California Press, 2007), 28.

4 On the idea of "structural" domination, see Jennifer Einspahr, "Structural Domination and Structural Freedom: A Feminist Perspective," *Feminist Review* 94, no. 1 (2010); Sally Haslanger, "Oppressions Racial and Other," in *Racism in Mind*, ed. Michael P. Levine and Tamas Pataki (Ithaca, NY: Cornell University Press, 2004); Sally Haslanger, "Distinguished Lecture: Social Structure, Narrative and Explanation," *Canadian Journal of Philosophy* 45, no. 1 (2015); Clarissa Hayward and Steven Lukes, "Nobody to Shoot? Power, Structure, and Agency: A Dialogue," *Journal of Power* 1, no. 1 (2008); William Sewell Jr., "A Theory of Structure: Duality, Agency, and Transformation," *American Journal of Sociology* 98, no. 1 (1992); Young, *Justice and the Politics of Difference*, 15–65.

5 Theodore Roosevelt, *Winning the West*, 4 vols. (1889–96); excerpted in Isaac Kramnick and Theodore Lowi, eds., *American Political Thought: A Norton Anthology* (New York: W. W. Norton, 2009), 908.

6 See Duncan Bell, *The Idea of Greater Britain: Empire and the Future of World Order, 1860–1900* (Princeton, NJ: Princeton University Press, 2007).

7 Wolfe's contribution in particular helps us respond to arguments regarding the supposed "supersession of historical injustice" since his juxtaposition of "structure not an event" is a useful device in highlighting the *endurance* of the colonial relationship of domination over Indigenous peoples. If colonization were a discrete "event" locatable at a specific historical moment, then the passage of time would seem to place increasing distance between us and the relevant locus of concern, thus diminishing the normative force of the critique of colonization. If, however, colonization is reframed as an enduring structure of domination, then the passage of time would seem to compound, rather than dilute, the normative concern. I have developed and deployed this argument in R. Nichols, "Indigeneity and the Settler Contract Today."

8 Leanne Simpson, *As We Have Always Done* (Minneapolis: University of Minnesota Press, 2017), 45.

9 An additional, unintended consequence of adopting the language of "structure" has been to impute a glacial ahistoricity to settler colonialism, that is, to define it analytically rather than historically. For if we define colonization as a "structure of domination" that endures over vast swathes of time, this risks depriving us of the analytic tools required to make sense of the dramatic differences between early modern and later modern forms—particularly as settler colonialism was transformed by global capitalism. Among other issues, the danger here is that the command relation characteristic of colonization comes to be framed in terms of a *failure to transition*, that is, as a residue of premodern, precapitalist relations of domination.

10 The most novel and (in)famous politicized use of diremption comes to us from Georges Sorel, who used it to describe a radical rupture in social reality, one that evaded all attempts at reconciliation. He thus uses the term to oppose all characterization of society as an organic whole (which position he associates with Hegel). For instance:

> "Social philosophy, in order to study the most significant phenomena of history, is obliged to proceed to a *diremption,* to examine certain parts without taking into account all of the ties which connect them to the whole, to determine in some manner the character of their activity by pushing them towards independence. When it has thus arrived at the most perfect understanding it can no longer attempt to reconstitute the broken unity." (*Reflections on Violence* [Cambridge: Cambridge University Press, 1999], 263)

Elsewhere Sorel writes,

> "Man cannot create unity in his thought unless he allows himself to give up part of reality. In order to construct a new metaphysics that corresponds to our needs, it must be admitted that in coming into contact with the world,

> our mind divides itself into distinct ideologies, which deal with areas that become more separate as we gain a broader knowledge [conaissance] of the real. Humanity has always acted as though it understood this metaphysics and the evidence of history legitimizes the enterprise of those who seek to create this *philosophy of diremption* to replace that of *unification*." ("Léon XIII," *Études socialistes* 1, no. 5 [1903]: 265; quoted in Eric Brandom, "Georges Sorel's Diremption: Hegel, Marxism, and Anti-Dialectics," *History of European Ideas* 42, no. 7 (2016): 937–50)

It does not appear that Hegel used the term in this political sense, however, reserving it almost exclusively for discussions of logic and metaphysics (for instance, as it is employed periodically throughout G. W. F. Hegel, *Encyclopädie der philosophischen Wissenschaften im Grundrisse* [Leipzig: Verlag von Feliz Meiner, 1905]). This has been further confused in the English reception of Hegel, since the term *Zerreißung* has also been translated as "diremption," as it is in Nisbet's *Philosophy of Right*, e.g., "In this realm, [the process of] differentiation comes to an end with the infinite diremption [*Zerreißung*] of ethical life into the extremes of *personal* or private self-consciousness and *abstract universality*": G. W. F. Hegel, *Elements of the Philosophy of Right*, ed. Allen Wood, trans. H. B. Nisbet (Cambridge: Cambridge University Press, 1991), 379. The same passage is translated by Knox as: "In this realm, differentiation is carried to its conclusion, and ethical life is sundered without end into the extremes of the private self-consciousness of persons on the one hand, and abstract universality on the other": Hegel, *Hegel's Philosophy of Right*, 221.

11 See, for example, Karl Marx, "Economic and Philosophic Manuscripts of 1844," in *The Marx-Engels Reader*, ed. Robert Tucker (New York: W. W. Norton, 1972), 52–103.

12 The term *alienation* refers then to different aspects of identification and control.

13 Rahel Jaeggi, *Alienation* (New York: Columbia University Press, 2014), 1. Jaeggi elaborates: "According to this formulation, alienation does not indicate the absence of a relation but is itself a relation, if a deficient one. Conversely, overcoming alienation does not mean returning to an undifferentiated state of oneness with oneself and the world; it too is a relation: *a relation of appropriation*" (1).

14 Alexis de Tocqueville, *Democracy in America*, trans. Harvey Mansfield (Chicago: University of Chicago Press, 2000), vol. 2, book 4, chap. 6, 663–64.

15 John Stuart Mill, *On Liberty* (Saddle River, NJ: Prentice-Hall, 1997), 7.

16 Mill, *On Liberty*, 7.

17 Mill, *On Liberty*, 7. Or, consider Thomas Paine's critique of landed aristocracy as a form of dispossession: "The fault, however, is not in the present possessors. . . . *The fault is in the system*" ("Agrarian Justice," 420, emphasis added).

18 Karl Marx and Friedrich Engels, *The Communist Manifesto* (New York: Penguin, 1985), 85–86.

19 Moishe Postone, *Time, Labor, and Social Domination: A Reinterpretation of Marx's Critical Theory* (Cambridge: Cambridge University Press, 1996), 30.

20 For an insightful parsing of these different modes of critique, see Rahel Jaeggi, "What (If Anything) Is Wrong with Capitalism? Dysfunctionality, Exploitation and Alienation: Three Approaches to the Critique of Capitalism," *Southern Journal of Philosophy* 54, no. 51 (2016).

21 Max Horkheimer and Theodor Adorno, *The Dialectic of Enlightenment* (Palo Alto: Stanford University Press, 2007).

22 Cf. Jason Moore, *Capitalism and the Web of Life: Ecology and the Accumulation of Capital* (New York: Verso, 2015).

23 Another instance of this can be found in the recent work of Anita Chari. In *A Political Economy of the Senses: Neoliberalism, Reification, Critique* (New York: Columbia University Press, 2015), Chari deftly reconstructs a conception of reification appropriate to contemporary neoliberal times. Drawing from Marx, Georg Lukács, and Adorno, Chari conceives of reification as a form of depoliticization with two "faces": (a) the rigidification of the political—"this feature of capitalism that stratifies the institutional structure of forms of self-rule"—and (b) the bracketing of the political, which refers to "the obfuscation of the relationship between the political and economic spheres" (95). As is often the case, emphasis on reification and alienation of society from itself via its own pathological modes of social organization leads to a downplaying of the internal division of that society, manifest in forms of domination and class struggle. For example, Chari defines *expropriation* as a kind of impersonal domination. For her, it refers to "the idea that we live dispossessed of the world and of the meaning of things and that we can borrow signs and objects in order to compose something that makes sense, which brings us back to something we experience" (172). The definition of expropriation and dispossession here comes from the artist Claire Fontaine, as cited by Ruba Katrib and Tom McDonough, *Claire Fontaine: Economies* (Miami: Museum of Contemporary Art, 2010), 10.

24 Coulthard, *Red Skin, White Masks*, chap. 1.

25 Lewis Henry Morgan, *Ancient Society* (1877; repr., Tucson: University of Arizona Press, 1985), 552.

26 "After the struggle is over, there is not only the demise of colonialism, but also the demise of the colonized. This new humanity, for itself and for others, inevitably defines a new humanism" (Fanon, *The Wretched of the Earth*, 178).

27 Kevin Bruyneel, *The Third Space of Sovereignty: The Postcolonial Politics of U.S.-Indigenous Relations* (Minneapolis: University of Minnesota Press, 2007), ix.

28 Perhaps most famously, the Haudenosaunee confederacy was able to expand and consolidate its power over a number of rival Indigenous nations such as the Wyandot (Huron) over the course of the late sixteenth century in part through shrewd military alliances with European allies.

29 For an extensive treatment of the role of the leadership of Haudenosaunee women in the eighteenth century, and an analysis of the obstacles to reconstructing such an account, see Hill, *The Clay We Are Made Of*, chap. 2.

30 Unnamed Woman and Red Jacket (Seneca), "We Are the Owners of This Land," 35.

31 Gregory Dowd, *A Spirited Resistance: The North American Indian Struggle for Unity, 1745–1815* (Baltimore: Johns Hopkins University Press, 1992), 30.

32 "The term *nativism* discomfits some because it derives from the word *native*, which has in the past carried a host of inaccurate and even demeaning connotations. But native peoples of some of the regions that experienced colonialism, Native Americans among them, have in recent decades revived the term native, and its seems permissible to follow their lead" (Dowd, *A Spirited Resistance*, xxi).

33 Dowd, *A Spirited Resistance*, 27.

34 Dowd, *A Spirited Resistance*, 37.

35 Dowd, *A Spirited Resistance,* 21.

36 Miller, *Compact, Contract, Covenant*, 67; Jack Stagg, *Anglo-Indian Relations in North America to 1763* (Ottawa: Indian and Northern Affairs Canada, 1981), 334–37.

37 Fitzmaurice, *Sovereignty, Property, and Empire*, 188. See also Richard White, *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650–1815* (Cambridge: Cambridge University Press, 1991), 322.

38 For a study of the Crow and their leader during much of the process of transitioning to reservation life, Plenty Coups, see Jonathan Lear, *Radical Hope: Ethics in the Face of Cultural Devastation* (Cambridge, MA: Harvard University Press, 2008).

39 He is sometimes thought to share this honor with the Sauk leader Blackhawk. See Blackhawk, *Life of Black Hawk, or Mà-ka-tai-me-she-kià-kiàk* (London: Penguin, 2008). Blackhawk narrated his biography in 1833.

40 The "Nullification crisis" refers to a conflict between South Carolina and the U.S. federal government in 1832–33. South Carolina deemed a series of tariffs imposed by Andrew Jackson's administration to be an unconstitutional violation of states' rights and therefore null and void within its boundaries. Only one year later, Apess would use the language of "nullification" to contend that, without the express consent of the Mashpee within their territory, U.S. laws were more generally void. See William Apess, "Indian Nullification," in *On Our Own Ground: The Complete Writings of William Apess, a Pequot*, ed. Varry O'Connell (Amherst: University of Massachusetts Press, 1992), 167–274.

41 For a reading of Apess in relation to American political thought more generally, see Adam Dahl, *Empire of the People: Settler Colonialism and the Foundations of Modern Democratic Theory* (Lawrence: University Press of Kansas, 2018).

42 William Apess, "The Experiences of Five Christian Indians of the Pequot Tribe," in *On Our Own Ground*, 157.

43 Chief Joseph, "An Indian's View of Indian Affairs," in Kramnick and Lowi, *American Political Thought*, 930–31, 941.

44 Within critical theory, the idea of a form-of-life critique has of late been revived and given new complexity in work by such thinkers as Rahel Jaeggi and Daniel Loick. See Rahel Jaeggi, *Kritik von Lebensformen* (Frankfurt am Main: Suhrkamp,

2013); Daniel Loick, "21 Theses on the Politics of Forms of Life," *Theory and Event* 20, no. 3 (July 2017): 788–803.

45 My understanding of immanent and externalist critique is especially indebted to the formulation given by Jakeet Singh in "Beyond Free and Equal: Subalterneity and the Limits of Liberal-Democracy" (PhD diss., University of Toronto, 2014).

46 Laura Cornelius Kellogg, *Our Democracy and the American Indian and Other Works* (Syracuse: Syracuse University Press, 2015), 74.

47 Kellogg, *Our Democracy*, 93, 100.

48 Kellogg, *Our Democracy*, 89.

49 Kellogg, *Our Democracy*, 97.

50 Kellogg, *Our Democracy*, 102.

51 Kellogg, *Our Democracy*, 76.

52 Kellogg, *Our Democracy*, 77.

53 For a more comprehensive survey of thinkers in this tradition, see Kiara Vigil, *Indigenous Intellectuals: Sovereignty, Citizenship, and the American Imagination, 1880–1930* (Cambridge: Cambridge University Press, 2015); David Martínez, ed., *The American Indian Intellectual Tradition: An Anthology of Writings from 1772 to 1972* (Ithaca, NY: Cornell University Press, 2011).

54 Miranda Johnson, *The Land Is Our History: Indigeneity, Law, and the Settler State* (Oxford: Oxford University Press, 2017), 3–4.

55 Sheryl Lightfoot, *Global Indigenous Politics: A Subtle Revolution* (New York: Routledge, 2016).

56 George Manuel and Michael Posluns, *The Fourth World: An Indian Reality* (Don Mills, ON: Collier-Macmillan Canada, 1974).

57 Coulthard, *Red Skin, White Masks*, 7.

58 A. Simpson, *Mohawk Interruptus*, 74.

59 For many years now, the "politics of indigeneity" in the English-speaking world has been dominated by a "cultural recognition paradigm." The basic logic of this framework has it that the normative force of Indigenous political claims derives from a claim of *cultural particularity*. Key thinkers such as Charles Taylor and Will Kymlicka have argued that we can derive the normative content of Indigenous claims from a universal need for the recognition (Taylor), or from the importance of preserving a cultural milieu that allows one to process meaning (Kymlicka). These thinkers typically argue that there is an important link between personal identity and agency of citizens and the respect or esteem given to their cultural or ethnic community. If this is the case, then the equal respect and dignity of individuals within liberal democratic societies require the (state) recognition of culturally distinct sub-state communities. Since Indigenous nations constitute distinct historically transmitted cultural entities, they are worthy of affirmative recognition on the basis of our general interest in respecting fellow citizens. This has come under such sustained critique for many decades now that I will not rehearse it here. See, e.g., Joanne Barker, ed., *Sovereignty Matters: Locations of*

Contestation and Possibility in Indigenous Struggles for Self-Determination (Lincoln: University of Nebraska Press, 2005); Coulthard, *Red Skin, White Masks*; Richard Day, "Who Is This We That Gives the Gift? Native American Political Theory and the Western Tradition," *Critical Horizons* 2, no. 2 (2001); Richard Day, *Multiculturalism and the History of Canadian Diversity* (Toronto: University of Toronto Press, 2000); Elizabeth Povinelli, *The Cunning of Recognition: Indigenous Alterities and the Making of Australian Multiculturalism* (Durham, NC: Duke University Press, 2002); Dale Turner, *This Is Not a Peace Pipe* (Toronto: University of Toronto Press, 2006).

60 Moreton-Robinson, *The White Possessive*, xvii–xviii.

61 Jodi A. Byrd, *The Transit of Empire: Indigenous Critiques of Colonialism* (Minneapolis: University of Minnesota Press, 2011).

62 Joanne Barker, *Native Acts: Law, Recognition, and Cultural Authenticity* (Durham, NC: Duke University Press, 2011), 19.

63 For a useful overview of these debates, see Maile Arvin, "Analytics of Indigeneity," and Kim Tallbear, "Genomic Articulations of Indigeneity," in *Native Studies Keywords*, ed. Stephanie Nohelani Teves, Andrea Smith, and Michelle Raheja (Tucson: University of Arizona Press, 2015), 119–29 and 130–55.

64 This perspective shares some overlap with an alternative paradigm for theorizing Indigenous politics, namely, those who argue Indigenous claims should be seen as a subset of reparations claims for past injustice. See Courtney Jung, *The Moral Force of Indigenous Politics* (Cambridge: Cambridge University Press, 2008); Janna Thompson, "Historical Injustice and Reparation: Justifying Claims of Descendants," *Ethics* 112, no. 1 (October 2001). While more sympathetic to this framework than either the multicultural or "first occupancy" models, I remain skeptical that Indigenous politics can be reduced to normative claims-making of this sort. For rejoinders to this "reparations" framework, see, e.g., Paul Patton, "Historic Injustice and the Possibility of Supersession," *Journal of Intercultural Studies* 26, no.3 (August 2005) ; Paul Patton, "Colonisation and Historic Injustice—The Australian Experience," in *Justice in Time: Responding to Historical Injustice*, ed. Lukas H. Meyer (Baden-Baden: Nomos Verlagsgesellschaft, 2004).

65 "Sooner or later, however, the colonized intellectual realizes that the existence of a nation is not proved by culture, but in the people's struggle against the forces of occupation" (Fanon, *The Wretched of the Earth*, 159).

66 For a useful overview of this concept and its recent history, see Friedrich-Wilhelm Eickhoff, "On *Nachträglichkeit*: The Modernity of an Old Concept," *International Journal of Psychoanalysis* 87, no. 6 (December 2006).

67 Jacques Lacan rendered it as *après-coup* in French. See Jean Leplanche, "Après-coup," *Dictionnaire international de la psychanalyse* (Paris: Hachette Littératures, 2005).

68 J. Kēhaulani Kauanui, "'A Structure, Not an Event': Settler Colonialism and Enduring Indigeneity," *Lateral: Journal of the Cultural Studies Association* 5, no. 1 (Spring 2016), https://doi.org/10.25158/L5.1.7.

Epigraphs: Hortense Spillers, "Mama's Baby, Papa's Maybe: An American Grammar Book," *Diacritics* 17, no. 2 (Summer 1987): 67; Saidiya Hartman, *Lose Your Mother: A Journey along the Atlantic Slave Route* (New York: Farrar, Straus and Giroux, 2007), 74.

1 See, e.g., Marisa Fuentes, *Dispossessed Lives: Enslaved Women, Violence, and the Archive* (Philadelphia: University of Pennsylvania Press, 2018).

2 This view is most closely associated with Robert Brenner. His touchstone article is "Agrarian Structure and Economic Development in Pre-Industrial Europe," *Past and Present* 70, no. 1 (February 1976).

3 Eric Williams, *Capitalism and Slavery* (1944; repr., New York: Putnam, 1966).

4 W. E. B. Du Bois, *Black Reconstruction in America* (1935; repr., Oxford: Oxford University Press, 2007); Cedric Robinson, *Black Marxism: The Making of the Black Radical Tradition* (1983; repr., Chapel Hill: University of North Carolina Press, 2000); Orlando Patterson, *Slavery and Social Death* (Cambridge, MA: Harvard University Press, 1982); George Lipsitz, *The Possessive Investment in Whiteness*, rev. ed. (Philadelphia: Temple University Press, 2006).

5 Robinson, *Black Marxism*, 116. Robinson does equivocate at times on the precise nomenclature, at times referring to slavery as a condition of "super-exploitation" (140).

6 For an example of work that emphasizes this dimension, see Stephanie Smallwood, *Saltwater Slavery: A Middle Passage from African to American Diaspora* (Cambridge, MA: Harvard University Press, 2007).

7 See Saidiya Hartman, "The Belly of the World: A Note on Black Women's Labors," *Souls: A Journal of Black Politics, Culture, and Society* 18, no. 1 (2016); Patricia Hill Collins, "Work, Family, and Black Women's Oppression," in *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment* (New York: Routledge, 2009), 51–75; Jennifer Morgan, "Archives and Histories of Racial Capitalism: An Afterword," *Social Text* 33, no. 4 (2015).

8 Patterson, *Slavery and Social Death*, 99.

9 Frank Wilderson, *Red, White, and Black: Cinema and the Structure of U.S. Antagonisms* (Durham, NC: Duke University Press, 2010). The historian Edward Baptist has emphasized the political-economic importance of seemingly gratuitous violence in this context as well. See Edward Baptist, *The Half Has Never Been Told: Slavery and the Making of American Capitalism* (New York: Basic Books, 2015).

10 Patterson, *Slavery and Social Death*, 13.

11 The opening lines of Douglass's *Narrative* read: "I was born in Tuckahoe, near Hillsborough, and about twelve miles from Easton, in Talbot county, Maryland. I have no accurate knowledge of my age, never having seen any authentic record containing it. By far the larger part of the slaves know as little of their ages as horses know of theirs, and it is the wish of most masters within my knowledge to

keep their slaves thus ignorant." Frederick Douglass, *Narrative of the Life of Frederick Douglass, an American Slave* (New York: Penguin, 1982), 17.

12 Hartman, *Lose Your Mother*, 74; Shatema Threadcraft, *Intimate Justice: The Black Female Body and the Body Politic* (Oxford: Oxford University Press, 2016), 57; Fuentes, *Dispossessed Lives*.

13 Athena Athanasiou, in Butler and Athanasiou, *Dispossession*, 32, 55. For a critique of Butler and Athanasiou's elision of Blackness as a foundational category for thinking through such bodily possession/dispossession, see Sabine Broeck, *Gender and the Abjection of Blackness* (Albany: State University of New York Press, 2018), chap. 6.

14 For a survey of such arguments, see Duncan Ivison, *Rights* (Montreal: McGill-Queen's University Press, 2008), esp. chap. 3, "Rights as Property."

15 Carole Pateman has argued that "property in the person" and "self-ownership" should not be used interchangeably since the latter obscures fundamental problems related to the alienability of personhood. For my initial purposes, however, I shall use the terms synonymously. See Carole Pateman, "Self-Ownership and Property in the Person: Democratization and a Tale of Two Concepts," *Journal of Political Philosophy* 10, no. 1 (2002).

16 Locke, *The Second Treatise of Government*, 19. Locke, it should be noted, tried to get around the problem of alienability by positing that our property in the person was actually a gift from God. Thus, we are actually *his* property, which means we can only use ourselves in accordance with his design, not our own. Thanks to Torrey Shanks for pressing me on this point.

17 C. B. MacPherson, *The Political Theory of Possessive Individualism* (Oxford: Oxford University Press, 1962), 3.

18 For a philosophical elaboration of this idea, see Hegel, *Hegel's Philosophy of Right*, §§ 65-70, pp. 52–57.

19 Robert Nozick, *Anarchy, State, and Utopia* (New York: Harper Row, 1974); G. A. Cohen, *Self-Ownership, Freedom, and Equality*. See also Attracta Ingram, *A Political Theory of Rights* (Oxford: Oxford University Press, 1994); Carol Rose, *Property and Persuasion: Essays on the History, Theory, and Rhetoric of Ownership* (Boulder, CO: Westview, 1994); Peter Halewood, "On Commodification and Self-Ownership," *Yale Journal of Law and the Humanities* 20, no. 2 (2008); Laura Brace, *The Politics of Property: Labour, Freedom, and Belonging* (New York: Palgrave Macmillan, 2004).

20 J. Philmore, "The Libertarian Case for Slavery," *The Philosophical Forum* XIV (1982): 48; quoted in Carole Pateman, *The Sexual Contract* (Stanford, CA: Stanford University Press, 1988), 71, emphasis added. J. Philmore is in fact a pseudonym for David Ellerman, who wrote "The Libertarian Case for Slavery" as a satirical take on Nozick's libertarianism, an attempt to reveal its absurdity by taking it to its logical conclusion. See David Ellerman, *Intellectual Trespassing as a Way of Life: Essays in Philosophy, Economics, and Mathematics* (Landham, MD: Roman and Littlefield, 1995), chap. 3.

21 Anne Phillips, *Our Bodies, Whose Property?* (Princeton, NJ: Princeton University Press, 2013); Cressida Heyes, *Self-Transformations: Foucault, Ethics, and*

Normalized Bodies (Oxford: Oxford University Press, 2007); Alexandra Wald, "What's Rightfully Ours: Toward a Property Theory of Rape," *Columbia Journal of Law and Social Problems* 30, no. 3 (Spring 1997). Wald argues that women need to be recognized as property owners over their bodies in order to be recognized as persons. See also Donna Dickenson, *Property, Women, and Politics: Subjects or Objects?* (Cambridge, UK: Polity, 1997); Ruth Perry, "Mary Astell and the Feminist Critique of Possessive Individualism," *Eighteenth-Century Studies* 23, no. 4 (1990); Rosalind Pollack Petchesky, "The Body as Property: A Feminist Re-Vision," in *Conceiving the New World Order: The Global Politics of Reproduction*, ed. Faye Ginsburg and Rayna Rapp (Berkeley: University of California Press, 1995); Ngaire Naffine, "The Legal Standing of Self-Ownership: Or the Self-Possessed Man and the Woman Possessed," *Journal of Law and Society* 25, no. 2 (1998); Pateman, "Self-Ownership and Property in the Person"; Martha Nussbaum, "Objectification," *Philosophy and Public Affairs* 24, no. 4 (1995). See Jennifer Nedelsky, *Law's Relations* (Oxford: Oxford University Press, 2011), for a productive engagement with these debates and insightful way around them via the concept of relational autonomy.

22 Stated conversely, the more central a right is to my personhood, the less alienable it appears to be. Counterintuitively, this means that core rights (e.g., life and liberty) appear as truncated or diminished property. Less important proprietary claims (such as over external objects) seem more expansive, in the sense that they have everything the core rights have, plus alienability.

23 Frederick Douglass, "Address to the Annual Meeting of the New England Woman Suffrage Association," in *The Essential Douglass: Selected Writings and Speeches*, ed. Nicholas Buccola (Indianapolis: Hackett, 2016), 305.

24 Douglass, "Address," 307, emphasis added.

25 Douglass, "Address," 313.

26 See Hayes Peter Mauro, *The Art of Americanization at the Carlisle Indian School* (Albuquerque: University of New Mexico Press, 2011).

27 Frederick Douglass, "Self-Made Men," in Buccola, *The Essential Douglass*, 332–49. The visit is referenced in Carlisle's newsletter: *The Indian Helper* 8, no. 30 (Friday, April 14, 1893). He is mentioned again in *The Indian Helper* of the following week, which discusses the process by which his speech was turned into a printed pamphlet for circulation and study by the residents of the school: *The Indian Helper* 8, no. 31 (Friday, April 21, 1893). Douglass also visited the town of Carlisle in March 1872 and August 1847 (traveling with William Lloyd Garrison at the time). During his 1872 stop, Douglass gave a speech at Rheem's Hall, evidently speaking in favor of the plan to annex "San Domingo." He was later denied the right to eat in the public dining hall of the Bentz House hotel, where he was staying, which is the focus of two local reports on his stay: *American Volunteer*, March 7, 1872; *Carlisle Herald*, March 14, 1872. These articles have been reprinted in David Smith, "Frederick Douglass in Carlisle," *Cumberland County History* 22, nos. 1–2 (Summer/Winter 2005): 53–60.

28 Douglass, "Self-Made Men," 344.

29 See John W. Blassingame and John R. McKivigan, eds., *The Frederick Douglass Papers*, series 1, vol. 5 (New Haven, CT: Yale University Press, 1992), 545–46.

30 Julius E. Thompson, James L. Conyers, and Nancy J. Dawson, eds., *The Frederick Douglass Encyclopedia* (Santa Barbara, CA: Greenwood, 2010), 115. Carlisle's own newsletter reports it thus:

> "On Thursday night last the school had the great privilege of seeing and listening to the Hon. Frederick Douglass, in his far famed speech, 'Self-Made Men.' Mr. Douglass is a man of 76 years of age, and has lost the fire so marked in his delivery twenty years ago, but the beautiful language of the address was all there. . . . During the course of Mr. Douglass' eloquent lecture, he said warmly, 'Usually I am Negro, but to-night I am Indian out and out,' and great was the honor felt at this high compliment." (*The Indian Helper* 8, no. 30 [April 14, 1893])

On "identifying with Indians" in nineteenth-century Black thought, see John Stauffer, *The Black Hearts of Men: Radical Abolitionists and the Transformation of Race* (Cambridge, MA: Harvard University Press, 2001), chap. 6.

31 Edward Tyler, *Slaveholding a Malum In Se, or Invariably Sinful*, 2nd ed. (Hartford, CT: Case, Tiffany, 1839), 12.

32 Tyler, *Slaveholding a Malum In Se*, 24.

33 William Lloyd Garrison, "Declaration of Sentiments of the American Anti-Slavery Convention," Philadelphia, December 6, 1833: "Because the holders of slaves are not the just proprietors of what they claim—freeing slaves is not depriving them of property, but restoring it to the right owner—it is not wronging the master, but righting the slave—restoring him to himself. . . . If compensation is to be given at all, it should be given to the outraged and guiltless slaves, and not to those who have plundered and abused them." William Lloyd Garrison, *Selections from the Writings of W. L. Garrison* (Boston: R. F. Wallcut, 1852), 69.

34 As Alex Gourevitch has extensively documented, this language was also instrumental in the crafting of "labor republican" arguments against the "slavery" of waged work. Alex Gourevitch, *From Slavery to the Cooperative Commonwealth: Labor and Republican Liberty in the Nineteenth Century* (Cambridge: Cambridge University Press, 2015).

35 For a reading of Douglass that emphasizes the role of self-ownership in his thought, see Buccola, *The Political Thought of Frederick Douglass*. On Douglass's thought more generally, see James Colaiaco, *Frederick Douglass and the Fourth of July* (New York: Macmillan, 2006); Reginald David, *Frederick Douglass: A Precursor to Liberation Theology* (Macon, GA: Mercer University Press, 2006); Waldo Martin, *The Mind of Frederick Douglass* (Chapel Hill: University of North Carolina Press, 1984); Peter Myers, *Frederick Douglass: Race and the Rebirth of Classical Liberalism* (Lawrence: University Press of Kansas, 2008).

36 Fred Moten, *In the Break: The Aesthetics of the Black Radical Tradition* (Minneapolis: University of Minnesota Press, 2003), 1.

37 Stefano Harney and Fred Moten, "Improvement and Preservation: Or, Usufruct and Use," in *Futures of Black Radicalism*, ed. Gaye Theresa Johnson and Alex Lubin (New York: Verso, 2017), 84–85.

38 In an aside, Harney and Moten speculate at a "militant preservation of what you (understood as we) got, in common dispossession" ("Improvement and Preservation," 86).

39 Frantz Fanon, "The Lived Experience of the Black Man," in *Black Skin, White Masks* (New York: Grove, 2008), 89, 107.

40 G. A. Cohen, *Self-Ownership, Freedom, and Equality*, 214, 215.

41 Patterson, *Slavery and Social Death*, 48.

42 Patterson, *Slavery and Social Death*, 51.

43 E.g., "If the indigenous relation to land precedes and exceeds any regime of property, then the slave's inhabitation of the earth precedes and exceeds any prior relation to land—landlessness. And selflessness is the correlate. No ground for identity, no ground to stand (on). Everyone has a claim to everything until no one has a claim to anything. No claim. This is not a politics of despair brought about by a failure to lament a loss, because it is not rooted in hope of winning. The flesh of the earth demands it: the landless inhabitation of selfless existence." Sexton, "The *Vel* of Slavery," 11.

44 In other words, in my view the problem with the strict ontological distinction is not simply that it is a false claim; it is the wrong *kind* of claim.

45 In some branches of (especially Anglo-American, analytic) philosophy and political theory, the term *naturalism* means that an inquiry is modeled after, or at least consistent with, the methodology of the natural sciences. The study of human beings is not, in this view, different in kind from the study of other natural phenomena. A second sense of the term, however, means something closer to "nonideal" or "realist." It is a form of analysis that takes it as axiomatic that to study a particular concept requires situating it into the concrete relations, institutions, and social practices that constitute it in a given time and place. A naturalistic account is nominalist and context dependent. Duncan Ivison has recently provided an attractive version of a naturalistic account of rights when he argues that "the language and practice of rights is conventional in certain crucial respects." In this view, our social and political institutions "are not 'natural' in the sense of conforming to (or being caused by) any deep facts about human nature, but rather in so far as they are the product of the collusion between 'bare' nature—the basic, innate equipment all human beings have—and 'second nature'—the particular interactions, relations of power and sociability characteristic of a particular community or society" (*Rights*, 22–23).

46 Cheryl Harris, "Whiteness as Property," *Harvard Law Review* 106, no. 8 (June 1993).

47 For a useful overview, see MacPherson, *Property*, chap. 1.

48 Or, in an inverted form, in a commitment to "unconditional self-possession" such as one finds in Chris Lebron's analysis of the intellectual precursors to Black Lives Matter, where he adduces "the lesson of *unconditional self-possession*" as core to the Black feminism of Anna Julia Cooper and Audre Lorde. Chris Lebron, *The Making of Black Lives Matter: A Brief History of an Idea* (Oxford: Oxford University Press, 2017), xxi; see also chap. 3 in that work.

49 Patricia Williams, *The Alchemy of Race and Rights*, 217.

50 My thinking on what it means to be "in slavery's wake" has been pushed and challenged by Christina Sharpe's *In the Wake: On Blackness and Being* (Durham, NC: Duke University Press, 2016).

51 Patterson comes down clearly on one side of this distinction: "The slave was a slave not because he was the *object* of property, but because he could not be the *subject* of property" (*Slavery and Social Death*, 28).

52 Hortense Spillers, "Introduction—Peter's Pans: Eating in the Diaspora," in *Black, White, and in Color: Essays on American Literature and Culture* (Chicago: University of Chicago Press, 2003), 20, quoted in Alexander Weheliye, *Habeas Viscus: Racializing Assemblages, Biopolitics, and Black Feminist Theories of the Human* (Durham, NC: Duke University Press, 2014), 10.

53 On the specifically U.S. context for this, see Alison Parker, *Articulating Rights: Nineteenth-Century American Women on Race, Reform, and the State* (DeKalb: Northern Illinois University Press, 2010); Barbara Welke, *Law and the Borders of Belonging in the Long Nineteenth-Century United States* (Cambridge: Cambridge University Press, 2010).

54 To be sure, elements of this concern predate the period I am focused on here. For instance, in the *Second Discourse*, Rousseau raises concerns with the ideological structures of "voluntary servitude": "If one continued thus to examine the facts in terms of Right, the voluntary establishment of Tyranny would prove to be no more substantial than it is true, and it would be difficult to show the validity of a contract which obligated only one of the parties, in which one side granted everything and the other nothing, and which could only prove prejudicial to the one who commits himself" (178).

55 Karl Marx, "On the Jewish Question," in *Selected Writings*, ed. Lawrence Simon (Indianapolis: Hackett, 1994), 16.

56 "The ideal would be for the convict to appear as a sort of rentable property: a slave at the service of all. . . . In the old system, the body of the condemned man became the king's property, on which the sovereign left his mark and brought down the effects of his power. Now he will be rather the property of society, the object of a collective and useful appropriation." Michel Foucault, *Discipline and Punish*, 2nd ed. (New York: Vintage, 1995), 109.

57 Friedrich Nietzsche, *On the Genealogy of Morals* (New York: Vintage, 1967), 64–65.

58 It is worth recalling that this is the same era in which Fyodor Dostoevsky had his "Grand Inquisitor" cry out: "Nothing has ever been more unendurable to man

and to human society than freedom!" This section of *The Brothers Karamazov* is perhaps one of the best-known passages in modern literature to deal with the vicissitudes and paradoxes of freedom, both the desire to flee the demands of freedom and the binding force of being forced to act *as if* one is free in a context that surely betrays this fiction. Fyodor Dostoyevsky, *The Brothers Karamazov*, vol. 1, trans. David Magarshack (1880; repr., New York: Penguin, 1958), 296.

59 On this, see Daniel Loick, "Juridification and Politics: From the Dilemma of Jurification to the Paradoxes of Rights," *Philosophy and Social Criticism* 40, no. 8 (2014).

60 Nietzsche, *On the Genealogy of Morals*, 64.

61 According to Marx, constrained now "only by their own free will," the worker is free to "bring his own hide to market" whenever he pleases, only now he "has nothing else to expect but—a tanning." In this way a worker under capitalist conditions "must constantly treat his labour-power as his own property, his own commodity, and he can do this only by placing it at the disposal of the buyer, i.e. handing it over to the buyer for him to consume, for a definite period of time, temporarily. In this way, he manages both to alienate [*veräussern*] his labour-power and to avoid renouncing his rights of ownership over it" (*C*, 280, 271).

62 Carole Pateman has interpreted the problem of property in the person along similar lines in her reply to Charles Mills on the utility of the concept. As she puts it, "Property in the person cannot be contracted out in the absence of the owner. If the worker's services (property) are to be 'employed' in the manner required by the employer, the worker has to go with them. The property is useful to the employer only if the worker acts as the employer demands and, therefore, entry into the contract means that the work becomes a subordinate. The consequence of voluntary entry into a contract is not freedom but superiority and subordination." Carole Pateman and Charles Mills, *Contract and Domination* (Cambridge, UK: Polity, 2007), 17.

63 On law and "negative personhood," see Dayan, *The Law Is a White Dog*.

64 Saidiya Hartman, *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America* (Oxford: Oxford University Press, 1997), 80.

65 Quoted in Hartman, *Scenes of Subjection*, 66.

66 Hartman, *Scenes of Subjection*, 69.

67 Hartman, *Scenes of Subjection*, 85.

68 Du Bois, *Black Reconstruction in America*, 580. As Du Bois famously put it, in the reconstruction era, "the slave went free; stood a brief moment in the sun; then moved back again toward slavery" (24). On Du Bois's contributions to theorizing property and (white) possessive individualism, see Ella Myers, "Beyond the Psychological Wage: Du Bois on White Dominion," *Political Theory* 47, no. 1 (2019).

69 Ida B. Wells, "The Reason Why the Colored Man Is Not in the World's Columbian Exposition" (1893), in *The Selected Works of Ida B. Wells-Barnett* (Oxford: Oxford University Press, 1991), 61. See also Sarah Haley, *No Mercy Here: Gender,*

Punishment, and the Making of Jim Crow Modernity (Chapel Hill: University of North Carolina Press, 2016).

70 Quoted in Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863–1877* (New York: Perennial Classics, 2002), 70–71.

71 As Wells notes, the American case has parallels elsewhere. Most notably, in March 1861, Russian czar Alexander II issued his own emancipation manifesto, freeing the serfs. There too, access to land ownership was the primary medium in which freedom was articulated. Although massive redistribution of ownership was promised, it was slow, complex, and expensive. By the 1880s, the majority of former serfs had received some land allotment, but the process tended to entrap them into large redemption payments. These were not abolished until the 1905 revolution. As a small indicator of how this theme circulated in Russian literary culture of the time, consider that Leo Tolstoy's parable "How Much Land Does a Man Need?," published in 1886 (the same year Douglass visited the New England Woman Suffrage Association, seven years before Wells's above-cited essay), speaks to the peasantry's desperate need for land, as well as the dangers of unchecked avarice for more than one needs. (The answer to the titular question comes at the end of the story, when the protagonist dies in his pursuit of more than he can use: "Six feet from his head to his heels was all he needed.") See Leo Tolstoy, "How Much Land Does a Man Need?," in *The Kreutzer Sonata and Other Short Stories* (New York: Dover, 1993), 14.

72 Foner, *Reconstruction*, 71.

73 William Cohen, *At Freedom's Edge: Black Mobility and the Southern White Quest for Racial Control, 1861–1915* (Baton Rouge: Louisiana State University Press, 1991), esp. chaps. 1 and 2.

74 Patterson, *Slavery and Social Death*, 241. On the idea of "political manumission" more generally, see 234–36.

75 Hartman, *Scenes of Subjection*, 131.

76 Ira Berlin, *Slaves without Masters: The Free Negro in the Antebellum South* (New York: New Press, 1992).

77 Michelle Alexander, *The New Jim Crow* (New York: New Press, 2010); Angela Davis, *Are Prisons Obsolete?* (New York: Seven Stories, 2003).

78 P. Williams, *The Alchemy of Race and Rights*, 219. She is discussing, in regard to similar experiences, the Women of All Red Nations' work on behalf of Indigenous women who had been subjected to forced sterilization.

79 I am indebted here to the methodological contributions of Brenna Bhandar, Alyosha Goldstein, K-Sue Park, and Nikhil Pal Singh (among others).

80 For a small sample of the growing literature that relates Indigenous and Black struggles, see Tiya Miles, *Ties That Bind: The Story of an Afro-Cherokee Family in Slavery and Freedom* (Berkeley: University of California Press, 2005); Tiya Miles, *The House on Diamond Hill: A Cherokee Plantation Story* (Chapel Hill: University of North Carolina Press, 2010); Barbara Krauthamer, *Black Slaves, Indian Masters: Slavery, Emancipation, and Citizenship in the Native American South*

(Chapel Hill: University of North Carolina Press, 2013); Shona Jackson, *Creole Indigeneity: Between Myth and Nation in the Caribbean* (Minneapolis: University of Minnesota Press, 2012).

81 Thank you to Nick Estes for pushing me to think more about this issue and pointing me to key sources such as Laura Gomez, *Manifest Destinies: The Making of the Mexican American Race* (New York: New York University Press, 2018).

82 Weheliye, *Habeas Viscus*.

83 Weheliye, *Habeas Viscus*, 77.

84 Weheliye, *Habeas Viscus*, 78.

85 Martin v. Lessee of Waddell, 41 U.S. (16 Peters) 367, 409 (1842), emphasis added.

CONCLUSION

Epigraphs: L. Simpson, *As We Have Always Done*, 43; Karl Marx, *Capital: Volume 3* (New York: International Publishers, 1967), 776.

1 My thinking on both expressivist and insurgent forms of resistance has been greatly enriched by Banu Bargu's *Starve and Immolate: The Politics of Human Weapons* (New York: Columbia University Press, 2014).

2 Government of New Zealand, Te Urewera Act (2014), section 11, http://www.legislation.govt.nz/act/public/2014/0051/latest/whole.html. For a useful summary and set of commentaries on the case, see "Whiringa-ā-nuku," special issue, *Māori Law Review* 9 (October 2014).

3 Government of New Zealand, Te Urewera Act (2014), section 17 (a).

4 Government of New Zealand, Te Urewera Act (2014), sections 12 and 13.

5 See Bryant Rousseau, "What in the World: In New Zealand, Lands and Rivers Can Be People (Legally Speaking)," *New York Times*, July 13, 2016.

6 Eleanor Ainge Roy, "New Zealand Gives Mount Taranaki Same Legal Rights as a Person," *The Guardian*, December 22, 2017.

7 On the legal history of the Whanganui River dispute, see Johnson, *This Land Is Our History*, chap. 6.

8 Eleanor Ainge Roy, "New Zealand River Granted Same Legal Rights as Human Being," *The Guardian*, March 16, 2017.

9 My understanding of the treaty and its contemporary implications is indebted to Malcolm Mulholland and Veronica Tawhai, eds., *Weeping Waters: The Treaty of Waitangi and Constitutional Change* (Wellington: Huia, 2010); I. H. Kawharu, ed., *Waitangi: Māori and Pākehā Perspectives of the Treaty of Waitangi* (Auckland: Oxford University Press, 1989); Vincent O'Malley, Bruce Stirling, and Wally Penetito, eds., *The Treaty of Waitangi Companion: Māori and Pākehā from Tasman to Today* (Auckland: Auckland University Press, 2010); Matthew Palmer, *The Treaty of Waitangi in New Zealand's Law and Constitution* (Wellington: Victoria University Press, 2008).

10 Translation from Kawharu, *Waitangi*, appendix, 319–21.

11 Shiri Pasternak, *Grounded Authority: The Algonquins of Barriere Lake against the State* (Minneapolis: University of Minnesota Press, 2017). The Canadian Supreme Court has also recently entertained similar arguments from the Ktunaxa Nation on behalf of a mountain: Ktunaxa Nation v. British Columbia (Forests, Lands, and Natural Resource Operations) (2017) SCC 54; Sean Kilpatrick, "Jumbo Mountain Ski Resort Approval Upheld by Supreme Court of Canada," *Huffington Post*, March 11, 2017.

12 See Protect Bears Ears, "Bears Ears: A Native Perspective on America's Most Significant Unprotected Cultural Landscape," March 2016, http://www.bearsearscoalition.org/wp-content/uploads/2016/03/Bears-Ears-bro.sm_.pdf. Closer to my immediate context, the White Earth Band of Ojibwe have recently moved to recognize the legal rights of Manoomin, or "wild rice." See Winona LaDuke, "The White Earth Band of Ojibwe Legally Recognized the Rights of Wild Rice. Here's Why," *Yes! Journalism for People Building a Better World*, February 1, 2019, https://www.yesmagazine.org/planet/the-white-earth-band-of-ojibwe-legally-recognized-the-rights-of-wild-rice-heres-why-20190201.

13 Patricia Monture-Angus, *Journeying* 222 (also discussed earlier, in chapter 1, section II).

14 Glen Coulthard, *Red Skin, White Masks,* 13.

15 Vine Deloria Jr., *God Is Red: A Native View of Religion*, 30th anniv. ed. (New York: Fulcrum, 2003); Winona LaDuke, *All Our Relations: Native Struggles for Land and Life* (New York: South End Press, 2008).

16 E.g., Keith Basso, *Wisdom Sits in Places: Landscape and Language among the Western Apache* (Albuquerque: University of New Mexico Press, 1996); Paul Nadasdy, *Hunters and Bureaucrats* (Vancouver: University of British Columbia Press, 2003); Shiri Pasternak, *Grounded Authority*.

17 For a small sample of this large literature in anthropology, see Julie Cruikshank, *Do Glaciers Listen? Local Knowledge, Colonial Encounters, and Social Imagination* (Vancouver: University of British Columbia Press, 2005); Daniel de Coppet, ". . . Land Owns People," in R. H. Barnes, Daniel de Coppet, and R. J. Parkin, eds., *Contexts and Levels: Anthropological Essays on Hierarchy* (Oxford: JASO, 1985), 75–90; Marisol de la Cadena, *Earth Beings: Ecologies of Practice across the Andean Worlds* (Durham, NC: Duke University Press, 2015); Fred Myers, *Pintupi Country, Pintupi Self: Sentiment, Place, and Politics among the Western Desert Aborigines* (Berkeley: University of California Press, 1991); Mark Nuttall, *Arctic Homeland: Kinship, Community, and Development in Northwest Greenland* (Toronto: University of Toronto Press, 1992).

18 L. Simpson, *As We Have Always Done*, 43. On this theme, see also Goeman, "From Place to Territories and Back Again."

19 Stephen T. Garnett et al., "A Spatial Overview of the Global Importance of Indigenous Lands for Conservation," *Nature Sustainability* 1 (July 2018): 369.

20 Joanne Barker, "Decolonizing the Mind," *Rethinking Marxism: A Journal of Economics, Culture and Society* 30, no. 2 (2018).

21 Shiri Pasternak, "How Capitalism Will Save Colonialism: The Privatization of Reserve Lands in Canada," *Antipode* 47, no. 1 (January 2015).

22 Garrett Hardin, "The Tragedy of the Commons," *Science* 162, no. 3859 (December 1968): 1247.

23 For an overview, see Ian Angus, "The Myth of the Tragedy of the Commons," *Monthly Review,* August 25, 2008, https://mronline.org/2008/08/25/the-myth-of-the-tragedy-of-the-commons/.

24 Onur Ulas Ince, "Property," in *Encyclopedia of Political Thought*, ed. Michael Gibbons (Oxford: Wiley-Blackwell, 2014), 1.

25 Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge: Cambridge University Press, 1990), 1. Ostrom is the first (and so far only) woman to win the Nobel Prize for economics (which she shared with Oliver Williamson), which is all the more remarkable for the fact that she won it as a political scientist and not an economist.

26 Much of this influential work was done by the International Association for the Study of the Commons and the *International Journal of the Commons*, both of which closely identified with Ostrom. See, for instance, Bonnie J. McCay and James M. Acheson, "Human Ecology of the Commons," in *The Question of the Commons: The Culture and Ecology of Communal Resources*, ed. Bonnie J. McCay and James M. Acheson (Tucson: University of Arizona Press, 1987). For a useful survey of Ostrom's impact, see Tim Forsyth and Craig Johnson, "Elinor's Ostrom's Legacy: Governing the Commons and the Rational Choice Controversy," *Development and Change* 45, no. 5 (2014).

27 Carol Rose, "The Comedy of the Commons: Commerce, Customs, and Inherently Public Property," *University of Chicago Law Review* 53, no. 3 (Summer 1986). See also Rose, *Property and Persuasion.*

28 E. P. Thompson, *Customs in Common*; Midnight Notes Collective, ed. "The New Enclosures," *Midnight Notes* 10 (1990); Michael Hardt and Antonio Negri, *Empire* (Cambridge, MA: Harvard University Press, 2000), *Multitude: War and Democracy in the Age of Empire* (New York: Penguin, 2004), and *Commonwealth* (Cambridge, MA: Harvard University Press, 2009). For previous historical debates on the "commons," see R. H. Tawney, *The Agrarian Problem in the Sixteenth Century* (London: Longmans, 1912); J. A. Yelling, *Common Field and Enclosure in England, 1450–1850* (London: Macmillan, 1977); J. M. Neeson, *Commoners: Common Right, Enclosure and Social Change in England, 1700–1820* (Cambridge: Cambridge University Press, 1993); Linebaugh, *Stop, Thief!*

29 For work that employs the language of "enclosures of the commons" as a means of understanding colonialism, see Peter Linebaugh and Marcus Rediker, *The Many-Headed Hydra: Sailors, Slaves, Commoners, and the Hidden History of the Revolutionary Atlantic* (Boston: Beacon, 2000); Francis Jennings, *The Invasion of America: Indians, Colonialism, and the Cant of Conquest* (Chapel Hill: University of North Carolina Press, 1975), 82–83; Gary Nash, *Red, White, and Black: The Peoples of Early North America*, 4th ed. (Upper Saddle River, NJ: Prentice Hall,

2000); Patricia Seed, *American Pentimento: The Invention of Indians and the Pursuit of Riches* (Minneapolis: University of Minnesota Press, 2001); Nancy Shoemaker, *A Strange Likeness: Becoming Red and White in Eighteenth-Century North America* (New York: Oxford University Press, 2004); Stuart Banner, *How the Indians Lost their Land: Law and Power on the Frontier* (Cambridge, MA: Harvard University Press, 2005); Charles Geisler, "Disowned by the Ownership Society: How Native Americans Lost Their Land," *Rural Sociology* 79, no. 1 (March 2014); Derek Wall, *The Commons in History: Culture, Conflict, and Ecology* (Cambridge, MA: MIT Press, 2014).

30 For a critique of this sort, see Sharma and Wright, "Decolonizing Resistance."

31 David Schorr, "Savagery, Civilization, and Property: Theories of Societal Evolution and Commons Theory," *Theoretical Inquiries in Law* 19 (2018).

32 See, e.g., Melanie Johnson-DeBaufre, Catherine Keller, and Elias Ortega-Aponte, eds., *Common Goods: Economy, Ecology, and Political Theology* (New York: Fordham University Press, 2015).

33 For an extensive critique of the application of a "commons" framework to colonialism, see A. Greer, *Property and Dispossession*, esp. chap. 7.

34 Bonnie Honig, *Public Things: Democracy in Disrepair* (New York: Fordham University Press, 2017), 89.

35 For an insightful intervention along these lines, see Sandy Grande, "Accumulation of the Primitive: The Limits of Liberalism and the Politics of Occupy Wall Street," *Settler Colonial Studies* 3, no. 4 (2013).

36 Giorgio Agamben, *The Highest Poverty: Monastic Rules and Form-of-Life* (Stanford: Stanford University Press, 2013), xiii.

37 See Noël Ing, *Bona Vacantia* (London: Butterworths, 1971).

38 Fitzmaurice, *Sovereignty, Property, and Empire*, chap. 2.

39 Blackstone, *Commentaries on the Laws of England*, book V, chap. XVII. In other words, you cannot "steal" a corpse because the dead are not the property of anyone. For a brief discussion of this, see Dayan, *The Law Is a White Dog*, 34.

40 For another example, see Jill Frank's recovery of an Aristotelian conception of property that does not fit neatly into contemporary distinctions between public and private but rather models an ideal of "holding things as one's own for common use." Jill Frank, *A Democracy of Distinction: Aristotle and the Work of Politics* (Chicago: University of Chicago Press, 2005), chap. 2.

41 Locke, *The Second Treatise of Government*, 286.

42 Locke did not use the specific language of res nullius to define this category. Many subsequent commentators and legal practitioners did however. More recently, it has found its way into international law. See Randall Lesaffer, "Argument from Roman Law in Current International Law: Occupation and Acquisitive Prescription," *European Journal of International Law* 16, no. 1 (2005). This points us to a more general irony attending discussion of res nullius in European legal and political thought: although the phrase *res nullius* is possible in Latin, it is only very rarely used in actual Roman law. Instead, as Andrew Fitzmaurice has demonstrated,

laws used a wide range of proximate expressions and phrases, which tend to afford greater specificity and precision. In particular, these alternative formulations help differentiate between "inappropriable" and "not-yet appropriated." For instance, see Fitzmaurice, *Sovereignty, Property, and Empire*, 51–59, citing Dig. 1.8.1: "What is subject to divine right is not anyone's property" (*quod autem divini iuris est, id nullius in bonis est*); Dig. 1.8.6.2: "Things sacred or religious or sanctified are no one's property" (*Sacrae res et religiosae et sanctae in nullius bonis sunt*); Inst. 2.1.7: "What belongs to heaven is part of no man's estate" (*quod enim divini iuris est, id nullius bonis est*); Gai. 2.9: "What is under divine law cannot be private property" (*quod nullius sit, occupantis fit*). Thus, although the concept appears to have an extended provenance, it is in fact a relatively recent, modern invention, one that has been projected backward into antiquity. Lamenting the instability and imprecision of modern uses of the phrase, Fitzmaurice does not consider the political *function* of this common conflation.

43 David Delgado Shorter, "Spirituality," in *Oxford Handbook of American Indian History*, ed. Frederick Hoxie (Oxford: Oxford University Press, 2016), 444.

44 A. Simpson, *Mohawk Interruptus*, 3.

45 Barker, *Native Acts*, 11.

46 Neera Chandhoke, "Realising Justice," *Third World Quarterly* 34, no. 2 (2013): 312.

47 My understanding of this art form comes from Joyce Szabo, *Howling Wolf and the History of Ledger Art* (Albuquerque: University of New Mexico Press, 1994); Janet Catherine Berlo, ed., *Plains Indian Drawings, 1865–1935* (New York: The American Federation of Arts, 1996); and from Donald Montileaux's artist statement, accessed March 3, 2019, http://www.donaldfmontileaux.com.

48 Quoted from Donald F. Montileaux's website, accessed March 3, 2019, http://www.donaldfmontileaux.com.

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