

**The Globalization of Property Rights:
An Anglo and American Frontier Land Paradigm, 1700-1900**

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Editor's Note:

John Weaver's fascinating paper, "The Globalization of Property Rights: An Anglo and American Frontier Land Paradigm, 1700-1900" is the first in this series to be a historical account of globalization. The McMaster Institute on Globalization and the Human Condition considers that investigation of the historical antecedents of the current phase of globalization to be important to the understanding of twenty-first century events. In that vein, we have invited historians to join our research group and to educate us about past episodes of global expansion.

An important aspect of contemporary globalization is the expansion of property rights, both of the kind John Weaver discusses here, that is, the privatization of land, and of the new, intangible kind of property rights in knowledge, computer software and biodata. Weaver's detailed, theoretical account of the marking off of property rights in conditions of political and legal uncertainty in frontier societies obliges those of us interested in globalization to think more carefully about the current round of privatization in the new "frontiers" of intangible properties. Thus, we welcome his contribution.

The policy of this working paper series, therefore, will be to include stand-alone historical pieces, as we include stand-alone pieces from other disciplines, in the hope that readers will find their contributions useful to their own research.

Rhoda E. Howard-Hassmann

The Globalization of Property Rights:
An Anglo and American Frontier Land Paradigm, 1700-1900

Old-world ideas accompanied European migrants, and a few changed the globe. An English obsession with landed property was implanted in settlement colonies, so that, between the late 1600s and late 1800s, private initiatives and official planning on British colonial and American frontiers interacted to frame property rights to extensive regions. This paper dwells on that interaction and the tensions between private goals and state sovereignty. The state was essential for framing property rights when these were associated with land and in situ resources. In very recent times, property rights have fostered entirely new industries, for example in software and genetically modified biota. Property rights have changed traditional activities such as art and entertainment. Do new forms of property - "less constrained by physical location" - leave the state with a reduced role in the realm of property rights? Does the paradigm of evolving property rights seen in previous centuries suggest any parallels with struggles over more recent property rights? These are questions for members of the institute to consider. We will offer several concluding thoughts.

There is another sense in which this discussion pertains to globalization. The global civil society that has been taking shape since the 1940s has confirmed a particular historical form of property rights: individualized and transferable. Following WWII, property rights became core values in an ideological confrontation with Soviet communism. Free market international agencies and the United States advanced their extension to "developing countries," and their resurrection in eastern Europe. The parentage of an ascendant form of property rights is thus

worth reviewing.

A product of entertainment - whose copyright I have not infringed - introduces pivotal ideas in the history of property rights.

Shane [Paramount Pictures, 1953]¹

First encounter:

Richer: I came to inform you. I got that beef contract for the reservation I'm goin'a need all my range.

Stark: Now that you've warned me, would you mind getting off my place.

Richer: Your place? You and the other squatters...

Stark: Homesteaders you mean don't ya?

Second encounter:

Stark: You've made things hard on us, and us in the right all the time.

Richer: You, in the right? Look Stark, when I come to this country, you weren't much older than your boy there. We had rough times, me and other men that are mostly dead now. I got a bad shoulder yet from a Cheyenne arra'head. We made this country. Found it and we made it. Worth blood and empty bellies. Cattle we brought in were hazed off, by Indians and rustlers. Don't bother you much anymore, because we handled 'em. Made a safe range out of this. Some of us died doin' it. We made it. Then people move in who never held a rawhide through the old days. Fenced off my range. Fenced me off from water. Some of them like you paw ditches, and take out irrigation water, and so the creek runs dry sometimes, and I got to move my stock because of it. And you say we have no rights to the range. The men who did the work and ran the risks, have no rights? I take you for a fair man, Stark.

Stark: I'm not belittlin' what you and the others did. But at the same time, you didn't find this country. There were trappers here and Indian traders long before you showed up and they tamed this land more than you did.

Richer: They weren't ranchers.

Stark: You talk about rights. You think you got the right to say that nobody else has got any. Well, that ain't the way the government looks at it.

On the high plains of Wyoming in 1889, a rancher and farmer debate doctrines of property rights. They race through arguments. Like multitudes of land seekers on countless frontiers,

these parties know their roles and they hurry. Settlement frontiers were places of haste and confrontation, like some frontiers of research today.

The protagonists in Shane collapse settlement history. Events flash by in a elegy of European occupation. Cast as villain, the rancher makes a plausible stand. He "improved" the plains, but in a hierarchy of land uses grazing was vulnerable, and on all frontiers pastoralists had to defend against criticism that they were unimproving nomads or greedy land barons. Richer's appeal to improvement starts an argument he cannot win. Neither Richer nor Stark associates indigenous peoples with rights to the land². They dismiss native Americans as vanquished adversaries who obstructed improvement, and who now ate Uncle Sam's beef; White people "tamed" the land, and the time of savage conflict was over. As a fable about newcomers, Shane captures a limited reality about frontier struggles for property rights. As self-conscious cinematic art, it transports this truth about specific conflicts over a backdrop of melting snow on the Grand Teton Mountains to audiences in the world beyond. On the pastures of Australia Felix (1830s) and the Darling Downs (1840s), by Natal's rivers below the Drakensberg (1840s), and in the resplendent Wairarapa Valley of New Zealand (1840s) both men would have been understood. Descendants of settlers know that Richer (the rich man) and Stark (the morally strong), grazer and farmer, clashed on more than one frontier during the long land rush from the early 1700s to 1900. If they listened carefully, they might have detected the slight, familiar, reference to native resistance.

Several organizing concepts guide this introduction to a global phenomenon³. Scenes from Hollywood's most reverently artistic "western" introduce two principal ideas: property rights

and frontiers. Related concepts include occupation and improvement. As well, two groups of real actors not seen in Shane, speculators and land hunters, can be found prominently throughout the great land rush.

Property rights must be discussed from several angles, as they are integral to important deliberations in the social sciences, and thus the reach of this discussion paper. A property right is a relationship between a person and other persons respecting access to material resources⁴. Political economist C.B. Macpherson expressed this idea in an active voice, describing a property right as "an enforceable claim to some use or benefit of something⁵." An absolute property right in something - a patented invention, an original work of art, computer software, a broadcast frequency, access to water, a mineral deposit, a plot of land - vests in someone exclusive use of that property. The idea of a simple and exclusive right has been embedded in popular and theoretical understandings of property; however, it is a misleading guide for many historical situations. Less than absolute rights proliferated on frontiers. When that is grasped, it makes deep comparisons of frontiers achievable.

An absolute property right to land would mean a right to use and manage it; to derive income by letting others use it; a right to transfer it to another by sale, gift, or bequest; a right to the capital value of the land; a right to immunity against the expropriation of the property; an absence of a term limiting the possession of these rights⁶. In many cases, people on frontiers clutched just a few sticks from this bundle of rights. Certain of these sticks constituted assets - a stake of some kind in the land - at a lower cost than what was required to secure a full bundle. Capital scarcity on frontiers made discounts attractive, but there was a "down side." Incomplete

rights created confusion, conflict, and litigation. Exasperation was plentiful. Hear the groans from a New York official who in 1765 looked into a fraudulent deed for 5-600,000 acres secured from the Iroquois by speculators. Even dishonest dealings yielded interests. "There will be much Labour as well to collect all the Materials & Instructions necessary for a true understanding of this Affair, so much perplexed as it is⁷." The initial transaction in this infamous Kayaderoseras patent had occurred sixty years earlier⁸.

Legions of frontier speculators - like the Kayaderoseras proprietors - manipulated partial rights or interests to add more sticks to an initial bundle. These sticks can be sorted into two groups: partial rights and interests. The foremost partial right, in British colonies, was a license to use crown land at the government's pleasure. It was a right, in that it had official sanction; it was partial because it gave no protection against removal by the crown. In that respect, it was substantially less than a lease. To increase their rights, colonial licensees petitioned to change their status to leaseholders or freeholders, insisting this be done with little cost to themselves. To justify an upgrade, they complained about the un-Britishness of their exposure to the whims of officialdom, and hailed their own productive efforts as remarkably useful to the colony. In the late nineteenth century, some ranchers on the American public domain fashioned their own remedy to the insecurity of licensed grazing. Leasing was not desirable, because they saw ecological advantages in having access to an open range. As well, some politicians could not abide big government and denigrated leasing as a monarchical⁹. So, regional associations protected ranchers' interests and deterred interlopers.

Interests were far more common than partial rights. In English and colonial law, such

interests arose from circumstances where strict enforcement could bring about unfair outcomes. For example, squatters' labour or capital, applied to land unlawfully occupied, created equitable interests, because to eject occupants for valid legal reasons could exact hardship and loss. The following could be defended in court as an interest: evidence of a private purchase of native title; a government promise of land even if the terms of occupation were not executed by the recipient and no patent had been granted; a government acknowledgement that it would study a request for land; squatting without permission on a tract; evidence of a transfer of any of these interests. Squatting and was a widespread interest. Sales of interests proliferated. Individuals with interests tried to bolster their position in law by warning other parties, in person or newspapers, to stay off. Newspaper announcements about improvements also helped to secure tracts by signalling a will to fight for compensation. Bluff played a part in tactics to hold interests.

In our definition of property rights, "relationship" stands out. It bears tensions of the kind that made Richer and Stark mortal enemies, because it underlines the social and political character of property rights. From starting points like our definition, philosophers, legal theorists, and economist have analyzed how societies should allocate resources, how they might identify and correct unjust distributions, and how communities could settle disputes. Theorists have tackled such essential questions with formal arguments, but also historical examples. When Robert Ellickson argued in Order without Law that it is common for people to establish rules of conduct that are not codified in law books, he recounted informal rules observed by nineteenth-century whalers¹⁰. The iron in the whale - the harpoon - established a right that whalers respected. Economist Douglass North, whose books stress government's "major role in the performance of

an economy" by its reduction of transaction costs, has also explained why informal normative codes sometimes work. Repetitive activities may promote them, because they open possibilities for retribution in a "tit-for-tat" sequence¹¹. Whaling captains were going to encounter one another often; taking someone else's whale could initiate an outbreak of chaotic seizures that injured the original transgressor. Prudence ruled.

Ellickson and North pick examples from history. Historical inquiry, though, is not usually concerned with formal concepts and abstraction. Although historians debate theoretical matters, they also document untidiness in human endeavour. Returning to the chaos of evidence, they find it as confusing as contemporaries did. But the essential subject here - the formation of property rights in new world situations - can only benefit from attention to theory. First, any urge to discover common meaning in the histories of several countries needs a decent chart. Second, property rights present a very significant common denominator in Anglo and American colonization.

By setting out to compare how British imperial and American frontiers were occupied, an engagement with theory is essential. Property rights in the English-speaking world have long been the subject of justification for actions, and justification goes hand in hand with definition. Commentators over the centuries have identified basic questions regarding property rights. John Locke - and recent commentators on Locke - have asked exactly the basic questions that can organize this study. Where do property rights originate; how complete should they be; are they just?

Where do property rights in a civil society originate? A relationship between persons

regarding property can be derived in several ways, including the exercise of norms or personal ethics that people understand and accept. Proponents of order without law stress that relationships over property can be maintained by norms. They do not dwell on famously contentious situations. Frontier history, however, concerns bitter inaugural contests for resources where many initial rounds of acquisition and allocation were recognized as once-in-a-lifetime opportunities. The antiquity, scale, and legal pith of a Kayaderosseras claim suggest that land jobbers, unlike whalers, could only make large killings from a few deeds. Hence they acted accordingly to get what they could "by hook or crook." Frontiers teemed with defiance. Enduring property rights that emerged out of frontier situations did not flow from normative conduct¹². Only after entitlements had been confirmed by governments could occupants cultivate ties that supported parochial norms. Minor boundary disputes and the disposition of wandering livestock, small things like the iron in the whale, could be handled in close-knit communities, or once larger resource issues had been settled¹³.

On many frontiers, indigenous peoples were anything but compliant when newcomers roughed out property rights for themselves, and planted settlements that disturbed habitat. Resistance checked plantations from the start. Friction over territory prompted an attack on the colony of Virginia in 1622¹⁴. Anglo and American frontier wars - intermittent from the 1620s to 1880s - had many specific causes, but most involved territory and habitat. Where first peoples were pastoralists, as was the case in southern Africa, they feuded with settlers over both grazing boundaries and stock ownership¹⁵. In western Cape Colony during the late seventeenth and early eighteenth century (1680s-1720s), the Khoikhoi raided white stockmen who occupied pastures

and streams north of Cape Town in order to defend the environment that supported them¹⁶.

Khoikhoi herdsman next resisted the northeastward advance of white grazers in the late eighteenth century (1750s-1790s)¹⁷. On the eastern frontiers of the Cape Colony, large-scale stock raiding between white colonizers and African grazers proliferated during interludes that separated a string of frontier wars between the Great Fish and Great Keiskamma Rivers (1770s-1850s), and along the Caledon River (1850s-1860s)¹⁸. Similar to intermittent wars between American settlers and first peoples, these conflicts flared up over the control of habitat and violations of access to buffer territories¹⁹.

When Australian squatter Edward Curr reminisced wistfully about his eighty-square-mile tract of grazing runs he remembered extensive marshlands, filled with fish and ducks, and "a great stronghold of the Banderang Blacks, whom ... my brother found troublesome²⁰." He let slip a dirty little secret. Australian Aborigines in several south eastern locales in the 1830s and 1840s maimed sheep when woolly backs over-ran traditional hunting and fishing areas; many - not all - grazers drove Aborigines off sheep runs, and their tactics included murder. The sequence continued in later decades when stockmen expanded counter-clockwise, north then west through the better watered parts of the driest continent²¹. In the 1840s and 1850s, Maori cultivators drove away European stock that trampled their plantings²². Stock raiding was a staple of conflicts over habitat in America and southern Africa. Horses were especially valued for use in later attacks; oxen shunned on account of their slow pace during an escape. The acquisition of property from indigenous peoples was accompanied everywhere by misunderstanding and duplicity, selectivity, ecological change, and hostility.

We do not have to look to conspicuous inter-cultural struggles over habitat to see that live-and-let-live arrangements were uncommon when newcomers introduced their concepts of property rights. It may be, as Ellickson proposes, that norms obtain in how some people sort out their workaday lives with one another; however, harmony and restraint were rare during the property-right allocations following acquisition from first peoples. White grazers feuded among themselves. In Australia and New Zealand, government officials mediated and prevented violence, though grazers finessed low blows at a neighbour's assets, like driving diseased stock across a disputed boundary. Brutality was relatively more common in the United States. The approximately 120 raids and skirmishes between cattlemen and sheepmen from 1880 to 1920 in Arizona, Texas, and Wyoming originated in struggles over access to grass and water²³. A search for normative conduct in frontier history will return scant evidence that significant original rights can be sorted out among individuals without major initial intervention by governments and courts, or without violence.

In both theory and history, a relationship that delimits property rights may also originate in a contract between parties or an agreement among members of an organization. Contracts, compacts, and mutual protection organizations that governed resources certainly appeared on frontiers; however, they pose complications for theories that look for examples of order without law. Let us consider direct contractual land dealings between indigenous peoples and private individuals. In many locales - in colonial America, the United States, southern African, Australia, and New Zealand - individuals rushing to tie up land either for exclusive use, or for gain from sales, attempted to lease or purchase directly from indigenous peoples. British colonial

governments by the early seventeenth-century normally prohibited these dealings²⁴. So too did a successor government, the United States²⁵. But it was not easy to over-turn them completely or prevent further violations. Land speculators exploited leniency and exceptions. Never the less, there was a fairly consistent doctrine applied to Anglo and American frontiers: no direct negotiations for land without prior approval by government²⁶. Was this an unreasonable imposition on first peoples?

From one important perspective, of course it was. It was paternalistic and designated first peoples as political inferiors. But affairs were very complicated. The question of whether a land system based on direct negotiations between settlers and first peoples could have functioned successfully to serve a market economy - which Europeans implanted - is an interesting topic connected to on-going debates about whether governments that extinguished native title compensated justly. British and American colonizers hungered after real property, and caused endless disputes. Establishing rudimentary land surveys and dispute resolution systems would have strained native vendors, just as it exhausted and embarrassed all colonizing governments. As North put it, "not only must the rights be measurable; they must also be enforceable²⁷." To transform tribal rights that served a particular way of life into private rights that served another could be accomplished in several ways, though none were facile²⁸. We should be sceptical about the possibility of precise and durable private contracts on frontiers, but aware of occasions when they were attempted, because these episodes revealed how individual colonizers respected or betrayed the interests of first peoples. And, interestingly, lawyers who represented direct-dealing speculators in America and New Zealand articulated - to no advantage - natural rights arguments.

In classical liberal theories of property rights, a legitimate contract that appropriates a resource must, as a minimum condition, originate in fair procedures. Direct dealings between newcomers and first peoples took place on frontiers from the Ohio valley to the coast of New Zealand, from the 1750s to the 1850s, and they present no obvious instances of fair conduct in large-scale direct sales between private individuals and first peoples. Governments recognized this situation, and cancelled most private agreements, unless they had been pre-authorized by government license. To have done otherwise would have thrown away any thought of peace. There were great hazards with direct dealing, but it is undeniable that their illegality affected the status of indigenous peoples.

Due to bans on direct dealing, we must turn to other processes when searching for relationships that underpinned property rights on nineteenth-century settlement frontiers. Organizations regulated relationships with regard to resources? Examples drawn from many frontiers, are plentiful, although the agencies - cabals is an honest label - functioned as flawed architects of property rights²⁹. One shortcoming was an asymmetry between their narrow membership and pretensions of authority. For legitimacy, they could claim - as Stark did - prior occupation, but where did that leave slightly later influxes of newcomers who alleged they could increase the productivity of specific tracts? The forecast of improvement, based on core tenets of European culture, was an instrumental idea on all frontiers, and it challenged the standing of indigenous peoples and pioneer occupants - particularly grazers. The latter frequently held partial rights, or carved out interests enforced by protective associations. A troubling feature of private regulatory associations was their recourse to threats and violence, practices injurious to civil

societies. One set of organizations that arranged resources on behalf of members in these troubling ways were cattlemen's associations on the American high plains. Since they managed relationships exclusively for the benefit of current members across a public domain, they had no wish to institute rules that managed access to resources by consent from all parties who might claim an interest. They acted as exclusive clubs to keep non-members off the public domain. An arrangement of property rights that places no burden on first-comers to consider the impact of their appropriation on late arrivals or later generations is problematic³⁰. But it occurred often in America, beginning long before the occupation of the high plains.

The ranchers associations resembled squatters' claims clubs in the American mid-west in the 1830s. Assisted by intimidation, these groups too barred late-comers, namely legitimate buyers of public land who included aspiring farmers³¹. A better case can be made for private enforcement by considering the cooperating groups of small American squatters who, in the 1780s and 1790s, had attempted frontier revolutions by squatter occupation³². Collective defiance sometimes represented struggles by poorer citizens to win self-sufficiency. These squatters' communities acted at an hour when influential merchants, speculators, and planters seemed poised to reap fortunes through their commitments to purchase large tracts carved out of the public domain at knocked-down prices³³. The early American squatters' combines project a Robin Hood image³⁴. That gloss can never be applied to ranchers' associations. But mentioning impoverished toiling agrarians and heavily capitalized ranchers in the same breath is no mistake. Private organizations that inserted themselves into processes for the initial distribution had common defects. Authorities in charge of formal allocation processes may not always have served the

public well, but irregular groups were no better and practiced coercive illegalities.

Defiance of law can be a means with many ends and agents. Repeated episodes of defiance in matters of property rights helped nurture a culture of direct action that advanced lawlessness as a too-prominent feature of American life³⁵. Other frontiers similarly witnessed an avoidance of regulations in varying degrees, and arguably suffered for it. By the mid-eighteenth century, the Dutch East India Company, the agency that established the Cape Colony in 1652, proclaimed restraints on colonists respecting their treatment of the Khoikhoi. As it happened, the company lacked the will to intervene in frontier conflicts. Left to their own devices, trekboers began in 1774 to deploy large kommandos to protect their livestock and homes; some raids led to the slaughter and abduction of Khoikhoi³⁶. The defiant practices shaped during the eighteenth century on the northern frontier of Cape Colony influenced white settler practices on other Cape frontiers³⁷. Following tentative grazing expeditions in the 1820s, thousands of pastoralists crossed the Orange River and established autonomous states in southern Africa (1835-42). These republics originated in the migrations of folk determined to shake themselves free from British laws that restricted access both to land and cheap native labour. Bold purposeful expeditions, organized by unofficial loose-knit associations, the treks touched off a cycle of inter-racial raids and wars. Unofficial organizations that have tried to govern people's relationships with respect to land merit critical scrutiny.

During the nineteenth century, the United States practiced a loose administration of its unalienated land. That changed early in the twentieth century, particularly in the west. "Uncle Sam is now more active and omnipresent than nineteenth-century pioneers could have

imagined³⁸." In contrast to nineteenth-century American permissiveness, British authorities responsible for frontiers attempted, relatively early, to administer crown lands. There was a tradition of management over royal estates and forests. The British administration at the Cape adapted Dutch colonial officers - the landdrost and veldkornet - to constrain land taking in southern Africa. It is almost certain that these institutions influenced the Governor of New South Wales, Sir Richard Bourke, who arranged in 1833 that this colony's crown land should be superintended by commissioners of crown lands. Bourke had previously served as Lieutenant-Governor in Cape Colony³⁹. The use of commissioners to manage grazing licenses, prevent unauthorized timber cutting, and oversee land sales was next applied in New Zealand⁴⁰.

Even on supervised British frontiers, early squatters took charge, and played rough with late-comers and indigenous peoples alike. Supervision was paper thin. In Australia, in the 1830s and 1840s, a few base squatters poisoned and shot Aborigines, and drove them off waterholes in droughts. However, the pattern of organized settler violence toward first people was non-existent on one frontier, the Canadian prairies⁴¹. Climate and isolation delayed massive land occupation in western Canada, a remote interior empire, mostly useless for grazing. This presented an opportunity rare among frontier governments. Untroubled by advance parties of pastoralists, Canada uniquely organized settlement by procedures that accentuated order. Prairie settlers were left with clean hands. But in America, southern Africa, and Australia, unauthorized group action to govern people's relationships over resources descended into raids and killings.

Norms, contracts, and organizations could not foster relationships to convert frontiers into lasting assets through a series of just steps. Some people founded or entrenched landed interests

by violence or threats. Agreements administered by organizations fell when exposed to government challenge, and uncertainty about government intentions discounted their market value. Individuals who took resources eventually had recourse to government institutions, because private arrangements could not adequately serve them in financial markets⁴². At critical junctures, as they engaged with a market economy, squatters or those who purchased their interests, needed to treat with lenders. The capitalist economy rewarded better security with better credit, and people who held partial rights or interests, and who participated in a market economy, sought capital to increase the carrying capacity of land through improved livestock, fencing, wells, irrigation, or drainage. Bootstrap organizations had fashioned imperfect assets, a few sticks from the bundle of rights.

In apology for the defiant occupants of frontier lands, it must be confessed that governments universally skimmed on land distribution mechanisms and earned the scorn of people in a hurry. Administrators' inability to keep pace with people's movements, and their failure to appreciate how environment and land grants should be associated, allowed squatters to hit authorities with charges of incompetence⁴³. The history of property rights on frontiers, therefore, is replete with tensions between enforcement and access, discipline and immediacy⁴⁴.

There have been popular and formal arguments justifying the actions of impatient individuals who seized frontier lands. A widely heard argument was that hustling occupants, not bungling governments, made frontier land valuable. Petitions for an upgrading of rights listed changes to the landscape, including the introduction of domesticated European plants and livestock. These pleas parallel a formal theoretical argument. The most persistently stimulating

theory about how individuals legitimately acquire property rights by their own actions originates with John Locke (1632-1704) who proposed that people could, on their own initiative by adding labour to things found in a state of nature, exercise a maker's right that entitled them to articles, including fields⁴⁵. In actual situations, this argument materialized, because land takers tried to firm up interests by assertions of improvement.

If Locke is associated with a maker's right to property, Thomas Hobbes (1588-1679) is identified with theories of a strong state. Legal centralism imposes a dark judgement on human nature⁴⁶. The full Lockean argument also places severe moral limits on a party's property rights due to unease about what individuals might do out of self-interest, but it leaves mechanisms of scrutiny and management of limits out of the picture⁴⁷. Hobbesian legal centralism contemplates limits, and is more frankly distrustful about what a person or group may attempt to secure when acquiring from a position of strength. Douglass North asked a pertinent question: "under what conditions can voluntary cooperation exist without the Hobbesian solution of the imposition of a coercive state to create cooperative solutions?"⁴⁸ A strong state, Hobbes' modern followers would argue, is required to prevent such an extreme appropriation of material resources that general welfare would be subverted⁴⁹. A Hobbesian perspective accords with what occurred on frontiers in several continents. No greater claim is made, because frontiers existed, by definition, as exceptional places. They approximated a Hobbesian realm of near chaos where governments were weak and disputes over property rights, especially land - and often the related water rights - escalated into raids and wars, sly dodges, and corrupt dealings. Although people seeking land on frontiers had recourse to a variety of ploys for holding onto it, the requirements of an evolving

economy were such that, sooner or later, government approval was essential.

Governments that claimed sovereignty over frontiers were conclusive agents for preparing, legitimizing, and administering rules that managed relationships among people with respect to resources. They were the third party enforcers of the relations that made property rights. How well did they do? One school of interpretation insists that they lacked the heroic qualities needed for just acquisitions from first peoples, and likewise for just allocations among newcomers. American land-policy historian, Paul Gates, devoted a career to chronicling "the malfunctioning of an intended democratic system of land disposal⁵⁰." Thomas Abernethy, in a study of land speculation prior to the American Revolution, lamented a failure of governments to allocate land suitably for the benefit of actual settlers⁵¹. Echoes from American progressivism, these studies were joined by later ones that documented chaos and corruption. Critics blamed poorly designed land sale practices with helping speculators whom they condemned for supposedly holding land off the market, slowing settlement, and bleeding farmers. In-depth studies of land speculation modified these conclusions, and showed that speculators tended to sell quickly and accepted financial risks. A fear of tyrannical government and a trust in the marketplace efficiency of freewheeling agents may also serve to defend loose control⁵².

These upbeat possibilities do not touch other grounds for criticism, "including environmental damage, over investment (in unproductive land speculation), and the human toll from foreclosures or relocation⁵³." Dishonesty, intimidation, and violence should also be added to the debit columns. Failure still stands as a reasonable verdict⁵⁴. But were finer practices and better outcomes feasible?

Greater wisdom, fairness, honesty, and peace in managing resources would have required substantial commitments of state resources very early. That would have entailed two conditions: consensus and big government. Consensus was absent. Even small remote colonies, New Zealand for example, were splintered by class and regional interests. Conflicting schemes to bring people of disparate means onto virgin lands were plentiful, because the concept of colonization inspired plans that addressed contemporary issues of poverty and aspirations for national or imperial development⁵⁵. Competing designs for frontiers land - to improve labourers' conditions, to combine settlement with protection of indigenous peoples, or to increase state wealth - were well-expressed in phrases familiar to Europeans. Richer and Stark proposed contrasting visions of land use, but spoke a common language of rights and improvements. For them, consensus on details was impossible, and so it was for real-life adversaries. States, moreover, were not accustomed to large peacetime undertakings. Consequently, no matter which resource allocation plans were adopted by faraway governments, administrative support pulled up short. Throughout Reluctant Empire, John S. Galbraith emphasized chaos on the Cape Colony's frontiers where economy-minded governments sent administrators "to battle cosmic forces."⁵⁶ In land matters, around the globe, disarray was in the cards.

Gates's thesis of failure can be adjusted. He dwelt entirely on an American tragedy, as he saw it, a betrayal of American democratic values. Aspects of what he reported, though, were part of a wider, more intricate medley of events. Many systems, not just the American, malfunctioned in the nineteenth century⁵⁷. Gates believed that the basic American system had been fashioned to realize democratic goals; however, the American system was not quite a social or political

programme, certainly not one guided by a neat enduring charter. A report of the Public Land Commission in 1880 codified the nearly 3000 acts of congress that affected the public domain. The compendium was once reputed to have been "referred to more than any other public document⁵⁸." In concert with distribution arrangements elsewhere, America's allocation system stumbled along as a complicated work in process. In that condition, it disbursed an empire. Similarly, British colonial administrators, working with an outpouring of statutes and executive rules, parcelled out an empire. By 1900, New South Wales had nearly 100 acts that dealt with land transactions, and the Italian Renaissance Lands Department building was one of more stately in Sydney's business district⁵⁹. Legislation and administrative practices everywhere grew in particulars. A New Zealand land ordinance of 1849 contained 46 sections; its 1877 successor contained 172⁶⁰. In all jurisdictions, authorities responded to administrative problems, shifting ideals, pressure groups, bribery, new environments, and evolving modes of exploitation.

The democratic ideal of an independent rural yeomanry that Gates felt was intrinsic to the American land system was not the sole commanding principle that guided the allocation of the American public domain. Democratic rhetoric gilded American schemes, but vitally active land hunters and ingenious speculators adopted democratic language and subverted land regulations. How could that happen? Many regulations were certainly undermined by slick manoeuvring lubricated with bribes. Additionally, though, entrenched Anglo and American doctrines about legal entitlements sustained the activities of squatters and speculators. The linked notions of occupation and improvement unlocked many frontiers for speculators; these substantial tenets rivalled and interacted with democracy on American frontiers. They influenced the formation of

property rights on the frontiers of Australia, New Zealand, southern Africa, and, to a lesser extent, Canada.

A question opened this discussion. Where do property rights originate? It is reasonable to claim that the relationships that ultimately defined property rights on frontiers had to originate in statutes and the common law. Organizations played an interim part in installing property rights, in some places around the world, by helping individuals maintain adverse possession which they could parlay into more comprehensive rights. What, from the perspective of social history, are the consequences of direct independent action for founding civil societies? And on behalf of economists, for whom moral questions belong in other disciplines, we should ask: did the tensions and fluctuations concerning property rights represent a balanced mix of stability and freedom, a mix that lowered transaction costs without sacrificing creative opportunities? It is then also plausible that the weakly-controlled formation of property rights was a common foundation for cruelty and prosperity.

A second grand introductory question can now be asked. Theorists interested in entitlements and the maximization of welfare inevitably ask how complete should property rights be? From the historical perspective, we can ask how complete were property rights? Different social systems have described property rights in singular ways. Until the early modern era in western Europe, property rights were constrained in many locales by feudalism. In England, these constraints accompanied the Norman conquest. Prior to the conquest, land in England could be allodial, meaning not subject to any rent, service, or exercise of authority from an overlord. After the conquest, land was subject to a doctrine of tenures. As a result of conquest, all land belonged

to the crown and subjects held it directly or indirectly from the crown. The crown parcelled out land to tenants-in-chief (in capite) who paid service to the crown. Tenants-in-chief could subgrant the land and require a service from tenants. Some land was granted for communal usage, but again a service was required. This scheme of tenures only continued as an active arrangement for several centuries. Bit-by-bit, the services to be performed were commuted to money payments. The crown, for example, received quit rents rather than military service.

The variety of tenures was reduced and the English Statute of Tenures (1660) essentially individualized title; however, in England and the settlement colonies of the second British empire there was no reversion to allodial tenure. Subjects could not own the land itself; technically, all land was held from the crown. Colonies applied the term crown land. Subjects could own an estate in land, and that estate entitled them to enjoy the land as fully as if they owned it. Lawyers had liberated much of English real estate by the time of colonization from the dead hand of feudalism, but a few royal favourites who were granted proprietorships in the colonies wished to establish feudalism⁶¹. Proprietary colonies, of course, did not sustain feudalism, and the revolution disposed of the crown and installed allodial tenure. Land held by the national government was henceforth the public domain.

Both reformed English title and allodial title went a considerable distance toward providing extensive individual rights that ran with the land, though allodial title went further. Some American historians, to underline the radicalism of the revolution, included property law reforms - especially the abolition of primogeniture and entail - as significant departures⁶². They seem only symbolic, while practical ideas about land - the doctrine of improvement, squatters'

possession, the marketability of interests, and the quest for a complete but cheap bundle of rights - pervaded frontiers in both America and the second British empire. A symbolic distinction between public domain and crown land must not be slighted, because republican advocates of free land passionately invoked the former expression as if it were embedded in the constitution. New York reformer George Henry Evans, who organized the National Land Association in 1844 which influenced Horace Greeley ("Go West, young man, and grow up with the country") insisted that the public domain should benefit working people. The Free Soil Party adopted some of his ideas, and in 1860 the Republic Party approved of free land⁶³.

A few restraints on property rights remained even in the United States. Allodial title did not sweep away complicating entitlements, interests, and non-market values. Women retained dower rights; where old usury laws lingered lending was convoluted; mortgagors and mortgagees had rights in law that varied in details with each colonial or state jurisdiction. The general point to stress is that rights that accompanied ownership of land, or an estate in land, essentially included free and exclusive enjoyment, and the right of transfer, but until legislative reforms abolished them, residual obligations or interests endured. Streamlining took time.

Speculators and settlers alike aimed to secure the maximum rights, for the lowest price or duty. They frequently abjured some rights, in return for reduced outlays. Cotton growers in South Mississippi during the early 1800s, for example, used their capital first for slaves and improvements, and delayed payments to government land offices, perhaps hoping for Congress to waive their obligations⁶⁴. This stalling was usually temporary, because "the more easily others can affect the income flow from someone's assets without bearing the full costs of their action, the

lower is the value of that asset⁶⁵." To increase rights - thus the income flow and collateral value - when they could afford to do so, was a common necessity. Squatters could not expect to enjoy quiet use of the land, nor could they expect immediately to transfer quiet use. Still, they routinely relinquished sticks in the bundle of rights in return for a low-cost position on the land⁶⁶. Getting a foothold and then adding to the bundle of rights was a strategy from at least the early 1700s; rich and poor alike practiced it, though the precise tactics and ultimate goals of wealthy and subsistence land hunters differed. The wealthy and influential sought documents that conveyed rights in crown or public land. Land warrants and grants were face cards in a game of land poker. The rights of the richer players often remained incomplete because they contracted mortgages, pledged the same land as security many times over for additional purchases, attempted purchase by devious means that were challenged, struck careless bargains that left clouded titles, or neglected to pay taxes⁶⁷.

In the Swan River Colony in western Australia, where the crown granted land in the late 1820s to English gentry, some grantees falsified declarations of assets in order to inflate their entitlements⁶⁸. This conduct was not unusual, and neither was their eventual disappointment. Many could not satisfy the settlement conditions exacted by the crown which denied them patents. Seldom were great land speculators as rich or as secure as their posturing suggested. Defending a portfolio of interests soaked up capital, and markets collapsed. In 1794, after forty years of experience with speculation and estate management, George Washington professed "I have found distant property in land more pregnant of perplexities than profit⁶⁹." Almost fifty years later, the Sydney whaler, merchant, and speculator in Maori deeds, Joseph Weller, confided that "land

which I always looked upon as a resource in case of pressure and calculated on a sale or to raise money on Mortgage, may be considered as valueless from the deficiency of capital to invest⁷⁰."

Interests secured by the rich often amounted to less than a full bundle of rights, but subtracted from someone else's bundle of interests, and that could force a compromise or buy out. Meanwhile, frontier folk who lacked powerful backers or easy credit relied on raw occupation and "sweat equity" improvement. As well, from time to time, the affluent and the poor cooperated on land hunting projects. Whatever the social origins of frontier speculators, there were among them risk-takers in the land trade who took positions early and accepted something less than full rights. It is extremely important to remember that partial rights and interests in the land - sticks in the metaphorical bundle - complicated land speculation everywhere. Understandably, interests in property became objects of reform. On frontiers, mere interests were traded and marshalled in legal battles. In settler societies, reform of property laws in ways intended to decrease the litigation was much desired, but contentious on details. No speculators relished costly law suits; however, the prospect of wiping out a partial right or interest was sure to unnerve someone. Thus, reformation of property rights transpired in an atmosphere of debate and compromise. The final details were unique to jurisdictions.

It is natural to ask, are the property rights, found at a particular place and time, just? This question connects to the first, about how rights originated, because "chains of transfers must end in acquisitions which are themselves not transfers but sources of original title⁷¹." How, for example, were frontier lands acquired from first peoples by governments? How did the government that Stark mentions as the source for his homestead claim secure its rights to the

public domain? The adversaries in Shane neglected an important party to all discussion of property rights on frontiers. Native interests in the land were a fundamental issue on all frontiers.

Robert Nozick, in an provocative contribution to theories of property rights, which stirred great interest in the subject, wished to frame a theory of entitlements that avoided a priori aims or subjective end states. A modernization of Locke, Nozick's system of acquisitions would have involved a scrutiny of transactions that appropriated resources to see if they had been characterized by just steps⁷². If just steps were followed, then the entitlement so created may be considered legitimate. That way, as he saw it, it would be possible to dispute the claims of socialism which sought end-state arrangements without taking into account the history of how entitlements were derived. This much of his argument resembles North's case for institutions. However, to the proposition of just steps, Nozick added a modified Lockean proviso.

Locke realized that any appropriation of resources or goods through the means of labour or contractual agreements might leave one party much worse off than before. Therefore, he proposed that after the appropriation there should be "enough and as good left in common for others⁷³." For appropriators, this could impose a stiff condition, although an escape beckons. It may be, argues Nozick, that the complete appropriation of a property still could provide countervailing benefits that would answer a weak, not a firm and literal, understanding of the Lockean proviso. What is important, he suggests, is that those who yield a resource should not be left worse off than before the pact or expropriation. That modified Lockean proviso compels a search for countervailing benefits. If the new owners of the property rights can generate greater benefits for themselves and those who ceded the rights - if the pie has grown and all parties may

share in the increase - then perhaps the proviso has been satisfied⁷⁴.

Nozick was uncomfortable with his argument, because he realized it would be no simple matter to estimate how things might have developed without the appropriation. "Lockean appropriation makes people no worse off than they would be how⁷⁵?" What is the baseline? Nozick's main dilemmas about the basis of property rights have actually arisen recently in the successor states to colonial frontiers. During the 1980s and 1990s, there have been heated public arguments, litigation, and remedial legislation about whether appropriation from first peoples involved just steps, and whether they gained indirectly from land cessions to colonizing governments. Benefits, so-called, seem inconspicuous and ambiguous. What is the baseline? To answer this exceedingly difficult question would require extensive work that applied the insights of anthropologists, demographers, economists, historians, and first peoples.

In addition to the caveat of the Lockean proviso - literal and demanding or amended and relaxed - there is the major test of just steps which requires that an acquisition of resources must be carried out fairly. When describing, from a historical perspective, the legal precepts and actual practices by which states secured land from first peoples, the simple idea of just steps has an illuminating quality, as far as it goes. Nozick admits that "rectification" must be part of a theory of entitlements: "Past injustices might be so great as to make necessary in the short run a more extensive state in order to rectify them⁷⁶." Rectification has started to move beyond theory and into practice and it has proven complicated, for example, in New Zealand where property rights have been part of national politics since the mid-1980s. In Australia and Canada, too, court decisions confirming first peoples' claims during the 1990s have ignited political crises, due to the

complexity of the interests affected by rectification, but also because governments have been unprepared for the discussions that court rulings necessitated⁷⁷. South Africa has just begun its reviews of property and wealth.

How can eighteenth and nineteenth century negotiations that resulted in appropriation be evaluated, in order to determine if they followed just steps? How should we evaluate acquisitions from first peoples in different frontier territories? For a start, we can pay attention to what economist John Roemer has advised. In his estimation, theories of justice that originate in ideal bargaining outcomes are "sterilized of real-world aspects" including bargaining skills, unequal states of knowledge about the resources' potential, deprivations which lower a bargainer's expectations, and different time preferences (people with shorter life spans may bargain away rights for short term gains)⁷⁸. Complications can be documented with ease from the histories of settlement frontiers.

Something else pertains to just steps. When some governments negotiated to acquire land from first peoples, they hampered private individuals from direct purchasing on their own account, and they sometimes justified this monopsony on the grounds that only governments possessed the detachment, resources, and ideals to conduct upright and careful negotiations. Self-interested individuals, in contrast, would be prone to haste, incomplete consultation, and duplicity. On many other occasions, the supreme standing of government negotiators was asserted as a sovereign act. (Sovereignty, meanwhile, was claimed on some very weak bases.) From these two justifications, obligations fall on government shoulders. First, when claiming moral scruples and exercising paternalism in their dealing with first peoples, a fiduciary responsibility was definitely

signified. In other words, if a government claimed it would behave with greater probity than individuals when treating with first peoples, it had (and has) an obligation to live up to claims of superior morality. In southern Africa, beginning in the late nineteenth century, white settler governments introduced, and abused, trusteeships over African tribal lands⁷⁹. Second, a government's exclusive right to purchase, in the name of the crown or the people, also placed a fiduciary responsibility upon the government. By closing off competition, governments had an obligation to be attentive to vendors' needs. Many acquisitions were patently fraudulent, unjust even without reference to the monopsony and fiduciary responsibility arguments.

Property rights - in history, philosophy, and economics - provoke extended controversy. These gleanings from theory may be faulted for failing to respect boundaries between formal concepts and past events. Theorists, though, have not been shy about selecting examples from history. Moreover, the past is a resource for comprehending contemporary matters, and theory clears a path of understanding through momentous linked events that spanned many years and many frontiers.

A lot has been written about the frontier in history, and for many decades Frederick Jackson Turner's triumphal themes about the American frontier predominated. For our purposes in this working paper, the term frontier labels a region pervaded by legal conflicts and assorted forms of intimidation⁸⁰. Frontiers occurred when migratory people entered a region where a government that claimed sovereignty had scarcely any practical authority. Seeing this fragility, yet having faith in the inevitability of order, some risk-takers moved beyond "the limits." Frontiers were never wildernesses. They were landscapes occupied first by indigenous peoples.

In frontier zones, therefore, it was common to find "a medley of peoples"⁸¹. Indigenous peoples and newcomers made accommodations in the ways they had lived; they influenced one another for awhile⁸². That interlude was frontier's moment.

Frontiers have been regions of interaction where "no one has an enduring monopoly on violence"⁸³. In the absence of a dominant authority, people on frontiers were apt to take direct action, provoking distant authorities to intervene when they could, in order to defend their citizens or prevent additional bloodshed. Aware of the costs of intervention, governments sometimes hesitated or retreated, and discomfited newcomers in frontier areas. In many regions - notably, the old Northwest (1750s-1790s), northern Cape Colony (1720s-1800s), the Orange River Sovereignty in southern Africa (1840s-1850s), and parts of the North Island of New Zealand (1840s-1860s) - they put themselves at risk and encountered heroic, organized, protracted resistance from indigenous peoples, and "the slaughter of thousands of tribesmen and the subjugation of the survivors"⁸⁴. Once a government's authority became established in a region it ceased being a frontier, and sovereignty could be mobilized to remove the property interests of indigenous peoples by executive decrees or legislative acts.

A number of migrants to settlement frontiers often steeled themselves to endure the absence of resolute government supervision and protection, because, frankly, they entered frontiers in order to squeeze gains from the meagre government control. They knew the risks full well. Petitions for help ran as torrents when the predictable disasters happened. The bonds of race and culture many times rescued European interlopers, because government agents were loath to abandon or eject people whose habits of thought they shared, even when these people shunned

laws restricting occupation. Besides sharing faith in a common providential mission to civilize, regulators and truculent squatters - often genial adversaries - participated in a common political economy. Some illegal occupants on frontiers had powerful friends and sponsors at distant centres of power, and regulators seldom ignored these connections. Only beyond the Orange River frontier of Cape Colony, where ferocious African counter strokes seemed to make settler occupation costly, was a large-scale annexation (the Orange Sovereignty in 1848), born in land hunger, repudiated (1854)⁸⁵.

Based on conjectures about when and how a government order would be installed, newcomers assumed they could secure advantage by seizing early positions on the land. Once on their "improvements," they never ceased to demand protection so that "things can go forward." By a preemptive occupation, they believed they could establish interests at little cost, and make them pay, through sales or exploitation. Even relatively poor and self-reliant American frontiersmen played the game, and so too trekboers who, by the 1820s, had some connections with capitalism through production of hides and wool, and their demand for gunpowder and lead⁸⁶. Expanding herds and flocks required additional pastures. More affluent land hunters, parties willing to make a substantial outlay of capital, believed they could acquire title at a time when near anarchy discounted the price. Regardless of the exact tactics they had in mind, people keenly interested in securing property rights - cheaply - pressed onto frontiers. A few put their lives at risk and lost. What seemed cheap, came dear. While a lack of authority may have served upstarts for awhile, many prayed for order and technical supports - troops, land offices, cadastral maps, courthouses, and banks - to advance marketable interests in landed property. The frontier

promised rewarding consummations when the frontier itself would be extinguished. The trick was to seize interests, hang onto them, and keep one's skin. Governments obstructed, but rarely with sustained force, and most were reconciled to squatter occupation.

Governments had several reasons for initially trying to limit or wholly prohibit access to frontier territory. First, in some instances - the old Northwest (1763-75), and unceded territory in southern Africa (1835-43) and New Zealand (1840-55) - imperial officials worried about costly confrontations between their encroaching citizens and first peoples. Interlopers staked out plots or stock runs to build interests and destroyed balances that sustained frontier peace. Second, on public and crown land in settlement colonies people thrust ahead of authorized occupation, to extract use-value (grazing) or strip assets (illicit timber cutting). Governments decried the loss of revenue. Third, if illegal occupants intended to stay and retain an interest in the land they were stripping, then bans or restrictions originated in a worry about land-sale trouble ahead. Squatters' interests could never defeat the crown or the government of the United States, but once people cleared fields, planted crops, and erected shanties it was difficult for governments to sell the land from under them without inciting trouble. An outpost on choice acres could effectively preempt late-arrivals, notwithstanding government title. Thus, to eradicate this possibility American soldiers burned out squatters in the Ohio country in late 1785⁸⁷. To avoid just such politically dangerous confrontations, some authorities tried to attenuate squatters' interests. In 1825, the Landdrost of Graaff-Reinet, Adries Stockenström, required grazers who "temporarily" drove flocks beyond Cape Colony to "promise not to set on foot or build anything of a permanent nature, nor to cultivate the least portion of land there, being fully impressed with the conviction

that we have not the least claim or title to any inch of said land, and cannot consider this indulgence as a precedent for the future⁸⁸." New South Wales made it an offence in 1833 to squat on land available for sale⁸⁹. These measures never curbed squatters for long.

In this study, a squatter is someone who violates formal rules to occupy land in order to originate an interest. A complication arises with Australia. After early Australian squatters succeeded in fortifying their interests, through the crown's concession of leasehold in 1846, they retained the squatter label and elevated it to respectability. Except in that special circumstance, the term squatter means an unlawful occupant, irrespective of financial standing.

Like the squatter, the speculator needs to be explained. Technically, speculation involves holding a commodity off the market in an attempt to drive up the price for a windfall profit. More generally and flexibly, it can mean a business dealing that assumes a great risk for the promise of a huge gain. This definition describes what animated land speculators. The actual magnitude of the supposed profit is secondary. Thus, a preeminent financier with millions of acres in prospect will be treated as a speculator, so too the small dabbler scrub acres⁹⁰. Robert Mitchell has described how a small "lokator" in the Shenandoah Valley in 1746 profited from land sales. Overshadowed by large speculators, but "adept at land negotiations and selling land and real property to newcomers, and then moving on to new locations⁹¹," these individuals played a part in the occupation of all frontiers. The assumption of risk and the expectation of reward characterized speculation, not the scale of the operation. That does not permit us to forget the differences between wealthy and threadbare speculators. They danced to the same music, but attended different balls. Influential speculators contrived fantastically complicated dealings that tied land to

credit. Their activities depict ingenuity and the global scale of risk taking.

Land hunter and land hunting are also helpful terms. The defining characteristics are found in objectives and practices. Land hunters looked for land and marked it, for themselves, partners, or backers. Among the traits associated with their specialty were the following: an ability to read the landscape for productive and strategic purposes; frontier survival skills perhaps learned while hunting, trapping, and trading; a bag of tricks for marking and holding a tract against rivals; a restlessness and an obvious delight in journeys of exploration. Among their number were western Virginia scouts in the pay of land-speculation companies (1750s-1780s), Southern and Yankee investors who went onto land they coveted (1780s-1790s), Australian stockmen driving mobs of sheep or cattle (1820s-1830s), voortrekkers crossing the Orange River boundary (1830s-1840s), American preemptive homesteaders (1840s-1850s). The list is suggestive. Once land hunters settled on a tract and stopped looking for additional or better land, they ceased being land hunters.

Land hunters pursued interests aggressively. In some frontier situations, where the state had installed land regulations, they worked with (but not always within) the rules. They collaborated with and manipulated nearby officials who provided a boundary dispute service and issued the licenses of occupation that could act as a wedge for broadening a person's legal interests or yield a marketable asset. Even in locales lacking land commissioners, a principle of law extended the means for land hunters to hold territory against other individuals. By occupation, land hunters evolved into squatters. Land hunters and squatters settling on the public domain, or crown land, or land beyond any organized sovereignty could bar the entry of other

individuals. Although occupation might defy a government regulation, authorities hesitated to remove land hunters and squatters. Occupation worked directly against rival squatters and impending settlers.

No one relished confronting land hunters and squatters. If a potential challenger with a putative legal title or interests arrived, the prior party, with benefit of occupation, could usually insist on compensation for improvements or try to discourage the title holder by threatening a financial penalty. Trespass was not normally a crime, but a tort or wrong whose remedy required a civil action. The likelihood of civil litigation helped squatters convince rivals to move along. Plainly, for some earnest settlers, squatter's occupation was a hurdle across their path to "legitimate" occupation. Some squatters played the game as a holdup for a payoff, accepting money or entering into partnerships with parties who held title, land scrip, or government promises. The dynamics among people with complementary and conflicting interests were the essence of frontier history.

Occupation could never defeat a government's root title to crown and public land. Though, in fact, governments found it awkward to punish or oust squatters. For political, economic, and even humanitarian reasons officials avoided ejection, because occupation might involve economic and settlement activity that the state believed furthered its "civilizing mission", or because drought and insect infestations made pleas by distraught squatters compelling. But interests conceded from compassion snowballed. Drought-stricken trekboers in the mid-1820s secured temporary permits for grazing beyond the Cape Colony's boundaries⁹². Soon these passes were traded among grazers as if they embodied property rights, and trekboers pressured the

Griqua - an important community of mixed Khoikhoi and European origin living just beyond the colony's borders - to grant formal leases to land they held⁹³. Governments frequently capitulated to squatters by granting part of the territory in question; other times they made compensatory grants elsewhere, or distributed certificates redeemable in land. When squatting occurred on land held by indigenous people, governments commonly secured title and legalized white occupation. The demise of the Cherokee Indian Territory in the United States illustrates this recurrent trend. In 1881, cattlemen were forbidden to lease land directly from the Cherokee, but they continued to do so until the Department of the Interior began a series of purchases from the Cherokees in 1890, allegedly to prevent utter confusion⁹⁴.

To obstruct or combat occupation, and yet avoid a political backlash, some governments sold or granted substantial blocks of land to companies or group colonization promoters. Then these entities had to cope with squatters⁹⁵. For many reasons, in the 1780s and 1790s, the United States and those state governments which retained public land, endeavoured to sell huge tracts at discounted prices. A contributing factor was an urge to reduce overhead for securing, protecting, and selling parcels of land. One of the most notorious sales in American history occurred when the Georgia state legislature - bribed into compliance by land agents - disposed of 20,000,000 acres to a few companies in 1795. A history of the affair concluded that "if it was a corrupt bargain, it was not essentially a bad one Was it really such a bad trade for Georgia to sell land which was in many places clouded by three sets of conflicting claims - those of Spain, the federal government, and the Indian tribes⁹⁶?"

In Upper Canada, some off-loading of the squatter and overhead problems occurred when

the crown disposed of over 2,000,000 acres to the Canada Company in 1826. In Indiana and Illinois, during the 1840s, the United States government allowed settlers and speculators "to encroach upon the grazing commons of the squatting cattlemen," forcing the latter to buy or move⁹⁷. Australian colonies and New Zealand handled occupation by allowing licensed occupation and then leasehold. Subsequently, governments were elected in the 1860s to effect land reforms, and they passed laws that encouraged prospective farmers to enter leased grazing land and pluck freehold farm tracts⁹⁸. Governments also drove off squatters by force from time to time, as we have mentioned, though schemes that used a "cat's paw" approach had an obvious appeal. Arrangements to sell or lease large tracts to individuals or companies erected lightning rods for populist dissent, since they handed estates to a select few. Governments tried to offload the burdens of resource allocation, by selling to companies or empowering selectors; however, they could never fully slip responsibility for distribution. Therefore, land allocation - the first business of frontier governments - complicated public life in all new societies and figured prominently in regional protest movements in the United States, and in demands for self government in British colonies⁹⁹. On every frontier, disgruntled claimants insisted that a local government would do a better job. In New Zealand, devolution went to an extreme, and the small colony fragmented into provinces (1854-1876). Several retained control of land administration¹⁰⁰.

Improvement or betterment is the last concept, and the most important. Theoretically, it is at the heart of the Lockean notion of property rights. Historically, it is linked to land hunting, squatting, and occupation. To improve the land meant to apply labour and capital, so that the land's carrying capacity, thus too its market value, was boosted. As pointed out, squatters could

attempt to improve title holders out of their estate. There were, too, cultural bonds joining improvement and squatting. In a famous argument, Locke proposed that when people mixed their labour with something "that [mixing] excludes the common right of other Men¹⁰¹." Comparable beliefs were on the lips of frontiersmen, and governments, whether under a crown colony constitution or a more democratic form, could not dismiss thrusting claimants without paying a political price.

In Shane, Stark shared the European heritage for improvement with Richer; therefore, he could not "belittle" what ranchers had done. In an embedded cultural sense, improvement meant mankind's duty to tame wilderness, rescue wasteland: perhaps even more, a duty to deliver humanity from want and indolence. Around the world, arguments that pleaded for strengthening property rights on account of improvement were amazingly similar to each other, and to the debates in Shane. On the occasion of an anniversary of the Sons of the Pilgrims, in December 1802, John Quincy Adams questioned pretentiously - and rhetorically - whether "the lordly savage" should "forbid the wilderness to bloom like roses? Shall he forbid the oaks of the forest to fall before the ax of industry and rise again transformed into the habitations of ease and elegance¹⁰²?" A pamphlet defending South Australian grazers in 1864 outlined the mission of improvement more prosaically. What did lands produce as they were? Nothing. "The lands owe their value principally to us, not only because we explored and rendered them available, but because, as every old settler will bear me out, we have by our stock, by our cultivation, and by importing European grasses, rendered them worth double what they were when we first came upon them¹⁰³." The author defended grazers against government land reforms favourable to small

farmers. He made Richer's case.

Richer and Stark argued about which group of newcomers had done more for improvement: trappers and traders, or ranchers. However, they agreed that land had to be domesticated. A dispute over improvement in a narrow or tactical sense animated these archetypes. They only alluded to a conflict over improvement in the wider meaning, as a conflict between a European-based Christian culture and the cultures of first peoples. In the film, this clash of values is reduced to a painful artifact, an "arra'head" in Richer's shoulder. In history the clash between improvement and the status quo, between newcomers and first peoples was more profound.

Conflicts over the meaning of improvement were serious, abundant, global, and culturally derived. The dispossession of a number of first peoples - and sometimes too the uprooting of white grazers - advanced under the most revered regimental colour. Improvement. While first peoples were adept cultivators and grazers, where biota and climate permitted, they were still thought by colonizers to stand in the way of improvement, because they appeared - to different degrees - less dedicated than Europeans to imposing a purposeful regular pattern on the wilderness¹⁰⁴. The idea of organizing a landscape so that nature might better serve human needs was long embedded in western thought. The concept may originate in Christianity which has been, of all religions, "the most insistently anti-natural¹⁰⁵." In his interpretative history of ecological ideas, Nature's Economy, Donald Worster contends that, for some thinkers through the ages, nature could be admired as the handiwork of God, but in the eighteenth and nineteenth centuries "this arcadian mood was often swept away in the rush for man's empire over nature¹⁰⁶."

In early-modern European thought, governments had "the task of ensuring proper conformance with God's demand for the thriving of the human species as far as possible¹⁰⁷." Locke's theory of property, by the way, insisted on a theological connection between people and resource usage.

Gopal Sreenivasan's summary of a Lockean proviso is apposite: "[one] should only appropriate as much as one can use before it spoils, and [this] is imposed by the law of nature. It obtains, more precisely, in virtue of God's intention that the earth should serve the preservation of mankind and so not be wasted¹⁰⁸."

Man's empire over nature was a cultural touchstone that made appeals to improvement irrepressible. In the estimation of governments in charge of frontiers, improvement absolved land hunters, squatters, and speculators. But only up to that instant when someone detected the possibility for an even greater improvement. A junior British official, Donald Moodie, ascribed hardships in Cape Colony to nomadic grazing. In 1834, on the banks of the Orange River, he asked Piet Botha, why trekboers trapped their children in an inferior way of life. "We are stupid," Botha allegedly answered. "But we see that; but tell me, who will employ our children, if we teach them trades? Not the Boers, for they are Jacks of all trades...we must keep sheep, and seek pasture, as far as the government will allow - or starve¹⁰⁹." Botha joined the Great trek, and may have been the Piet Botha killed in at Veg Kop during a Ndebele attack in October 1836. Moodie later served as government secretary for Natal. As a land commissioner, he judged voortrekker land claims with respect to evidence of occupancy and placed some under an orderly registration system¹¹⁰. In argument and in life, the grazer and the administrator headed in the same general direction, but separated over degrees of improvement.

It is no exaggeration to claim that British and American newcomers on frontiers spun a web of ideas about property rights that extended around the world¹¹¹. That web consisted of informal and formal steps for taking land: occupation; the recognition and sale of interests; the ban on direct dealing; the doctrine of improvement. Powerful commonplace Anglo-American ideas and practices contributed to a universal story. What happened then, as people exploited resources and shaped the landscape, was mediated by climate, geology, the ecology of flora and fauna, and first peoples. But imported ideas were influential. The conversion of frontiers into assets involved collisions between firmly-held, insistent, widespread, habits of thought and a staggering diversity of habitats which indigenous peoples utilized with varying degrees of intensity. The power of ideas about entitlements to property rights may be measured by citing lists of endangered species, chronicling incidents of native dispossession, witnessing the rival claims of grazing, intensive agriculture, and irrigation farming¹¹².

We have suggested that there is a global pattern for the establishment of important property rights. The pattern expresses these features: conflict somewhat contained by government; government inadequacy at the start; government authority required for the ultimate formation of enduring property rights; a market-value premium on individualized enforceable property rights; in light of this last feature, a quest for ever stronger legal interests; the use of government sovereignty to break-up communal (indigenous) property interests that were recognized in the common law; the power of the idea of improvement. This historical account should stand on its own as a contribution to understanding globalization, but there is more. The property rights at issue related to immobile resources; that helps account for the significance of

state sovereignty on frontiers. However, new property rights are gossamer-like and as portable as "grey matter." Those who extract capital flows from rights to new property seek dispute resolution and enforcement mechanisms in state, bilateral, and international agreements. Agencies that transcend boundaries have a bright future, unless the modal systems will come to resemble the American open range.

There are lessons for the present and the future. The dynamics of land hunting were all about wealth accumulation in an initial rush for positions. Land patents were the objective, and now it is patents of a different kind. Regulators and the regulated had interesting, complex relationships. The future will be more of the same, and a lot will be heard about improvement.

Notes

1. There are differences between A.B. Guthrie's screenplay and Jack Schaefer's sort novel. Guthrie, who wrote American historical adventure novels, extended the dialogue and changed the names of the rancher and farmer to Richer and Stark (the spellings may differ). The German root words for these names happen to fit the character development in the movie. For an example of the shorter dialogue about property rights in the novel, see Jack Schaefer, The Short Novels of Jack Schaefer (Boston: Houghton Mifflin Company, 1967), 90-1. For a modern recitation of Richer's view of history see Robert H. Fletcher, Free Grass to Fences: The Montana Cattle Range Story (New York: Published for the Historical Society of Montana, University Publishers Incorporated, 1960), 27-83.
2. First people or indigenous people are terms in current usage. Many people refer to themselves by their tribal name; however, a generic term - like first people - is helpful in summary statements.
3. This book maintains that a history of property rights on frontiers around the globe exposes common themes in terms of ideas, actions, and dilemmas. It is fair to point out that an emphasis on similarities among frontiers has been disputed. Donald Denoon went down the path of comparison when he looked at settler societies in the southern hemisphere, but his hemispheric emphasis was deliberate, for his aim was to discredit the American model of economic development, and to point out local social and political factors. See Denoon, Settler Capitalism: The Dynamics of Dependent Development in the Southern Hemisphere (Oxford: Oxford University Press, 1983), 220-30. British imperial historians who wrote about land policy mentioned comparisons between British colonies and the United States; however, their attention to administrators was bound to accent peculiarities and variety. Although they wrote carefully documented accounts of individual colonies, they only added comparative conclusions. See for example the conclusions in Leslie Clement Duly, British Land Policy at the Cape, 1795-1844: A Study of Administrative Procedures in the Empire (Durham: Duke University Press, 1968), 187-91.
4. Attracta Ingram, A Political Theory of Rights (Oxford: Clarendon Press, 1994), 27.
5. C.B. Macpherson, Property: Mainstream and Critical Positions (Toronto: University of Toronto Press, 1978), 202.
6. Ingram, 30.
7. J.T. Kempe to Sir William Johnson, 12 August 1765, in Milton W. Hamilton ed., The Papers of Sir William Johnson, vol. 11 (Albany: The University of the State of New York, 1953), 889. Hereafter Johnson Papers.
8. For some background see William Johnson to Robert Leake, 9 March 1764 in Johnson Papers, vol.4, 360.

9. United States Public Lands Commission, Report of the Public Land Commission Created by Act of March 3, 1879, Relating to Public Lands in the Western Portion of the United States and to the Operation of Existing Land Laws (Washington: Government Printing Office, 1890), 511.

Mary E. Young, "Congress Looks West: Liberal Ideology and Public Land Policy in the Nineteenth Century," in Ellis, 90-1.

10. Robert C. Ellickson, Order without Law: How Neighbors Settle Disputes (Cambridge: Harvard University Press, 1991), 141-3; 191-206. Our introduction owes much to his refinement of definitions and the stimulating quality his thesis. Ellickson studies a ranching community to demonstrate how norms can provide order; however, he does not consider the initial sorting out of boundaries and access. In fairness to him, he notes with respect to the whalers that norms that enrich one group's members may impoverish those outside the group.

11. Douglass North, Institutions, Institutional Change and Economic Performance (Cambridge: Cambridge University Press, 1990), 13-16; 69.

12. Ellickson, 249. For a study of the replacement of informal understandings when stakes were low, and their replacement when by legislation when the stakes increased, see Gary Libecap, "Economic Variables and the Development of the Law: The Case of Western Mineral Rights," in Empirical Studies in Institutional Change ed. by Lee Alston, Thráinn Eggertsson, and Douglass C. North (Cambridge: Cambridge University Press, 1996), 34-58.

13. North, 36-45.

14. Bernard W. Sheehan, Savagism and Civility: Indians and Englishmen in Colonial Virginia (Cambridge: Cambridge University Press, 1980), 144-76.

15. On the question of how American historians have treated the question of similarities among frontiers, see Edward Countryman, "Indians, the Colonial Order, and the Social Significance of the American Revolution," William and Mary Quarterly, vol.53(April 1996), 342-66. He challenged American exceptionalism by focusing on Americans who were not free, namely Indians and slaves.

16. Leonard Guelke and Robert Shell, "Landscape of Conquest: Frontier Water Alienation and Khoikhoi Strategies of Survival, 1652-1780," Journal of Southern African Studies, vol.18 (December 1992), 804-24. For relations between the Dutch and the Khoikhoi from 1652 to 1720, see Richard Elphick, Khoikhoi and the Founding of South Africa (Johannesburg: Ravan Press, 1985). When explaining the collapse of Khoikhoi society near the Cape, he stresses a smallpox epidemic in 1713, while Guelke and Shell accent an assault on the ecology. The difference is one of emphasis. Elphick, 217-34.

17. Petrus Johannes van der Merwe, Die Noordwaartse Beweging van die Boere voor die Groot Trek (1770-1842) (Den Haag: W.P. Van Stockum & Zoon, 1937), 25-58; M.F. Katzen, "White

Settlers and the Origins of a New Society," in Monica Wilson and Leonard Thompson ed., The Oxford history of South Africa (Oxford: At the Clarendon Press, 1969), 212-3.

18. Petrus Johannes van der Merwe (translated by Roger Beck), The Migrant Farmer in the History of the Cape Colony, 1657-1842 (Athens: University of Ohio Press, 1995), 209-48; Leonard Thompson, Survival in Two Worlds: Moshoeshoe of Lesotho, 1786-1870 (Oxford: Clarendon Press, 1975), 219; 281-5; Noël Mostert, Frontiers: The Epic of South Africa's Creation and the Tragedy of the Xhosa People (New York: Alfred A. Knopf, 1992), 726-760; William W. Collins, Free Statia: Reminiscences of a Lifetime in the Orange Free State (Cape Town: C. Struik, 1965; reprint of 1907 edition), 124-151; 153-6; 189-190; 220-237. See the important discussion of conflicts over land, water, and stock in Leonard Guelke and Robert Shell, "Landscape of Conquest: Frontier Water Alienation and Khoikhoi Strategies of Survival, 1652-1780," Journal of Southern African Studies, vol.18, no.4 (December 1992), 803-24. Also Clifton C. Crais, White Supremacy and Black Resistance in Pre-Industrial South Africa: The Making of the Colonial Order in the Eastern Cape, 1770-1865 (Cambridge: Cambridge University Press, 1992).

19. Richard White, The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650-1815 (Cambridge: Cambridge University Press, 1991), 489. For a parallel in South Africa, see Crais, 96-121.

20. Edward M. Curr, Recollections of Squatting in Victoria, then Called the Port Phillip District (From 1841 to 1851) (Melbourne: George Robertson, 1851), 167.

21. Jan Critchett, A Distant Field of Murder; Maurice French, A Pastoral Romance: The Tribulation and Triumph of Squatterdom (Toowoomba: University of Southern Queensland, 1990), passim; Noel Noos, Invasion and Resistance: Aboriginal-European Relations on the North-Queensland Frontier, 1861-1897 (Canberra: Australian National University, 1979), 47-51. Mary Durack, Kings in Grass Castles (Condell: Corgi Books, 1985), 329-333. Durack is candid and critical about her father's unauthorized raids.

22. Government Gazette Hawke's Bay, vol.2, no.37, 13 March 1861, 1-3; John Yule to the Superintendent of the Southern District, 26 October 1846, Colonial Secretary, Incoming Letters, IA 1/46, National Archives of New Zealand.

23. Bill O'Neal, Cattlemen vs. Shepherders: Five Decades of Violence in the West, 1880-1920 (Austin: Eakin Press, 1989), 16-20.

24. Peter Burroughs, Britain and Australia: A Study in Imperial Relations and Crown Lands Administration (Oxford: Clarendon Press, 1967), 162.

25. The Royal Proclamation of 1763 is the best known example; however, British authorities applied the same policy in southern Africa, Australia, and new Zealand. See van der Merwe, 209-19; John C. Weaver, "Beyond the Fatal Shore: Pastoral Squatting and the Occupation of

Australia, 1826-1852," American Historical Review, vol.101 (October 1996), 989; Weaver, "Frontiers into Assets: The Social Construction of Property Rights on New Zealand, 1840-65," Journal of Imperial and Commonwealth History, vol.27 (September 1999), 19-29.

26. It is possible that the doctrine had its greatest initial trials on the frontiers of New York. Here the Dutch established a policy of fair dealing with the Iroquois (Five Nations); the British believed in the strategic necessity of preventing direct dealings, because fraud with respect to these contracts might turn the Iroquois toward an alliance with the French. New York frontier land issues did in fact involve significant direct dealing and fraud. See Georgiana C. Nammack, Fraud, Politics, and the Dispossession of the Indians: The Iroquois Land Frontier in the Colonial Period (Norman: University of Oklahoma Press, 1969), 3-21.

27. Douglass C. North, Structure and Change in Economic History (New York: W.W. Norton, 1981), 36.

28. For European settlers who ultimately wanted enforceable rights, the challenge was how to individualize native title. That is, the problem was to move from the collective interests of the tribe to private plots desired by Europeans. Governments could undertake acquisition and division. Another path was for indigenous people to break up the collective holding into plots, and then sell these to individuals. A contentious business, it required government action, in the form of land courts (New Zealand after 1865) or executive acts (South Africa after 1879). There was ample room for falsehood and betrayal in both systems, and destitution also came to play a significant part in land alienation.

29. See the New Zealand example cited in Weaver, "Frontiers into Assets," 40-1.

30. Ingram, 56-8.

31. Helene Sara Zahler, Eastern Workingmen and National Land Policy, 1829-1862 (New York: Columbia University Press, 1941), 193; Leslie E. Decker, "The Great Speculation: An Interpretation of Mid-Continent Pioneering," in David M. Ellis ed., The Frontier in American Development: Essays in Honor of Paul Wallace Gates (Ithaca: Cornell University Press, 1969) 373; Allan Bogue, "The Iowa Claims Clubs: Symbol and Substance," Mississippi Valley Historical Review, vol.45 (September 1958), 231-53.

32. Alan Taylor, "To Man their Rights: The Frontier Revolution," in Ronald Hoffman and Peter Albert ed., The Transforming Hand of Revolution: Reconsidering the American Revolution as a Social Movement (Charlottesville: The University Press of Virginia, 1995), 231-57.

33. A fine short account of some of these dealings appears in Thomas M. Doerflinger, A Vigorous Spirit of Enterprise" Merchants and Economic development in Revolutionary Philadelphia (New York: W.W. Norton and Company, 1987), 314-29. For a detailed description of the operations of one of the era's greatest speculators see Barbara Ann Chernow, Robert

Morris: Land Speculator, 1790-1801 (New York: Arno Press, 1974).

34. There is a strain of admiration for the squatters among a number of American historians of the early republic. For an older brilliant history of the period that treats squatters sympathetically, see Merrill Jensen, The New Nation: A History of the United States during the Confederation, 1781-1789 (New York: Alfred A. Knopf, 1958), 357; for a sympathetic and fuller account, see Alan Taylor, "'To Man Their Rights': The Frontier Revolution," in Ronald Hoffman and Peter J. Albert, The Transforming Hand of Revolution: Reconsidering the American Revolution as a Social Movement (Charlottesville: University of Virginia Press, 1996), 231-57 and Taylor "'A Kind of War': The Contest for Land on the Northeastern Frontier, 1750-1820," William and Mary Quarterly, vol. (1989).

35. Historians have contributed to debates on the sources of American violence. See Edward Ayers, Vengeance and Justice in the American South; Richard Maxwell Brown, "Violence," in Clade A. Milder, Carol A. O'Connor, and Martha A. Sandweiss ed., The Oxford History of the American West (New York: Oxford University Press, 1994). Ayers argued that America's record of violence partly originated from a southern code of direct action, exemplified by duelling. Southern traditions, including this one, spread westward. Brown draws attention to a bitter western struggle between labour and industrial corporations, and describes it as the Western Civil War of Incorporation.

36. Van der Merwe, 32-110. This well-documented history provides information about the company's policies, its weakness, the land-occupation practices of the trekboers, the confrontation over habitat, and the slaughter of the Khoikhoi. It attempts to defend the actions of the white settlers, and argues that the company bears responsibility for allowing matters to get out of control on the frontiers. Van der Merwe draws many parallels between American and South African frontiers. Also see M.F. Katzen, "White Settlers and the Origins of a New Society, 1652-1778," in Monica Wilson and Leonard Thompson ed., The Oxford History of South Africa (Oxford: At the Clarendon Press, 1969), 226-7.

37. For examples contemporary ideas on direct action and defiance of governments before the Great Trek see André du Toit and Hermann Giliomee, Afrikaner Political Thought: Analysis and Documents, Volume One: 1780-1850 (Berkeley: University of California Press, 1983), 127-63. On the continuities of southern African settlement history see Petrus Johannes van der Merwe, The Migrant Farmer in the History of the Cape Colony, 1657-1842, translated by Roger B. Beck (Athens: Ohio University Press, 1995). Afrikaner nationalists have presented the case for the Great Trek arising from grievances against British authorities. Better authors among them do not deny hunger land as a motive. See Johannes Meintjes, The Voortrekkers: The Story of the Great Trek and the Making of South Africa (London: Cassell, 1973), 23. The grazing system was intrinsic to the frontier and even Meintjes notes that land regulations were a source of boer resentment, and land was a factor in the trek. Meintjes, 39-40.

38. Carl Abbott, "The Federal Presence," in The Oxford History of the American West, 470.

39. John C. Weaver, "Beyond the Fatal Shore: Pastoral Squatting and the Occupation of Australia, 1826-1852," American Historical Review, vol. 101(october 1996), 987; Mostert, 573.

40. This paper is a chapter in a manuscript on land and frontiers, and a subsequent chapter treats the "uprooting of native title." A copy can be provided on request.

41. In 1851, the Métis of Red River had a pitched battle with the Sioux on the Grand Coteau of the Missouri, on American territory. Margaret Arnett MacLeod and W.L. Morton, Cuthbert Grant of Grantown: Warden of the Plains of the Red River (Toronto: McClelland and Stewart, 1974), 143-151. The rebellions of 1870 and 1885 did not pit settlers against indigenous peoples.

42. This goes to the heart of a contradiction noted by Patricia Limerick who observed how disrespectful land hunters were with respect to the public domain, but how jealous they were of individual exclusive property rights. Patricia Nelson Limerick, The Legacy of Conquest: The Unbroken Past of the American West (New York, 1987), 62.

43. Leslie Clement Duly, British Land Policy at the Cape: A Study of Administrative Procedures in the Empire (Durham: Duke University Press, 1968), 75-7; A.J. Christopher, The Crown Lands of British South Africa, 1853-1914 (Kingston: Limestone Press, 1984), 22.

44. These contrasting "needs" are recognized by economists who see them in terms of a search for universal principles of economic behaviour, and historians who take sides in a social debate about the legitimacy of elite positions backed by law versus the claims of people justify their possession by labour.

45. For a convincing study that argues that Locke's theory of property was mainly based on the idea of a maker's right, see Gopal Sreenivasan, The Limits of Lockean Rights in Property (New York: Oxford University Press, 1995), 59-92. In the early modern period, the European empires each developed distinctive rituals for asserting sovereignty. Interestingly, English practices accented the application of labour to land. Patricia Seed, Ceremonies of Possession in Europe's Conquest of the New World, 1492-1640 (Cambridge: Cambridge University Press, 1995), 31-40.

46. Ellickson, 138.

47. For example, because Locke stressed a justification by labour, his theory is critical of acquisition by gift and inheritance. See Sreenivasan, 95-119.

48. North, 17.

49. See for example John Roamer, Theories of Distributive Justice (Cambridge: Harvard University Press, 1996), passim.

50. Paul W. Gates, Landlords and Tenants on the Prairie Frontier: Studies in American Land Policy (Ithaca: Cornell University Press, 1974), 12.

51. Thomas Perkins Abernethy, Western Lands and the American Revolution (New York: Russell and Russell, 1959), 368-9.
52. North, 59-60.
53. John H. Haeger, "Economic Development of the American West," in Roger L. Nichols ed., American Frontier and Western Issues: A Historiographical Review (Westport, Connecticut: Greenwood Press, 1986), 36.
54. For Gates' progressivism, see Lawrence B. Lee, "Introduction," in Paul Gates, Land and Law in California: Essays on Land Policies (Ames: Iowa: Iowa State University Press, 1991), xiv-xviii; Frederick Merck, "Forward," in Ellis, x-xxx.
55. The Colonial Office in the 1830s, for example, was pulled by a number of conflicting interests. Honest confusion is depicted in John S. Galbraith, Reluctant Empire: British Policy on the South African Frontier, 1834-1854 (Berkeley: University of California Press, 1963), passim; Claudia Orange, The Treaty of Waitangi (Wellington: Bridget Williams Books, 1987), 19-31.
56. Galbraith, 61.
57. Duly, 190; Weaver, "Beyond the Fatal Shore," 985-88.
58. Roy M. Robbins, Our Landed Heritage: The Public Domain, 1776-1936 (Princeton: Princeton University Press, 1942), 290
59. Ernest Sinclair MacDermott, Manual of the Practice of the Land Title Office Sydney (Sydney: Websdale, Shoesmith and Company, 1904).
60. 13 Victoriae, No.1. An Ordinance to regulate the Occupation of Waste Lands of the Crown in the Province of New Ulster. [23rd August 1849]; 41 Victoriae, No.29. An act to regulate the Sale or other Disposal of the Land of the Crown in New Zealand [10th December 1877].
61. Peter Charles Hoffer, Law and People in Colonial America (Baltimore: The Johns Hopkins University Press, 1992), 70.
62. Gordon Wood, The Radicalism of the American Revolution (New York: Alfred Knopf, 1992), 116-7, 181. Wood provides an argument against his own thesis of the revolution as a radical departure when he notes that a tenantry and rent producing estates could not be secure investments in a part of the world where land was plentiful and cheap. There is a trace of continuity in this claim. Wood, 113-4.
63. Helene Sara Zahler, Eastern Workingmen and National Land Policy, 1829-1862 (New York: Columbia University Press, 1941), 19-98.

64. Thomas D. Clark and John W. Guice, Frontiers in Conflict: The Old Southwest, 1795-1830 (Albuquerque: University of New Mexico Press, 1989), 81.
65. North, 31.
66. For the idea of a bundle of rights and a discussion of the persistence of communal rights, see Robert W. Gordon, "Paradoxical Property," in John Brewer and Susan Staves ed., Early Modern Conceptions of Property (London: Routledge, 1996), 95-108.
67. Chernow, 126-7; 144-69; 175; Beverley W. Bond, "Introduction: John Cleves Symmes, Pioneer," in Bond ed., The Correspondence of John Cleves Symmes: Founder of the Miami Purchase (New York: Macmillan, 1926), 16-22. On the hazards of land speculation on a large scale in the mid-nineteenth century see Henry Cohen, "Vicissitudes of an Absentee Landlord: A Case Study," in David M. Ellis ed., The Frontier in American Development, 192-208. In regions where Spanish or Mexican grants had been made, squatters and holders of alleged grants clashed in the courts for years. See Gordon Morris Bakken, Practicing Law in Frontier California (Lincoln: University of Nebraska Press, 1991), 75-6.
68. Burroughs, 44, 77.
69. George Washington to Presley Neville, 16 June 1794 in C.W. Butterfield, Washington-Crawford Letters. Being the Correspondence between George Washington and William Crawford, from 1767 to 1781, Concerning Western Lands (Cincinnati: Robert Clarke and Company, 1877), 79.
70. Joseph Weller to Jackson Barwise (?), 26 April 1841, Weller Brothers Papers (copies of originals in Dixon Library of the Mitchell Library, Sydney), folder 1, MS 0872, Alexander Turnbull Library.
71. Ingram, 47.
72. Nozick, 150.
73. John Locke, Two Treatises of Government critical edition with introduction by Peter Laslett (Cambridge: At the University Press, 1967), The Second Treatise, section 28, 306.
74. Sreenivasan contends that Nozick's modernized Lockean theory leaves the landless worse off than they would have been under the terms of Locke's theory of property rights because it had included a place for charity and the right of people to labour. Sreenivasan, 120-39.
75. Nozick, 177.
76. Nozick, 231.

77. In the United States, treaty disputes have been dealt with through a federal commission. David Wishart, "Belated Justice: A Comparison of the Indian Claims Commission and the Waitangi Tribunal," Unpublished Conference Paper, Land and Law Conference, Newcastle, New South Wales, July 1999.
78. Roemer, 91.
79. T.R.H. Davenport and K.S. Hunt eds., The Right to the Land (Cape Town: David Philip, 1974), 31-61. For the importance of land ownership as an economic springboard in South Africa see Colin Murray, Black Mountain: Land, Class and Power in the Eastern Orange Free State, 1880s to 1980s (Edinburgh University Press, 1992).
80. For a useful introduction see Leonard Thompson and Howard Lamar, "Comparative Frontier History," in Lamar and Thompson ed., The Frontier in History: North American and South Africa Compared (New Haven: Yale University Press, 1981), 3-13. Also see Donna J. Guy and Thomas E. Sheridan, "On Frontiers: The Northern and Southern Edges of the Spanish Empire in the Americas," in Guy and Sheridan eds. Contested Ground: Comparative Frontiers on the Northern and Southern Edges of the Spanish Empire (Tucson: University of Arizona Press, 1998), 3-15.
81. Leonard Thompson, Survival in Two Worlds: Moshoeshoe of Lesotho, 1786-1870 (Oxford: At the Clarendon Press, 1975), 106.
82. For an extended discussion of the evolving forms of contact between Europeans and first peoples, and of the impact of political organization and the weight of numbers, see Richard White, The Middle Ground: Indians, Empires, and Republics in the Great Lakes region, 1650-1815 (Cambridge: Cambridge University Press, 1991), *passim*.
83. Silvio Barretta and John Markoff quoted in Donna Guy and Thomas Sheridan, "On Frontiers: The Northern and Southern edges of the Spanish Frontier in the Americas," in Guy and Sheridan ed. Contested Ground: Comparative Frontiers on the Northern and Southern Edges of the Spanish Empire (Tucson: University of Arizona Press, 1998), 10,
84. Duly, 81-4; Galbraith, 181.
85. Galbraith, 227-9; 242-76. In 1835, Governor Benjamin D'Urban had annexed a region on the eastern frontier and was immediately forced by the Colonial Office to renounce it, but this was a relatively small region.
86. Martin Legassick, "The Northern Frontier to 1820: The Emergence of the Griqua People," in Richard Elphick and Hermann Giliomee, The Shaping of South African Society, 1652-1820 (Cape Town: Longman Penguin, 1979), 278.

87. Richard B. Morris, The Forging of the Union, 1781-1789 (New York: Harper and Row, 1987), 229; R. Douglas Hurt, The Ohio Frontier: Crucible of the Old Northwest, 1720-1830 (Bloomington: University of Indiana Press, 1996), 144-8; John K. Mahon, "Indian-United States Military Situation, 1775-1848," in Wilcomb Washburn ed., History of Indian-White Relations, vol.4 (Washington: Smithsonian Institution, 1988), 162.
88. Quoted in van der Merwe, 212.
89. 4 William IV, No. 10. An Act for protecting the Crown Lands of this Colony from encroachment, intrusion, and trespass. [28th August 1833].
90. Elliott West, "American Frontier," in Clyde A. Milner, Carol A. O'Connor, and Martha A. Sandweiss ed. The Oxford History of the American West (New York: Oxford University Press, 1994), 144-5.
91. Robert D. Mitchell, Commercialism and Frontier: Perspectives on the Early Shenandoah Valley (Charlottesville: University of Virginia Press, 1977), 78-81.
92. Van der Merwe, 176-240.
93. Van der Merwe, 256-78; 307-21; 342-53.
94. Edward Everett Dale, The Range Cattle Industry: Ranching on the great Plains from 1865 to 1925 (Norman: University of Oklahoma, 1960), 125-45. Written in 1925 and first published in 1930, this book remains useful as a source for specific details. In recent years, there has been a revived interest in western history that accents the corporate interests and government collaborations that so often determined resource allocations. See for example Patricia Limerick, The Legacy of Conquest: The Unbroken Past of the American West (New York: W.W. Norton, 1987).
95. Chernow, 54.
96. C. Peter Magrath, Yazoo: The Case of Fletcher v. Peck (New York: W.W. Norton, 1967), 14.
97. Gates, 176.
98. Joseph M. Powell, The Public Lands of Australia Felix: Settlement and land Appraisal in Victoria with Special Reference to the Western Plains (Melbourne: Oxford University Press, 1970), 144-5; W. Keith Hancock, Discovering Monaro: A Study of Man's Impact on his Environment (Cambridge: At the University press, 1972), 90-1..
99. Charles Seller, The Market Economy: Jacksonian America, 1815-1846 (New York: Oxford University Press, 1991), 290-2; 312-14.

100. There were as many as ten, but the major ones included Otago and Canterbury which had public land. W.P. Morrell, The Provincial System in New Zealand (Christchurch: Whitcombe and Tomes, 1964), 69-104; 278-9; Keith Sinclair, A History of New Zealand (Auckland: Penguin Books, revised edition, 1984), 108-111; Weaver, 44-6.

101. Locke, Two Treatises of Government, II, section 27. For a discussion and critique of this theory see Matthew H. Kramer, John Locke and the Origins of Private property: Philosophical Explorations of Individualism, Community, and Equality (Cambridge: Cambridge University Press, 1997), 93-150.

102. Adams quoted in Cyrus Thomas, "Introduction," in Charles C. Royce and Cyrus Thomas, Indian Land Cessions in the United States; Eighteenth Annual Report of the Bureau of American Ethnology (Washington: Government Printing Office, 1899), 536.

103. Henry Jones, The New Valuations; or, the Case of the South Australian Squatter Fairly Treated (Melbourne: Henry Tolman Dwight, 1864), 10.

104. William Cronon, Changes in the Land: Indians, Colonists, and the Ecology of New England (New York: Hill and Wang, 1983), 19-33.

105. Donald Worster, Nature's Economy: A History of Ecological Ideas (Cambridge: Cambridge University Press, second edition, 1994), 27.

106. Worster, 55.

107. Kramer, 239.

108. Sreenivasan, 143.

109. Donald Moodie quoted in van der Merwe, 324-5.

110. Manfred Nathan, The Voortrekkers of South Africa: From Earliest Times to the Foundations of the Republic (London: Gordon and Gotch, 1937), 149; Meintjes, 225.

111. Europeans were also assisted in their colonization efforts by the biota that they imported from home, and their resistance to assorted diseases that accompanied them. See Alfred Crosby and Jared Diamond.

112. On the decline of biodiversity, see Edward O. Wilson, The Diversity of Life (Cambridge: Belknap Press of Harvard University press, 1992), 215-80.