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Aboriginal Societies and the Common Law

The Cambridge Companion to the Rule of Law
The Cambridge Legal History of Australia

ROSS BOND

Territorial Rights Taylor & Francis
How the imposition of Crown rule across the British Empire during the Age of Revolution corroded the rights of British subjects and laid the foundations of the modern police state. During the eighteenth and nineteenth centuries, the British Empire responded to numerous crises in its colonies, from North America to Jamaica, Bengal to New South Wales. This was the Age of Revolution, and the Crown, through colonial governors, tested an array of coercive peacekeeping methods in a desperate effort to maintain control. In the process these leaders transformed what it meant to be a British subject. In the decades after the American Revolution, colonial legal regimes were transformed as the kingÕs representatives ruled new colonies with an increasingly heavy hand. These new autocratic regimes blurred the lines between the rule of law and the rule of the sword. Safeguards of liberty and justice, developed in the wake of the Glorious Revolution, were eroded while exacting obedience and imposing order became the focus of colonial governance. In the process, many constitutional principles of empire were subordinated to a single, overarching rule: where necessary, colonial law could diverge from metropolitan law. Within decades of the American Revolution, Lisa Ford shows, the rights claimed by American rebels became unthinkable in the British Empire. Some colonial subjects fought back but, in the empire, the real winner of the American Revolution was the king. In tracing the dramatic growth of colonial executive power and the increasing deployment of arbitrary policing and military violence to maintain order, The KingÕs Peace provides important lessons on the relationship between peacekeeping, sovereignty, and political subjectivityÑlessons that illuminate contemporary debates over the imbalance between liberty and security.
On Being Here to Stay Springer
To the Uttermost Parts of the Earth shows the vital role played by legal imagination in the formation of the international order during 1300–1870. It discusses how European statehood arose during early modernity as a locally specific combination of ideas about sovereign power and property rights, and how those ideas expanded to structure the formation of European empires and consolidate modern international relations. By connecting the development of legal thinking with the history of political thought and by showing the gradual rise of economic analysis into predominance, the author argues that legal ideas from different European legal systems - Spanish, French, English and German - have played a prominent role in the history of global power. This history has emerged in imaginative ways to combine public and private power, sovereignty and property. The book will appeal to readers crossing conventional limits between international law, international relations, history of political thought, jurisprudence and legal history.
Settler Sovereignty UBC Press
Over the past two decades Global Legal Pluralism has become one of the leading analytical frameworks for understanding and conceptualizing law in the 21st century. Wherever one looks, there is conflict among multiple legal regimes. Some of these regimes are state-based, some are built and maintained by non-state actors, some fall within the purview of local authorities and jurisdictional entities, and some involve international courts, tribunals, and arbitral bodies, and regulatory organizations. Global Legal Pluralism has provided, first and foremost, a set of useful analytical tools for describing this conflict among legal and quasi-legal systems. At the same time, some pluralists have also ventured in a more normative direction, suggesting that legal systems might sometimes purposely create legal procedures, institutions, and practices that encourage interaction among multiple communities. These scholars argue that pluralist approaches can help foster more shared participation in the practices of law, more dialogue across difference, and more respect for diversity without requiring assimilation and uniformity. Despite the veritable explosion of scholarly work on legal pluralism, conflicts of law, soft law, global constitutionalism, the relationships among relative authorities, transnational migration, and the fragmentation and reinforcement of territorial boundaries, no single work has sought to bring together these various scholarly strands, place them into dialogue with each other, or connect them with the foundational legal pluralism research produced by historians, anthropologists, and political theorists. Paul Schiff Berman, one of the world's leading theorists of Global Legal Pluralism, has gathered over 40 diverse authors from multiple countries and multiple scholarly disciplines to touch on nearly every area of legal pluralism research, offering defenses, critiques, and applications of legal pluralism to 21st-century legal analysis. Berman also provides introductions to every part of the book, helping to frame the various approaches and perspectives. The result is the first comprehensive review of Global Legal Pluralism scholarship ever produced. This book will be a must-have for scholars and students seeking to understand the insights of legal pluralism to contemporary debates about law. At the same time, this volume will help energize and engage the field of Global Legal Pluralism and push this scholarly trajectory forward into another two decades of innovation.
Harvard Historical Studies Routledge
In the 1930s, a series of crises transformed relationships between settlers and Aboriginal people in Australia’s Northern Territory. By the late 1930s, Australian settlers were coming to understand the Northern Territory as a colonial formation requiring a new form of government. Responding to crises of social reproduction, public power, and legitimacy, they re-thought the scope of settler colonial government by drawing on both the art of indirect rule and on a representational economy of Indigenous elimination to develop a new political dispensation that sought to incorporate and consume Indigenous production and sovereignties. This book locates Aboriginal history within imperial history, situating the settler colonial politics of Indigeneity in a broader governmental context.
The Extraterritoriality of Law Springer
The Routledge Handbook of the History of Settler Colonialism examines the global history of settler colonialism as a distinct mode of domination from ancient times to the present day. It explores the ways in which new polities were established in freshly discovered ‘New Worlds’, and covers the history of many

countries, including Australia, New Zealand, Israel, Japan, South Africa, Liberia, Algeria, Canada, and the USA. Chronologically as well as geographically wide-reaching, this volume focuses on an extensive array of topics and regions ranging from settler colonialism in the Neo-Assyrian and Roman empires, to relationships between indigenes and newcomers in New Spain and the early Mexican republic, to the settler-dominated polities of Africa during the twentieth century. Its twenty-nine inter-disciplinary chapters focus on single colonies or on regional developments that straddle the borders of present-day states, on successful settlements that would go on to become powerful settler nations, on failed settler colonies, and on the historiographies of these experiences. Taking a fundamentally international approach to the topic, this book analyses the varied experiences of settler colonialism in countries around the world. With a synthesizing yet original introduction, this is a landmark contribution to the emerging field of settler colonial studies and will be a valuable resource for anyone interested in the global history of imperialism and colonialism.

Ekklesia University of Chicago Press

Mistress of everything examines how indigenous people across Britain's settler colonies engaged with Queen Victoria in their lives and predicaments, incorporated her into their political repertoires, and implicated her as they sought redress for the effects of imperial expansion during her long reign. It draws together empirically rich studies from Canada, Australia, New Zealand and Southern Africa, to provide scope for comparative and transnational analysis. The book includes chapters on a Maori visit to Queen Victoria in 1863, meetings between African leaders and the Queen's son Prince Alfred in 1860, gift-giving in the Queen's name on colonial frontiers in Canada and Australia, and Maori women's references to Queen Victoria in support of their own chiefly status and rights. The collection offers an innovative approach to interpreting and including indigenous perspectives within broader histories of British imperialism and settler colonialism.

Settler Sovereignty Harvard University Press

Although settler colonialism is a deeply entrenched structural problem, Indigenous peoples have always resisted it and sought to protect their land, sovereignty, and treaties. Some settlers have aimed to support Indigenous peoples in these struggles. This book examines what happens when settlers engage with and attempt to transform settler colonial systems. What does 'decolonizing' action look like? What roles can settlers play? What challenges, complexities, and barriers arise? And what opportunities and possibilities emerge? The authors emphasize the need for settlers to develop long-term relationships of accountability with Indigenous peoples and the land, participate in meaningful dialogue, and respect Indigenous laws and jurisdiction. Writing from multiple disciplinary lenses, and focusing on diverse research settings, from Turtle Island (North America) to Palestine, the authors show that transforming settler colonial relations and consciousness is an ongoing, iterative, and unsettling process that occurs through social justice-focused action, critical self-reflection, and dynamic-yet-committed relationships with Indigenous peoples. This book was originally published as a special issue of Settler Colonial Studies.

Fragile Settlements Routledge

Fragile Settlements compares the processes by which British colonial authority was asserted over Indigenous peoples in south-west Australia and Prairie Canada from the 1830s to the early twentieth century. At the start of this period, in a humanitarian response to settlers' increased demand for land, Britain's Colonial Office moved to protect Indigenous peoples by making them subjects under British law. This book highlights the parallels and divergences between these connected British frontiers by examining how colonial actors and institutions interpreted and applied the principle of law in their interaction with Indigenous peoples "on the ground."

Mohawk Interruptus U of Minnesota Press

Examines the rising numbers of free settlers from the 1820s to the 1860s, their dependence on Aboriginal, immigrant, and convict under-paid laborers, and the slow development of representative government.

Critically Sovereign Oxford University Press

A meticulous and thought-provoking look at how Tribes use language to engage in "cooperation without submission." It is well-known that there is a complicated relationship between Native American Tribes and the US government. Relations between Tribes and the federal government are dominated by the principle that the government is supposed to engage in meaningful consultations with the tribes about issues that affect them. In Cooperation without Submission, Justin B. Richland, an associate justice of the Hopi Appellate Court and ethnographer, closely examines the language employed by both Tribes and government agencies in over eighty hours of meetings between the two. Richland shows how Tribes conduct these meetings using language that demonstrates their commitment to nation-to-nation interdependency, while federal agents appear to approach these consultations with the assumption that federal law is supreme and ultimately authoritative. In other words, Native American Tribes see themselves as nations with some degree of independence, entitled to recognition of their sovereignty over Tribal lands, while the federal government acts to limit that authority. In this vital book, Richland sheds light on the ways the Tribes use their language to engage in "cooperation without submission."

Native Americans and the Supreme Court Edward Elgar Publishing

What, other than numbers and power, justifies Canada's assertion of sovereignty and jurisdiction over the country's vast territory? Why should Canada's original inhabitants have to ask for rights to what was their land when non-Aboriginal people first arrived? The question lurks behind every court judgment on Indigenous rights, every demand that treaty obligations be fulfilled, and every land-claims negotiation. Addressing these questions has occupied anthropologist Michael Asch for nearly thirty years. In On Being Here to Stay, Asch retells the story of Canada with a focus on the relationship between First Nations and settlers. Asch proposes a way forward based on respecting the "spirit and intent" of treaties negotiated at the time of Confederation, through which, he argues, First Nations and settlers can establish an ethical way for both communities to be here to stay.

Sovereignty Routledge

Ekklesia: Three Inquiries in Church and State offers a New World rejoinder to the largely Europe-centered academic discourse on church and state. In contrast to what is often assumed, in the Americas the relationship between church and state has not been one of freedom or separation but one of unstable and adaptable collusion. Ekklesia sees in the settler states of North and South America alternative patterns of conjoined religious and political power, patterns resulting from the undertow of other gods, other peoples, and other claims to sovereignty. These local challenges have led to a continuously contested attempt to realize a church-

minded state, a state-minded church, and the systems that develop in their concert. The shifting borders of their separation and the episodic conjoining of church and state took new forms in both theory and practice. The first of a closely linked trio of essays is by Paul Johnson, and offers a new interpretation of the Brazilian community gathered at Canudos and its massacre in 1896–97, carried out as a joint churchstate mission and spectacle. In the second essay, Pamela Klassen argues that the colonial churchstate relationship of Canada came into being through local and national practices that emerged as Indigenous nations responded to and resisted becoming “possessions” of colonial British America. Finally, Winnifred Sullivan’s essay begins with reflection on the increased effort within the United States to ban Bibles and scriptural references from death penalty courtrooms and jury rooms; she follows with a consideration of the political theological pressure thereby placed on the jury that decides between life and death. Through these three inquiries, Ekklesia takes up the familiar topos of “church and state” in order to render it strange.

A Search for Sovereignty ANU Press

In a brilliant comparative study of law and imperialism, Lisa Ford argues that modern settler sovereignty emerged when settlers in North America and Australia defined indigenous theft and violence as crime. This occurred, not at the moment of settlement or federation, but in the second quarter of the nineteenth century when notions of statehood, sovereignty, empire, and civilization were in rapid, global flux. Ford traces the emergence of modern settler sovereignty in everyday contests between settlers and indigenous people in early national Georgia and the colony of New South Wales. In both places before 1820, most settlers and indigenous people understood their conflicts as war, resolved disputes with diplomacy, and relied on shared notions like reciprocity and retaliation to address frontier theft and violence. This legal pluralism, however, was under stress as new, global statecraft linked sovereignty to the exercise of perfect territorial jurisdiction. In Georgia, New South Wales, and elsewhere, settler sovereignty emerged when, at the same time in history, settlers rejected legal pluralism and moved to control or remove indigenous peoples.

The KingÕs Peace Routledge

This local history of Griqua Philippolis (1824-1862) and Afrikaner Orania (1990-2013) gets at the crux of the ever-pertinent land question in South Africa. Identifying the many layers of dispossession definitive of the South African past, the book presents a provocative new argument about land rights and the residues of settler colonialism.

Mistress of everything Manchester University Press

Although Native Americans have been subjugated by every American government since The Founding, they have persevered and, in some cases, thrived. What explains the existence of separate, semi-sovereign nations within the larger American nation? In large part it has been victories won at the Supreme Court that have preserved the opportunity for Native Americans to ‘make their own laws and be ruled by them.’ The Supreme Court could have gone further, creating truly sovereign nations with whom the United States could have negotiated on an equal basis. The Supreme Court could also have done away with tribes and tribalism with the stroke of a pen. Instead, the Court set a compromise course, declaring tribes not fully sovereign but also something far more than a mere social club.

The Routledge Handbook of the History of Settler Colonialism Cambridge University Press

Critically Sovereign traces the ways in which gender is inextricably a part of Indigenous politics and U.S. and Canadian imperialism and colonialism. The contributors show how gender, sexuality, and feminism work as co-productive forces of Native American and Indigenous sovereignty, self-determination, and epistemology. Several essays use a range of literary and legal texts to analyze the production of colonial space, the biopolitics of “Indianness,” and the collisions and collusions between queer theory and colonialism within Indigenous studies. Others address the U.S. government’s criminalization of traditional forms of Diné marriage and sexuality, the Iñupiat people's changing conceptions of masculinity as they embrace the processes of globalization, Hawai‘i’s same-sex marriage bill, and stories of Indigenous women falling in love with non-human beings such as animals, plants, and stars. Following the politics of gender, sexuality, and feminism across these diverse historical and cultural contexts, the contributors question and reframe the thinking about Indigenous knowledge, nationhood, citizenship, history, identity, belonging, and the possibilities for a decolonial future. Contributors. Jodi A. Byrd, Joanne Barker, Jennifer Nez Denetdale, Mishuana Goeman, J. Kehaulani Kauanui, Melissa K. Nelson, Jessica Bissett Perea, Mark Rifkin

Settler Society in the Australian Colonies Routledge

This book describes the encounter between the common law legal system and the tribal peoples of North America and Australasia. It is a history of the role of anglophone law in managing relations between the British settlers and indigenous peoples from colonial foundation to the end of the Twentieth century. The historical basis of relations is described through the enduring, but constantly shifting questions of sovereignty, status and, more recently, self-determination.

Settler Common Sense Duke University Press

An investigation into how indigenous rights are conceived in legal language and doctrine In the twenty-first century, it is politically and legally commonplace that indigenous communities go to court to assert their rights against the postcolonial nation-state in which they reside. But upon closer examination, this constellation is far from straightforward. Indigenous communities make their claims as independent entities, governed by their own laws. And yet, they bring a case before the court of another sovereign, subjecting themselves to its foreign rule of law. According to Jonas Bens, when native communities enter into legal relationships with postcolonial nation-states, they "become indigenous." Indigenous communities define themselves as separated from the settler nation-state and insist that their rights originate from within their own system of laws. At the same time, indigenous communities must argue that they are incorporated in the settler nation-state to be able to use its judiciary to enforce these rights. As such, they are simultaneously included into and excluded from the state. Tracing how the indigenous paradox is inscribed into the law by investigating several indigenous rights cases in the Americas, from the early nineteenth century to the early twenty-first, Bens illustrates how indigenous communities have managed—and continue to manage—to navigate this paradox by developing lines of legal reasoning that mobilize the concepts of sovereignty and culture. Bens argues that understanding indigeneity as a paradoxical formation sheds light on pressing questions concerning the role of legal pluralism and shared sovereignty in contemporary multicultural societies.

Grounded Authority University of Chicago Press

From 1840 to 1852, the Crown Colony period, the British

attempted to impose their own law on New Zealand. In theory Maori, as subjects of the Queen, were to be ruled by British law. But in fact, outside the small, isolated, British settlements, most Maori and many settlers lived according to tikanga. How then were Maori to be brought under British law? Influenced by the idea of exceptional laws that was circulating in the Empire, the colonial authorities set out to craft new regimes and new courts through which Maori would be encouraged to forsake tikanga and to take up the laws of the settlers. Shaunnagh Dorsett examines the shape that exceptional laws took in New Zealand, the ways they influenced institutional design and the engagement of Maori with those new institutions, particularly through the lowest courts in the land. It is in the everyday micro-encounters of Maori and the new British institutions that the beginnings of the displacement of tikanga and the imposition of British law can be seen. Juridical Encounters presents one of the first detailed studies of the interactions of an indigenous people in an Anglo-settler colony with the new British courts. By recovering Maori juridical encounters at a formative moment of New Zealand law and life, Dorsett reveals much about our law and our history.

Pathways of Settler Decolonization Cambridge University Press

This book investigates whether and how reconciliation in Australia and other settler colonial societies might connect to the attitudes of non-Indigenous people in ways that promote a deeper engagement with Indigenous needs and aspirations. It explores concepts and practices of reconciliation, considering the structural and attitudinal limits to such efforts in settler colonial countries. Bringing together contributions by the world's leading experts on settler colonialism and the politics of reconciliation, it complements current research approaches to the problems of responsibility and engagement between Aboriginal and non-Aboriginal peoples.