The Land, the Sea, and the Colonial Production of Space within the Anglo/British Empire

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Abstract:
The manufacturing of colonial legal spatialities in the Age of Discovery has traditionally been studied by historians, human geographers, and cartographers. Seldom have legal scholars examined it. This essay aims to fill the gap in legal research and assesses processes of spatial production that took place in colonies by adopting a legal-geographical approach. Special attention is paid to how the English, and later British Empires manufactured both terrestrial and oceanic spaces. The essay maintains that, within what this article calls the 'Anglo/British Empire', the integrated geographies of land and sea were facilitated by some intrinsic qualities of the English common law. Its legal coding devised a holistic approach that captured the whole earth even beyond the divide between land and sea.

Keywords: Comparative Law, Legal Geography, Spatial Production, Age of Discovery, Anglo/British Empire, British Colonial Legal Places, Common Law, Oceanic Spaces.

> They also that dwell in the uttermost parts are afraid at thy tokens**:**
> thou makest the outgoings of the morning and evening to rejoice.
> *Psalm* 65:8

In *Property, territory, and colonialism*, Henry Jones brings us back to the onset of the English colonial enterprise. On 5 August 1583, the English

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Legalities 4.1 (2024): 43–67
DOI: 10.3366/legal.2024.0064

www.euppublishing.com/legal

explorer Sir Humphrey Gilbert (1539 ca.–1583) landed on a site that would develop into St John's Harbour, the capital of Newfoundland (Jones 2019, 187). Gilbert claimed this portion of North America for his country with a 'a symbolic act of possession' (Quinn 1985, 8). The event was by no means productive; no permanent population settled there. To make matters worse, on September 9th 1583, Gilbert's ship sank near the Azores during his return voyage, causing him to be lost at sea (Edwards 1992, 272; Probasco 2020).

Despite its unhappy ending, Gilbert's enterprise was a remarkable *cross-disciplinary achievement*, interweaving political, legal, and geographical issues. From a political perspective, exercising English rights of possession over Newfoundland was part of the 'politics of spaces' (Gordon and Klein 2001, 5) pursued by the Europeans since the dawn of the Age of Discovery. It was also a geopolitical struggle, where the law played a pivotal role in constructing a 'variegated colonial world' (Benton 2010, 3). Indeed, Gilbert went to sea legally equipped with letters patent issued by Elizabeth I for colonisation. This allowed him to 'hold, occupy & enjoy … all the soyle of all such lands, countries, & territories so to be discovered or possessed … with ful power to dispose thereof, & of every part thereof in fee simple or otherwise, according to the order of the laws of England'.[1]

Geography also interplayed with the expedition. Gilbert had a navigation chart redacted by John Dee (1527–1608). A mathematician, astronomer, geographer, and Queen's magician, Dee was a staunch 'promoter of English imperialism' (Cormack 2001, 47), credited for having employed the term 'empire' with its colonial connotation for the first time. Gilbert also brought several surveyors with him; measuring the territory was indeed vital for both transforming 'unowned land into private property' and politically controlling North American territories (Jones 2019, 187 and 195).

CROSS-DISCIPLINARY ACHIEVEMENTS: IMPERIAL LEGAL GEOGRAPHIES

Jones locates Gilbert's letters patent, with their grant of fee simple ownership, within the Imperial development of English land law. Experimenting with 'practices of private property' in colonial settlings before bringing them back to the mother country was functional to the 'legal creation of private property' and 'the formation of the modern state' (Jones 2019, 202, 187–188; see also Byer 2023). Jones grasps the legal-geographical implications of Gilbert's surveying the land; 'property and territory are both historically produced practices for ordering space' (Jones 2019, 194).

This article further explores this predicament by navigating the connections between geography and the law. It examines how, at the onset of the colonial enterprise, practices of private property contributed to the production of legal spaces (Stock 2015). Like Gilbert's, mine is a cross-disciplinary experiment. Yet, the manufacturing of imperial spatialities has traditionally been examined by historians (also legal historians), human geographers, and cartographers. Seldom have legal scholars addressed how colonies were turned into legal spaces. As lawyers, we are keenly interested in the legal implications of westernising the world, focusing on intercolonial transfers, acquisition of territories (whether by settlement, cession, conquest, and annexation), transplants, and mixing of legal systems in conquered and settled colonies. The lack of legal analyses is even more puzzling, bearing in mind that geographical features were often 'creatively combined with discourses about the law and with reports about patterns of legal practice' in colonial environments (Benton 2010, 7).

This article acknowledges that concepts such as 'production of space' may prevent legal scholars from engaging with the topic under scrutiny. This expression points to the 'spatial turn' that took place in geography in the late twentieth century. Clearly, the stance was cross-disciplinary, and space was conceived as 'a (social) product' (Lefebvre 1991, 26) made up of sundry variables (social, political, and geographical: see e.g., Soja 1989; Massey 2005; Dorsett and McVeigh 2012, 98). Reducing the law to a geographical practice may indeed be unpalatable also for legal scholars actively involved in cross-disciplinary research.

Among legal studies, comparative law is well-equipped for assessing the law as a spatial practice. Firstly, it has cross-disciplinary ambitions disengaging the law from formalistic and textual approaches (Husa 2022). Secondly, it shows attentiveness to operational rules beyond the written law (Kedar 2014; Spencer 2020). Thirdly, its methodology is suitable for cross-disciplinary research because it possesses an *empirical* and 'problem-based approach' (Siems 2022, 32). Finally, it grasps the 'deep structure of the law' (Legrand 1996, 55–66), ascertaining how social, economic, and historical aspects affect its meaning. In other words, it discloses the 'deep connection' between the law and its cultural contexts (Watt 2012, 84).

Comparative law helps us to reassess the special relationship between law and geography in cross-disciplinary terms. Together with (especially critical) human geography, it contributes to the 'truly interdisciplinary intellectual project' which is legal geography (Braverman et al. 2014, 1; see also Blomley 1994; Delaney 2010, 2015, and 2017; Bartel and Cartel 2021; Nicolini 2022). This project examines how power, space, place, and

law are mutually constitutive. The law is first and foremost a performative practice creating spaces whose meaning is pragmatically enriched by socio-geographical contexts. Space is, on its own, *also* manufactured through legal practices.

This article fills the gap in current legal research and actively engages with the production of legal spaces. It examines the processes of spatial production implicated in the creation of colonial legal spaces in the Age of Discovery (section 2): the law of spatiality (section 3) and the spatiality of law (section 4). It then analyses how they were applied within the Anglo/British Empire (section 5), where spatial production was extended to oceans, the navigation of which connected Imperial territories across the globe. The term 'Anglo/British Empire' is here used to designate the Empire both before and after the Act of Union (1707). In signalling that the Empire was originally 'English' and, subsequently, 'British', the label also captures its ability to extend its authority both *into* and *onto* the oceans (section 6). This was a legal geographical endeavour, because, 'by definition, there could be no territorial control of the oceans' – at least 'not in the ways conventionally imagined' (Benton 2010, xi).

In searching for a new paradigm integrating terrestrial and maritime spaces, the article assumes that these processes were facilitated by the intrinsic qualities of the English common law. It devised a holistic approach, capable of capturing the spatiality of the whole earth. In crossing the divide between the geographies of land and sea, the creation of Imperial legal geographies was the outcome of the intertwining of religious, legal, and imaginative geographical practices in early modern England. Integrating land and sea thus represented a further cross-disciplinary achievement (section 7).

THE AGE OF DISCOVERY AS SPATIAL PRODUCTION

The descriptor 'Age of Discovery' points to the interweaving of voyages and explorations that led to the expansion of European geographies of power through the world in the fifteenth and sixteenth centuries (Parry 1981; Livingstone 1992, 32 and 41–54). This age marked the dawn of European colonialism during which the interactions between law and geography secured the superiority of the West over the rest of the world. Moving 'itself outwards, [Europe's] sense of cultural', as well as political, 'strength was fortified' (Said [1978] 2003, 117). Non-Western legal traditions still bear the consequences of these interactions. Their pre-colonial past was erased and their legal systems buried. The practice of settler colonialism sought to 'eliminate the native presence from the land

… to build a settler society' by replacing native law and land titles with European processes of legal (and spatial) production (Bhungalia 2018, 314; see also Wolfe 1999 and Kedar 2003). The imposition of Western law simplified their human and physical geographies, reducing their complexity to a simple picture by stripping away whatever was ideologically useless or dangerous for the purposes of colonial spatial production.

Europe 'essentialised', and thereby misrepresented the rest of the world (Driver 2001, 7). To demonstrate their legal-cultural superiority, colonial powers projected their Western imaginaries onto the whole earth. This is patent in the celebration of João III of Portugal's 'politico-legal' marriage with Catherine of Habsburg (i.e. Charles V's sister). The King commissioned a 'series of lavish tapestries entitled the *Spheres*' (1525), the last of which epitomised the Eurocentric geography of the Age of Discovery and 'the sweep of territory and ocean stretching eastwards through Africa, the Indian Ocean and Southeast Asia, curving back towards Europe through the Red Sea and into the Mediterranean world and Central Asia'. On these territories, João 'claimed entitlement' (Brotton 2018, 13; on the tapestries see Gschwend 1995, 8).

Essentialising geographical knowledge required physical, imaginative, and political land appropriation. Geography had to be rewritten, and the earth mapped again. It was also necessary to discover new territories. Magellan, Vespucci, da Gama, Drake, Rodríguez Cabrillo, Tasman, and Cook – to mention just a few – opened new navigational routes. We shall never know what Bartolomeu Días felt when rounding the Cape of Good Hope in 1488. Nor shall we experience what, whilst crossing the isthmus of Panama in 1513, Vasco Núñez de Balboa felt when setting 'his eyes for the first time upon the ocean the immensity of which he did not suspect and which in his elation he named the Pacific' (Conrad 1924, 243; Seed 1995, 116–120). The same is valid for both Vasco da Gama's landing in India in 1497 and Ferdinand Magellan's navigation through his eponymous strait in South America. As the major European powers, the Spaniards, the Portuguese, the English, and the Dutch accommodated newly discovered territories into a new political order made visible through maps. Yet, the Age of Discovery also required a new spatial order. As a consequence, the production of new legal spaces soon ensued.

DISCOVERING TERRITORIES AND PRODUCING PHYSICAL GEOGRAPHY: THE LAW OF SPATIALITY

The Age of Discovery marked several legal geographical transitions, particularly from Mediterranean to oceanic spaces and from unchartered horizons to newly discovered territories located overseas. Spatial

production entailed 'both opening and later closing' territories discovered and acquired by the Europeans (Harley 1988a). The opening of territories caused world geography to be remapped through law and cartography. European powers arranged world knowledge in ways that fit into their conceptual framework, i.e. one of legal and cultural superiority whereby the world might be ordered. I label this process of spatial production 'law of spatiality', since it refers to how physical geographical features acquire significance, i.e. are rewritten, through the law. Under no circumstances is geography 'a simple matter of bare facts'; in manufacturing it, political power exercises an 'imaginative leap' (Bennett 2008, 7).

With a good dose of imagination, it governs spatiality by considering both physical-human geographical variables alike and the new meaning that is assigned to them. This meaning refers not to the ontology of physical features, but to their representation; not to their 'essence', but to their 'existence'. Features are already present in nature; what power does is to 'reshuffle [them] in space', transforming 'the natural environment into a cultural environment' (Kristof 1959, 275). This new meaning still conveys the idea that physical geography reflects a 'neutral' reality. In so doing, the geo-political discourse naturalises the new meaning, turning the political appropriation of physical geography into 'common sense'. It is, in sum, a new ontology proposed to normalise the spatial reshuffling, which comes into existence when it finds its place on the map. *This is* a mountain, a watershed, and a river, our maps say, because we have ideologically probed these physical elements by making them part of our own politico-legal decision (Wood 2010, 56–57).

When European colonial powers gained control of world knowledge, they normalised their own new world representation, applying these canons of legal-geographical spatial construction. Not only did they process new physical environments, but they also coded them through the law. Their legal consideration justified spatial construction by making a deliberate use of it. Geography, cartography, and the law supplied European powers with the practical knowledge they needed to manufacture their own legal spatialities and 'naturalise [their] particular representations of the world' (Nayak and Jeffrey 2011, 240). The law of spatiality was favoured by a further cultural-cum-scientific transition. Moving from the Middle Ages to the Age of Discovery meant shifting from the 'extravagant speculation' and 'imaginary kingdoms' of *Geography Fabulous* to the discoveries of *Geography Militant* with its related spatial manufacturing (Conrad 1924, 241). Again, the Portuguese undertook their first Atlantic expeditions in the fifteenth century. They had before them 'open seas that had rarely been navigated before

the fourteenth century', also disclosing 'an interconnected world … beyond the familiar waters of the Mediterranean' (Abulafia 2020, 483). The mysteries of Africa, the fascination of India, and the bonanza of the 'spice-producing islands of Moluccas' prompted immediate geographical assimilation (Brotton 2018, 15).

The Portuguese populated the earth's surface with a variety of legal spaces. Cartography supplied an extremely functional tool in the form of portolan charts, i.e. accurate and precise geographical maps based on an unrivalled level of geometric measurement (Nicolai 2015). Their accuracy was valuable during the progressive opening of navigation and seaborne trade beyond the Pillars of Hercules. They annotated new coasts and locales on the maps, adding 'a bit of truth here and a bit of truth there' (Conrad 1924, 243), storing concrete practical information and, at the same time, shaping spaces that were closer to reality. Physical, human, and imaginative geographies were reshuffled. In particular, spaces were processed at the same time as they were discovered. Discoveries, spatial reshuffling, and legal coding went hand in hand. The Portuguese equivalent of discovery, i.e. *descobrimento*, has this connotation but also refers to the related process of spatial production (Brotton 2018, 72; Seed 1995, 129).

PROCESSING COLONIAL LEGAL GEOGRAPHIES: THE SPATIALITY OF LAW

The Portuguese were not alone in making *Geography Militant*. Several European powers reimagined spaces for new purposes, discovering, surveying, and renaming them (on the practice of surveying in early modern England see Blomley 2003, 33). In the Americas, for example, the Spaniards 'symbolically invented a "New Spain" to be visualized, possessed, and controlled' (Craib 2000, 17). Likewise, the English navigated north (towards the Americas) and south in search of *Terra Australis Incognita*. The mythical southern continent stirred up their imagination. Its label became 'the most promising words ever written on the maps of human knowledge' (Boorstin 1983, xvi Abulafia 2020, 727–744) acting as the 'driving force behind the voyages of discovery' (Livingstone 1992, 35). New scientific knowledge coalesced towards the commercial opportunities favoured by these geographical imaginaries and expeditions. In the eighteenth century, Cook's first (1768–1771) and second expeditions (1772–1775) had, among their objectives, the discovery of new lands and the making of observations 'as may be useful either to Navigation or Commerce' (Williams 1996).

Yet, the English 'were late in the field compared to Spain and Portugal'. In partitioning the world between these two Catholic powers, the 1493 Papal Bulls *Inter Caetera* must have 'greatly discouraged exploration' (Egerton 1897, 14; Tomlins 2001, 318–319). The English Reformation gave impetus to navigation also for geopolitical reasons. It was necessary to 'alert the nation and the state to the advantage that their Spanish counterparts had gained over them through transoceanic exploits'. Continental trading networks had to be circumvented through 'direct trading connections with Asia and to exploit whatever opportunities existed in America'. A 'spectacular expansion in trade' soon ensued (Canny 2001, 4). A group of geographers, country gentlemen, and militant Protestants stimulated the English navigational enterprise. We shall see that, in the aftermath of the Reformation, the anti-papal English no longer held to any pontifical claims to be God's representative on Earth. Consequently, they explored the Earth acting upon direct divine mandate without the geographical limitations set by the Bulls. This resulted in the appropriation of heathen 'sundry rich and unknown lands … fatally, and it seemeth by Gods providence, reserved for England and for the honor of her Majesty'[2]. Among the supporters of the enterprise, it goes without saying, we find Sir John Dee and Gilbert Humphrey, whose unhappy history I have already mentioned.

Appropriating these territories was functional to the second step mentioned above, that of closing territories. This triggered a new process of spatial production, i.e. the spatiality of law, which addresses the importance of physical, human, and imaginative geographies when manufacturing legal systems. The law 'was … the principal instrument by means of which newly acquired territories … met Europe's domination over the rest of the world' (Patton 2000, 26). This progressively led to the discovery of new spaces culminating with that of the last earth's landmass, i.e. Antarctica (1820), thus 'closing' all territories. Mapping these spaces here is Conrad's *Geography Triumphant* (Conrad 1924, 242), a text which is 'triumphant' precisely because it conveyed a cartographic visualisation of the legal systems of the world. The West gained the global politics of place; by virtue of its legal traditions, it imposed their allegedly superior *legitimacy* over other non-Western ones, rearranging colonial spaces through its own culture-specific 'legal frame' (Halpérin 2009). It goes without saying that the use of the verb 'to impose' here hints at the idea of power and force. The global politics of spaces was indeed gained by force accompanied any legal enactments and legal performances. Power laid behind the law, which explains how European powers reshaped African, American, Oceanian, and Asian legal cartographies, westernised the rest of the world, thus legally appropriating space for radically new purposes.

The newly discovered territories were encoded with the superior principles of Western legal civilisation. The infusion of non-Western contexts varied enormously. The Americas were completely reshuffled. Barely inhabited, the continent was 'populated by Indians weakly organized in polities without proper rules and likely to be Christianized'. The presence of highly civilised groups in Asia, by contrast, made the Europeans understand 'rather quickly that they could not evangelize all these people'. Their subjugation was to be attained through legal coding of their human geography, which transformed 'social norms, which were not binding rules before the local courts, into law' (Halpérin 2009, 342). In Africa, Europeans forged new institutions whereby African societies could be both governed and 'civilised': chiefs, tribes, and customary courts are 'invented traditions', which 'became in themselves realities through which a good deal of colonial encounter was expressed' (Ranger 1983, 211 and 212).

The process was so grandiose that it still determines how legal systems are displayed on maps. It also explains why comparative law traditionally focused (and still focuses) on the similarities between former colonies and Western legal systems. By emphasising legal-colonial links, scholars rank French, Spanish, Portuguese, Dutch, and Italian former colonies among the civil-law legal systems; former British colonies and protectorates are ascribed to the common-law tradition, whereas countries with a mixed colonial past join the mixed jurisdictions (Zimmermann and Visser 1996, 7–8). The thorough application of European legal encoding had the 'material effect' of outlining depopulated spaces to be subsequently arranged to comply with 'Western beliefs' (Gordon and Klein 2001, 1). As a result, these territories became meaningful spaces for the Europeans, both culturally and legally. Once cordoned off, the non-Western world was essentialised and reduced to 'cartographic silence' (Harley 1988b, 57). It was a clear (albeit implicit) statement of the inferiority of these legal geographies, whose features hardly squared with Western legal mentality and policies.

MANUFACTURING LEGAL SPACES IN THE ANGLO/BRITISH EMPIRE

Among the European empire, that of the Anglo/British also navigated the oceans in search of new legal spaces. This article has already noted that the infusion of colonial lands with the principles of the common law reflected the narrative of property, economy, and progress purported by the supporters of English Protestantism. This proprietary narrative represented the 'just' title for the acquisition of colonial lands and

the 'just' indiscriminate dispossession of natives' legal geographies. In reimagining colonial spaces for radically new purposes, the English reshuffled them strategically, either silencing or burying the application of non-European legal traditions. In so doing, they adopted a 'sanitising' posture that concealed their policy of conquest and, for our purposes, of spatial production.

This sanitising posture aimed to prevent colonisers from direct contact with non-European, i.e. inferior cultures, shielding them from the socio-cultural consequences of their multi-racial Empire. The purpose was to avoid what had already occurred at Roanoke Island, which had been mysteriously abandoned by the English well before the creation of Jamestown settlement in 1607. Thomas Harriot 'visited Roanoke Island at the mouth of the Chesapeake' in 1585–1586; he gained some fluency in Algonquian and was able to secure a first settlement there in 1587. The intermixture between colonists and natives led to dismissing the sanitising function of essentialist European thinking. By 1590, the colony had vanished, and the 'English settlers on Roanoke had mysteriously disappeared' (MacMillan, 2006, 3). Though, curiosity 'about the fate of the settlers led to suppositions that they had joined Native Americans and moved to the forests of the interior' (Bailey 2012, 18; Seed 1995, 17).

The only way to avoid what had taken place at Roanoke was to secure the cultural (and legal) superiority of Western civilisation. Through the spatiality of law, the land was materially encoded with English legal paradigms. This was made possible because the landmasses located overseas were considered uninhabited lands – uninhabited, we add, by Christian peoples. Political appropriation justified physical apprehension, inasmuch as non-Christian peoples were 'savage both by dint of their paganism but also by dint of their failure … to cultivate or "improve"' (Tomlins 2011, 335). These people were deprived of their lands; they were 'rightless' as they could not demonstrate that they possessed 'a recognizable legal system' (Bennett 1996, 66 and 68). In English common law (and its Anglo/British colonies), the land was (and still is) vested in the Crown (Egerton 1897, 285). As 'tribal occupation did not rest upon a crown-derived basis', it was 'un-granted land'; tribes did not have any type of 'land right' of which 'a common law court might take cognizance' (McHugh 2011, 111).

A recognisable legal title to the land was found in English private property law based on tenure. This was impressed into the grounds of the colonies by virtue of royal prerogative (MacMillan 2006, 31–34), depriving the Indigenous peoples of their land rights. The rule in *Calvin's case* (1608) was adamant: 'if an uninhabited country be

discovered and planted by English subjects, all the English laws are immediately there in force. For as the law is the birthright of every subject, so wherever they go they carry their laws with them'.[3] In the aftermath of the Age of Discovery, this was the case of the uninhabited settled colony of Australia. Although the common law became 'the law of the territory and of the land' at the very moment of its acquisition, it was applied 'largely on the basis of a person's status, not on the basis of territory' (Dorsett and McVeigh 2012, 102 and 100).[4] The territorial application of the common law was eventually endorsed in *R v Murrell and Bummaree*, that is, only after the Crown had effectively asserted its jurisdiction over the whole of Australia (Dorsett and McVeigh 2012, 101).[5]

An exception was created for those tracts of lands already inhabited, conquered, or occupied by Christian peoples. Whereas the rule in *Calvin's Case* made the common law of England the 'birthright' of colonists, that in *Campbell v Hall* (1774) stated that 'in conquered or ceded countries, that have already laws of their own, the king may indeed alter and change those laws; but, till he does actually change them, the antient laws of the country remain, unless such as are against the law of God, as in the case of an infidel country'.[6]

THE LANDS OF COLONISIERS: IMPRESSING ENGLISH LAW INTO COLONIAL SOILS

Gilbert's letters patent explain how the rule in *Calvin's Case* operated in 'uninhabited' Canada. Surveying the land turned it into territory and then into private property (Taylor 1994). This meant claiming a title to the territory and legally infusing it with the principles of the superior English law. Likewise, in America, the land was encoded with the principles of English mediæval land law. As the process of land appropriation impressed the seal of Westernisation into the fertile grounds of the colonies, these became the lands of the colonisers. Colonial charters allowed the latter to 'describe and pursue claims to American spaces in detail'; and 'America … came predefined, "produced" as English territory by legal documents that created jurisdictions in bounded spaces' (Tomlins 2001, 316). The first charter of Virginia (1606), for example, established that 'all the lands, Tenements, and Hereditaments' were held of the Crown, 'as of our Manor at East-Greenwich, in the County of Kent, in free and common Socage only, and not in Capite' (quoted in Tomlins 2001, 329). This meant that the landholder was not a King's tenant-in-chief (such as in the case the land was held *in capite*); rather, the feudal tenure of land required that the holder pay charges or render other non-military service to the King.

In 1663 Charles II issued a charter making 'a group of eight confidants … proprietors' of Carolina, i.e. a colony 'encompassing what is now most of North Carolina, South Carolina, and Georgia'. Consequently, they were enfeoffed as 'absolute lords' (Jones 2019, 199).[7]

The same holds valid for the French territories in North America acquired with the Treaty of Versailles (1763). Along the St Lawrence River, which was the 'heart' of French colonisation in Canada, the *ancien régime* seigneurial system was introduced in the eighteenth century. This meant transplanting into Québec the feudal adage *Nulle terre sans seigneur* – which styles the radical idea of a private-property-based legal geography. The system survived until 1854, well beyond the attempts to suppress the French-Roman Law (1763)[8] and its abolition during revolutionary France (Grenier 2004). Unsurprisingly, the term used to define English settlements outside England (e.g., in Ireland and America) is 'plantation'. Perhaps most intriguing of all is that it points to both the 'settling of people, usually in a conquered or dominated country' (i.e. 'the planting or establishing of a colony') and the 'action of planting seeds or plants in the ground' (OED). The production of colonial legal spaces was, then, an act of cultivated civilisation. It started in sixteenth-century Ireland, with several attempts to establish plantations in the 'wilderness' laying 'outside the pale [by] enclosing civility, and Protestantism'. The transplant of English law into America followed the same pattern. It was an 'uncultivated landscape: bog, mountains and forests; and the wild Irish and Americans those places contained' (Scott 2011, 17). The gentility that the infusion of the common law impressed into its soil is portrayed in Smith's *A map of Virginia with a description of the certain* (1612): 'In Aprill they begin to plant, but their chiefe plantation is in May'. As an uninhabited country, it had to be cultivated both agriculturally and legally: 'all the English laws then in being … are immediately … in force' in the colonies 'discovered and planted by English subjects.[9] Indeed, the colonisers constructed their right to the land by 'building houses and fences and planting gardens'. In so doing, they created a 'fixed place' that 'under English law created a virtually unassailable right to the land' (Seed 1996, 17). The fence demarcated both the garden (i.e. the bounded politico-legal order) and the plantation, whose crops embedded the economic appropriation of the fruits of the earth according to the newly created legal title.

In other words, the transplant of English property law into the colonies assigned them a new legal-geographical meaning (see also Byer 2023). A new political, social, and proprietary order became visible. In the subsequent centuries, this also triggered the 'aboriginal title doctrine' – or, *mutatis mutandis*, the 'native title doctrine' – developed

by courts in Canada and Australia. I shall not undertake any analysis of its application in several former British colonies and protectorates,[10] which have been (and no doubt continue to be) subject to scholarly examination. My purpose is limited in scope; the basic tenets of English land law are so ingrained in the soil that, to be restored, native titles must precede the advent of the common-law space and must not have been extinguished because of the conquest. The whole truth is that, even when disputes related to aboriginal titles are settled by adopting Crown-Indigenous group agreements, such as in Canada,[11] native groups must 'cede, release and surrender' all Aboriginal, and 'pre-existing', titles and rights to native lands; once surrendered or non-exercised, lands and rights become Crown lands, which First Nations are supposed to hold in fee simple 'as a collective' (Blomley 2015, 172.). Just as in the Age of Discovery, the spatial fabric of the common law invests the Crown with the radical title, triggering the ultimate dispossession of Aboriginal lands. An estate (i.e. an interest in land) is assigned to native groups and fills the land 'with white legal fictions' (Blomley 2015, 171).

The production of legal spaces was also accomplished in different ways. Instead of impressing the seal of English land law into colonial soil, it was also possible to adjust 'the complex of laws that constructed the [land] market' and its conveyance practices to favour British colonisers (Banner 200, 54). This occurred especially after the Age of Discovery when *Terra Australis Incognita* materialised as Australasia. Take Aotearoa New Zealand, where 'the greatest proportion of the land was acquired by contract rather than by conquest' (Banner 200, 47), thus depriving the Māori of their full rights in the land. The Treaty of Waitangi (1840) assigned 'the exclusive right of pre-emption over such lands as the proprietors thereof may be disposed to alienate'; and such lands were sold to settlers. The objective of processing Native titles as Western ones was then pursued under the Native Lands Act 1862 by assimilating their rights to such lands 'as nearly as possible to the ownership of land according to British law'. The Native Land Act 1865 added fuel to the fire, encouraging 'the extinction' of Native 'modes of ownership into titles derived from the Crown'.

It also established the Māori Land Court (a Māori Appellate Court was created in 1894), which dismantled customary tenure of land, following in the footsteps of a 'policy of individualization of customary tenures' that had 'some affinities with parliamentary enclosure in Britain and the abolition of customary tenures in Ireland and Scotland, but also with trends in the United States, Hawaii and Latin America' (Boast 2013, 164). The communal titles were impressed with the seal of Western individualism, giving rise to the so-called Māori freehold land, which is

still reflected in the Torrens system, implemented in 1870 and now regulated under the Land Transfer Act 2017. Māori land titles, which are issued by the Māori Land Court, must therefore be registered to give certainty to the conveyancing process. This type of spatial production is now limited by *Te Ture Whenua Māori*/Māori Land Act 1993, which recognises that 'land is a taonga tuku iho [heritage] of special significance to Māori people'. The Act makes it 'very difficult to alienate Māori freehold land to persons outside the group, to devise by will to persons outside the family, and to change its status from Māori freehold land to general land'. This also makes the utilisation of the land even more complicated. The Act preserves the paternalistic attitudes of the 1862 and 1865 statutes and the superiority of the Western law.

Unsurprisingly, Lord Grey could affirm without hesitation that 'the waste lands of the vast Colonial possessions of the British Empire [were] held by the Crown, as Trustee for the inhabitants of the Empire at large' (quoted in Egerton 1897, 285). Although created in the Age of Discovery, these patterns of overseas tenure are still applied for managing communal land in some former African British colonies. In the aftermath of decolonisation, Western (i.e. individual) land titles were retained and colonial laws regarding customary lands adapted to the African context; land legislation transformed communal lands into public lands, such as in Nigeria, Tanzania, and Ghana. As in England, the land is vested in the Head of State, who acts on behalf of, and holds it in trust for all citizens. Though these citizens cannot own land, they can own rights over it, which in turn may be bought, sold, and inherited.[12]

INTEGRATING LAND AND SEA IN THE LEGAL GEOGRAPHY OF THE EMPIRE

'Every acre of English soil and every proprietary right therein have brought within the compass of a single formula, which may be expressed thus: *Z tenet terram illam de* […] *domino Rege*'. With these words Pollock and Maitland epitomised the tenets of England's mediæval constitutional legal geography (Pollock and Maitland [1895] 1968, I.232). This strong connection between the Crown, land, communities, and the law was transplanted into the colonies. The quality of soil varied enormously; and the tenure system was accommodated accordingly. Being outside the Realm of England, colonial territories were *ultra vires* the 'ordinary prerogative right of the Monarch' and the 'jurisdiction of the common law courts' (MacMillan 2006, 31–32). As the English law was extended by royal prerogative, plantations and overseas colonies were regarded as royal demesne, under the Privy Council's jurisdiction (Howell 1979, 5).

The transplant of English land law was particularly difficult in two cases. The first one relates to British Guyana, a former Dutch colony that retained its Roman-Dutch law substrate after being admitted into the Empire in 1814. The Roman-Dutch law was repealed only in 1917, when the *Civil Law of British Guyana Ordinance 1916* came into force.[13] Its sections 4 (a) and (b) 'expressly preserved the (Roman-Dutch) principle of absolute private ownership in land' and 'the Roman-Dutch law as to mortgages of land and real servitudes' (Ledlie 1917, 219). The 1914 Report of the Common Law Commission for Guyana accounts for this 'exemption': nobody wanted 'to introduce the complicated incidents of (English) real property law' (quoted in Ledlie 1917, 216–217).

The second case refers to oceanic spaces, which, on their own, became integrated into colonial processes of legal-spatial production. Extending the Anglo/British authority both *into* and *onto* the oceans must be understood in terms of legal geographical continuity: in the Age of Discovery, oceanic spaces were not navigable interstices between Eng-land and its (Irish and American) plantations; like these, it was 'a wilderness not only in that it was largely uncultivated', but because it could be legally appropriated with 'the Royal Navy's mastery of the oceans' (Armitage 2000, 101).

The achievement was not as easy as one might suppose. It was necessary to dismiss the 'continental mentality' displayed by Europeans, who perceived 'oceans as distances (or even wastelands) to be traversed' (Scott 2011, 15). The same image of the seas we find in Psalm 107: 25–27, one which acted as a deterrent when Englishmen went to sea:

> For at his word the stormy wind ariseth **:** which lifteth up the waves thereof.
> They are carried up to the heaven, and down again to the deep **:** their soul melteth away because of the trouble.
> They reel to and fro, and stagger like a drunken man **:** and are at their wits' end[14].

In addition, as Carl Schmitt explained in *The Nomos of the Earth*, 'the sea has no *character*, in the original sense of the word, which comes from the Greek [χαράσσειν] *charassein*, meaning to engrave, to scratch, to imprint … On the waves there is nothing but waves' (Schmitt 2003, 42–43).

In supporting colonial enterprises, it was essential to mobilise English society's conservatism: 'although they were, like the Spartans, farmers not sailors' they must 'think of [themselves] as islanders' and Athenians (Scott 2011, 48). How , though, did the process of sea-appropriation work? Was it really possible for the English to apprehend it materially? Maritime spaces, discoveries, and navigation are still functional to land

appropriation. Unbounded oceans paved the way to further territorialised spaces. For example, the 'new earth' beyond the seas turned out to be 'firm land'. The British Empire was made up of several 'corridors' and 'interconnected passageways' (Benton 2010, xii). Besides oceanic corridors, the Empire also 'focused on rivers as the points of entry and pathways to trade and settlement'. Yet, in West Africa and America, 'as they moved through river regions, expeditions [became] embroiled in internal, i.e. terrestrial, "disputes"' (Benton 2010, xii–xiii and 43 et seq..) rather than in the manufacturing of oceanic spaces. In so doing, colonial policies preferred to conceive of watery logical spaces as functional paths to land, i.e. the earth's element that we, as humans, know better and with which we are more familiar.

The Anglo/British Empire set an alternative process of oceanic production that eluded the binary opposition between land and sea. As said above, this meant (and still means) navigating different routes and searching for new paradigms through which marine logical spaces might be apprehended. The result was impressive, as it led to a spatiality of the whole earth crossing the divide between the geographies of land and sea and outlined a holistic paradigm, which 'globally' captured their planetary equation. Such a holistic approach is present elsewhere in the Bible, where narratives related to the earth point to both land and sea – but the sea takes precedence over the land.[15] The narrative points to both the earth's creation and the divine title thereto – particularly to *Psalm* 24:1–2, where processes of land- and sea- appropriation are reversed: 'The earth is the Lord's, and all that therein is **:** the compass of the world, and they that dwell therein./For he hath founded it upon the seas **:** and prepared it upon the floods'.

Like the Bible, the Anglo/British Empire reversed the process of maritime appropriation, devising a holistic approach to both the geographical and the legal. In an era where the Bible saturated the whole 'political (and indeed the non-political) spectrum' (Killeen 2017, 7; Hill 1993, 266), their starting point was a new reading of Psalm 107. In the *Epistle Dedicatorie to Sir Francis Walsingham* prefacing his *The Principall Navigations* (1589), the English geographer and historian Richard Hakluyt (1552–1616) used the following verses of Psalm 107: 23–24 as a form of 'patriotic celebration of English maritime life' (Scott 2011, 17): 'They that go down to the sea in ships**:** and occupy their business in great waters;/These men see the works of the Lord**:** and his wonders in the deep'. No wonder that, with Dee, Hakluyt was one of the most 'influential propagandists for Elizabethan England's belated grab for the brave new worlds of oceanic commerce and territorial acquisition' (Tomlins 2001, 318).

As in the Bible, the validity of this legal geography depended on its divine provenance. We must bear in mind that, at the dawn of the Age of Discovery, the English Reformation hugely changed the English religious landscape. Though they still still shared a common Christian feature with their Catholic counterparts, the Spanish and Portuguese: that is, the colonising (and civilising) mission aimed at propagating the Gospel: 'Go ye into all the world, and preach the Gospel to every creature' (*Ma* 16:5). Unlike the Spaniards and Portuguese, however, the English had neither the pontiff nor any other representative of God as earthly mediator. Since they were *Defensores Fidei*, the English monarchs were 'as entitled as any Pope to make universal concessions of sovereignty so as to promote the spread of the Gospel around the world' (Pagden 2011, 37; Edwards 1992, 274). In particular, they navigated westwards and northwards, i.e towards North America, according to both the Bible[16] and George Herbert's *The Church Militant* (1625, lines 296–297; see Edwards 1992, 274): 'Then Shall Religion to America flee:/They have their times of Gospel, ev'n as we'.

Yet, this mandate is stated in more general terms in *Psalm* 2:7–8: 'I will preach the law, whereof the Lord hath said unto me **:** Thou art my Son, this day have I begotten thee./Desire of me, and I shall give thee the heathen for thine inheritance **:** and the utmost parts of the earth for thy possession'. The legal creation of oceanic spaces was possible due to some intrinsic qualities of the English common law, particularly when it comes to considering the holistic approach devised by Imperial spatialities. Acting upon direct divine mandate triggered the English self-identification as God's chosen people. As John Aylmer (1521–1594), Bishop of London under Elizabeth I, put it, 'God is English': 'For first you have God, and al his army on angels on your side; you have right and trouth, and seeke not to do them wronge, but to defend your own right' (Aylmer 1559; Ward 2020, 30–37; Goodrich 2021, 15 and 29). The divine provenance of the British titles is reflected in the 'Common Laws of England', which 'are grounded upon the law of God, and extend themselves to the original Law of Nature, and universal Laws of Nations, and … are not originally *Leges Scriptae*' (Dugdale 1680, 3b).[17] 'The law of nature' being 'part of the law of England', it follows that, as Coke put it in the *Calvin's Case*, the English common law was also written 'with the finger of God',[18] thus becoming 'immemorial in literal sense'.[19]

Integrated into a legal system that had 'been in existence since the creation of the world',[20] the unmediated divine title endowed the British with a 'well-earn'd empire of the deep' (Thomson 1802, line 166) under God's protection. Having sent His 'word of command to rebuke the raging winds, and the roaring sea', God preserved His Chosen People

'from the dangers of the sea, … from the violence of the enemy', and the dragons of the deeps:[21] 'Thou didst divide the sea through thy power **:** thou brakest the heads of the dragons in the waters**/** Thou smotest the heads of Leviathan in pieces **:** and gavest him to be meat for the people in the wilderness.'[22] Consequently, he granted the English "[…] dominion of the works of [his] hands **:** … [putting] all things in subjection under his feet;/ […]The fowls of the air, and the fishes of the sea **:** and whatsoever walketh through the paths of the seas.[23]

LAND AND SEA CONTINUITY: 'UNTO THE UTTERMOST PART OF THE EARTH'

In the introduction to this article, I stated that its principal aim was cross-disciplinary. To that end, the article would navigate open water with the aim of filling the gap in current legal research as regards the engagement of the law in the production of space. The article indeed examined the processes implicated in the creation of colonial legal spaces in the Age of Discovery by applying the cross-disciplinary potential of legal geography. The law of spatiality and the spatiality of law were subsequently probed as regards the manufacturing of Anglo/British imperial spatialities.

This article then assessed how oceanic spaces were integrated into the legal and spatial production of the Empire. The Anglo/British were thus capable of extending their authority both *into* and *onto* the oceans by establishing a legal geographical continuity between the mother country, the colonies, and the seas. In so doing, they created an alternative process of oceanic production that eluded the binary opposition between land and sea. Maritime spaces were therefore incorporated into imperial legal geographies.

This article has argued that that this was possible because of key intrinsic qualities of the English common law, ones which allowed the Anglo/British Empire to reframe its processes of maritime appropriation, thus founding the colonial enterprise, as *Psalm* 24 puts it, 'upon the seas'. Again, with *Psalm* 24, I may say that the act of impressing the common law into colonial soil was firstly 'prepared … upon the floods'. The integrated Imperial legal geography was founded on a remarkable process of politico-legal invention taking place in early modern England; the Reformation and the immemorial antiquity of the common law were reimagined in the light of the religious fervour of militant Protestantism, the Age of Discovery, and the transformation of the English nation from a community of farmers into a society of sailors and traders.

The leap is particularly apparent in terms of imaginative geography. Take, for example, the frontispiece of John Dee's *General and Rare*

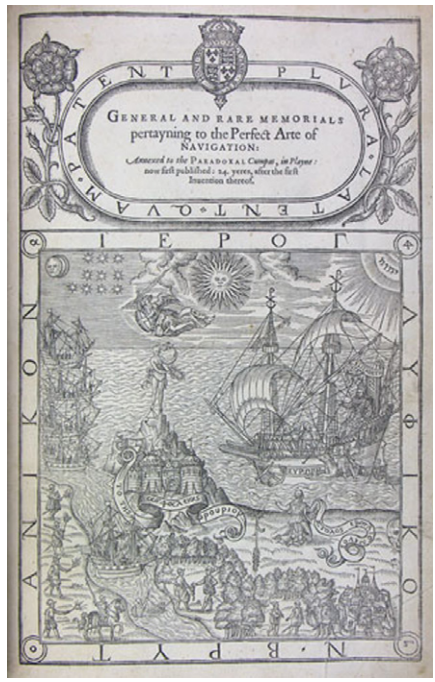

Figure 1. Title page of John Dee's *General and Rare Memorials Pertaining to the Perfect Arte of Navigation* (1577). By permission of the Master and Fellows of St John's College, Cambridge.

Memorials Pertaining to the Perfect Arte of Navigation (Figure 1). This staunch supporter of English imperialism is adamant in assuming that 'God [has taken] up the cause of the expansionist English'. As Psalm 139: 8–9 confirms, God will never abandon His Chosen People: 'If I take the wings of the morning**:** and remain in the uttermost parts of the sea;/Even there also shall thy hand lead me **:** and thy right hand shall hold me'. Indeed, the frontispiece depicts God's 'sword-wielding angel, Michael. By weakening its enemies and strengthening its friends, God has shown England that it is now time to act' (Cormack 2001, 50; MacMillan 2006, 1). Perhaps most striking of all, *Michael* was the only flagship that survived 'the Arctic ice' during Sir Martin Frobisher's expedition to Hudson Bay in 1578 and came back home safe (Abulafia 2020, 664).

The self-identification with God's inheritance was therefore highly productive in terms of discoveries, expeditions, and spatial production. The English were able to secure the validity of their title over dryland and oceans because their navigation was firmly grounded in open

waters: 'Thy way is in the sea, and thy paths in the great waters: and thy footsteps are not known' (*Ps* 77:16). The rise of Puritanism reinforced the navigation-trade nexus; Oliver Cromwell's *Navigation Act* of 1651 transformed England into a mercantile power. The English became 'a people … that are to God as the apple of His eye'; in commercial terms, they were 'under the shadow' of God's mercantilist 'wings' (*Ps* 18:8).

As God's Chosen People, the English have displayed an indissoluble connection with their own Established Church. The liturgy of that Church, especially its *Book of the Common Prayer* enacted by the 1662 *Act of Uniformity*,[24] has played a pivotal role in propagating the Gospel and the British dominion over the word: 'But ye shall receive power, after that the Holy Ghost is come upon you: and ye shall be witnesses unto me … unto the uttermost part of the earth' (*Acts* 1:8). This portion of Scripture is *legally* appointed for Ascension Day,[25] thus confirming the interweaving of the politico-legal, the religious, and the geographical (i.e. physical, human, and imaginative) as they existed and were effectively practised at the onset of the Anglo/British Empire. Within the common law, the 'knowledge of the law is affirmed to be *Rerum divinarum humanarumque Scientia*, and it doth containe the knowledge of all divine & humane things' (Doderidge 1621, 29).

The English (and later, British) imperial enterprise was, without doubt, an intriguing cross-disciplinary achievement. Navigating the integrated legal geographies of both land and sea was the sign of English (and British) superiority in mastering the earth. The gentility that the common law was able to impress upon colonial soils and infuse into the oceans was, indeed, regarded with bitterness and awe by the other European actors competing in the global production of space. Their envy had already been foreseen by Psalm 65:8, which vividly illustrates their reaction to the enterprise of God's Chosen people: 'They also that dwell in the uttermost parts of the earth shall be afraid at thy tokens**:** thou that makest the outgoings of the morning and evening to praise thee'.

NOTES

1. Letters Patent, Granted, on June 11, 1578, by Her Majesty Queen Elizabeth, to Sir Humfrey Gylberte, Knight, for Planting a Colony in America (Shatter 1903, 96–97).
2. Petition of divers gentlemen of the west parts of England to the Queen. To allow of an enterprise by them conceived, and with the help of God, … to be performed for discovery of sundry rich and unknown lands (Sainsbury 1893, 1).
3. *Calvin's Case* (1608), 77 ER 377. Quotations are from Blackstone 2016, 75.
4. *R v Ballard or Barrett* [1829] NSWSupC 26.

5. *R v Murrell and Bummaree* (1836) 1 Legge 72; [1836] NSWSupC 35.
6. *Campbell v Hall* (1774) 1 Cowp 204, 98 ER 1045. See also *Phillips v Eyre* (1870) LR 6 QB 1; *Sammut v Strickland* [1938] AC 678 (PC).
7. The 1663 Charter contained the 'Durham Clause' giving the same proprietary rights held by 'any Bishop of Durham', within the County Palatine of Durham. Proprietors were thus 'granted directly from the king as freehold', which gave them far more power and freedom then any traditional manorial lord or knight service in capite' (Jones 2019, 199).
8. It was suppressed by the Royal Proclamation, King George III of England Issued October 7, 1763 (Brigham 1911, 212–218). Section of the Quebec Act 1774 revoked it by reinstating the pristine 'Form of Constitution and System of Laws' (i.e. the Coutume de Paris) in force since the creation of the French colony.
9. See *Mabo v Queensland* (No. 2), 175 CLR.
10. Such as in Malaysia, Belize, Botswana, Kenya, and RSA. See Gilbert (2007), 585 and 586–592 for a legal comparative survey of its application in these jurisdictions.
11. The scheme for an amicable composition of the disputes related to aboriginal title is known as the 'Comprehensive Land Claim' (CLC) established in 1973. See Samson (2016).
12. Sect. 255(1) and 167(1) of the 1992 Constitution (Ghana); URT, Land Act (No. 4), sec. 7 and URT, Village Land Act (No. 5), sec. 8(1), 12(1) (Tanzania). In Nigeria, Sect. 1 Land Use Act 1990 vests state land in the governor.
13. As Ledlie 1917, 214–215 explains, some principles of Roman-Dutch were displaced even before, e.g. when introducing the English Interpretation Act in 1891 and the Sale of Goods Act 1893 in 1914.
14. All Biblical quotations are drawn from BCP [1662] (2004).
15. See e.g. *Ge* 1.1–31; *Jonah* 1:9; *Ps* 95:5
16. See *Is* 43:5 and *Mt* 24:27.
17. That the English law was founded on the law of God was also upheld in the Colony of Massachusetts Bay in 1646. See Stoebuck 1968, 400.
18. *Calvin's Case*, 7 *Reports* (1608) 4: 12b.
19. Baker 2016, 85 and 86, where it is stated that 'evidence of a legal culture among the ancient Britons was found in the tales of the legendary King Brut and King Lucius'.
20. See *Wallyng v Meger* (1470) 47 SS 30, *per* Catesby Sjt.
21. 'Praise the Lord upon earth: ye dragons, and all deeps' (*Ps* 148:7).
22. *Ps* 74: 14–15.
23. *Ps* 8:6, 8.
24. 12 &14 Char II c 4 cl 10.
25. BCP [1662] (2004), 145.

REFERENCES

Abulafia. David. 2020. *The Boundless Sea: A Human History of the Oceans*. London. Penguin.

Armitage. David. 2000. *The Ideological Origins of the British Empire*. Cambridge. Cambridge University Press.

Aylmer. John 1559. *An harborowe for faithfull and trewe subiectes agaynst the late blowne blaste*. London. printed by John Day.

Baker. Sir John. 2016. *The Reinvention of Magna Carta 1216–1616*. Cambridge. Cambridge University Press.

Bailey. Richard W. 2012. *Speaking American: A History of English in the United States*. New York. Oxford University Press.

Banner. Stuart. 2000. Conquest by Contract: Wealth Transfer and Land Market Structure in Colonial New Zealand. *Law & Society Review*. **34**: 47–96.

Bartel Roby and Jennifer Carter. Eds. 2021. *Handbook on Space, Place and Law*. Cheltenham and Northampton, MA. Edward Elgar.

Bennett Alastair. 2008. *What is geography?* London. SAGE.

Bennett. Thomas W. 1996. African Land – a History of Dispossession. In *Southern Cross: Civil Law and Common Law in South Africa*. Eds. Reinhard Zimmermann and Daniel Visser, 65–94. Oxford. Clarendon.

Benton. Lauren. 2010. *A Search for Sovereignty. Law and Geography in European Empires*, 1400–1900. Cambridge; Cambridge University Press.

Bhungalia. Lisa. 2018. Governing banishment: settler colonialism, territory, and life in an economy of death. In *Handbook on the Geographies of Power*, eds. Mat Coleman and John Agnew, 313–331. Cheltenham and Northampton, MA. Edward Elgar

Blackstone. William. [1765] 2016. *Commentaries on the Laws of England, I, Of the Rights of Persons*. Gen. ed. Wilfred Prest. Oxford. Oxford University Press.

Blomley. Nicholas. 1994. *Law, Space, and the Geographies of Powers*. New York. The Guilford Press.

Blomley. Nicholas. 2015. The ties that blind: making fee simple in the British Columbia treaty process. *Transactions of the Institute of British Geographers*, **40**: 168–179.

Blomley. Nicholas. 2023. *Territory. New Trajectories in Law*. Abingdon & New York. Routledge.

Boast Richard (2013). Property Rights and Public Law Traditions in New Zealand. *New Zealand Journal of Public and International Law* Special Issue: 21st Birthday of the New Zealand Bill of Rights Act, **11**: 161–182.

Boorstin. Daniel J. 1983. *The Discoverers. A History of Man's Search to Know his World and Himself*. New York. Random House.

Braverman. Irus et al. 2014. Expanding the Spaces of Law. In *The Expanding Spaces of Law: A Timely Legal Geography*, eds. Irus Braverman et al, 1–29. Stanford. Stanford UP.

Brigham. Clarence S. ed. 1911. *British Royal Proclamations Relating to America*, Volume 12, Transactions and Collections of the American Antiquarian Society. Worcester, MA. American Antiquarian Society.

Brotton. Jeremy. 2018. *Trading Territories: Mapping the Early Modern World*. London. Reaktion Books.

Byer. Amand. 2023. *Placing Property. A Legal Geography of Property Rights in Land*. Cham. Springer.

Calendar of State Papers Colonial, America and West Indies. 1893. Volume 9, 1675–1676 and Addenda 1574–1674. Ed. Noel Sainsbury. Majesty's Stationery Office, London.

Canny. Nicholas. 2001. The Origins of Empire. An Introduction. In *The Oxford History of the British Empire*, Vol I, *The Origins of Empire. British Overseas Enterprise to the Close of the Seventeenth Century*. Eds. Nicholas Canny, 1–33, Oxford. Oxford University Press.

Conrad. Joseph. 1924. Geography and Some Explorers. *The National Geographic Magazine*, **45**: 241–356.

Cormack. Leslie B. 2001. Britannia rules the waves?: images of empire in Elizabethan England. In *Literature, Mapping and the Politics of Space in Early Modern Britain*, eds. Andrew Gordon and Bernard Klein, 45–68. Cambridge; Cambridge University Press.

Craib. Raymond B. 2000. Cartography and Power in the Conquest and Creation of New Spain. *Latin American Research Review*, **35**: 7–36.

Dee. John. 1577. *General and Rare Memorials Pertayning to the Perfect Arte of Navigation*. London. John Daye.

Delaney. David. 2010. *The Spatial, the Legal and the Pragmatics of World-Making*. Oxford. Blackwell.

Delaney. David. 2017. Legal geography III: New worlds, new convergencies. *Progress in Human Geography*, **41**: 667–675.

Doderidge. John. 1631. *The English Lawyer: Describing a Method for the Managing of the Lawes of this Land. And Expressing the Best Qualities Requisite in the Student, Practizer, Judges and Fathers of the Same*. London: Assignes of I. More.

Dorsett Shaunnagh and Shaun McVeigh. 2012. *Jurisdiction*. Abingdon and New York. Routledge.

Driver. Felix. 2001. *Geography Militant. Cultures of Exploration and Empires*. Oxford, Blackwell.

Dugdale. William. 1680. *Origines juridiciales. Historical memorials of the English law*. London: Printed for Christop. Wilkinson, Tho. Dring, and Charles.

Edwards. Philip. 1992. Edward Hayes explains away Sir Humphrey Gilbert. *Renaissance Studies*. **6**: 270–286.

Egerton. Hugh E. 1897. *A Short History of British Colonial History*. London. Methuen & Co.

Gilbert. Jérémie. 2007. Historical Indigenous Peoples' Land Claims: A Comparative and International Approach to the Common Law Doctrine on Indigenous Title. *The International and Comparative Law Quarterly*, **56**: 583–611.

Goodrich. Peter. 2021. *Advanced Introduction to Law and Literature*. Cheltenham and Northampton, MA. Edward Elgar.

Gordon Andrew and Bernard Klein. 2001. Introduction. *Literature, Mapping and the Politics of Space in Early Modern Britain*, eds. Andrew Gordon and Bernard Klein, 1–12. Cambridge; Cambridge University Press.

Grenier. Benoit. 2004 "Nulle Terre Sans Seigneur"? : Une Étude Comparative de la Présence Seigneurial (France-Canada), XVIIe–XIXe Siècle. *French Colonial History*, **5**: 7–24.

Gschwend. Annemarie J. 1995. In the Tradition of Princely Collections: Curiosities and Exotica in the Kunstkammer of Catherine of Austria. *Bulletin of the Society for Renaissance Studies*, **13**: 1–9.

Halpérin. Jean-Louis. (2009) The Concept of Law: A Western Transplant? Theoretical *Inquiries in the Law*, **10**: 333–354.

Harley. John B. 1988. Silences and Secrecy: The Hidden Agenda of Cartography in Early Modern Europe. *Imago Mundi*, **40**: 57–76.

Harley. John B. 1988a. *Victims of a Map: New England Cartography and the Native Americans*. Paper read at the Land of Norumbega Conference, Portland, Maine, December 1988.

Hill. Christopher. 1993. *The English Bible and the Seventeenth-Century Revolution*. London. Allen Lane.

Husa. Jaakko. 2022. *Interdisciplinary Comparative Law. Rubbing Shoulders with the Neighbours or Standing Alone in a Crowd*. Cheltenham and Northampton, MA; Edward Elgar.

Jones. Henry. 2019. Property, territory, and colonialism: an international legal history of enclosure. *Legal Studies*. **39**: 187–203.

Kedar. Alexandre. 2003. On the Legal Geography of Ethnocratic Settler States: Notes Towards a Research Agenda. In: *Law and Geography: Current Legal Issues*. Eds. Jane Holder and Carolyn Harrison, 401–441, Oxford. Oxford University Press.

Kedar. Alexander. 2014. Expanding Legal Geographies: A Call for a Critical Comparative Approach. In *The Expanding Spaces of Law: A Timely Legal Geography*, eds. Irus Braverman et al., 95–119, Stanford. Stanford UP.

Killeen. Kevin. 2017. *The Political Bible in Early Modern England*. Cambridge. Cambridge University Press.

Kristof. Ladis KD. 1959. The Nature of Frontiers and Boundaries. *Annals of the Association of American Geographers*, **49**: 269–282.

Ledlie. John. C. 1917. Roman-Dutch Law in British Guiana and a West Indian Court of Appeal. *Journal of the Society of Comparative Legislation*. **17**: 210–222.

Lefebvre. Henry. [1974] 1991. *The Production of Space*. Oxford. Blackwell.

Legrand. Pierre. 1996. European Legal Systems are not Converging. *International and Comparative Law Quarterly* **45**: 52–66.

Livingstone. David N. 1992. *The Geographical Tradition*. Oxford. Blackwell.

Massey. Doreen. 2005. *For Space*. London. SAGE.

McHugh. Paul G. 2011. *Aboriginal Title. The Modern Jurisprudence of Tribal Land Rights*. Oxford. Oxford University Press.

McMillan. Ken. 2006. *Sovereignty and Possession in the English New World*. Cambridge. Cambridge University Press.

Nayak Anoop and Alex Jeffrey. 2011. *Geographical Thought. An Introduction to Ideas in Human Geography*. Abingdon and New York. Routledge.

Nicolini. Matteo. 2022. *Legal Geography. Comparative Law and the Production of Space*. Cham. Springer.

Pagden. Anthony. 2001. The Struggle for Legitimacy and the Image of Empire I the Atlantic c. 1700. In *The Oxford History of the British Empire*, Vol I, *The Origins of Empire. British Overseas Enterprise to the Close of the Seventeenth Century*. Eds. Nicholas Canny, 34–54, Oxford. Oxford University Press.

Parry. John H. 1981. *The Age of Reconaissance, Discovery, Exploration and Settlement, 1450 to 1650*. Berkely. University of California Press.

Patton. Paul. 2000. The translation of indigenous land into property: the mere analogy of English jurisprudence. Parallax, **6**: 25–38.

Peter A. Howell. *The Judicial Committee of the Privy Council, 1833–1876*. New York: Cambridge University Press. 1979.

Pollock. Frederick and Frederick W. Maitland. [1895] 1968. *The History of English Law: Before the Time of Edward I*. ed. S. M. C. Milsom. Cambridge. Cambridge University Press. 2 Voll.

Probasco. Nathan J. 2020. *Sir Humphrey Gilbert and the Elizabethan Expedition*. Cham. Palgrave Macmillan.

Quinn. David B. 2015. *Set Fair For Roanoke. Voyages and Colonies, 1584–1606*. University of North Carolina Press. Chapel Hill-London.

Ranger. Terence. 1983. The Invention of Tradition in Colonial Africa. In *The Invention of Tradition*, eds. Eric Hobsbawm and Terence Ranger, 211–262. Cambridge. Cambridge University Press.

Said. Edward. [1978] (2003). *Orientalism*. London. Penguin.

Samson. Colin. 2016. Canada's Strategy of Dispossession: Aboriginal Land and Rights Cessions in Comprehensive Land Claims. *Canadian Journal of Law and Society/Revue Canadienne Droit et Société*, **31**: 87–110.

Schmitt. Carl. [1950] (2006). *The Nomos of the Earth in the International Law of the* Jus Public Europaeum (trans: Ulmen, G.L.). New York, Telos.

Scott. Jonathan. 2011. *When the Waves Ruled Britannia*. Cambridge; Cambridge University Press.

Seed. Patricia. 1995. *Ceremonies of Possession in Europe's Conquest of the New World, 1492–1640*. New York. Cambridge University Press.

Shatter. Carlos. 1903. *Sir Humfrey Gylberte and His Enterprise of Colonization in America*. Boston. Publications of the Prince Society.

Siems. Mathias. 2022. *Comparative Law*. 3rd edn. Cambridge; Cambridge University Press.

Simpson. A. W. B. 1986. *A History of the Land Law*. Oxford, England: Clarendon Press.

Smith. John. 1611. *A Map of Virginia. With a description of the Country, the Commodities, People, Government and Religion … Whereunto is Annexed the proceedings of those Colonies, since their first departure from England*. Oxford. Printed by Joseph Barnes.

Soja. Edward W. 1989. *Postmodern Geographies: The Reassertion of Space in Critical Social Theory*. New York. Verso.

Spencer. Liesel. 2020. Comparative Legal Geography. Context and place in 'legal transplants'. In *Legal Geography. Perspectives and Methods*, eds. Tayanah O' Donnell et al., 149–166. Abingdon and New York. Routledge.

Stock. Paul. ed. 2015. *The Uses of Space in Early Modern History*. Palgrave MacMillan. New York.

Stoebuck. William B. 1968. Reception of English Common Law in the American Colonies. *William & Mary Law Review*, **10**: 393–426.

Taylor. Iain C. 1994. Official Geography and the Creation of 'Canada'. *Cartographica*, **21**: 1–15.

The Book of the Common Prayer And Administration of the Sacraments, And Other Rites and Ceremonies of the Church, According to the Use of The Church of England. [1662] 2004. Cambridge. Cambridge University Press.

Thomson. James. 1802. Britannia. *The Works of Mr. James Thomson: With His Last Corrections and Improvements*, Vol. 2. London. printed for R. Baldwin.

Tomlins. Christopher. 2001. The Legal Cartography of Colonization, the Legal Polyphony of Settlement: English Intrusions on the American Mainland in the Seventeenth Century. *Law & Social Inquiry*, **26**: 315–372.

Ward. Ian. 2020. *English Legal Histories*. London. Bloomsbury.

Watt. Gary. 2012. Comparison as deep appreciation. In *Methods of Comparative Law, Edward Elgar*, ed. Pier Giuseppe Monateri, 82–103. Cheltenham and Northampton, MA; Edward Elgar.

Williams. Glyndwr. 1996. 'To Make Discoveries of Countries Hitherto Unknown'. The Admiralty and Pacific Exploration in the Eighteenth Century. *The Mariner's Mirror*, **82**: 14–27.

Wolfe. Patrick.1999. *Settler colonialism and the elimination of the native*. London and Washington. Cassell.

Wood. Daniel. 2010. *Rethinking the Power of Maps*. New York and London. The Guildford Press.

Zimmermann Reinhard and Daniel Visser. 1996. Introduction. In *Southern Cross: Civil Law and Common Law in South Africa*. eds. Reinhard Zimmermann and Daniel Visser, 1–30. Oxford. Clarendon.

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1. The primary goal of the EUP Journals Blog

To aid discovery of authors, articles, research, multimedia and reviews published in Journals, and as a consequence contribute to increasing traffic, usage and citations of journal content.

2. Audience

Blog posts are written for an educated, popular and academic audience within EUP Journals' publishing fields.

3. Content criteria - your ideas for posts

We prioritize posts that will feature highly in search rankings, that are shareable and that will drive readers to your article on the EUP site.

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- Flexible length, however typical posts range 70-600 words.
- Related images and media files are encouraged.
- No heavy restrictions to the style or format of the post, but it should best reflect the content and topic discussed.

5. Linking policy

- Links to external blogs and websites that are related to the author, subject matter and to EUP publishing fields are encouraged, e.g.to related blog posts

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