Legal Cartography of Colonization, the Legal Polyphony of Settlement: English Intrusions on the American Mainland in the Seventeenth Century,
The Symposium: Colonialism, Culture, and the Law

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The Legal Cartography of Colonization, the Legal Polyphony of Settlement: English Intrusions on the American Mainland in the Seventeenth Century

Christopher Tomlins

This essay investigates the first century of English colonization of the North American mainland, concentrating on the charters and letters patent that proponents of western planning secured over the course of the century. The elaborated legalities of chartering should be understood as a technology of planning and design. Charters allowed projectors both to justify their pursuit of particular territorial claims and to establish, with some precision, the conceptions of the appropriate, familiar, desired order of things and people that would be imposed onto uncharted social and physical circumstance.

The structures of authoritative sociolegal order planned by projectors encountered others implicit in the migrations of actual settlers. Investigating settlers' disagreement with and departure from projectors' designs, the essay discards common explanations—that these were inevitable corrections brought about by the intrusion of local environmental realities on English projectors' fantasies, or the realization of an implicit evolutionary logic of political development, or of legal reception. It argues that disagreements were more often the result of a collision of distinct English legal cultures brought, by migration, into an unavoidable proximity.

The essay counterposes the paradigm of "colonization" to both "common law reception" and "bottom-up localism" analyses of the formation of

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early American legal culture. It proposes that "colonization" also resolves the discontinuity between early (colonial) and later (U.S.) American history.

What does it mean to colonize, and how is colonization brought about? Does colonizing have its own epistemology? What are its tools? What is the relationship between colonization's conceptual and documentary apparatus and the migrations of peoples that, in most cases, give it actual effect? In this essay I explore the process of imagining, designing, embodying, and undertaking English colonization of North America, from its beginnings until the end of the seventeenth century. I concentrate on colonial charters and popular migrations as comparable avenues to the successful imposition of foreignness on space. I consider how documents and migrants were at odds in the foreignness they imposed.

Part 1 focuses on the four constituent elements of early colonizing's discourse of "planting"—Christianity, commerce, geography, and law—as expressed in contemporary commentary on oceanic expansion and as invoked in the charters and letters patent that planting's proponents secured over the course of the later sixteenth and seventeenth centuries to define their enterprises. Charters gave the English colonizing impulse specific documentary form and embodiment by elaborating the discourse of planting in a language of legalities. This might be thought simply a matter of "legitimation." But it was much more besides. Essentially, the exercise of writing charters furnished projectors with means to plan enterprises whose dimensions in practice could not be known with any certainty. Writing charters allowed projectors to describe and pursue claims to American space in detail; to declare, with considerable linguistic precision, their conceptions of the appropriate order of things and people that would be created by colonizing; and to impose that order onto unmapped social and physical circumstance. America, as it were, came predefined, "produced" as English territory by legal documents that created jurisdictions in bounded spaces. Inspection of the charters' terms allows us access to that aspect of colonizing that consists less in the brute achievement of ascendency over a colonized "other" than in developing the conceptual dynamics of one's colonizing, explaining one's designs to oneself, and finally giving them detailed effect.

Neither the design nor the implementation of English colonizing was uniform. First, the designs themselves changed over time. English colonizing projects did not follow a single conceptual-institutional path throughout the seventeenth century, but were expressed in a succession of forms—commercial, proprietorial, royal—each with its own distinct valences. Simply considered as an enterprise of metropolitan elite invention, in other words, colonization created severalty. But second, as an activity that came to depend on mass importation of population to confirm boundaries and cement occupancy, colonization meant additional diversity. Consider the
components of the discourse of planting anew, in light of the country from which seventeenth-century migrants departed. Christianity meant not one reformed church but conflicting faiths and a multiplying division of sectarian offshoots. Commerce, likewise, signified an expanding but highly differentiated sphere of action: mercantile vitality meant dynamism and growth in the domestic economy, but it meant also fundamental ongoing alterations in its structure—wrenching disruption and reconstitution of regional economies, wrenching social changes accompanying them. Both geography in fact and geographers in action furnished compelling evidence of England's deep and lasting regional variation. Whether in its competing abstractions or its concrete expressions, finally, law was anything but a singularity. Rather, law described a congeries of particular practices that in their application exhibited sufficient regional and social variation to justify expression of English legal culture in the plural (Helgerson 1992, 65-147, 249-94; Foster 1991, 1-32; Brenner 1993; Underdown 1985; Wrightson 1982; Spufford 1974; Sharp 1980; Kussmaul 1990; Thompson 1991; Brewer and Styles 1980; Wood 1996, 249-85; Fletcher and Stevenson 1985a; Ross 1998, 248-67). It is hardly surprising that when the seventeenth-century cartographer Michael Drayton looked for a title to summarize his representation of England, he chose not "Albion" but "Poly-Olbion."

Part 2 explores how Poly-Olbion filled the colonizing ventures of the seventeenth century with people, and how migration counterposed the plural English cultures of settlers to the structures of authoritative sociolegal order conceived by colonization's projectors. It shows that where the process of settlement departed from charter designs, as it often did, the polyphony of migration was in many cases the cause. Rather than corrections brought about by the intrusion of local environmental realities upon English projectors' fantasies, or the realization of an implicit evolutionary logic of political development or legal reception, processes of social and state formation in colonial America that departed from initial colonizing designs were at least as often the product of differences among plural English cultures brought, by migration, into unavoidable proximity.

English colonizing in North America did have at least one unifying characteristic, however: whether expressed in magnates' charters or overwhelmingly plebeian migrations, its originating impulse and lasting ambition was one of appropriation. How appropriation was set in motion—its origins, instrumentalities, manifestations, and justifications—is the first concern of this essay. How English cultural diversity affected its course is the second.

1. The title, it has been argued, epitomizes a representational transformation from monarchy to land, from nation singularly embodied in the Crown to nation plurally embodied in country (see Helgerson 1992, 117-47).
PART I: COLONIZATION

For as much as men usually live in houses which are neither spacious enough nor light enough within for them to be able to place or spread out conveniently a large world map in them, it will be most gratifying to many to have a map thought out on the following lines: namely that when spread out to its full extent it is quite fit and suitable for a hall or other spacious place of that kind, and also when rolled up at each end on two smooth revolving rods it lies conveniently on a table about three or four feet square. . . . In this way you will perform a most acceptable service to a number of English lawyers, to the students of both Oxford and Cambridge Universities, to the citizens of London.

—Richard Hakluyt, lawyer, of London, to Abraham Ortelius, cosmographer, of Flanders (n.d., circa 1567)

Discourses of Discovery and Acquisition

Compared with other European colonizers, English ambition for transoceanic empire was not much elaborated before the 1580s (Pagden 1995). Then, however, we encounter two remarkable Elizabethans, each named Richard Hakluyt, cousins. The elder was a lawyer of the Middle Temple, a member of Parliament, and a confidant of adventurers, cosmographers, merchants and high ministers of state. The younger grew up a scholar of Westminster School and Christ Church, Oxford. He became a professor of theology, a student of cosmography and navigation, a diplomat and advisor to the court of Queen Elizabeth, and eventually, a Virginia patentee. Together the Hakluys were influential propagandists for Elizabethan England’s belated grab for the brave new worlds of oceanic commerce and territorial acquisition, and the most advanced early theorists of its forms (Taylor 1935; Pagden 1995; Mancall 1995, 1-2; Armitage 2000, 70-71).

Neither Hakluyt brought firsthand experience to his theorization of voyaging and acquisition. The elder never even crossed the coast; the younger did, but got no further than Paris. Each, rather, exploited the experience of others, while depending on his own learned knowledge to

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2. In his otherwise penetrating study of the English colonization of Virginia, Edmund Morgan (1975, 14-15) writes, inaccurately, that both Hakluys were "undistinguished. . . . Neither stood close to the centers of power." A better indication of the standing of the Hakluys in the eyes of their contemporaries and successors is the decision of Samuel Purchas, "perhaps the greatest geographer of seventeenth-century England" (Schmidt 1997, 564), to give his famous compilation of travel accounts Purchas his Pilgrimes: Contayning a History of the World in Sea Voyages and Lande Travells by Englishmen and Others (published in 1625) the filiopietistic overall title Hakluytus Posthumous.
interpret and organize that experience. Discourses of Christianity and commerce, of geography and law, thus became the Hakluys' plots for transoceanic expansion and adventure. The extent of their influence is conveyed by the label applied, in hindsight, to the centerpiece of the younger Hakluyt's efforts, the record and commentary upon English voyaging that he entitled *The Principall Navigations, Voyages, Traffiques and Discoveries*. Froude called it "the Prose Epic of the modern English nation" (Froude 1891, 1:446).

Christian evangelism provided an initial point of departure and general underpinning for the ambitions of both Hakluys, as it had for two centuries for all European expansion overseas (Pagden 1995, 29–37). Based on original claims of universal dominion for Roman Christianity, the evangelical impulse sharpened in the fifteenth century when voyages of oceanic exploration confirmed the existence of "countries and islands . . . hitherto undiscovered" occupied by non-Christians. Defense of Christendom and pursuit of the Catholic Church's spiritual mission became the basis for papal authorization of Portuguese and Spanish (Castilian) occupancy of all newly discovered lands, save only such as were "in the actual temporal possession of any Christian owner" (see the papal bulls *Inter Caetera* [1493] and *Romanus Pontifex* [1455], both in Davenport [1917–37] 1967, 1:62, 23; see also Muldoon 2001). Both Hakluys invoked that same original authority in justification of English expansion on the North American mainland. The younger Hakluyt's *Discourse of Western Planting* (1584) took as its opening proposition that "westeme discoverie will be greately for thinlargement of the gospell of Christe" (Taylor 1935, 211, 327). Of 31 "Inducements to the Liking of the Voyage intended towards Virginia" (1585) composed by his cousin, the first was the "Glory of God by planting of religion among those infidels." Neither was an invocation of papal authority: the gospel to be enlarged was that "whereunto the Princes of the reformed religion arechefely bounde." But the Henrician reformation had not resiled from the episcopal jurisdiction claimed by the papacy, simply appropriated it to the monarchy as an act of state ascendancy. Thus, like other European claims on overseas territories, the English founded theirs initially on the self-asserted rights of Christian rulers to authorize occupation of the lands of non-Christian rulers and conversion of their inhabitants. The people "of that parte of America," said Hakluyt the younger, were "idolaters" (Taylor 1935, 214). That was enough.

In realized terms, however, propagation of the gospel was of minor significance to the design of English colonization, but one element of an enter-

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3. Anthony Pagden (1993, 10, 51–54) stresses the importance of "the autoptic imagination" (that is, "the appeal to the authority of the eye-witness") in the European reception of America. But he also stresses the authority of the epistemological canon that determined what could be said about what was seen and, indeed, thereby determined what was seen. Neither Hakluyt was an eyewitness. Each, rather, labored within, and advanced the assimilative authority of, the interpretive canon (see also Carter 1988).
prise that "blurred any real distinction between military glory, God's work and profit" (Pagden 1995, 35; see also Juricek 1975, 9; Armitage 2000, 71). The younger Hakluyt's Discourse reflected this blurring. Before exposition of its initial proposition was a quarter complete, it had passed from the end of evangelism to the means. Preachers should be sent if souls were to be saved, but "the meanes to sende suche . . . ys by plantinge one or twoo Colonies of our nation upon that fyrme, where they may remaine in safetie." From that point, planting held center stage in Hakluyt's Discourse, and its prospects (developed in the remainder of his first proposition, and the next 20 too) became his abiding concern—revival of trades, production of commodities, employment of the idle, and withal a general accretion in "the strengthe of our Realme" (Taylor 1935, 215, 270, 313–19).

Precisely the same trajectory was followed, more tersely, by his cousin. "The ends of this voyage [to Virginia]," according to the elder Hakluyt's 1585 "Inducements," were "To plante Christian religion. To traffike. To conquer. Or, to doe all three." He continued, virtually in the form of a syllogism: "To plant Christian religion without conquest, will bee hard. Traffike easily followeth conquest; conquest is not easie. Traffike without conquest seemeth possible, and not uneasie" (Taylor 1935, 332).

The elder Hakluyt's logic favored "traffike"—the opening of markets. But the practicalities were not so simple. Commerce required an impulse to exchange, but he said, "If the people be content to live naked, and content themselves with few things of meere necessity, then traffike is not." If, on the other hand, the people "be clothed, and desire to live in the abundance of all such things as Europe doth, and have at home all the same in plentie, yet we can not have traffike with them, by means they want not any thing that we can yeeld them." Or admit a third variation (also the likeliest)—"that they have desire to your commodities" but "neither Golde, Silver, Copper, Iron, nor sufficient quantitie of other present commoditie to mainteine the yeerely trade." On any of these premises the opportunities for successful "traffike" appeared highly limited. And, from this point on, commerce in the elder Hakluyt's discourse became, somewhat like evangelism in

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4. Whether lands occupied were inhabited by non-Christians continued to have important salience in English law as a determinant of what kind of jurisdiction the occupier would enjoy. See, e.g., Blankard v. Galdy, 87 Eng. Rep. 359 (1694). But occupancy specifically for purposes of evangelizing infidels, as opposed to the general salience of religious condition (Christian or non-Christian) in determining the nature of the successor regime, quite quickly faded in significance when compared to other components of "planting" discourse. Indeed, Virginia slave law rendering non-Christians liable to enslavement was studiously indifferent to their subsequent evangelization. Act XII (1662/3) declared perpetual bondage for the children of enslaved Negro women; act III (1667/8) held that children born as slaves were not freed from their condition by baptism; act XII (1670/1) held that servants, not being Christians, imported by shipping, were slaves; act I (1682) held that servants, not being Christian at the time of their first purchase, "although afterward and before their importation into this country [either by sea or by land] . . . shall be converted to the Christian faith" were slaves (all in Guild 1969, 23, 42, 44, 46).
his cousin's, a thoroughly contingent outcome, one valued but subordinated in all practical counts to a prerequisite necessity—planting—the pursuit of which altered completely the commercial ends originally articulated (Taylor 1935, 332–33).

The necessities of planting altered the goals of voyaging by inducing a shift in their expression; that is, in Hakluyt's understanding of “trafficke.” The “Inducements” constantly intone the virtues of commerce, but it is a transformed commerce, no longer the bilateral exchanges of commodities across trading frontiers between peoples with which Hakluyt began, but a commerce predicated upon the colonizer's initial appropriation of productive resources for his own use. The “trafficke” that Hakluyt invokes has become a “trafficke” to be carried on by the colonizers among themselves. To this, the indigenous inhabitants—whether as consumers or producers—were an irrelevance: “how the naturall people of the countrey may be made skilfull to plant . . . is a matter of small consideration: but to conquer a countrey . . . and to man it, to plant it, and to keepe it . . . were a matter of great importance” (Taylor 1935, 333–34).

Christianity and commerce, on the surface the clearest expressions of the European expansionist impulse, thus fade in significance in the English case, as expansionists turn to the measures necessary for the realization of their ambitions—manning, planting, keeping. Evangelism, the transcendent moral justification for European expansion, can be of practical effect only insofar as it rests on and justifies the occupation of territory from which evangelization may at some unspecified future moment eventually take place (Taylor 1935, 216). Commerce, in principle a civilizing and mutually beneficial “trafficke” between peoples, becomes in practice a relationship confined to the colon occupants of new territories and their metropolitan sponsors. Nor, even in these desiccated forms, is either evangelization or commerce self-realizing. Although both depend on planting, neither furnishes the instrumentalities or technologies that are conditions of planting's success.

Success in planting was instead a creature of the other discourses mobilized by the Hakluys—geography and law. Each, especially law, provided means to elaborate the precise statements of relationships between places and people, existing or desired, that were crucial to success in planting. Equally important, each, especially law, provided a medium for design and implementation of those relationships and, thus, of actually realizing planta-

5. Most of the elder Hakluyt's writings on trade and commerce address the opening of English commerce with northeastern Europe and the eastern Mediterranean, a “trafficke” that in no sense involved the creation of plantations or the migration of peoples. See, for example, his “Notes on Dyestuffs” (1579), “Instructions for the North-east Passage” (1580), “Notes on the Levant Trade” (1582), and “Notes for a Factor at Constantinople” (1582) (all in Taylor 1935, 137–38, 147–58, 182–83, 184–95).
tions. Each, finally, offered a medium in which meaning could be imposed on the activities thus engendered.

Geography in the late sixteenth century was one of several related modalities of study and measurement through which observers interacted with the observed spatial world. At one end of the spectrum, chorography denoted narrative description of specific regions—topography, inhabitants, institutions, cultures. Chorographers “placed a great deal of [their] emphasis on history (genealogy, chronology), antiquities, and topography; for very small areas, local folklore was used to distinguish one region from otherwise similar neighbors.” At the other end, cosmography combined terrestrial with celestial observation in the attempt to map the world as a whole. Necessarily, the effort was predominantly representational and abstract. Geography filled the range between. Its horizons wider than the chorographer’s region, its goals more substantively descriptive than cosmography’s holistic representations of the world, “geography entailed the study of the world as a whole and of mapmaking . . . and the listing of all the world’s constitutive regions, described by their broad physical, demographic, and economic attributes” (Edney 1997, 43; see also Buisseret 1990b, 17).

In all three aspects—chorographic, geographic, and cosmographic—study of the world gained enormous impetus from the overseas voyaging of the later fifteenth and sixteenth centuries. Voyaging itself meant demand for increasing sophistication in navigation and cosmography; these were the phenomenon’s technologies of discovery, literally its instruments. Accounts of individual voyages, meanwhile, were essentially chorographic narratives. They told of what had been found and seen: peoples and cultures; flora and fauna; places, climates, soils, and commodities. When brought together in works like the younger Hakluyt’s Principal Navigations, which appeared in several editions and numerous volumes from 1589 onward, narratives of voyaging enabled observers to assemble increasingly detailed and coordinated general accounts of the world and its regions. The Principal Navigations weaves an assemblage of narrative particulars into general statements, first making frequent mention of “beastes, birds, fishes, serpents, plants, fruits, hearbes, rootes, apparell, armour, boates, and such other rare and strange curiosities,” then inserting besides these details more general “descriptions of so many parts of the world,” then adding abstracted knowledge—“Geographicall and Hydrographicall tables”—nowhere available among the many empirical details of the individual voyages as such. Hakluyt completed the work with wholly representational knowledge—“one of the best generall mappes of the world onely” (Taylor 1935, 408–9).6

6. The world map to which Hakluyt here refers was the work of the English cartographer Edward Wright, who described it as “a true hydrographical description of so much of the world as has beene hetherto discovered.” That is, it was a map of oceans and discovered coastlines, not of continental or regional interiors (for a reproduction see Quinn 1990, 57).
In all this, the younger Hakluyt revealed himself a major participant in
the construction of "a new geography for a new world." But his writings
exhibit a more pointed purpose. Though offered as reportage, description is
in fact representation. The point is made obvious in this case by ambitions
for a new geography. Hakluyt, further, used his compilation of English voy-
ages in a particularly explicit way. The driving force and point of his repre-
sentation was "not merely to record what the English had done and what
the world was like" but "to reinvent both," that is, to establish a particular
articulation of English nationhood and with it a representation of the world
that suited English purpose. As already indicated in the Discourse, that pur-
pose was one not of mutual encounter but of English acting-on-the-world—
exploitation, appropriation, fortified occupancy. There is little in either the
Discourse or the Principle Navigations to suggest that either voyaging or
planting were experiences to be understood on any other terms. Just as cos-
mographic sophistication was an ever more essential instrumentality of Eu-
ropean discovery, then, Hakluyt made geographic and chorographic
knowledge a means to project English political and economic ambition onto
the discovered world (Helgerson 1992, 152–53; Edney 1997, 41; see gener-

One should not be surprised to encounter geography in this guise.
"[G]eography and empire are . . . intimately and thoroughly interwoven" for
“both are fundamentally concerned with territory and knowledge.” In India,
two centuries later, geographers would stand at the forefront of British ef-
forts "to transform a land of incomprehensible spectacle into an empire of
knowledge." British knowledge. They "mapped the landscapes and studied
the inhabitants"; they "collected geological and botanical specimens"; they
“recorded details of economy, society, and culture”; and their cartographic
surveys “created and defined the spatial image” of the British Indian empire.
In all these ways, but particularly through cartography (a practice “rooted in
cultural conceptions of space and in the politics of manipulating spatial rep-
resentations”), India’s British geographers “came to define the empire itself,
to give it territorial integrity and its basic existence” (Edney 1997, 1, 2,
300).7

7. Harley (1989, 13) has argued that to “catalogue the world is to appropriate it . . .
cartography’s] technical processes represent acts of control over its image.” Like Edney, he
associates cartography’s accession to authority over the world’s image with the Enlighten-
ment’s faith in the realism of science. “The map has attempted to purge itself of ambiguity and
alternative possibility. Accuracy and austerity of design are now the new talismans of author-
ity culminating in our own age with computer mapping. We can trace this process very clearly
in the history of Enlightenment mapping in Europe. The topography as shown in maps, in-
creasingly detailed and planimetrically accurate, has become a metaphor for a utilitarian phi-
losophy and its will to power” (1989, 10). Carter (1988, 8, 21–22) makes a similar point in
contrasting the scientific practices of the Endeavour’s captain, James Cook, to those of the
ship’s botanist, Joseph Banks. Cook’s naming of the eastern Australian coast reflected a trav-
erer’s epistemology—“a genealogy of particulars, a horizontal disposition to mark things where
they occurred locally, rather than to organize them hierarchically or thematically. Cook’s
Just as British scientific-intellectual activity in India created a representation of “India” that was a colonizer’s invention, literally a British India, Hakluyt’s Discourse, three centuries earlier, helped begin a similar English invention of America. Yet although geographic knowledge was thus instrumental in the late-sixteenth-century invention of English empire, just as it would be to its Asian and Australasian extensions 200 years later, Hakluyt was at a clear epistemological disadvantage relative to his successors. Their techniques, of cartographic mapping and rigorous empirical inquiry into population and resources, were born in the Enlightenment’s general commitments to rational inquiry and empirical certainty. He, in contrast, had to rely secondhand on scraps of impressionistic narrative, “the partial experience of individual mariners and traders.” Geography’s capacity comprehensively to express the imperial will to power, that is, is primarily a phenomenon of the Enlightenment. In the later eighteenth century, British access to technologies of systematic measurement—geodetic triangulation, statistical survey—allowed them to discipline the Indian subcontinent with their science, recreating it, for their own purposes, on their own terms. Hakluyt’s geographic resources were far more limited, and the results far less organized (Edney 1997, 318, 333–34; Helgerson 1992, 165).

Pursuit of intellectual control over appropriated space through systematic measurement and cartographic mapping would indeed become an essential aspect of European expansion and overseas colonization. In a very basic way, maps gave their creators, and their creators’ sponsors, “the means to construct, no less than project, an image of power and possession abroad” (Schmidt 1997, 551; Harley 1988, 279). The elder Hakluyt’s desire for “a large world map” that could be manipulated to conform to both the present resources and the future ambitions of its intended audience, the rising English commercial and professional bourgeoisie, underlines his awareness of the point. And on occasion throughout the first century of English overseas empire—the colonization of Munster, the design of the socioeconomic structure of William Penn’s “Holy Experiment”—maps did indeed become the means to create new identities, consolidate new intrusions of authority (Schmidt 1997, 554; Price 1995, 257–65; Barber 1992b, 61–62; MacCarthy-Morrogh 1986; Kain and Baigent 1992; see also Harley and Woodward 1987). Yet for most of the seventeenth century, colonial survey was neither consistent in its methods nor definitive in its results, nor mapping at all a

names were not proto-scientific or proto-imperial.” Banks, in contrast, was an Enlightenment scientist, a Linnaean. “Knowledge for Banks is precisely what survives unimpaired the translation from soil to plate and Latin description. There is in Bank’s philosophy no sense of limitation, no sense of what might have been missed, no sense of the particular as special . . . his knowledge is always complete: each object, found, translated into a scientific fact and detached from its historical and geographical surroundings, becomes a complete world in itself.” Bank’s taxonomies organized the world he encountered and substituted themselves for it.

8. See the headnote to part 1 of this essay.
routine practice for recording outcomes (Hughes 1979, 1–3, 8–9, 28–54). In
the North American case the “great period” of English mapmaking was not
in fact that of seventeenth-century intrusion but of eighteenth-century con-
solidation (Harley 1990, 11; 1997, 181–91; Cumming 1974; Schmidt 1997,
562–64; Papenfuse and Coale 1982, 3). Pre-Enlightenment cartographic
representations of North America were overwhelmingly continental in scale
and hydrographic in orientation. They placed the exterior of “America” in
Europe’s world but little of its continental, let alone its regional, interior.
Those cartographic representations, moreover, remained highly speculative
until the later sixteenth century; and for a good hundred years thereafter
virtually all mapping was pitched at the continental-coastal level. Early-
modern maps, that is, oriented America to European oceanic purpose. Few
English maps represented interior local or regional detail; none created any
systematic record of European presences upon the land. In part, the rarity of resort to geodetic mapping as a routinized agency
for the imposition of colonizers’ presence on and appropriation of overseas
space reflected early-modern English circumstance and practice. Always,
maps “were of more immediate use to those with property and power than to
those without” (Helgerson 1992, 107). By the last quarter of the sixteenth
century the practice of estate mapping and the “map consciousness” that the
practice encouraged were growing among landed gentry. Even so, property
was generally managed (and power extended) without the aid of maps. Em-
ployment of cadastral survey for purposes of estate management or state
taxation remained exceptional. There was no “inexorable and consistent

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9. Quinn observes that “detailed large-scale maps of the newly settled areas hardly began
to appear before the second half of the eighteenth century” (1990, 46).
10. The only English examples are John White’s sketch map of the Roanoke region,
published in 1590; John Smith’s Chesapeake map, first published in 1612, and his New
England map of 1614; Sir William Alexander’s Nova Scotia/New England map of 1624; John
Mason’s Newfoundland map of 1625; and William Wood’s 1634 map of southern New
England. For reproductions of the White and Smith (Chesapeake) maps, see Quinn 1990, 54,
60. For the Smith (New England) map, see Arber 1910, 695. For the Alexander, Mason, and
Wood maps, see Burden 1996, 258, 268, 300. The last three have some function in the re-
cording of the location of claims, but not in any precise or systematic fashion. There are no
examples of cadastral surveys or land grant maps drawn to scale. See, generally, Cumming
1974, Burden 1996. On the absence of cadastral or land-grant mapping, see Price 1995, 121,
129, 331–32, 349–53.

As Schmidt (1997) and Merwick (1990) both show, the Dutch were rather more active
cartographers of America, both in oceanic and regional terms. Maps gave them “visual con-
quest of the whole” (Merwick 1990, 21). What is fascinating, however, is the way in which
Dutch cartography had an explicitly hydrographical orientation that corresponded to the cul-
tural discourse of their colonization. The English sought to occupy and possess the land, and
did so through law. Pre-Enlightenment maps could not serve the precise purposes of posses-
sion. The Dutch sought to navigate the land, in the service of “trade.” Possession was unim-
portant to their purposes. Maps suited their purposes, for their colonization’s geography was
one of rivers and seas, not of jurisdiction and territory (see Merwick 1990, 23, 33, 45, 103–4,
132–33, and passim; see also Richter 1991).

If not through mapping, how was colonized space to be produced and mobilized as such by its new occupants? How was territory to be recorded, granted, possessed, and exchanged? In contemporary Europe, according to Roger Kain and Elizabeth Baigent, “land was bought and sold, farmed and exploited, surveyed for private individuals and on behalf of crowns and governments for valuations and tax assessments by written description alone.” Written description meant elaborate enumerations of assets and narrative descriptions of features “parcel by parcel, by means of lists of bounds and abuttals” (Kain and Baigent 1992, 5–6 [my emphasis]). As this indicates, representation was documentary not pictographic.

Dependence on written description reminds us of the centrality of narrative to chorography—the study of locality and region—but also takes us further afield, to a distinct though closely related intellectual site, conceptually far more powerful in securing possession than early-modern mapping’s descriptive and representational approximations: that is, law. First, as a thing produced, “territory” was created by the assertion of jurisdiction over space. Second, once produced, what enabled territory to be mobilized—bought, sold, farmed, exploited, surveyed, valued and taxed—was not maps but legal documents, the “immense pile of legal texts” that constructed the objects of their attention (fields, barns, houses, fences, and boundaries; the characters who inhabited them; the “habits of living, actions, dangers, and rewards” that motivated those characters and informed their transactions) as subjects of elaborated record, and that in their detail gave that record far more authority than could be possessed by any pictographic map. Collectively, what those documents created amounted, over time, to “a set of deep routines, a vast map of social interactions and human purposes” (Bushman 2001, 388). Law, we may argue, inventories the human activities that constitute the cultural fields in which action occurs and archives their meanings for authoritative reference.11

Legal Cartography

Like a map, but more purposefully, law’s inventory of a cultural field’s significant characteristics establishes authoritative identities for the subjects within the field’s parameters, whether they are people, places, institutions,

11. Jean and John Comaroff (1991, 21) define culture as “the shared repertoire of practices, symbols and meanings from which hegemonic forms are cast—and, by extension, resisted . . . the historically situated field of signifiers, at once material and symbolic, in which occur the dialectics of domination and resistance, the making and breaking of consensus.” The argument advanced here suggests that law is an extremely powerful and authoritative archive of culture. More prosaically, as a discourse organizing the commodification of territory in detail it long precedes maps. On both points, see also Harley 1988, 279–80, 281–82.
activities or relationships. In the case of England’s early American colonizing, this was necessarily a prospective and prescriptive exercise—a means of planning, an anticipation of what would and should be. Take, as the first available example, the Notes on Colonisation drawn up in 1578 by the elder Richard Hakluyt, “no doubt in his professional capacity,” for the instruction of Sir Humphrey Gilberte in his pursuit of a project of discovery and colonization authorized by Elizabeth I (Taylor 1935, 13; Thorpe [1909]1993, 49–52). Written at the behest of Gilberte’s backers, Hakluyt’s Notes are analogous in form to the shipping articles by which merchants commissioned captains and instructed them in the performance of commercial voyages. They direct Gilberte’s implementation of the project—how to choose an appropriate “seate” (site) for a colony, what soil and climate to search out, what intercourse to enter with the “naturall inhabithantes.” The Notes operated at several levels. Prosically they laid out a relentlessly demanding and seemingly endless list of technical tasks to be performed—materials and sustenance to be secured, territory to be scouted, a haven for shipping established, resources located, commodities planted and processed. Speculatively, they traversed what might be found and commodified, ranging seemingly indiscriminately from the realistic to the extravagant. Imaginatively, they invoked the kind of society required for such development to be sustained. It would have to be a “Citie,” that is a civitas—a place of brick and stone, of houses and roofs and walls, and of all “thinges without which no Citie may bee made nor people in civill sorte be kept together.” It would have to be permanent—“the people there to plant and continue.” And it would have to acquire dominion over its region, “become of all the provinces round about the only governour.” Gilberte’s letters patent, together with Hakluyt’s Notes, thus constituted a detailed plot of colonizing activities that employed law as its medium of authorization, of planning and direction, and, in the necessary ascendancy of civitas and regional governance, of implementation and subordination (Taylor 1935, 116–22).

12. Harley and Zandvliet (1992, 15–16) suggest that cartography could and did perform a similar function. Pointing to a map of the Dutch province of Gelderland produced for the Spanish Emperor Charles V in 1542 depicting its “Towns, villages, monasteries, castles, with all the fine and excellent rivers, measured and plotted according to the true art of Geography,” they comment “it is the classification of objects worthy of recording in the landscape that is critical. . . . Why ‘Towns, villages, monasteries, castles?’ This is not the landscape ‘as it really was,’ but a redescription of the countryside that had been scrutinized and controlled to produce an image fit for an emperor concerned with the subordination of space. Each of the items is a class of political motif. Each symbolizes a layer of political power. The map as a whole represents a social hierarchy . . . a selective discourse in support of Spanish dominion and its universal religion in the Low Countries.” Law and cartography are indeed very much alike in this essential representational regard. But what distinguishes law from cartography in early English colonizing is that law is the medium not simply for the classification of objects worthy of recording but worthy of creating.

13. On the place of the civitas in the discourse of European expansion, see Pagden 1995, 18–28; Armitage 2000, 73–75. As Pagden explains, the civitas was the source of empire because (citing Machiavelli) “it provides both the men for the armies and the source of the
The elder Hakluyt's "Inducements" repeated the exercise in 1585, drawing on themes from his earlier Notes, this time in the context of Sir Walter Raleigh's scheme for the colonization of "Virginia" under his charter of 1584. His cousin's lengthier and more sophisticated Discourse had the previous year purported (on behalf of Raleigh, his patron) to establish that the Queen of England could assert title "more lawfull and righte then the Spaniardu or any other Christian Princes" to at least as much of America "as is from Florida to the Circle Articke" and Raleigh's charter reproduced the wide grants of authority and possession that had earlier been offered to Gylberte (Thorpe [1909] 1993, 53–57; Taylor 1935, 213). The "Inducements" reiterated earlier arguments for permanent settlement, but undertook less elaboration of settlement's civic character, paying more attention to technical matters. In discussing relations between the colonizers and indigenous inhabitants, meanwhile, the "Inducements" were more frankly oriented to achieving an ascendancy by any means necessary: plans for "trafficke" were just and lawful, but in any case could easily be defended against interference "by reason that we are lords of navigation, and they not so." Indigenous hostility to the creation of permanent settlements might be countermanded either by statecraft, joining "with this king heere, or with that king there, at our pleasure," or by force—"if we will proceed with extremtite, conquer, fortifie, and plant in soiles most sweet." In either event, in the end all would be brought "in subiection and to civilitie." Significantly, in that it had implications for his perception of matters of present occupation versus prior right, Hakluyt represented colonizers and indigenous inhabitants as if they were engaged in similar pursuits: the former were there to "plant" just like the latter, who simply happened to be "planted" there already (Taylor 1935, 329–30).

Neither the Gylberte nor the Raleigh charters became the basis of permanent settlements. Nevertheless the exercise of their negotiation and prospective implementation established a model for English colonization as a process that throughout the next century would use law to project elaborately detailed English designs onto the North American mainland. What these designs accomplished was the production of English territory through the appropriation of space to an English epistemology, to English politics and economics, to English representations and purposes.

Chart(er)ing "Virginia"

The first comprehensive expression of chartering as a legalized strategy of colonial planning and implementation is to be found in the original authority needed to retain provinces once they have been conquered" (1995, 18). Crucially, it also provided the measure of belonging, and hence also of exclusion.
charter of Virginia, granted in 1606 by James I, which began continuous English presence on the American mainland. The Virginia charter licensed two schemes of "habitation and plantation" in "that part of America commonly called VIRGINIA," territory "not now actually possessed by any Christian Prince or People." One scheme was pioneered by a company comprising "certain Knights, Gentlemen, Merchants, and other Adventurers" of the city of London, the other by similar denizens of Bristol and the West Country. The first was to be located anywhere on the American Atlantic coast between 34° and 41° of northern latitude, the second anywhere between 38° and 45°. Each was to comprise "all the Lands, Woods, Soil, Grounds, Havens, Ports, Rivers, Mines, Minerals, Marshes, Waters, Fishings, Commodities, and Hereditaments" lying within "the Space of fifty miles of English statute measure" inland and along the coast, and a hundred miles out to sea; neither was to be established within a hundred miles of the other. Each scheme's patentees were granted "all the lands, Tenements, and Hereditaments" within its precincts, to be 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," whereon they might "inhabit... build and fortify" at their discretion, reserving to the Crown "the fifth Part" of any gold or silver dug, and the fifteenth part of Copper. Each colony was to have its own council for purposes of local government. Each was made subject to a ruling Council of Virginia established in England for the "superior Managing and Direction" of their affairs, as also for the government of the entire Virginia tract (that is, everything between 34° and 45° north, including any further schemes licensed within that territory). Each was granted particular privileges (for example, unencumbered flows of people, commodities, and armaments) tending to confer powers of physical and economic command of its own borders (Thorpe [1909] 1993, 3783–89).

14. Socage was "a tenure of land by certain and determinate service," carrying an obligation on the part of the tenant to pay certain recurrent and one-time charges as a condition of holding the land in question. Villeinage was a base socage tenure, free socage an "honorable" one. Land held in socage may be contrasted to land held by knight service, which required of the holder military services as well as exposure to an additional range of payments (primarily wardship). Land held in capite was held directly by the Crown, and the holder was considered a tenant-in-chief whose tenancy was burdened by potentially heavy obligations to the Crown (notably primer seisin, the profits of the first year), but who in turn enjoyed substantial privileges and authority in relations with lesser landlords whose land was held by the tenant-in-chief rather than by the Crown. Land held "as of" a royal manor (sit de manore) meant royal land held not directly of the crown, and hence subject to the certain and determinate services of a manorial relationship rather than the uncertain services (because military in origin) of a chivalrous one. Land held "as of" a manor in free and common socage not in capite was thus a combination of conditions that added up to "much the easiest tenure" particularly when the tenant was a corporation, for corporations were exempt from paying relief (see Saunders 1977, 185, 318; Barnes 1931, 4–7). By resolutions of the recalled Long Parliament (1640) and of the Civil War Parliament (1645), and by acts of the Commonwealth and Restoration Parliaments (1656, 1660), all tenures were converted to socage tenure, which became the basis of all modern forms of landed property. On English land law, see generally Simpson 1986.
Using the charter to describe and allocate resources, both physical (land, minerals) and political, legal, and economic (powers and institutions of government, relief from customs duties), was an exercise in the creation of jurisdiction. In the same fashion, the Crown and the patentees also used the charter to distribute control over other essential resources, notably population. First, the charter explicitly permitted the departure of the patentees' “several Companies, Plantations, and Colonies” and of “such and so many of our Subjects, as shall willingly accompany them.” Second, it extended a common civic status to the inhabitants of the two Virginia colonies, and simultaneously situated the colonies within a web of like polities among which population was (in civic personality) fungible. All persons “being our subjects” dwelling and inhabiting within both colonies, “and every of their children,” had “all Liberties, Franchises, and Immunities within any of our other Dominions,” as if abiding and born within England “or any other of our said Dominions.” In this respect the charter offers an interesting contrast between representation of the prospective population—“as if” within England, hence culturally “settled” though physically distant—and the actual indigenous population, invoked as a preliminary only to establish that their want of English civic personality rendered them unsettled, unrecognizable, hence unfit to occupy what they, in fact, occupied. They lived “in Darkness and miserable Ignorance of the true Knowledge and Worship of God.” Theirs was not a civitas. Only the creation of colonies (not, we should note, propagation of Christianity per se) might bring them “to a settled and quiet Government,” or as the elder Hakluyt had put it 20 years before “in subiection and to civilitie” (Thorpe [1909] 1993, 3784, 3786, 3788; Taylor 1935, 330; compare Armitage 2000, 53–60).

The Virginia charter initiated English colonizing by articulating the epistemology that the process demanded and by furnishing the medium in which it might be realized. Colonization’s essential configurations—spatial (location), economic (the distribution of rights over land and other resources, the control of flows of population), political (the structure of government), and civic (the character of local personhood)—were all given points of English reference that aligned them seamlessly with myriad other enabling processes while splitting them off from their physical locale. The whole comprised an authoritative representation of a vast and remote tract of territory (“Florida to the Circle Articke”) in English designs that
underscored English possession, while rendering local occupants and their practices practically invisible.

Future charters—of which there were many—performed the same role, mobilizing legal discourses both instrumentally and imaginatively to imprint England on America. Examining them refines our perception of the dynamics of the relationship between law and European colonial expansion. Recent historical and anthropological examinations of colonization, Jean and John Comaroff tell us, have commonly insisted on "the centrality of law in the colonization of the non-European world," asserting "its role in the making of new Eurocentric hegemonies [and] in the creation of colonial subjects," providing "tools of domination and disempowerment; blunt instruments wielded by states, ruling classes, reigning regimes." The Comaroffs dispute those conclusions. Colonization's legalities were less an instrumental facilitation of a "linear, coherent, coercive process" than an imaginative resource not entirely under the colonizer's control. Clearly law could have instrumental effects in discrete circumstances, but considered as a general phenomenon, law's effectivity was "inherently ambivalent, contradictory" (Comaroff and Comaroff 1997, 365-67; Comaroff 1994, ix–xiii).

Examination of the North American case both relativizes and reinforces that claim for a lack of linearity, an inherent contradictoriness, in the relationship between law and colonization. Relativizes, because considered from without, as an undifferentiated genus of legal activity, chartering was quite linear and not at all self-contradictory. Its goal was unambiguously to advance the creation of English colonies; and it was successful. In the later British imperium (notably nineteenth- and twentieth-century India and

15. Seed (1995) has brought to our attention the variety of enactments of possession in which European colonizers engaged in the New World—"planting crosses, standards, banners, and coats of arms[,] marching in processions, picking up dirt, measuring the stars, drawing maps, speaking certain words, or remaining silent" (1995, 2)—and has stressed their symbolic significance for the initiation of colonial rule. Her analysis is suggestive, but misses a crucial point—namely, that at least in the English case, the most important ceremonies of all were those that took place in Europe, for it was there that territory was created, claimed, and divided; rights recognized, usages planned, and outlined; and disputes settled. Ceremonies of possession in the New World were ceremonies of culmination not initiation. Hence, for example, when the Ark and the Dove departed the Isle of Wight in September 1633 to establish the colony of Maryland, the colony's lord proprietor, Cecilius Calvert, "remained behind to defend the new enterprise" (Papenfuse and Coale 1982, 5; see also Juricek 1975).

16. The indigenous population had no English existence because they had no recognizable civic presence. They of course had their own existence and were recognized as such, but that existence was as savages. Moreover, one can watch the import accorded that physical presence decline in the documentary trail of early English colonization. In the earliest of the elder Hakluyt's observations, for example, the indigenous exist as subjects of statecraft whose reduction must be plotted—kings to be made allies, suborned, or conquered. By the early seventeenth century, they have become merely "natives" and "naturalls," of whom one should be cautious but who enjoyed no political significance (Taylor 1935, 118, 121, 492–99). See also note 28 below.

17. For a useful and analogous account of the role of law in the formation of culture, see Sugarman and Warrington 1995.
Southern Africa) indigenous colonial subjects were able to discover means to appropriate the colonizer’s legalities—to employ, however inadequately, his ideology of rights in their struggles against his mights (see, for example, Fitzpatrick 1999, 53–54; see also Merry 2000, 8, 264). But the early Atlantic empire offers less evidence of this tension. The design of seventeenth-century English colonizing was insular and monocultural, tending to express a dramatic social, cultural and economic separation between the colonizers (“settled,” civically endowed) and the non-European world (unsettled, “savage”) that they had entered, one in which little was shared (Pagden 1995, 65, 73; Seed 1995, 187; Greene 1993, 44). Applied to the first Atlantic empire, in short, the Comaroffs’ arguments against the interpretation of law as a purposive technology of European rule carry only moderate weight.

Once assuming precisely that purpose, however—that is, accepting and moving within an initial characterization as an activity expressing and projecting Englishness and English rule—law’s linearity becomes less evident. On the inside one encounters not linearity but instead polyphonic (and contestable) representations of Englishness, and plural modalities of rule. Here then is a degree of reinforcement for the Comaroffs’ observation. There is more. First, it is important to note that in institutional terms the charters are highly prescriptive representations of the English civitas. There is considerable merit to investigating them as such. Early American historians have generally succumbed to the temptation to write the legal history of the colonized mainland from the ground up, as if its only significant referent were the quotidian social behavior of its settler populations. But English settlement did not occur in vacant conceptual space, anymore than it did in vacant physical space. The charters and their terms offer a distinct avenue of inquiry to the composition of settlement’s legalities, one that finds relevant institutional and political contexts for settler legal culture outside

18. This is not to say the attempt was not made. See, for example, Hermes (2001), O’Brien (1997). But see also Plane (2001), which demonstrates the vulnerability of indigenous usages to English legalities.

19. Fitzpatrick (1999, 40) notes that occidental consciousness of their “incommensurability” with the other became intellectually problematic only in the wake of the Enlightenment. “The Spanish had used their incommensurability with the populations of the Americas to reason that the supposed absence of property relations enabled them to occupy the land. Indeed, incommensurability was to become not just a prime justification for Europe’s colonial extraversion but also a foundation for the identity of the European as exemplary of modernity.” Purdy (1999) goes further, denying that the liberal problematic actually resulted in any real difference between early-modern and liberal-modern imperialisms, or between colony and postcolony. “Dressing law in the borrowed garb of postcolonialism has made us blind to the ways in which law continues to function as it always has in the colonial context . . . ‘to speak the language of pure force’” (222 [my emphasis]).

20. As we shall see in the remainder of part 1, English projectors developed several distinct legal models for colonization, each with different implications for the structure of the colonizing enterprise itself and for the social and political structures endorsed as appropriate for the projected colony. As part 2 indicates, migration brought more plurality. Thus, no one model of “Englishness” was projected in the colonizing impulse.
those in evidence locally. Colonies are expressed in many forms: the scatterings of actual English settlement up and down the mainland coast in the seventeenth century contrast markedly with the dense tapestry of possessive and jurisdictional claims that blanketed it.

Second, and now acknowledging the importance of local settler influences in the formation of early American legal cultures, how should we understand the process of those cultures’ composition? As one of consensus or of conflict? Was there an ineffaceable common fund of English legality on which all impositions of England on America drew, chartering elites and migrating masses alike, or did fundamental cleavages in English legal culture exist that transferred with English colonists? And if the latter, what were their origins?

Consider first the charters themselves. Between 1606 (the first Virginia charter) and 1681 (Pennsylvania) some 28 major territorial charters and grants were promulgated, dealing with the establishment, reestablishment, or confirmation of English (and one Scottish) settlements on the North American mainland. All used law to hack territory out of space and to depict the institutional and cultural forms in which authority would be applied to (and within) that territory. The production of territory was chorographic—the creation of jurisdiction by a narration of boundaries and interior character. In James I’s 1623 grant of the province of Avalon (part of Newfoundland) to Sir George Calvert, for example, the charter walked the reader around the boundary of the grant by means of a topographic narrative.21

21. The first, second, and third charters of Virginia (1606, 1609, 1611); the London and Bristol Company charter for Newfoundland (1610); the New England Council charter (1620); the three Alexander charters for Nova Scotia (1621, 1625, 1628); the Maine grants (1622, 1639, 1664, 1674); the Avalon charter for Newfoundland (1623); the Heath patent for Carolina (1629); the Plymouth charter (1629); the Massachusetts Bay Company charter (1629); the New Hampshire grants (1629, 1635); the Maryland charter (1632); the Kirke charter for Newfoundland (1637); the Connecticut charter (1662); the Rhode Island charter (1663); the Carolina charter (1663, 1665); the New Jersey grants (1664, 1674, 1682); the Pennsylvania charter (1681).

22. The narrative set out the following:
All that entyre porcon of Land situate within our Country of Newfoundland aforesaid, beginning southerly from the middle part of a certaine Neck of Land or Promontorie situate between the two Harbors of Fimuth, and Aquafortie and from thence following the Shoare towards the North unto the midle part or half way over a little Harbour called in that reguard Petit Port or Petit Harbour which boundeth upon the South part of the Plantacon of St John’s includeing the one half of a certaine fresh River that falleth into the said Port of Petit Harbour and soe tending all along the south Border of the said Colony of St John’s extendeth itself to a certaine little Bay commonly called Salmon Cove lyeing on the South syde of the Bay of Concepcion includeing the one half of the River that falleth into the said Cove as also ye one half of ye sd. Cove itselfe, from whence passing along the Shoare of the said Bay towards the South and reaching into the Botom thereof where it meets with the Lands of John Guy Citizen of Bristoll named Sea Forrest is bounded with a certain River or Brooke which there falleth into the sea and from the Mouth of the said Brooke ascended into the farthest Spring or Head thereof from thence passeth towards the South for Six Miles together along the
All charters designated locales for colonization and settlement in this fashion, by written description, although language as precise as that used in the Avalon charter was not always present. Nor, when it was, did precise charter language mean precision on the ground. First, local topography often did not conform to the charter’s narrative of landscape. Second, grants were often inconsistent with other grants, creating conflicting and overlapping jurisdictions. “One wonders if any of the crown lawyers or chancery officials ever consulted the old patents in making out a new one, or ever studied the geography of the regions they so easily gave away” (Andrews 1964, 1:323). That they did not could be taken as simple carelessness, but it more likely signifies the relative unimportance of geographic or topographic “accuracy” in asserting control of space, compared with the authority of the legal form in which the claim was embodied.

All charters contained related (and quite familiar) justifications for the appropriation of the space in question. We have already encountered the evangelical claim that underlay all European appropriative activity. This was accompanied, at first implicitly, but increasingly explicitly, with the additional claim that territory was legitimately appropriated by use—or rather, by the prospect of use (Pagden 1995, 76–79; Seed 1995, 25, 30–35). From early on, English charters were catalogs of intense creative activity. Rather than embrace passive commercial-acquisitive processes, like the Dutch (Merwick 1990), or forcible extractive processes, like the Spanish (Pagden 1995), the English foreshadowed systematic transformative action on the land. The New England charter of 1620, for example, endows “Adventurers intending to erect and establish fishery, trade and plantations” (Thorpe [1909] 1993, 1828). Charters in general underscored possession of

Borders of ye said John Guy his plantation and there crossing over westward in a right line reacheth into the Bay of Placentia and the space of one League within the said Bay from the Shoare thereof. Hence turning again towards the South passeth along the Harbour of Placentia with the like Distance from the Shoare and descending into New Falkland towards the north and west part thereof stretcheth itself in a right line Eastward continuuing the whole southerly length upon the Bounds of the said New Falkland, into the midle part or point of the Promontory or Neck of Land aforementioned between the said Ports of Formose and Aquafort at which place is described and finished the perambulacon of the whole Precinct. (Matthews 1975, 40–42)

At the risk of stating the obvious, it is worth noting that the description possesses the place for the English because (with a few concessions to French proper names) it is an anglicized description, noting nothing not relevant to English possession. More generally, Colin Calloway (1997, 11–12) notes how in the process of English occupation new towns “were given European names to replace their ancient Indian names, and the pattern of settlement rapidly obscured the Indian past and presence. In seventeenth century New England, for example, Agawam became Ipswich; Shawmut became Boston; Naumeag, at the mouth of the Pequot River, became New London; and the river itself became the Thames.” On intra-European elisions, see Schmidt 1997; Merwick 1990.

23. The charters evince some tendency to greater precision over time, and the expression of their precision becoming more abstract and scientific (see, for example, the Pennsylvania charter’s description of landed extent, text following note 46).

24. Belyea (1992) makes a similar point about maps.
fisheries, harbors and soils. Later charters gave growing emphasis to cultural signs of occupation in addition to specificities of use—the division of lands, and the erection of churches, manors and fortifications, towns, and markets. All, however, imply substantial constructive activity—improvement, transformation.

It is well established, of course, that the claim of legitimacy of appropriation by use or constructive occupation meant that previous or current occupants did not use (or constructively occupy) the space in question. The “natives” were savage both by dint of their paganism but also by dint of their failure, in the English imagination, to cultivate or “improve.” Thus the evangelical and usage justifications tended to merge into one characterization of a prior “emptiness” that permitted occupancy. This could be a claim of actual physical emptiness—as in the New England case, where “God's Visitation,” the charter stated, had “raigned a wonderfull Plague, together with many horrible Slaugthers and Murthers, committed amongst the Sauages and brutish People there,” wherefore “those large and goody Territoryes, deserted as it were by their naturall Inhabitants, should be possessed and enjoyed by . . . our Subjects” who might then go about the work of “reducing and Conversion of such Sauages as remaine . . . to Civil Societe and Christian Religion,” and more generally, “the Inlargement of our own Dominions, and the Advancement of the Fortunes of such of our good Subjects as shall willingly intresse themselves in the said Imployment” (Thorpe [1909] 1993, 1828–29). But it could also be a claim to a general spiritual-ideological emptiness to which actual presence or absence was ir-relevant. “[N]o gain is easier or more safe than what is made by planting new colonies in foreign and uncultivated regions . . . especially if these places were before without inhabitants, or were settled by infidels” (Prince Society 1873, 127–28). The Pennsylvania charter (1681) similarly

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25. This also applied to prior English titleholders, not just to the indigenous population. Sir George Calvert’s charter to the province of Avalon (1623) was nullified by the 1637 charter granted to Sir David Kirke et al. because Calvert and his successors had “deserted” the province, which the Crown, desiring to see it “cherished and speedily promoted” now therefore granted to Kirke et al. (Matthews 1975, 83–84).

26. English visual and descriptive evidence to the contrary (see, e.g., White [1585] 1588) notwithstanding.

27. The depiction of regional interiors in John Smith’s maps of the Chesapeake (1612) and New England (1614) is graphically illustrative of this move from indigenous presence to absence. Smith’s New England interior is as empty of Indians as his Chesapeake is full of them. Interestingly, it is the latter map’s inclusion of Indian village sites that has been found “remarkable” (Quinn 1990, 44), not the former’s exclusion of them. The Chesapeake map depicts the English planted, tentatively, at Jamestown amid others—“this king heere, or . . . that king there,” as the elder Hakluyt had put it (Taylor 1935, 329–30). The New England map devotes itself to the ideology of indigenous absence and to the anglicization of space. For details of available reproductions, see above note 10.
acknowledged an existing indigenous population and instantaneously denied it any significance to English occupancy:

Our Trustie and well-beloved Subject, William Penn, Esquire... out of a commendable Desire to enlarge our English Empire, and promote such useful commodities as may bee of Benefit to us and Our Dominions, as also to reduce the savage Natives by gentle and just manners to the Love of Civil Societie and Christian Religion, hath humbly besought Leave of Us to transport an ample Colonie unto a certaine Countrey... in the Partes of America not yet cultivated and planted. (Thorpe [1909] 1993, 3036)

As important as the definitions of territory and the claims to occupancy that aspiring possessors offered, where there is considerable continuity in English discourse, are the structures of authority that claimants invoked as means to take control of and organize activity in their territories (that is, to express and effect jurisdiction to build states). Here continuities are less apparent. These structures should not be thought of as responses to the immediate exigencies of colonization; in most cases they were highly elaborated and detailed plans. In some cases they were reproductions of structures actually prevailing in contemporary England, in others, projections of forms of sociolegal order that projectors desired to create.

The initial letters patent and charters—Gylberte's, Raleigh's—did not outline in any detail how authority was to be exercised in the process of colonization, instead vesting in the recipients "full and meere power and authoritie to correct, punish, pardon, governe and rule by their, and every or any of their good discretions and policies," providing only that the

28. Penn's confidence that savage natives did not plant contrasts noticeably with the elder Hakluyt's references, a century earlier, to "native kings or lords planted on the rivers sides" in the region to be penetrated by Raleigh's 1585 expedition, which at least allowed them as occupants a rough equivalence with the English (Taylor 1935, 329–30). Contemporaneously, Francis Bacon was writing, "I like a Plantation in a pure soil; that is where people are not displanted to the end, to Plant others. For else it is rather an Extirpation than a Plantation." Bacon thought it acceptable to plant "where Savages are," but only as long as the savages did not "plant" themselves (Pagden 1995, 79). Over the course of the seventeenth century the inconvenient indigenous occupants and their activities disappear from early America's founding legal texts. By the time we arrive at the Georgia charter (1732), the land is "waste and desolate," the indigenous population simply a marauding enemy—not even potential converts (Thorpe [1909] 1993, 765).

29. The charters' property discourse, whether landed or mineral, is noticeably more absolutist in its contemplation of possession than contemporary English discourse. There is little indication that any of the complex of "multiple overlapping claims by many individuals and casual or regular uses by many others" that characterized English land rights discourse (and, increasingly, conflicts) into the eighteenth century had any play in American colonizing, except, perhaps in water rights. Given that the trend in English law was toward the discovery of land as property, and property as exclusive, this is perhaps not surprising, but it does suggest how the charters could accommodate political and/or economic expectation, or fancy, unleashed from domestic restraint. On the conceptualization of property in English law, see Seipp 1994; Simpson 1998, 17–26.
resulting regime be "as neere as conveniently may, agreeable to the forme of the lawes and pollicy of England" (Thorpe [1909] 1993, 51, 55). The 1606 Virginia Charter was the first to go into the matter in detail, specifying a hierarchy of control over colonization: local company authority specific to company projects, subordinated to general crown jurisdiction asserted over the entire Virginia territory and "the several collonies" which then were or, presumably, might later be established "within any part of the said country" (Thorpe [1909] 1993, 3785–86).

Between 1606 and 1609 the London and Bristol companies each established a settlement, at Jamestown on the Chesapeake Bay and at Sagadahoc in Maine. Only the Jamestown settlement survived, and that only barely. Its difficulties prompted the London adventurers to seek major refinements in the arrangements established in 1606, formally separating from the Bristol adventurers and reconstituting themselves as a separate joint-stock company controlled by a new London-based council. The new charter abolished the royal council created in 1606, substantially enlarged the London company’s original grant of territory, vested an enlarged authority to govern the colony in the company’s London council, and empowered the latter to replace the Jamestown settlement’s local council with an appointed governor vested with authority equivalent to a county lord lieutenant (Thorpe [1909] 1993, 3796–98, 3801). Three years later, additional refinements broadened participation in company affairs beyond its ruling council to the generality of its members by establishing a structure of greater and lesser company courts. The 1612 charter also delegated substantial judicial authority over delinquent colonists returning to England to the company council in London (Thorpe [1909] 1993, 3802–10).

The structures of authority projected by participants in the Virginia enterprise thus underwent a transition from royal licensing of unincorporated adventuring within a Crown domain, to a form of partnership between Crown and incorporated investors, to corporate ascendancy. Once in place, the latter became the normative legal-organizational model for English planting overseas for much of the next 20 years. The year after the Virginia Company was incorporated in 1609, for example, James I chartered a “Company of Adventurers and Planters of the City of London and Bristol for the Colony of Plantation in Newfoundland” on a near-identical basis. The Somers Island (Bermuda) Company followed in 1615 (Matthews 1975, 17–31; Andrews 1964, 1:215–17). But by the 1620s matters had begun to change. The first wave of English colonization had begun opportunistically on a wave of commercial ambition to exploit commodities supposedly naturally plentiful, with little appreciation of the pitfalls (Morgan 1975,

30. Other corporations chartered for colonizing activity were the Guiana Company (1626), the Massachusetts Bay Company (1629), and the Providence Island Company (1630).
None of the ventures was adequately capitalized. Established merchant investors had no particular interest in financing plantation rather than simply “trafficking” with established sources of supply; some gentry investment was forthcoming, but not at all sufficient to the need (Brenner 1993, 92–112). The companies’ only major asset—jurisdiction over space (territory)—was an abstraction. Territory could not be represented as “soile” (tillable land) and mobilized for investment without an actual demonstration of successful cultivation; but cultivation could not occur without occupancy, nor occupancy without population and continuous investment to transport and sustain it. Without committed investors plantation was a perilous undertaking. The London and Bristol (Newfoundland) Company failed within a decade of its formation; the Virginia Company collapsed in the mid-1620s; only the Bermuda Company proved resilient in the long term. With the exception of the Massachusetts Bay Company, established at the end of the decade, the “corporate” model would not be seen again in American mainland colonization.

In its place came territorial lordship, and a distinct approach to the definition and exercise of jurisdiction. Discourses of lordship did not discount commerce, but placed a premium on control of expanse. As in the corporate case, the Crown was willing to allow considerable powers to intermediaries to facilitate that control. We have seen that the Crown’s initial attempt to exercise a direct jurisdiction over territory within which particular colonies would be created—the royal council of Virginia (1606)—was not sustained beyond the reorganization of the Virginia Company in 1609. When the Virginia Company eventually collapsed, the royal council was recreated and government of the colony taken over directly by the Crown. But this pattern was not followed elsewhere. Instead English colonizing became an exercise in the delegation of authority to landed proprietors. Just as the incorporated company had provided the institutional design for a colonial “state” during the first wave of English settlement—and would continue to do so, where it was in place—so in the 1620s the dominant design became proprietorship.

31. The commercial motive was uppermost, but the religious undercurrent was ever present too, though less the evangelical than the appreciation of colonies overseas as places of refuge. Thus, the elder Hakluyt could be found writing in 1578 that “a place of safetie might there be found, if change of religion or civil warres shoulde happen in this realme” (Taylor 1935, 119–20), a theme certainly becoming prominent in the 1620s and 1630s (Nova Scotia, Plymouth, Massachusetts Bay, Maryland).

32. No other royal colonies were created before the Restoration, and only Rhode Island at that point; not until the late seventeenth century does the move in that direction become pronounced. Nor is it clear whether the legal-institutional distinctions Virginia enjoyed as a result of becoming a royal colony had much effect on its participation in the new colonial political economy of territorial lordship.

33. The Gilberte and Raleigh charters had granted their bearers title to lands by homage and allegiance, creating a relationship of vassalage in which land was held directly of the Crown by the vassal as tenant-in-chief. This was also the basis of Henry VII’s letters patent to
The initial expression of the proprietary model came in qualified form in 1620, with James I's charter creating the "Councill established at Plym-outh, in the County of Devon for the planting, ruling, ordering, and gov-erning of New-England, in America" (Council for New England). The charter recreated the spatial jurisdiction granted the Bristol adventurers in the original Virginia charter of 1606, but transferred it to an incorporated board of proprietors. The council obtained complete freedom to dispose of the territory under its command—making subgrants, creating particular col-onies or plantations, appointing their governors, appointing an overall "principall Governor" with the powers of a lord-lieutenant of an English county. All were to have authority "to correct, punish, pardon, governed, and rule" such of the King's subjects as should inhabit New England, according to such "Laws ... and Instructions" established by the council, as near as conveniently agreeable to the "Laws, Statutes, Government and Policie" of England (Thorpe [1909] 1993, 1827-40; Andrews 1964, 1:323).

In most respects the Council for New England's charter recapitulated that of the Virginia Company. What was novel was the proprietary form. First advanced in the council's original charter, this was refined in a succession of territorial charters granted between 1621 and 1640 that, collectively, represented most of the North Atlantic mainland in the image of a march-land. While on their face the proprietary grants had all the appearance of an overseas extension of the contemporary scramble for control of territory among English landed elites, in chartered form they expressed a legal relation-ship of delegated territorial lordship. Where the company charters sought to invent forms of institutional authority appropriate to colonizing by extrapolating from commercial undertakings, the proprietorial charters extrapolated from the very different referent of landed magistracy (Berthoff and Murrin 1973, 264).35

34. Andrews comments that the council, "though proprietary in fact was corporate in law," and that it intended to negotiate a new charter that would make it proprietary in law through the regrant of lands in capite, which might then be subinfeudated (Andrews 1964, 1:405). It is worth noting that the Council's principal legal advisor was Sir Henry Spelman, the first English historian of feudal tenures and, in effect, the inventor of the history of En-glish feudalism (on Spelman, see Reynolds 1994, 7, 323, 355). Reynolds argues that so-called feudal tenures conveyed property that was in fact no less free or heritable than any other. In other words, the seigneurial charters granted to American mainland proprietors were an ex-pression of "feudal" relationships that had never in fact existed as such in England, developed in the service of granting their beneficiaries secure legal possession (and autonomous govern-ance) over very large expanses of overseas territory.

35. On elite competition for control of land in England in the sixteenth and seven-teenth centuries (1540-1640), and its consequences, see Lachmann 1987, Sharp 1980, Man-ning 1988. This subject is pursued further in part 2 of this essay.
The first "pure" proprietorial charter was Sir William Alexander's "Lordship and Barony of New Scotland in America," granted in 1621 under the privy seal of Scotland. The territory was to be divisible at Alexander's pleasure, and he and his heirs were to be the king's hereditary lieutenants-general, with full powers of government and the establishment and alteration of "laws, rules, forms, and ceremonies," powers of martial law, and powers also to confer "favors, privileges, gifts and honors" (Prince Society 1873, 129-33). The charter is particularly notable, first, for the "feudal" language in which its institutions were described (see Prince Society 1873, 144-45), and second, for its articulation of an ideology of appropriation distinct from the commodity-driven discourse of the previous half century. New lands were to be Christianized and cultivated, not in hopeful pursuit of an essentially adventitious and superficial commerce but by conscious acts of will in fulfillment of spiritual renewal, undertaken by a migrating population:

We, thinking how populous and crowded this land now is by Divine favor, and how expedient it is that it should be carefully exercised in some honorable and useful discipline, lest it deteriorate through sloth and inaction, have judged it important that many should be led forth into new territory, which they may fill with colonies. (Prince Society 1873, 128)

Crucially, the spiritual renewal envisioned here was a self-renewal, the implementing migration voluntarist. The goal was not to evangelize the indigenous inhabitants, but "to cultivate peace and quiet" in relations with them so that "our beloved subjects" might worship undisturbed.

This is symptomatic of larger issues. Increasingly, charters made explicit reference to colonies less as sources of commodities than as destinations for large numbers of people. Sir Robert Heath's 1629 Carolina patent, underlined "the multitude of people thronging thither." Cecilius Calvert wanted to plant "a numerous Colony" in Maryland, and his father, "a very great and ample" one in Newfoundland (Thorpe 1909 1993, 72, 1677; Matthews 1975, 39). The language of the proprietary charters turned as much on the creation of structures to manage the occupation of territory by

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36. The latter, reconfirmed in 1625 by Charles I's "Novodamus" charter, became the basis for the creation of an order of knights baronet of New Scotland, to which between 1625 and 1638 approximately 100 appointments were made, with grants of land (see Prince Society 1873, 217-31 [the Novodamus Charter], 233-37 [Roll of the Knights Baronets of New Scotland]).

37. The indigenous were to be controlled through alliance where possible, but force if necessary. They remained "savages... savage aborigines... barbarians" (Prince Society 1873, 136-37). On the theme of colonies as sanctuaries in intra-European religious conflicts, see note 31.
migrants as on the extraction of resources. But proprietorship was not a rejection of commodification. In some ways it was a deepening. The purpose of occupancy was to render territory into “soile,” and sloth into activity, through cultivation. Rather than treat colonies as sites for the production of particular commodities, as in commercial discourse, proprietorship’s emphasis on occupancy commodified the colony in its entirety.

The New Scotland charter was followed in short order by the Avalon charter (1623), which granted Sir George Calvert a substantial part of Newfoundland with jurisdictional authority very similar to that granted Alexander. As in the earlier company charters, Calvert’s lawmaking powers were subject to the assent of the province’s freeholders (whom, however, he was to assemble “in such sort, and forme as to him shall seeme best”). Persons transported to the province, or borne there, were confirmed denizens possessed of English “liberties, franchises and priviledges” (Matthews 1975, 39–63).

Two novel features make the Avalon charter particularly noteworthy. First, Calvert’s proprietary powers were premised on a grant of land “in capite,” that is, directly of the king, and “by Knights service,” that is, by a tenure that promised military services in return for the tenancy, rather than in free and common socage as in earlier charters. Landholders in capite enjoyed rights to create subtenures to govern the lands they disbursed to others that created lines of allegiance terminating in themselves rather than in the Crown (Barnes 1931). Second, he was granted “Rights Jurisdictions, privileges, prerogative, royalties, Liberties, Immunities, and Franchises” equivalent to those enjoyed by the bishop of Durham, one of several “palatine” jurisdictions within the Crown’s domain and the only one, by the seventeenth century, whose lordship had not been assumed by the monarch. Such grants invoked a seigneurial capacity that had been significantly weakened in England over the previous century. The idea itself

38. An anticipation of migration was always a presence in the charters. Among the propagandists of English expansion, the discovery of outlets overseas where surplus population could be “set on work” bulked large in their advocacy of colonizing (Taylor 1935, 176, 328–29; see also Mancall 1995, 13–14). But although discussed, substantial movements of population did not begin until the 1620s and, particularly, the 1630s. Only as “colonization” developed from “trafficke” to commodity and thence to occupation did migration become a more explicit (and leading) component of what it entailed. With that came greater colonial emphasis on managing population in detail through law.

39. The Avalon charter was granted under the English seal.

40. The service was purely symbolic. Calvert was to discharge his obligations by payment of a white horse on each entry into his territory made by the king.

41. My attention was first drawn to the Avalon charter as an expression of the phenomenon of palatine authority by the unpublished work of Rina Palumbo (1997).

42. Within England, the earldoms of Chester, Lancaster, and Richmond, and the bishopric of Durham—all marchland (border) territories—were palatinates. In Ireland, Anglo-Norman earldoms, such as that of Desmond in Munster, also enjoyed palatine authority. All lived in tension with the Crown. Long before the sixteenth century the earldoms of Chester, Lancaster, and Richmond had been resumed by the crown itself. In 1536 the bishops of Dur-
nevertheless expressed the ambition shared by Crown and proprietors alike to control England's American territorial claims by occupancy and by control of occupants, and to do so through vice-regal institutions and powers designed for remote and contested regions (see Barnes 1931; Ellis 1995). In the American charters, furthermore, palatine powers were granted in language not restricted by recent history: in Newfoundland, Sir George Calvert was to "have exercise use and enjoy the same as any Bishop of Durham... hath at any time heretofore had, held, used, or enjoyed, or of Right ought or might have had, held, used or enjoyed" (Thorpe [1909] 1993, 1679 [emphasis added]).

Proprietorship recreated mainland colonization both in process and purpose. From 1623 on, English charters made palatine jurisdiction and authority key features of the evolving design of North American colonization. Sir Robert Heath's patent as "true lord and proprietor" for the province of Carolina granted territory on the same basis, "in Cheife, by knights service," and contained the same genus of empowering clauses as Calvert's Avalon charter (Thorpe [1909] 1993, 70, 71). Cecilius Calvert's Maryland charter (1632) was no different in the jurisdictional bases claimed or in the density of jurisdiction that it implied. Indeed, it was chiefly remarkable for its combination of palatine vice-regality with land rights awarded the proprietor in free and common socage with "full and absolute License" to "assign, alien, grant, demise, or enfeoff" the same in any amount, to be held by the proprietor rather than the Crown. The Calvert family possessed a more absolute lordship over Maryland than any granted to that date anywhere (Thorpe [1909] 1993, 1679, 1684–85; see also Andrews 1964, 2:282–83).

The Maryland charter is the most complete example of proprietorial absolutism to emerge from the first half of the seventeenth century, but it was by no means atypical. The Montgomery charter of 1628 granted territory in the West Indies to the earl of Pembroke in much the same form as in Maryland. The "Syon" petition of 1629 sought creation of a palatinate in the northern part of the Virginia Company grant. The Plowden petition of 1632 sought creation of the palatinate of New Albion in the Delaware River valley. In 1637, Sir David Kirke and others successfully applied for a charter to Newfoundland that vacated the former (and unfulfilled) Avalon grant and replaced it with a jurisdiction that named them "true and absolute Lords and Proprietors" in Newfoundland (Barnes 1931, 24–27; Andrews 1964, 2:222–23; Matthews 1975, 82–116). Throughout the early 1620s the Council for New England sought amendments to its charter that would fully transform it into a palatine authority. It returned to the task in 1632 in the wake of the Maryland charter. In 1639 Sir Ferdinando Gorges obtained a
charter from Charles I confirming the council's 1622 grant to him of the province of Maine, with new authority to exercise palatine jurisdiction (Thorpe [1909] 1993, 2433-44, 1621-37; Andrews 1964, 1:279-82).

By the end of the 1630s, therefore, the conceptual representation of colonization in English charters had altered quite sharply, from a shift in emphasis on appropriation for use in commercial extraction to one on appropriation for occupancy. One may see this, crudely, as a move from commerce to lordship and civic establishment. Assuredly, as we have seen, these are not conceptually separate ideologies of colonization. As the elder Hakluyt had observed, commodity and occupancy were each a necessary condition for the success of the other (Taylor 1935, 333-34). Yet each implied distinct institutional outcomes, distinct ideals of social and state formation. To the extent that each received the same "subjects" (migrants) with the same "liberties, franchises and privileges," those subjects were inserted into different legal, political, and economic environments.

The charters were representations of intent. Elevated plans were implemented rudely; much of what was foreshadowed did not occur. But the shift in design had effects, even where one might anticipate the rule of exceptions. Take, for example, the puritan colonization of Massachusetts Bay. In 1627 the Council for New England transferred territory between the Merrimack and Charles Rivers to the New England Company, a voluntary unincorporated joint-stock company, which then obtained a charter of incorporation as the Massachusetts Bay Company. Apparently counter to the proprietary trend of the 1620s, the Massachusetts Bay Company was incorporated as a trading company (Thorpe [1909] 1993, 1846-60). But at this point in its history the venture was simply one more untested colonizing enterprise within a larger proprietary domain—a "particular plantation." The company charter clearly contemplated a religious settlement,

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43. Something of the "dialectic" (as Alexander 1997 puts it) of commodity and propriety may be found in the course of New England's economic development recently described by Stephen Innes. Innes (1995, 9) sees as central to the New England way an interplay between a "distinctive civic ecology" based on strong families, strong town organizations, a vibrant public sphere, and a "culture of discipline," or self-reliance, that "fostered industrious and 'striving' behavior, communal responsibility, and a high ratio of savings and investment relative to income by its limitations on leisure. The development of capitalism in the early modern period required an ethic of disciplined work and self-denial in order both to maximize production and reinvestment and to attend to the needs of the economically vulnerable." It required "an ideology of social solidarity and trust to offset capitalism's ever present destructive capacities."

44. Throughout the 1620s the Council for New England had been attempting to mobilize its territorial assets by making grants of one kind or another. In 1622 it had created "New Albion" (between the Kennebec and Penobscot Rivers); it had granted the province of Maine (between the Merrimack and the Sagadahock Rivers) to Ferdinando Gorges and John Mason. Mason also gained the "Marianna" grant stretching roughly from Cape Ann to the Merrimack, and in 1629, he was granted the New Hampshire patent. Numbers of additional smaller grants were made, and patents were issued for particular plantations, notably that to the Leyden separatists for what would become Plymouth Plantation.
declaring evangelization of the indigenous “the principall Ende of this Plantacion.” But formal avocation of an evangelical motive was routine in all English charters of colonization. And, once established, the Massachusetts Bay Company behaved in a manner not dissimilar to its proprietary contemporaries. That is, though unable to secure a degree of formal autonomy equivalent to their palatine jurisdictions, it sought to separate its pursuit of planting quite decisively from metropolitan oversight or mediation. Moreover, unlike earlier expressions of the company model, that pursuit was, in practice, both densely institutional and, though certainly not anticommercial, at least somewhat ambivalent about commerce. A lordly proprietary neither in jurisdiction nor practice, Massachusetts Bay nevertheless designed its state for the regulation of occupancy.

The planting of new English colonies on the North American mainland largely stalled during civil conflict in England between 1640 and 1660, but resumed after the Restoration. The post-Restoration grants were notable both for the size of the territories involved, their overwhelmingly proprietorial character, and in two cases at least, for the density and sophistication of the interior organization—the civic establishment—they envisaged.

Much post-Restoration chartering activity abrogated earlier patents while leaving intact established jurisdictional ideologies. The Carolina charter of 1663 took the immense territory formerly granted Sir Robert Heath in 1629 and vested dominion in eight lords proprietor, whose terms of possession and authority were made as absolute as those granted Heath and Calvert 30 years before. The charter conveyed a multitude of powers, rules, jurisdictions, and privileges by which territory became defined and population managed: erection of “castles, forts, fortifications, cities...boroughs, towns, villages”; appointment of “governors, deputy governors, magistrates, sheriffs and other officers”; creation of corporations, appointment of “markets, marts and fairs”; erection of manors (“so many...as to them shall seem meet and convenient”) with courts baron “with all things whatsoever which to a court baron do belong.” And so forth. In 1665, the proprietors’

45. The duke of York's grant (1664), for example, made him proprietor of the Maine territory (formerly granted to Sir Ferdinando Gorges in 1639 and governed by him until his death in 1647). It also made the duke proprietor of everything from the Connecticut River to the Delaware and north to Albany, Long Island, and other former Dutch possessions, and later the west bank of the Delaware. Essentially the duke's proprietorship brought together several previously distinct jurisdictions within the territory formerly claimed by the Council of New England. It excepted Massachusetts and Connecticut but absorbed the competing claims of the Dutch in the Hudson and Delaware valleys. The duke's charter was brief and not, in its express terms, innovative. Its terms differed from the contemporary Carolina proprietorship in that they included no explicit palatine grant but instead reconstituted in the person of the duke the jurisdiction originally vested in the Council of New England (Thorpe [1909] 1993, 1637–40). The duke's charter “gave him complete power to organize his government as he wished, reserving to the Crown sovereignty and the right of judicial appeal” (Ritchie 1977, 31).
domain was further enlarged, along with authority "to erect, constitute, and make" such "counties, baronnies, and colonies" throughout the area as they might see fit. Organization of the whole was attempted in 1669 through promulgation of the *Fundamental Constitutions of Carolina*, written by a young John Locke. The *Constitutions* stands as by far the most elaborated statement of English proprietary colonization's legalized projection of authority onto an expanse of mainland territory. In 120 clauses the Constitutions created layer upon interwoven layer of office, honor, privilege, obligation, definition, boundary, rule, and regulation: a medley of institutions and cultural signs, cascading down on virtually every aspect of public and private life, the whole structure building legal, political and social institutions directly on distributions of landed property (Thorpe [1909] 1993, 2750-51, 2763, 2772-86).

William Penn's charter for Pennsylvania (1681), which established the smallest of the Restoration proprietaries, was the last of the great seventeenth-century proprietary grants. Descriptively it also hinted at the intrusion of new conceptions of jurisdiction and territorial marking on the chorographic perambulations that had theretofore supplied the metes and bounds within which the American charters had built their layers of legal authority.

Spatially, Pennsylvania would be

all that Tract or Parte of Land in America, with all the Islands therein conteyned, as the same is bounded on the East by Delaware River, from twelve miles distance Northwards of New Castle Towne unto the three and fortieth degree of Northern Latitude, if the said River doeth extend soe farre Northward, then by the said River soe farr as it doth extend; and from the head of the said River, the Eastern Bounds are to be determined by a Meridian Line, to bee drawne from the head of the said River, unto the said three and fortieth Degree. The said Lands to extend westwards five degrees in longitude, to bee computed from the said Eastern Bounds; and the said Lands to bee bounded on the North by the beginning of the three and fortieth degree of Northern Latitude, and on the South by a Circle drawn at twelve miles distance from New Castle Northward and Westward unto the beginning of the fortieth degree of Northern Latitude, and then by a streight Line Westward to the Limitt of Longitude above-mentioned. (Thorpe [1909] 1993, 3036)

46. I am not taking account here of the Jerseys, which were obtained by indenture from the duke of York. The duke divested territory to John Lord Berkeley and Sir George Carteret, who claimed to have been granted their own proprietary province of New Caesaria, or New Jersey. The history of the Fairfax estate in Virginia's Northern Neck is also beyond the scope of this essay, save only to note here Andrews's description of it as "a great landed domain, within which were reproduced many of the tenurial features characteristic of the manorial system at home" (1964, 2:237).
One may take these scientistic impositions on local topography (straight lines, arcs, latitudes, and longitudes) as a sign of high English self-confidence, of complete mastery in the imposition of precise European form on other space, a prefiguration of Enlightenment cartography that so clearly contrasts with earlier attempts to identify bounded spaces through proclamations of autoptic intimacy with local physical details. Then again, charters had never extended their concern for locales much beyond topographical marking and the appropriation of resources. Local political institutions, the local economy, and local culture had always vanished beneath the welter of textual English impositions. Pennsylvania was no exception. All its significant points of social, economic, political and cultural reference projected English appropriation, English jurisdiction, English ambition—Englishness—onto an inert mainland. Penn himself was the “true and absolute” proprietor of the “Province and Seignorie” of Pennsylvania, holding its territory in free and common socage, and with “free and absolute” power to divide the country into “Townes, Hundreds and Counties,” to “erect and incorporate Townes into Borroughs, and Borroughs into Citties, and to make and constitute faires and Marketts.” He was to be free to “assigne, alien, Grant, demise, or enfeoff” without restriction, to “erect any parcells of Land . . . into Mannors” and in “every of the Said Manors to have and hold Court-Baron, and View of ffrank-pledge” (Thorpe [1909] 1993, 3037, 3040, 3042–43).

Considered within its English context, however, Penn’s charter actually signified a diminution of capacity, the closing of an era of extensive delegation of colonizing responsibilities and governing authority to magnate elites, the beginnings of one of consolidation. Though proprietorial, Pennsylvania was not palatine. Penn’s charter powers were not as extensive as those of the Carolina proprietors, nor of the Calverts before them. Like them he could make laws, with the approbation of the province’s freemen, and appoint “Judges and Justices, Magistrates and Officers . . . for what Causes soever.” But his power to “remit, release, pardon, and abolish” was subject to restriction; the privy council had oversight of provincial laws; the king retained the right to hear appeals. Proprietorial discretion in the disposition of land was constrained by restrictions on subinfeudation. Proprietorial discretion in the control of trade was constrained by the requirement of strict adherence to the acts of navigation. Proprietorial control of the economy was limited by royal claims of a right (with parliamentary consent) to impose taxes. What Penn’s charter revealed in its English context was that by the 1680s the proprietorial design for English colonization

47. Stephen Saunders Webb (1979, 446–51) points to the replacement of the council of foreign plantations by the committee of the Privy Council for the plantations (the lords of trade and plantations) as the pivot upon which the move to imperial consolidation and royal regulation swung. See also Webb 1984.
was fast being eclipsed by the expanding English state. The control of occupancy and population was represented as an enterprise of the metropolitan state and an expression of nation. "The members of the Board of Trade at Whitehall . . . desired to get rid of the proprietary system altogether and to obtain for the proprietary colonies a more efficient order of [royal] government, to the greater peace and contentment of the colonists and the advantage of the mother country" (Thorpe [1909] 1993, 3038, 3039–40, 3042, 3043; Andrews 1964, 3:225).

The attempt at the end of the seventeenth century to create a singular metropolitan representation of mainland colonizing was itself constrained, of course, by the state forms, both residual and established, and actually embraced by planting's projectors over the preceding hundred years. But that source of institutional diversity was overlain by another and greater source of plurality, namely the migrations that had actually provided the colonies' occupants. Overwhelmingly "English," the migrants were far from a single "people" with a shared cultural orientation to the creation of one Englishness in America. Rather, the migrants that cemented English colonial occupancy of the mainland arrived possessed of quite distinct repertoires of habits, ideologies, and social practices. Manifested in law, these diverse social and cultural birthmarks imprinted not one but several distinguishable variants of Englishness on the American landscape. Their pluralism found itself at odds with the worlds of the metropolis and of colonization's magnate projectors alike.

PART II: SETTLEMENT

Thou hast a lap full of seed,
And this is a fine country.
Why dost thou not cast thy seed,
And live in it merrily?

—William Blake, Poems from the Rossetti Manuscript, part 1
(circa 1793)

Law's Polyphony

In Albion's Seed, David Hackett Fischer has argued that each of the successive waves of seventeenth-century migration into North America (specifically to New England in the 1630s, to the Chesapeake region between 1630 and 1690, and to the Delaware valley between 1675 and 1715) was in essential respects a discrete movement of people and folkways from a
particular English region, resulting in the serial creation of distinct settler societies on the American mainland. Labeled by some a “procrustean” exercise that distorts cultural circumstance on both sides of the Atlantic, Fischer's research has been praised by others for its disaggregation of a spuriously homogenous “metropolitan culture” into heterogeneous regional parts, and for making “the most sustained and compelling case yet” for the influence of regional cultural inheritance “in the formation of colonial American regional cultures” (Fischer 1989; Anderson 1991, 235; Greene 1991, 229, 230).\footnote{See also Colley 1992 for the argument that a national culture for the British Isles did not begin to appear until the eighteenth and early nineteenth centuries.}

In examining processes of cultural transmission and persistence, Fischer's research stresses in particular the strategic role of “elite” core groups within migrations. These migrant elites are not to be confused with the magnate negotiators (and beneficiaries) of colonial charters, who were largely absent from the physical processes of settlement. None of the seventeenth-century migrations reproduced the social hierarchy of contemporary Britain. Indeed, most of the settler “elites” were entirely unremarkable in their social origins, their status a newfound product of standing relative to the even more unremarkable migrant masses. New England's core elite, for example, came from the East Anglian middling strata. A few were provincial gentry, but most were yeomen, husbandmen, artisans, and craftsmen (Fischer 1989, 27; Thompson 1994). The Chesapeake migration was more stratified, mostly people of extremely modest means, with few middling commoners and a more pronouncedly aristocratic upper crust than in New England. “Efforts to promote a rigidly stratified society” failed in the Chesapeake, but its upper-caste core shared much tighter regional origins than the mass. Unlike the dissenting core group of the Puritan migration, the Chesapeake core identified with the political, social, and cultural values of English county elites (Fischer 1989, 207–25; Horn 1994, 28, 147, 427–28). The Delaware valley migration, like New England's, had a strongly defined regional core of self-conscious dissenters and an even flatter social structure. Most of the original Delaware valley migrants were Quakers from northwestern England. Few called themselves gentlemen or even yeomen. Most were husbandmen, craftsmen, small traders, and merchants. Unlike the Chesapeake colonies, here was no core with preexisting social authority or resources to mobilize. More like in New England, it was a group of early arrivals sharing an ideocultural tradition and common regional background (Fischer 1989, 419–55; Lemon 1972, 5–7; Levy 1988, 123–89).

Settler elites being at best regional in their original solidarities, the cultural resources they shared—knowledge, relationships, ascendancies—tended to be local in origin. This served community leaders well. Local cohesions were rallying points in colonial settlements in which, by dint of
migration from a diversity of points of origin, many in the population would initially have been strangers to each other. It also meant that the institutions, ideas, customs, and folkways on which migrants relied to establish rules of engagement with each other were most likely to be expressions of, or refracted through, disparate local or regional cultures.

Of all the means to the establishment of such rules of engagement, few had more import than law. In part 1 we saw that processes of European colonial expansion had always been framed in a discourse of legalities, both as initial "civilizing" justification and as a more specific matter of designing procedures for the occupation of territory and the organization and government of settler populations. The effectivity of the framing depended on the presumption that the migrant populations manifested sufficient legal consciousness to recognize legal institutions and offices as incontrovertible manifestations of public authority. And indeed, the "order ways" of each region of settlement expressed authority as a legal phenomenon. Considered ideologically—as an essential value in itself, as "the rule of law"—law was not the only, nor necessarily even the most important, mode of authorizing behavior. Considered as a means to implement cultural authority, however, law and legal institutions had considerable potency (Haskins 1968; Konig 1979; Roeber 1981; Horn 1994, 334–80; Offutt, 1995; see also Muldoon 1979; 1994).

The general salience of law notwithstanding, migration no more exhibited a common national legal culture in motion than did any other facet of Albion's social seeding. The legal cultures actually created in the regions of mainland settlement were in crucial respects departures from each other. They were also constructed in tension with the designs to be found in the colonial charters.

Early-modern England was dense in law and its institutions, but there was nothing necessarily unitary about English law as a cultural field. Indeed, there is considerable evidence of pronounced social and regional difference in English conceptions of legal and political order. The meaning of that evidence, however, has been obscured by a historiography that understands legal variation as a series of oppositions between "central" authority and "peripheral" localism rather than as systematic difference across geographic regions. Keith Wrightson, for example, points to the intensification of the central "infrastructural reach" of the state in seventeenth-century England, and to the substantive local refraction of its effects by the endemic "variability in contexts and options" exhibited across the country's 9,000 parishes. In localism's endemic variability, however, he finds not patterns of systematic

49. In Tomlins 1993, I develop the concept of law as "a modality of rule" to underline the social and cultural particularities inherent in legal modes of authorizing. See also Goodrich 1990.

50. The classic statement is Goebel 1931.
differentiation but only fragmentation—below the gentry “a lack of alternative conceptions of the social order,” and envelopment instead “in relations of communality and deference” and in “the localism which gave those ties force and meaning” (Wrightson 1982, 65; 1996, 26, 31). Writing of the eighteenth century, E. P. Thompson similarly situates “the customs, or habitual usages of the country,” particularly the lex loci, or “local customs of the manor,” at the interface between local practice and state law. Unlike Wrightson, Thompson finds in locality a resource stiffening “resistance” to the center and to a national legal order under construction at a distance from plebeian communities. Nevertheless, Thompson agrees with Wrightson in stressing local legality’s infinite variety, its lack of pattern: it was “a lived environment comprised of practices, inherited expectations, rules which both determined limits to usages and disclosed possibilities, norms and sanctions both of law and neighborhood pressures.” Its composition differed “from parish to parish according to innumerable variables” (Thompson 1991, 3–4, 97, 102; see also Wrightson 1980).

More recent work has enriched but also qualified these emphases. Studies of customary free mining law, for example, stress how the “localised and specific” nature of its jurisdiction contributed to miners’ “sense of collective identity” and capacity to “resist . . . their rulers’ wishes.” But they also show that free mining jurisdictions did not manifest fragmented isolation or bewildering variation. For one thing, their boundaries expanded and contracted. Free mining law influenced miners in adjoining localities; it percolated across regions as miners migrated from one area to another (Wood 1999, 262, 324, 218–48; 1996, 250–51). For another, the core areas of free mining law (tin in Devon and Cornwall, coal and iron in the forest of Dean, coal in Kingswood, lead in the Somerset Mendips and the Peak district of Derbyshire) exhibited similar social character and legal practices, and excited the same opposition from local gentry “taught to see commons, forests, moors and fens as the loci of rebellious and libertarian local cultures.” Wherever free mining’s claims gained “a firm legal basis and a strong hold on male plebeian culture” they bred “senses of rights and liberties” rooted in its distinctive practices and in the “collective political engagement against social superiors” that protection of those practices necessitated (Wood 1999, 144). The west country “Stannaries”—institutionally the most highly developed example of free mining law in action (distinct court system, a distinct representative body to legislate for the industry, exemption from county and national taxation, the right to muster their own militias)—have been described as “virtually a self-governing state within the state” (Stoyle 1994, 17). In the Peak district, mining law was administered through “barmote” courts distinct from other institutions of local governance, which underwrote “unusual freedoms” that distinguished the area’s miners “as an identifiable collectivity” within the region (Wood 1999, 143). The forest of
Dean’s mine law courts exercised a similarly distinct jurisdiction, allowing the region’s coal miners a degree of independence not unlike that of the Peak’s lead miners. In the Mendips, local manorial lords enjoyed somewhat greater influence over the region’s minery courts than elsewhere, but the courts nevertheless claimed an autonomous industrial jurisdiction over all matters arising “as well between the lord of the soile and workemen as between workmen and workmen” (Wood 1996, 260-61).51

If local legalities thus exhibited detectable patterns within their difference, the purported national uniformities constructed at the center likewise displayed certain distinct contingencies. Historians have underscored the rootedness of customary legalities in the specificities of place in part to contrast “custom and practice” with the generality of common law, “an almost mystical intellectual system which was a central part of ideology of the political nation” (Sharpe 1985, 244). Contemporary critics were more conscious of uniformity’s limits, labeling the common law “dispersed and uncertain,” unsystematic and unimproved, uncivilized, “barbaric.” Sir Edward Coke’s nationalizing project of “writing English law” was the product of his “persistent awareness” of competitors “against which English law had to defend and define itself.” The competitors were external—rival legal “systems,” as in continental or Roman or canon law; rival claims to determinative national authority, as in monarchical or episcopal will, executive ascendancy, or sovereign prerogative. But there were also internal rivals. Like other contemporary English nationalisms, Coke’s passion for national-legal consolidation “had a double-face . . . turn[ing] inward to find out and eliminate those practices and those institutions that failed to reflect back its own unitary image” as well as outward “to declare its defining difference” (Helgerson 1992, 70-72; see also Blomley 1994, 71-82).

The polyphony of English legal culture was recorded in the same chorographic perambulations that detailed the plurality of the country’s social habits and topographical features. Chorographers depicted no routines of transcendent central influence, royal or otherwise, but instead “words and images, caught in a complex and mutually self-constituting exchange between individual authors, the communities to which they belong, and the land they represent.” Authority in this system was “not centered but dispersed” (Helgerson 1992, 124).52 Place had geographical but also legal-instit-
Institutional particularity, in common law no less than lex loci (Blomley 1994, 76–78). One example is the work of the Kent Justice of the Peace, William Lambarde, who in the 1570s and 1580s wrote in both the chorographic idiom—his *Perambulation of Kent* (1576) was the first of the histories of English counties—and the legal, discoursing on the peculiarities of Kentish gavelkind in his *Perambulation*, and more generally using local materials as the basis for his equally classic *Eirenarcha* (on the office of the justice of the peace) and other volumes on the duties of officers of local government (Read 1962, 7–8, 60; Ross 1998, 248). Justices might have been commissioned as agents of the center, but everywhere they found it necessary to establish “conventions and customs to meet local needs.” The exemplary hostility they showed the Caroline Book of Orders of 1630–31, in which the privy council attempted to require identical forms of enforcement of social legislation to be practiced in every county, has appropriately been described as resistance to “Charles’s semi-conscious assault on local autonomy and his insistence on obedience to the letter of the statute law” (Morrill 1999, 35; Langelüddecke, 1997). But such hostility—or at least studied indifference—was in no sense a novelty (Davies 1956, 220–28, 230–39).

While assuredly an essential element of the “great tradition” of supralocal elite culture and rule, then, law was no great tradition monopoly—except, perhaps, in its ritual presentations. Law, first, was “part of popular culture, at least for those plebeian strata above the labouring poor . . . something which people used and participated in.” Even among the laboring poor, “popular consciousness was capable of forming and articulating its own opinions on the nature of the rule of law” (Sharpe 1985, 261, 262 [emphasis added]). More important, although the discursive singularity “law” implied unity in origin and meaning, and a received ideology that cemented consensus, the existence of markedly differentiated social opinions about law, coupled with clear spatial variation in local legalities, can in fact be taken to indicate the existence of distinct conceptions of what law was and what was law. Not only might distinct “conceptions of legality, order and authority . . . be articulated by different social groups,” but those distinct conceptions actually reflect real differences (Wood 1996, 250).

In the American case, although colonization was designed by elites, it was precisely people from the plebeian strata—both above and including

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53. As Lawrence Stone puts it, “When an Englishman in the early seventeenth century said 'my country' he meant 'my county.' What we see in the half century before the civil war is the growth of an emotional sense of loyalty to the local community, and also of institutional arrangements to give that sentiment force. The county evolved as a coherent political and social community, with reference to—and potentially in rivalry with—both other counties and the central executive and its local agents” (1972, 106).

54. The most evocative account of the latter remains Douglas Hay’s exploration of the cultural significance of eighteenth-century criminal law (see Hay 1975). Hay’s wider argument there also underscores how, by the early eighteenth century, law was becoming what it previously had not been—a “great tradition” monopoly.
the laboring poor—who constituted the mass of each of the three major
seventeenth-century migrant streams to the American mainland. Hence
one may propose that the transatlantic movement of socially identifiable
strata of the population implied the movement of socially identifiable legal
cultures. Given, further, that migration to each of the three mainland
regions of primary reception had identifiable regional characteristics, one
may propose, similarly, that transatlantic movement implied the movement
of regionally distinct legal cultures.

English historians have already begun exploring the potential of sys-
tematic variation within the frontiers of a political geography molded by
regional location to clarify specifics of social and political behavior. Take
for example David Underdown’s study of variation in patterns of popular
allegiance during the English Civil War. Disputing analyses of allegiance
that stressed rivalry between “provincial” or “county” solidarities and the
“central” state (such as Morrill 1999; Stone 1972), Underdown proposed
that contrasts in allegiance were rooted in two distinct “constellations of
social, political and cultural forces” that gave rise to polar viewpoints on
contemporary society, one “relatively stable and reciprocally paternalistic
and deferential,” which accurately predicted popular engagement in pro-
royalist politics, the other “more unstable, less harmonious, more individu-
alistic” and predictive of pro-parliamentarian politics. Crucially, the con-
stellations varied according to regional and subregional geography, the
former principally embedded in arable areas, the latter in woods-pasture,
rural-industrial regions (Underdown 1985, 40–41).

More recent approaches remain at one with Underdown’s desire to sys-
tematize England’s political geography, but they have given greater causal
emphasis to the institutional conditions of variation arising from ecological
difference. Margaret Somers, for example, has developed a historical sociol-
ogy of English law that focuses on the existence of two distinct “types” of
legal culture historically associated with distinctions in England’s political
geography. Building on the pioneering agricultural history of Joan Thirsk
and Alan Everitt, Somers argues that the population of pastoral and rural-

55 Underdown’s argument has been criticized for its “ecological determinism” (see, for
example, Wrightson and Levine 1995, 214–15; Morrill 1987; see also Davie 1991; but see
Stoyle 1994). Certainly it suffers from a number of problems. First, though premised on an
initial recognition of socioeconomic change during the first half of the seventeenth century,
the argument is quite static: it is an account of the effects of exogenous change according to
its reception within distinct ecological areas, those characterized by pastoral land use, and
those by arable. Yet, in fact, such areas were themselves undergoing endogenous transforma-
tion, the frontiers of farming regions altering substantially across the course of the century
(Kussmaul 1990). What Underdown describes may have been less the consequence of change
refracted by stable ecological identifications than change in the regions themselves, both in
their organization and in their prevailing ecology. Second, the Civil War was in itself a major
supervening political event, as such likely to provoke allegiance patterns that transcended as
much as reproduced the influence of local cultural variation. Exemplary variation may be
better displayed in matters where less, comparatively, is at stake.
industrial regions tended to manifest a plebeian consciousness of citizenship rights and obligations as "freeborn Englishmen" entitled to participate in lawmaking processes, while the population of arable regions tended to a consciousness of rightlessness and deference. "Whereas the working population in the pastoral regions looked to the law to guarantee their rights, the working peoples of the arable regions feared the law as a form of social control." Somers puts this difference down to "regional differences in public spheres," that is, in modes and ideologies of governance. "In the pastoral regions, the public sphere encompassed local village governance, which encouraged popular participation; in the arable regions, governance was countywide and wealthy landlord-elites monopolized participation" (Somers 1994, 97–99; 1993, 594, 601 [emphasis in original]). This institutional-ideological contrast was embedded in the history of English feudalism. In productive arable regions, imposed fiefs and manorial lordships could be sustained by the local economy, underwriting private spheres of power and a social hierarchy of lords, vassals, and peasant laborers. By the beginning of the seventeenth century villeinage was long past, the arable peasant population redistributed among categories of large yeoman farmer, husbandmen, and laboring poor. But the largest part of this peasantry, although now free, was essentially landless, and "continued to live and work under the direct political and residential supervision of their yeoman-farmer employers and gentry landlords." Lacking independent standing, the laboring population of the arable regions could not take advantage of participatory rights. Hence, "despite the legal freedom granted by public law, [they] were subordinated anew through the legal process."

56 In pastoral highland and woodland regions, by contrast, "Manorialism was weaker, more divided, or nonexistent." The population was primarily one of small peasant freeholders dispersed in scattered villages and hamlets." Pastoral communities were more solidaristic than arable, family cohesion was higher, the dominance of powerful county elites was less in evidence, and officeholders were closer to the people. These conditions enhanced local autonomy, establishing the foundations necessary for a viable local civic sphere (Somers 1993, 601; 1994, 97; see also Wrightson 1982, 171–73; Thirsk 1967, 109–12; Everitt 1967, 433–34; Ellis 1995, 46–48, 257–58; Thirsk 1984).

Historians will treat Somers's hypotheses with some caution. The product of ideal-type analysis, they are not sensitive to the microvariation of individual communities. David Grayson Allen's excavation of the English roots of early Massachusetts towns warns that "regional and subregional variations in England produced a complicated social fabric." While each of the

56. Participatory rights were stated in colonial charters as rights of "freeholders" (see, e.g., the charter of Maryland [1632] in Thorpe [1909] 1993, 1680). Charters generally guaranteed the "liberties" of the subject as existing in England (see, e.g., the first charter of Virginia [1606] in Thorpe [1909] 1993, 3800).
two broad zones of the Thirsk-Everitt model "had its own agricultural practices, social structure and local customs," within them "regional specialization in agriculture and certain distinctive features of community life were increasing in the sixteenth and seventeenth centuries," accentuating subregional variation (Allen 1981, 18, 14–16; see also Davie 1991, 2–25). Manorialism, for example, manifested rather different legal-cultural effects in the East Riding of Yorkshire and the sheep-corn husbandry of Salisbury Plain. "Pastoral" East Anglia, likewise, produced greater variation in the mode of community organization than "lumping" generalizations allows.

Nor, like Thirsk's original delineation of English farming regions, are Somers's hypotheses particularly sensitive to change over time. The sixteenth- and seventeenth-century England from which the bulk of the North American mainland's migrants came was a land undergoing substantial alteration. Population growth meant rising food prices, periodic dearth, market transformations, and basic alterations in the balance and location of arable and pastoral agriculture. Small-holding husbandmen and landless laborers pushed out of arable regions by rising rents and manorial fines, and by engrossment and enclosure, crowded into areas of more extensive commons and wastes, fens, and woods or forest, where squatting and subsistence farming remained viable. Rising popular mobility and dearth crises also prompted substantial alteration in the structure of political-legal relations encompassing central and local authority (Spufford 1974; Sharp 1980; Sharpe 1985; Wrightson 1982; Fletcher and Stevenson 1985b; Kussmaul 1990). Such fundamental levels of social and material change help explain the heightened popular propensity to migrate, but they make generalizations about the legal-cultural context of migration risky.

Yet precisely because regional diversity lends itself to a degree of typologizing, its inclusion may in fact generate useful generalizations. The core migrant streams that fed New England and the Delaware valley had clear "pastoral" resonances through their roots in, respectively, East Anglia and the Pennine north. The legal cultures they established reflected those roots. Core migration to the Chesapeake had more substantial elite connection to the arable-manorial south and southwest, and many Chesapeake migrants came from the displaced population of formerly arable regions. These characteristics mark Chesapeake legal culture as, potentially, quite distinct from that of New England and the Delaware valley. In short, both at the general conceptual level and also in some important particulars, the Thirsk-Everitt model and the historical sociology of law that it supports have considerable utility in refining our understanding of the legal cultures that migrants established on the early North American mainland.

57. For debate on Thirsk's schema, see Davie 1991. For a dynamic analysis of the English rural economy that reassesses Thirsk's categories, see Kussmaul 1990.
A. New England

New England's local institutions in the seventeenth century gave particular emphasis to the town community as the unit of settlement, collective proprietorship, land distribution, and local governance. Initially varying according to "regional differences in the mother country," local institutions quickly developed in the direction of common individual freehold, partible inheritance, pastoral agriculture, and participatory local government. In Rowley, Massachusetts, migrants from Rowley in Yorkshire replicated the manorial society that they had left—a stable, static, agrarian community, dominated by open-field farming, cloth making, and a "tightly defined" social structure. Rowley settlers were slow to divide the town's land; when they did so, their distributions relative to neighboring communities were made in small parcels that—reflecting the community's stratification—were quite unequal in extent. Rowley's legal culture reflected its manorial roots, with dense local bylaws passed by common consent regulating common agricultural practice and widespread office holding to oversee enforcement (Allen 1981, 19–54). But although Rowley settlers had carried manorial habit with them, they did not carry the manor itself, with its lord and his manorial rights, its courts leet (to try petty offenses), and baron (to enact bylaws). In Massachusetts, Rowley's manorialism was a decapitated version of the original. Its decision making was participatory, founded on town meeting and town officers.

Migration from Hingham, Norfolk, is likewise informative. The original Hingham was located in central Norfolk, abutting both wood-pasture and arable. Its inhabitants' lives followed a pattern of "vulnerable subsistence," dependent on dairying, corn-livestock rearing, and cloth making. With manorialism in this area in desuetude, open-field agriculture was in decline, with scattered enclosures amid woods. Hingham, Massachusetts reproduced a nonmanorial structure, centered on an explicit notion of corporate "townsmanship," collective responsibility, relative social and economic equality, and an explicit web of connection between community office holding and family (Allen 1981, 57, 70, and generally 55–81).

Allen's studies of Newbury, Ipswich, and Watertown all demonstrate similar local variation. What is particularly important about them collectively, however, is their common illustration of "the peculiar ease" with which—as distinct from contemporary England—local government "by consent" could evolve in Massachusetts. Allen sees this as a matter of distinction not difference. "People in Stuart England were not incapable of directing their own lives. The most illuminating example is Hingham, where in both the English parish and the New England town the approval of the town meeting was an essential element of government." Self-government, this suggests, developed naturally in lordless environments, whether
these were in old England or new. The principle distinction “new” England offered was greater possibility—given the absence of extremes of riches and poverty, given near complete local control insulated from outside authority—“for working out the long-term implications of government by consent” (Allen 1981, 210-11, 212, and generally 205-22; see also Cronon 1983, 137-56; Powell 1964, 140-41; Breen 1975; Lockridge 1970; Innes 1995).

B. The Chesapeake

If early Massachusetts’s local legal culture emphasized the town, that of the Chesapeake was focused on the county (Carr 1978; Wheeler 1978). Counties and county courts existed in both Virginia and Massachusetts, established in Virginia in 1634 and in Massachusetts in 1643. In Massachusetts the county courts and county officers achieved institutional importance alongside the self-governing towns. Chesapeake legal culture and local government, however, centered almost exclusively on the county court. One finds there none of the density of local communal organization visible in Massachusetts. Apart from the county and its officers, the only institution with governmental responsibilities affecting individual settler households was the parish vestry, which itself was intimately interwoven with the structure of county-level governmental power (Seiler 1978).

In part the dominance of the county in the Chesapeake is attributable to settlement patterns. The tidewater population was widely dispersed, “solitary and unsociable. . . dispersedly and scatteringly seated upon the sides of Rivers. . . thinly inhabited.” Towns and villages were hardly to be found. “There was nothing in Virginia or Maryland that replicated English urban experience” (Horn 1994, 234-35). Behind this, however, one finds—as in New England—hints of influence from the region’s English cultural backgrounds. Pointing to the importance of migration from the south and west of England in shaping Chesapeake folkways, for example, Fischer stresses characteristics of the region—manorialism, corn-sheep husbandry, rigid social hierarchy, gentry domination, a substantial landless population of cottagers and farm laborers—that we have seen Somers associate with the “arable” model of legal culture. As Somers points out, concentration of local government institutions at county level, dominated by county elites, is the primary institutional expression of the “arable” model. Fischer concurs. “The ordering institutions of Virginia were as hierarchical as the idea of order itself. The most important order-keepers were not town constables who had been elected by the people, as in New England, but county sheriffs who had been appointed in the name of the Crown.” Alongside the sheriff

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58. For contrasting assessments of the relative strengths of county and town institutions in Massachusetts, see Konig 1978, 29-37; Allen 1981, 205-22.
sat the county court composed of the county’s justices of the peace, “self-
perpetuating oligarchies of country gentlemen” (Fischer 1989, 398, 406;

As in New England, one must avoid too facile an identification of a
historically specific legal culture with an overschematic ideal type. One
recurring theme of migration is its capacity to create new cultural mixes
from previously nonexistent proximities. Hence, according to James Horn,
while the dominance of county-level government in the Chesapeake does
signify and reinforce the influence of the colonial gentry, one cannot associ-
ate that dominance with a particular inherited regional legal culture.
“[P]rovincial cultures did not have the same impact in the Chesapeake as
they apparently did in parts of New England.” Rather, the diversity of
sources for Chesapeake emigration meant a jumbling there of multiple local
influences. Yet Horn argues that diversity did not turn Chesapeake society
into a staggeringly variegated culture, but rather a new, “simplified” one.
“The rich particularity of the past could not be replicated in America; what
emerged were compromises and approximations” (Horn 1994, 14, 148; see
also Greene 1991, 227).

The point is worth considering. Judging from indenture records kept at
the port of Bristol, many of the Chesapeake’s southwestern migrants came
not from identifiable downland areas of England but from the increasingly
populous pastoral parishes, forests, and wastes of western Gloucestershire,
Wiltshire, and northern Somerset. The cultural significance of this is not
obvious, however, for as we have seen, many in these parishes were them-
selves newcomers displaced from the southwest’s arable areas by engross-
ment of small holdings, conversions to pastoral husbandry, and—especially
in the case of the young—by a cyclical weakening in demand for farm ser-
vice. Chesapeake migrants leaving through Bristol, like many of those
drawn to London, may well have been displaced arable workers (Horn 1994,
69–76; Salerno 1979; Kussmaul 1981, 98–100; 1990, 1–13). Nevertheless,
it is quite conceivable that one dynamic of migration to the Chesapeake
was to place a culturally pastoral population of migrants within the fram-
work of institutions built by core group elites upon culturally distinct
foundations.

Under these circumstances the real issue—at least where formal au-
thoritative institutions, sinews of power, are concerned—becomes one of
cultural ascendancy: Who is to say what institutional forms will rule? On
the face of it, this was a question more likely to be resolved by elite minori-
ties, “the well-born and the wealthy,” than by the mass of plebeian, largely

59. In his 1585 “Inducements,” the elder Hakluyt refers specifically to the existence in
America of “great waste Woods” where “many of our waste people may be imployed” (Taylor
1935, 331). Waste having a quite specific meaning in sixteenth- and seventeenth-century
England (unenclosed, open to casual settlement), it is unlikely that Hakluyt here wished to
refer simply to “surplus” people. See also Dean 1996, 167.
youthful, emigrants. And did the “simplified” institutions that those minori-
ties chose—gentry-dominated county courts and parish vestries—really re-
represent a pattern of governance and legal culture “broadly familiar” to the
generality of emigrants and “reminiscent of a variety of jurisdictions” (Horn
1994, 148, 428–29),60 or can their roots be specified more precisely? Judging
by what those core minorities created, at least in its legal culture, the Ches-
apake was less a compromise or a composite than an imitation of downland
arable England. Just as New England tipped toward one pole of a cultural
continuum, the Chesapeake tipped toward the other.

C. The Delaware Valley

In the third primary area of English settlement—the Delaware Val-
ley—the character of early migration was more homogenous than the Ches-
apake. From it emerges strong evidence for the influence of a distinctively
“pastoral” legal culture among the first settlers. This is not to say that cul-
tural confrontation lacks the potential for explaining the political culture of
the Delaware Valley that it may have in the Chesapeake. Penn’s charter
envisioned Pennsylvania as a manorial society of well-disciplined agricul-
tural communities, and the pattern of land distribution that characterized
the colony exhibits a distinctive manorial twist (Lemon 1972, 50–56, and
generally 42–70; Price 1995, 258–67). The mass of the original migrants, in
contrast, came from northern and northwestern England, areas as pastoral as
one could hope to find—weak in manorial institutions, lacking powerful
oligarchic local elites, social relations characterized by family and household
cohesion, inhabitants possessed of “‘a reputation for independence,’ and a
custom of equality among themselves” (Fischer 1989, 448). These qualities
help explain why some of the most basic and enduring frictions animating
the colony’s politics in the eighteenth century occurred along an axis of
conflict that pitted Penn and his proprietary successors against the provin-
cial population (Tully 1994, 258. See also Berthoff and Murrin 1973,
266–68; Hill 1996, 298–305). What those settlers were bent on creating in
early Pennsylvania differed from what the proprietor had planned—not dis-
sciplined agrarianism but “a transplantation of upland, provincial, British so-
ciety.”61 It was a transplantation “profoundly modified by radical religion”

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60. Though descriptively rich, Horn’s Adapting to a New World tends constantly to fall
between two stools. By emphasizing endemic local variety, the author denies the possibility of
systematic translocal variation between regions; by emphasizing cultural transference as a pro-
cess of “simplification” that reveals lowest-common-denominator familiarity, he assumes an
essentialist core of sameness—“Englishness”—prevails at the stripped-down heart of all local
cultures. On this point, see also Fischer 1991, 286.

61. Penn’s manorialism reflected his general affinity to lowland culture. But it is also
worth remarking how his plans for Pennsylvania reproduced a venerable tradition of seven-
teenth-century metropolitan state policy toward the north of England (whence his migrants
came) and Ireland (where Cromwell had granted his father extensive Munster estates),
(that is, Quakerism). But rather than introduce qualitative changes in a familiar social order, the settlers' Quakerism in fact organized and accented key aspects of the experience of living in upland plebeian pastoral society. Religious ideology reinforced the distinct culture of its settler-adherents, tightening their key social experiences into an explicit ideology of social authority (Fischer 1989, 448; Levy 1988, 6).

Of the many aspects of local culture transplanted by settlers, most important was the family. The northern and northwestern districts from which the Delaware valley's first settlers came were typified by low population densities and a subsistence economy of dispersed smallholder farming. Opportunities to achieve lasting household independence were few. To compensate and “provide family continuity and personal dignity in the face of scarcity and individual household poverty,” northwestern households developed practices of pooling resources. These practices became “the sinews of northwestern society” and Quakerism their “radical, charismatic” expression. Even as Quakers separated from non-Quaker society first in England and subsequently by migration to Pennsylvania, Quaker ideology continued to place kinship and an extended sense of family and communal solidarity at the center of what was now a separate Quaker social practice (Levy 1988, 37, 84–85, 100, 102).

So strong was Quaker familialism in the Delaware valley, so pronounced its emphasis on extended private space in social practice, that quite apart from the dissonance between proprietary ambition and the legal culture of the migrant population, public institutions initially played only a secondary role in the settlers' social and cultural practices. This was particularly clear in religious practices, where no religious establishment was created, toleration was widespread, and the calendar of “meetings” was the only interposition on an otherwise spontaneous communalism. But it was also clear in Quaker political economy and legal culture. Disputes between Quakers were generally composed within meetings rather than taken “to law.”

Communal institutions outside the household/meeting nexus, however, were not absent. Parallel layers of local government and legal process existed from the outset of settlement, operating through both township and county, sharing responsibilities for local administration: road building and maintenance, poor relief, licensing, livestock regulation. Justices of the peace appointed by the governor were strategic figures at both levels: at county level, collectively, they presided over quarter sessions, and until replaced by locally elected county commissioners, they presided over all

namely “the creation of a ‘civil’ English society, based on the norms and values of lowland England,” manifested (in the Irish case) in “schemes to reduce the countryside to tillage and civility by planting English settlers in nucleated English villages of English stone cottages, regardless of the suitability of local conditions” (Ellis 1995, 270). On the Penns and the anglicization of Munster, see Canny 1986, 141–43.
county administration; at township level, individually, they arbitrated or settled minor disputes. Other county-level figures—the sheriff, the coroner—were equally strategic. “These officers were not controlled by a small clique of county gentry as in Virginia, nor elected by the consensus of a local community as were the constables of New England.” Rather, they were appointed centrally from among a limited field of nominees (two) who were chosen in countywide elections (Fischer 1989, 585).62 In the context of Quaker ideology, the role of all these public officials was at least as much one of social ordering through mediation within the locality as the projection of public disciplinary power into the locality from the outside. Initially focused on the relationship between Quakers and “the world,” as Delaware valley society diversified, public officials refocused on mediation among the plurality of groups that peopled the area. As Quakers became outnumbered, legal institutions—participatory in procedural emphasis, local in focus—became key to sustaining Quaker influence (Offutt 1995, 11; Brophy 1996).

CONCLUSION

“More vividly perhaps than any other developments during the first century,” Jack Greene has argued, “the number and range of [colonizing] experiments illustrates the extent to which America had been identified among Europeans as a site for the realization of dreams and hopes that could not be achieved in the Old World.” By experiments, Greene here refers to the charter designs for the establishment of commercial plantations, territorial lordships, and/or ideological sanctuaries, with which the first part of this essay was concerned. “Of course,” he continues, “all of these efforts were failures,” and their failure was “almost immediate.” Intricate designs yielded before material realities—resource allocations, demography, and economy. New World settlers substituted as “their principal collective social goal the creation of some sort of recognizable version of the metropolitan society” (Greene 1993, 58, 66 [my emphasis]).

I have already suggested that one can allude to the “failure” of English colonization designs only if one has first assumed a position on the inside of English expansion. Viewed from the outside, failure is far less easy to discern. The first objective of colonial chartering was to sanction the creation of colonies. It was attained. The second objective was to employ the discourses and methodologies to hand “to man . . . plant . . . and to keepe” those colonies (Taylor 1935, 333–34); that is, to impress Englishness in detail on the American mainland, and to displace competitors. That too was attained. Greene calls the mainland colonies “experiments,” but little in

62. In practice the biggest vote getter was chosen. Formal authority thus flowed from the center. Practical authority, however, flowed from the locality.
any of England’s seventeenth-century intrusions departed from the plural available discourses of seventeenth-century Englishness—political, economic, legal, or institutional. One hundred and fifty years after the first English intrusions on the mainland, the mid-eighteenth century’s maps of the interior presented “an unconscious portrait of how successfully a European colonial society had reproduced itself in the New World.” Their depictions of place names, settlements, roads, and local administrative boundaries were a constant reminder of “the structures and consequences,” the “European geography,” that English colonization had created. It was “as if the Europeans had always lived there” (Harley 1997, 189).

The third objective of the charters was to design particular economies, polities, and institutional structures (that is, states) for particular colonies. Here there is more evidence for failure, although it did not come as quickly, nor was it as final, as Greene implies. In societal terms, Massachusetts’s loss of its original charter half a century after the founding of the colony was deeply traumatic—hardly a sign of the charter’s irrelevance. In general the primary point of ideological orientation for most of the New England settlements, well into the eighteenth century, was still provided by the circumstances of their founding (Miller 1961, 135–72; Bushman 1967). The politics and economics of proprietorship were central to the course of development in both Maryland and Pennsylvania, in the latter case well into the second half of the eighteenth century (Tully 1994). Conceptions of rights and liberties abroad in the revolutionary epoch suggest that provisions of the colonial charters remained a crucial point of civic reference (Reid 1993). More generally, the discourse of appropriation, exclusion, occupation, improvement—ubiquitous in the charters—was embraced everywhere. Seen for what they were—the principal means for expressing colonization and expansion, authorizing displacement, and impressing Englishness on America—the founding designs for English mainland colonies do not seem at all irrelevant to the mainland’s subsequent history.

63. Important elements of the colonization process were clearly utopian, and the necessities of crystallizing their utopianism in documentary form required institutions to be configured in novel “experimental” ways. Yet the institutions themselves were usually not unfamiliar, nor even their configurations unprecedented. The company charters were not out of place in a long line of trading company charters; the proprietorial and quasi-proprietorial charters had immediate resonance with Irish plantation charters. Nor was their manorialism at all odd as an expression of landed jurisdiction in sixteenth/seventeenth-century England.

64. Harley calls these same mid-eighteenth-century maps “subliminal charters of colonial legitimation.” There is no need to contest the description in order to remind ourselves that the charters actually establishing the colonies had taken care of the matter long before, a point Harley concedes in noting the maps’ “unwitting support [for] the legal doctrines of terra nullis [sic] and vacuum domicilium, which, since the earliest days of the colonies, had featured among the grounds for acquiring land title and assuming political jurisdiction” (1997, 191).

65. Berthoff and Murrin (1973) offer a particularly acute analysis of the continued relevance of foundational legal and social forms into the later eighteenth century, showing how enormously valuable proprietary territorial claims had by then become. They err, however, in assuming that the original charters had attempted to establish something they call “genuine”
If declarations of the (almost immediate) irrelevance of foundational designs for English colonization seem worthy of reconsideration, so does the companion assertion that what settlers substituted (one must assume "almost immediately" lest they pitch into a cultural void) was an approximation or amalgam of metropolitan culture. It is not clear how the capacity to approximate or amalgamate a metropolitan culture would be developed or set in play. Most settlers, it is true, enjoyed one common cultural trait upon which they could draw in forming colonial societies, namely language. How much else they shared or, in their isolation, wished to share is debatable. It is more realistic to hypothesize that the settlers of the North American mainland tended to establish and reproduce serial locally or regionally specific English cultures than that they spontaneously became the first English speakers in the world to invent a homogenous national culture. It is unclear whether the regional migrations Fischer describes were quite as solidary in all cases as he claims, but it is indisputable that each of the recipient regions became home to influential pluralities who were, in their origins, distinctive and who brought many elements of that distinctiveness to bear in the "settling" of their new environment.

The legal field is not the least of those in which cultural variation may be observed. Legal cultures established in areas of North American mainland settlement and sustained by those core groups that maintained local ascendancy reproduced regionally distinctive English legal cultures. Although crude in some respects, the distinction between arable and pastoral legal cultures appears to offer considerable analytic purchase in understanding the nature, ideology, and institutional organization of legal and social authority in the areas of mainland settlement under examination. As we have seen, it is also worth considering to what extent tensions between chartered authority and settler legal cultures arose from a cultural dissociation between the two borne in processes of migration that confronted people from one English region with authority structures designed on the basis of practice in another. Endemic proprietor-settler conflicts in Maryland and, especially, in Pennsylvania are explicable in just such terms.

feudalism, which could not be realized, and that eighteenth-century usage was something different—a resolutely "modern" (and implicitly cynical) mobilization of "old" claims in the service of "new" profit (1973, 266–67). It is difficult to take seriously the idea of the charters as an attempt to realize something called "genuine" feudalism. Feudalism was invented at the same time, and by the same people, as the charters themselves. It was of use in the charters for the purpose of giving powerful magnates virtually autonomous jurisdiction over immense territories, which, as we have seen, they hoped to commodify as "land" by filling them with people. Berthoff and Murrin's account of the eighteenth-century history of proprietorship is testament to their success.

66 Other work in progress investigates the migration of regionally distinct legal cultures through examination of regimes of labor and employment regulation. One possibility in this regard is that examination of regional regimes of master/servant will reveal regional variation in the origins of local elites. Another is to consider whether vagrancy and servitude regulation was invoked to control cross-cultural conflicts.
What, finally, should one say now of law as a constituent element in the process of colonization? First, law as a discourse of authority in general clearly had a central role in the processes by which English colonizers claimed, named, manned, planted, and finally, kept the American mainland. Second, as a discourse of authority in detail (as a modality of home rule, so to speak), law continued to play that considerable role on the ground, where it was manifest chiefly in refracted cultural and institutional forms grounded in England’s regional pluralism. Both were roles of appropriation: Neither projectors nor populations had much trouble with that general ambition. Nevertheless, the roles were distinct and existed in tension, a tension that leads me to suggest the utility of a variation on the Comaroff’s view of law not as colonization’s blunt instrument but instead its more mutable companion.

From early in its history, English colonization of the American mainland had been as much a self-colonization as a visitation of power upon a colonized “other”—a labor of transformation wrought by the English upon themselves. Managed by delegation for most of the first century of colonization, originally to metropolitan projectors and then to local elites, in the early eighteenth century, as “Britain” began to emerge as a unified national state dominated by a fully integrated English center, the labor of self-transformation came to mean much closer attention paid by that state to “its” colonies than before. The metropolitan state sought uniformities of practice where previously migrants had established severalties and custom; it attempted to institute new processes of institution- and state-formation that cut across original regional affinities and rearranged hierarchies of rule. Usefully conceived of as a broad “anglicization” of colonial political and legal culture (see Dayton 1995, 11; Brown 1996, 247–366; and generally Tomlins 1999, 24–32), these processes may also be seen as an attempt to homogenize things already English, with political overtones—the abandonment of delegation in favor of metropolitan state ascendancy—that extended to the American mainland the same centralist ambitions to subjugate regional difference that were already ongoing in Britain.

Law proved an important medium for the realization of cultural anglicization (Dayton 1995; Murrin 1983). But as the new century wore on, the

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67. The creation of disciplined labor forces in overseas colonies through transportation or migration of surplus populations is a theme of English colonization argumentation from the younger Richard Hakluyt onward. In his Discourse of Western Planting, for example, Hakluyt argues “That this enterprize will be for the manifolde employment of numbers of idle men” (Taylor 1935, 233–39). English historians have noted, moreover, how colonization’s aspect as the transformation of peoples extended simultaneously to the “internal” colonization (geographic and social) of the British Isles (see, e.g., Ellis 1995; Armitage 2000, 24–60; Brogden 1987). During the eighteenth century a dialectic between metropolitan and colonial social transformation became explicit in the work of police/political economy theorists. See, generally, Armitage 2000, 146–98. For examples, see Colquhoun 1796; 1814. The point is explored by Tomlins (1993, 74–80) and by Comaroff and Comaroff (1997, 310–22).
political overtones of the process became more obvious. The colonials were exposed not, after all, as presumptively English at all but rather as provincial and peripheral "others," to be addressed as such and themselves transformed by the imperial state. Colonial law's distinctive rights claims, grounded in its persistent regionalisms, then became an important medium of resistance (Webb 1979, 441–42).

Law, in short, colonized early America. But it did so in multiple and sometimes conflicting ways. It did so by providing the most significant medium for planning and creating colonial jurisdictions. It did so as well by filling those jurisdictions with institutions that expressed the will of settler elites. It did so by providing a medium of resistance to the English imperial state. And it did so, finally, by becoming in its turn an expression of the colonists' own expansionist impulse to colonize others. In the mainland colonies that would become the United States, Americans distilled from their English law the rights of the colonized (that is, themselves) to claim their independence. They did so, in large part, in order to free themselves from imperial constraints that restrained their own colonizing (or to use the preferred anodyne phrase, their own "westward movement"); to realize and release their energies as self-conscious subjects, for the first time, of their own, now indubitably American, history; and thus (as before, at the expense of others) to construct and make manifest their destiny as "new men" (Crevecoeur 1904, 54; Hurst 1956; Tomlins 2001). Law would play an instrumental role in Americans' realization of that destiny, as it had since the beginning of English colonizing. By writing the legal history of colonization and settlement, we uncover the fundamental continuity of early-modern and modern America.

REFERENCES


