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Source: *The American Historical Review*, Vol. 117, No. 2 (APRIL 2012), pp. 365-386

Published by: Oxford University Press on behalf of the American Historical Association

Stable URL: <https://www.jstor.org/stable/23310740>

Accessed: 11-03-2019 03:45 UTC

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## Commons and Enclosure in the Colonization of North America

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ALLAN GREER

WHAT WERE THE BROAD PROCESSES by which settlers of European stock created new forms of tenure and wrested control of lands from indigenous peoples, first in the Americas and later across wide stretches of Africa and Oceania? Anyone interested in this basic question about colonization and dispossession in an Atlantic world setting may be tempted to think in terms of a great “enclosure movement” that took shape first in England and Western Europe and then extended overseas to the New World, bringing survey lines, fences, and legal rules fostering exclusive access and transferability. More than one historian has pointed in the direction of such an extended conception of enclosure, although none has so far made the case in detail. “When the English took possession of lands overseas, they did so by building fences and hedges, the markers of enclosure and private property,” write Peter Linebaugh and Marcus Rediker.<sup>1</sup> In relation to the eighteenth and nineteenth centuries, E. P. Thompson has also pointed to a connection between enclosure within England and the imposition of private property across the overseas British Empire, notably in India, where the Permanent Settlement of Bengal (1793) represented a particularly brutal and doctrinaire attempt to establish unitary proprietorship over land. Thompson’s argument about enclosure and colonization appeared in an essay published late in his life, and it touches on North America, New Zealand, and Africa as well as India.<sup>2</sup> Richly suggestive, it remains schematic and preliminary, pointing to a long-

Research for this article was supported by grants from the Social Science and Humanities Research Council (Canada) and the John Simon Guggenheim Memorial Foundation. I wish to thank Kate Desbarats, Rebecca Horn, and Virginia Anderson, as well as the audiences who commented on earlier versions presented as papers at the University of Toronto Legal History Seminar, Concordia University, the College of William and Mary, and the “Contested Spaces in the Americas” Seminar/Symposium, McNeil Center for Early American Studies, Philadelphia.

<sup>1</sup> Peter Linebaugh and Marcus Rediker, *The Many-Headed Hydra: Sailors, Slaves, Commoners, and the Hidden History of the Revolutionary Atlantic* (Boston, 2000), 44. Similar views of enclosure and colonization can be found in the following works: Francis Jennings, *The Invasion of America: Indians, Colonialism, and the Cant of Conquest* (Chapel Hill, N.C., 1975), 82–83; Thomas Flanagan, “The Agricultural Argument and Original Appropriation: Indian Lands and Political Philosophy,” *Canadian Journal of Political Science* 22 (1989): 589–602; Gary B. Nash, *Red, White, and Black: The Peoples of Early North America*, 4th ed. (Upper Saddle River, N.J., 2000), 23; Patricia Seed, *American Pentimento: The Invention of Indians and the Pursuit of Riches* (Minneapolis, 2001), 32–34; Nancy Shoemaker, *A Strange Likeness: Becoming Red and White in Eighteenth-Century North America* (New York, 2004), 20–22; Stuart Banner, *How the Indians Lost Their Land: Law and Power on the Frontier* (Cambridge, Mass., 2005), 37–39, 258–259; Ben Maddison, “Radical Commons Discourse and the Challenges of Colonialism,” *Radical History Review*, no. 108 (2010): 29–48.

<sup>2</sup> E. P. Thompson, “Custom, Law and Common Right,” in Thompson, *Customs in Common* (New

term global movement to privatize the commons that emanated outward from the British Isles. Certainly, there is an intriguing, if rough, coincidence of peak periods of enclosure in England—the Tudor period and the late eighteenth century—with times of imperial expansion and reinvigoration.<sup>3</sup>

Settlers did frequently erect fences, since “enclosure” in that mundane sense of the term played an important part in separating ruminants and crops, the two elements whose coexistence typified European agriculture. It is also true that commodified, individualized forms of property usually followed in the wake of colonization, although the transition may not have been as rapid as some imagine. While the long-run tendency may indeed have been in the direction of an enclosed private property regime that largely excluded natives, colonization was also accompanied by the establishment of commons. Evidence from seventeenth-century New Spain, New France, and New England can shed light on the interplay of enclosure and commons in the formation of colonial property regimes in North America.<sup>4</sup> It shows that common property was a central feature of both native and settler forms of land tenure in the early colonial period and that dispossession came about largely through the clash of an indigenous commons and a colonial commons.

The contrary view, that enclosure rather than commons acted as the driving force in colonial dispossession, has been sustained partly through the lingering influence of John Locke, proponent of both enclosure and colonizing and preeminent philosopher of property in land. In the fifth chapter of his *Second Treatise of Civil Government*, a brief but powerfully argued essay titled “Of Property,” Locke has much to say about commons, enclosure, and, at least by implication, colonization.<sup>5</sup> If the world and nature’s bounty were created for all of humanity, he asks, how can anyone claim exclusive rights to a specific portion of the earth? His answer is that labor provides the ultimate basis for legitimate property rights. Thus, the “wild Indian” who shoots a deer somewhere in “America” has a perfect right, by virtue of his hunting skill and efforts, to enjoy the meat and leather that its carcass provides, but he has no particular claim on other deer in the forest, much less on the forest itself. Property in land also derives from labor: in the state of nature, acorns are mine when

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York, 1991), 164–175. See also Ranajit Guha, *A Rule of Property for Bengal: An Essay on the Idea of Permanent Settlement* (Durham, N.C., 1996).

<sup>3</sup> On English enclosure, see R. H. Tawney, *The Agrarian Problem in the Sixteenth Century* (London, 1912); Joan Thirsk, ed., *The Agrarian History of England and Wales*, vol. 4: 1500–1640 (Cambridge, 1967), chap. 4; J. A. Yelling, *Common Field and Enclosure in England, 1450–1850* (London, 1977); J. M. Neeson, *Commoners: Common Right, Enclosure and Social Change in England, 1700–1820* (Cambridge, 1993).

<sup>4</sup> Admittedly, the language of “enclosure” has a parochially English ring to it, but even though contemporaries rarely spoke of an “enclosure movement” in the context of continental Europe, historians find considerable evidence of developments not unlike the changes that transformed the English countryside in the early modern period. Marc Bloch, *French Rural History: An Essay on Its Basic Characteristics*, trans. Janet Sondheimer (Berkeley, Calif., 1966), chap. 6; Gérard Béaur, *Histoire agraire de la France au XVIII<sup>e</sup> siècle: Inerties et changements dans les campagnes françaises entre 1715 et 1815* (Paris, 2000), 64–83, 300–302; Martina de Moor, Leigh Shaw-Taylor, and Paul Warde, “Comparing the Historical Commons of North West Europe: An Introduction,” in de Moor, Shaw-Taylor, and Warde, eds., *The Management of Common Land in North West Europe, c. 1500–1850* (Turnhout, Belgium, 2002), 15–31; Jesús García Fernández, “Champs ouverts et champs clôturés en Vieille-Castille,” *Annales: Économies, sociétés, civilisations* 20, no. 4 (1965): 692–718; Juan Diego Pérez Cebada and Felipa Sánchez Salazar, “Destroying the Commons: The Enclosure of Lands in Spain in the ‘Ancien Régime’” (paper presented to the International Association for the Study of Common Property, Brescia, Italy, 2006).

<sup>5</sup> John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge, 1960), 133–146.

I take the trouble to collect them, and similarly land is mine when I clear, cultivate, and fence it. Once government and laws make their appearance, property rights and the distribution of property are subject to contractual agreements, but the original appropriation of the universal commons took place through the operation of labor.

Modern commentators note that this chapter of the *Second Treatise* was about property generally and not specifically *private* property, insisting that Locke's logic applies equally to collective and individual property.<sup>6</sup> However, if we consider "Of Property" in terms of its rhetoric, the author's preference for enclosure and private property is abundantly clear. There are repeated references to the poverty of "commoners" and to the superiority of enclosures; the question is whether the productivity of one exceeds that of the other by a factor of ten or a hundred. "For I ask whether in the wild woods and uncultivated waste of America, left to nature, without any improvement, tillage, or husbandry, a thousand acres yield the needy and wretched inhabitants as many conveniences of life as ten acres of equally fertile land do in Devonshire, where they are well cultivated." A few pages later, an acre producing twenty bushels of wheat in England is compared to an acre of equally good American land; the former produces revenues of five pounds, the latter hardly a penny, "if all the profit an Indian received from it were to be valued and sold here." Quite apart from Locke's reasoning about original appropriation in the state of nature, the association of words gives his chapter a definite pro-enclosure rhetorical thrust. Linked together in consistently negative contexts are the words "commons," "waste," "commoner," "Indian," "America," and "poverty."

By referring to Indians as "commoners" living off the unenclosed bounty of the New World, Locke seems to assimilate them, as far as issues of productivity are concerned, to the cottagers and smallholders of the Old World. "The fruit or venison which nourishes the wild Indian, who knows no enclosure and is still a tenant in common, must be his . . . before it can do him any good for the support of his life."<sup>7</sup> An impression is created: "improvement" is equally at odds with common fields in England and uncleared forests in America. Later pro-enclosure propagandists would take up this same equation, comparing poor fen-dwellers in East Anglia with American Indians who foraged for a living from land that ought ideally to be converted to private property.<sup>8</sup> However, while he emphasizes similarity in the economic implications of commons and enclosure on the two sides of the Atlantic, Locke introduces a radical distinction between the village commons of the Old World and the open lands of the New when he turns to questions of justice and rights.

"Land that is common in England or any other country where there is plenty of people under government who have money and commerce" is perfectly legitimate,

<sup>6</sup> James Tully, *A Discourse on Property: John Locke and His Adversaries* (Cambridge, 1980); Tully, "Differences in the Interpretation of Locke on Property," in Tully, *An Approach to Political Philosophy: Locke in Contexts* (Cambridge, 1993), 118–136. Tully's argument challenges C. B. Macpherson's view of Locke as the philosopher of capitalist property relations. Macpherson, *The Political Theory of Possessive Individualism: Hobbes to Locke* (Oxford, 1962), chap. 5; Macpherson, "Capitalism and the Changing Concept of Property," in Eugene Kamenka and R. S. Neale, eds., *Feudalism, Capitalism and Beyond* (London, 1975), 105–124.

<sup>7</sup> Locke, *Two Treatises of Government*, 134.

<sup>8</sup> "Forests and great Commons make the Poor that are upon them too much like the *Indians*," wrote John Bellers in 1714 (quoted in Thompson, "Custom, Law and Common Right," 165). See also Neeson, *Commoners*, 30.

collectively owned property, according to Locke. In this setting, unlike the state of nature, “no one can enclose or appropriate any part without the consent of all his fellow-commoners; because this is left common by compact, *i.e.*, by the law of the land, which is not to be violated. And though it be common in respect of some men, it is not so to all mankind, but is the joint property of this country or this parish.”<sup>9</sup> America represents a different sort of commons, wide open and available to all: not collective property, but rather the antithesis of property. Enclosure at home and enclosure overseas may be equally desirable ends, but they have to come about by very different means according to Locke. In England, voluntary agreement (and presumably compensation) is a must, whereas enclosure in America requires no one’s permission.<sup>10</sup> This procedural divergence over enclosure, critical to Locke’s implied theory of colonial property formation, rests on the elision of two different criteria. Legitimate common property is local/particular, and it is instituted in law, whereas pre-colonial America knows no law, and its lands constitute a commons of universal scope: it corresponds to nature itself.

Scholars interested in the commons, both those who focus on the history of the agricultural commons and those who examine “the commons” in today’s world (air, oceans, fisheries, the Internet, etc.), would agree with Locke on the need to distinguish particular commons from what they term “open-access resources.” The former, specialists tell us, are jointly owned and, in most cases, collectively managed; the latter are portions of the environment that are not property. Yet there would be little empirical support for Locke’s notion that particular commons somehow require the prior existence of “government,” “law,” and “money” in forms that would be recognizable as such by a European observer. Contemporary research on the commons has shown that common property does not necessarily depend on legal formalities, but is more typically an organic aspect of fishing, hunting, grazing, or wood-cutting communities.<sup>11</sup> That common property of this sort might be found in pre-Columbian North America, might even have been the norm, is a possibility that Locke never entertained. His reasoning rests too heavily on a basic ontological division between civil societies and their antithesis, natural humanity: on one side were civilized communities where land could be owned individually or communally, on the other uncivilized communities where land was open to all. In erasing the distinction, where American natives were concerned, between particular commons and open-access resources, Locke effectively disqualified them as proprietors.<sup>12</sup>

Common property was, in fact, a fundamental feature of landholding in both the New World and the Old in the early modern centuries. The commons came in myriad

<sup>9</sup> Locke, *Two Treatises of Government*, 137.

<sup>10</sup> Locke’s insistence on the right of unilateral appropriation in the state of nature, appropriation requiring no one’s consent, is a feature that, according to Barbara Arneil, distinguishes his theory of property from that of Hugo Grotius. Arneil, *John Locke and America: The Defence of English Colonialism* (Oxford, 1996), 61–62.

<sup>11</sup> Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (New York, 1990), chap. 3; David Feeny, Fikret Berkes, Bonnie J. McCay, and James M. Acheson, “The Tragedy of the Commons: Twenty-Two Years Later,” *Human Ecology* 18, no. 1 (1990): 1–19; Bonnie J. McCay and Svein Jentoft, “Market or Community Failure? Critical Perspectives on Common Property Research,” *Human Organization* 57, no. 1 (1998): 21–29.

<sup>12</sup> James Tully, “Rediscovering America: The Two Treatises and Aboriginal Rights,” in Tully, *An Approach to Political Philosophy*, 137–176.

forms, varying from one environmental setting and subsistence regime to the next, shaped in some areas by legal codes and customs, shaped in their particulars also by the factors cited by Locke: population density, government, and commerce. Although the commons is perhaps best apprehended in its local specificity, we might still venture some general observations. In Europe, where agriculture typically involved the raising of livestock and the growing of crops in close proximity, “open-field” practices developed in many (by no means all) regions, whereby land was held individually but managed collectively, and where the cattle and other animals of a given community grazed either in a special pasture or on portions of the arable land that were not currently bearing crops.<sup>13</sup> The commons might be thought of both as a place—the village pasture—and as a set of access rights, such as gleaning and stubble grazing. This portion of the commons located in the tillage zone of a given community might be designated the “inner commons.” “Outer commons” can then be used to refer to collectively owned resources in the surrounding area beyond local croplands. This was called “the waste” in England: the zone of moor, mountain, marsh, or forest that rural folk used as rough pasture for their livestock as well as for cutting wood or peat for fuel, gathering herbs, taking rushes for basketry or thatching, felling timber for construction, and so on. A variety of rules and customs, some of them local, others regional or national, governed access to these common resources. In Spain, where the medieval law code, the *Siete Partidas*, had given particular attention to common property, outer commons were very extensive; elsewhere in Europe, they varied greatly in size and significance.<sup>14</sup>

WHILE OUR LANGUAGE OF COMMONS derives from European settings and practices, versions of common property, both the “inner commons” and the “outer commons,” were present right across indigenous North America as well. There was, of course, agriculture in the pre-Columbian New World—indeed, the majority of the hemisphere’s population subsisted primarily through cultivating the soil, although Locke’s “Of Property” gives a contrary impression—but it was purely crop-based: potatoes, maize, beans, squash, and other cultigens were grown without a significant component of animal husbandry.<sup>15</sup> Because crops did not share space with domestic animals, fences and hedges were largely unnecessary, and in that literal sense, the land was not enclosed. However, individual families or lineages did have particular plots of their own, subject to varying degrees of community control. Around the great cities of Mesoamerica lay villages and hamlets with intensively cultivated fields, some of the latter belonging to particular households, others owned by temples, local chiefs, or urban nobles and worked by the community. Plots were carefully measured, marked, and recorded; tenure displayed some characteristics associated with “en-

<sup>13</sup> Joan Thirsk, “The Common Fields,” *Past & Present*, no. 29 (December 1964): 3–25. For an excellent description (in a colonial American context in this case) of the collective management of livestock as an accompaniment to grain-growing, see Brian Donahue, *The Great Meadow: Farmers and the Land in Colonial Concord* (New Haven, Conn., 2004).

<sup>14</sup> Robert I. Burns, ed., *Las Siete Partidas*, 5 vols., vol. 3: *Medieval Law: Lawyers and Their Work* (Philadelphia, 2001), 820–822.

<sup>15</sup> Vicki Hsueh, “Cultivating and Challenging the Common: Lockean Property, Indigenous Traditionalisms, and the Problem of Exclusion,” *Contemporary Political Theory* 5, no. 2 (2006): 193–214.

closed” areas of England and some characteristics of what Locke would call legal, particular commons. Thus this can be viewed as a zone of enclosure and “inner commons.”

Beyond the villages and cornfields lay a different kind of commons: the forest or mountains or desert terrain where local people went for firewood, wild herbs and berries, game, and other resources. Scholars have found little specific information on this Mesoamerican “outer commons” in the surviving sources, but in general terms they have no doubts as to its existence.<sup>16</sup> For the most part, this was not the universal commons, but rather territory and resources that belonged to a particular person, lineage, or community. In that respect, the situation was roughly similar to the moors, mountains, and forests of Europe: common property, but neither unregulated nor open to the entire human race.<sup>17</sup>

North of Mexico lay a vast continent occupied by peoples who subsisted on various combinations of hunting, fishing, foraging, and agriculture. With the partial exception of the Pacific Northwest, where chiefs, and through them particular lineages, enjoyed a strong sense of exclusive control over sites and resources, especially aquatic resources, most land was held as a kind of commons.<sup>18</sup> Maize cultivators of the northeast, including Iroquoians as well as the various Algonquian nations such as the Delaware and Narragansett, typically planted fields surrounding a village, relocating and clearing new lands every ten or twenty years. Tilled fields typically belonged to the women of a given family, although agricultural work and the distribution of the fruits of the harvest also had a strongly collectivist character (inner commons).<sup>19</sup> Outside these small islands of cultivation, however, lay terrain that provided vital supplies of game, fish, fruit, and other useful resources to those who knew how to harvest them (outer commons). Modern historians sometimes describe such practices in terms of “usufruct,” as opposed to genuine ownership.<sup>20</sup> The sev-

<sup>16</sup> Rebecca Horn, personal communication, March 4, 2009.

<sup>17</sup> On land tenure and agriculture among the Nahuatl peoples of central Mexico, see Charles Gibson, *The Aztecs under Spanish Rule: A History of the Indians of the Valley of Mexico, 1519–1810* (Stanford, Calif., 1964), chap. 10; H. R. Harvey, “Aspects of Land Tenure in Ancient Mexico,” in H. R. Harvey and Hanns J. Prem, eds., *Explorations in Ethnohistory: Indians of Central Mexico in the Sixteenth Century* (Albuquerque, N.M., 1984), 83–102; S. L. Cline, *Colonial Culhuacan, 1580–1600: A Social History of an Aztec Town* (Albuquerque, N.M., 1986), chap. 8; James Lockhart, *The Nahuatl after the Conquest: A Social and Cultural History of the Indians of Central Mexico, Sixteenth through Eighteenth Centuries* (Stanford, Calif., 1992), chap. 5; Elizabeth Boone, “Glorious Imperium: Understanding Land and Community in Moctezuma’s Mexico,” in David Carrasco and Eduardo Matos Moctezuma, eds., *Moctezuma’s Mexico: Visions of the Aztec World* (Niwot, Colo., 1992), 159–173; Rebecca Horn, *Postconquest Coyoacan: Nahuatl-Spanish Relations in Central Mexico, 1519–1650* (Stanford, Calif., 1997), chap. 5.

<sup>18</sup> On the concept of an indigenous commons in the Arkansas Valley, see Kathleen DuVal, *The Native Ground: Indians and Colonists in the Heart of the Continent* (Philadelphia, 2006), 7–9. On the prevalence of particular claims to resources in the Pacific Northwest, see Wayne Suttles, ed., *Northwest Coast* (Washington, D.C., 1990); Richard Daly, *Our Box Was Full: An Ethnography for the Delgamuukw Plaintiffs* (Vancouver, B.C., 2005); Douglas C. Harris, *Landing Native Fisheries: Indian Reserves and Fishing Rights in British Columbia, 1849–1925* (Vancouver, B.C., 2008).

<sup>19</sup> Conrad Heidenreich, *Huron: A History and Geography of the Huron Indians, 1600–1650* (Toronto, 1971), 168–171; Bruce G. Trigger, *The Children of Aataensic: A History of the Huron People to 1660* (Montreal, 1976), 34–40; Anthony F. C. Wallace, “Woman, Land, and Society: Three Aspects of Aboriginal Delaware Life,” *Pennsylvania Archeologist* 17, no. 1–4 (1947): 1–35; Kathleen J. Bragdon, *Native People of Southern New England, 1500–1650* (Norman, Okla., 1996); Dean R. Snow, *The Iroquois* (Oxford, 1994).

<sup>20</sup> William Cronon, *Changes in the Land: Indians, Colonists, and the Ecology of New England* (New York, 1983), 60–68. Creek land, says Claudio Saunt, “was not owned as much as used.” Saunt, *A New*

enteenth-century missionary Gabriel Sagard, however, had no hesitation in drawing on the language of common property when he referred to Huron claims to land and resources:

It is their custom for every family to live on its fishing, hunting, and planting, since they have as much land as they need; for all the forests, meadows, and uncleared land are common property, and anyone is allowed to clear and sow as much as he will and can, and according to his needs; and this cleared land remains in his possession for as many years as he continues to cultivate and make use of it. After it is altogether abandoned by its owner, then anyone who wishes uses it, but not otherwise.<sup>21</sup>

Generally, North American territory was claimed and controlled by specific human societies (usually in cooperation with animal and spiritual entities), and these societies determined how they would be managed. Even non-agricultural hunting-gathering societies held land as a kind of outer commons without any inner commons. Writing of the Mi'kmaq of eastern Canada, the French Récollet friar Chrestien Le Clercq was emphatic:

It is the right of the head of the nation, according to the customs of the country, which serve as laws and regulations to the Gaspesians [i.e., Mi'kmaq], to distribute the places of hunting to each individual. It is not permitted to any Indian to overstep the bounds and limits of the region which shall have been assigned him in the assemblies of the elders. These are held in autumn and spring expressly to make this assignment.<sup>22</sup>

Although he grasped a basic truth about hunting grounds—they were allocated to particular individuals (and their families)—Le Clercq describes Mi'kmaq tenure norms in European terms, exaggerating the authority of the “head of the nation” and implying that space was defined by outer “bounds and limits.” On the whole, hunter-gatherer tenure has to do with specific functions, such as hunting, fishing, and berrying; moreover, land was not necessarily defined by clear-cut outer boundaries, space being more commonly delineated in terms of central places, lines, and waterways.<sup>23</sup> Consequently, different groups sometimes lay claim to overlapping areas for distinct foraging purposes. On the Great Plains of North America, where wide-ranging bison herds were the land's most important resource, interpenetrating territories were common.<sup>24</sup> Overlapping was less likely in the eastern woodlands, but it was certainly not uncommon for people of different nations to share hunting grounds; however, outsiders who hunted without authorization risked violent sanctions.<sup>25</sup> Moreover, hunters and fishers have never been passive recipients of nature's

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*Order of Things: Property, Power, and the Transformation of the Creek Indians, 1733–1816* (New York, 1999), 40–42.

<sup>21</sup> Gabriel Sagard, *The Long Journey to the Country of the Hurons*, ed. George M. Wrong, trans. H. H. Langton (Toronto, 1939), 103.

<sup>22</sup> Chrestien Le Clercq, *New Relation of Gaspesia, with the Customs and Religion of the Gaspesian Indians*, trans. and ed. William F. Ganong (Toronto, 1910), 237.

<sup>23</sup> See Tim Ingold, *The Appropriation of Nature: Essays on Human Ecology and Social Relations* (Manchester, 1986), chap. 6.

<sup>24</sup> Patricia Albers and Jeanne Kay, “Sharing the Land: A Study in American Indian Territoriality,” in Thomas E. Ross and Tyrel G. Moore, eds., *A Cultural Geography of North American Indians* (Boulder, Colo., 1987), 47–91; Theodore Binnema, *Common and Contested Ground: A Human and Environmental History of the Northwestern Plains* (Norman, Okla., 2001); DuVal, *The Native Ground*, 9, 203.

<sup>25</sup> There is a rich literature, most of it the work of anthropologists, on the northern Algonquian

bounty; as environmental historians have shown, they managed forests and waterways, burning underbrush, diverting streams, and generally altering the environment.<sup>26</sup>

We can, then, speak of an “indigenous commons,” recognizing the wide variety of arrangements by which terrain and resources belonged to specific human collectivities in the real America where Europeans came to establish their colonies. Apart from cultivated areas, America was a quilt of native commons, each governed by the land-use rules of a specific human society. The notion of a universal commons completely open to all—Locke’s “America”—existed mainly in the imperial imagination.

To this pre-owned continent came Spanish, English, and French colonists, occupying space, appropriating resources, and developing tenure practices to suit their purposes. Cleared, plowed, and enclosed farms were a part of that process of appropriation, but so were varieties of what we can call the “colonial commons.” A settler version of the “outer commons” would prove most threatening to the existing indigenous commons, because of its expansive tendencies, but the pioneers of New Spain, New France, and New England also instituted “inner commons.” When the Spanish established cities in Mexico and elsewhere, these were always surrounded by extensive pastures and other common lands. Though townsmen received individual urban lots (*solares*) and could apply for grants of agricultural land in the vicinity, most surrounding territory, extending far into the countryside, constituted the *ejido*, or municipal commons. The *ejido* was the corporate property of the town, and each Spanish *vecino* (municipal citizen) was entitled to share its benefits.<sup>27</sup> Positive legislation in the form of a royal ordinance of 1573 on the founding of new settlements reinforced communal traditions; it required that any new town established on conquered territory must be provided with an *ejido* as well as ample *dehesas* (common pastures) for the grazing of residents’ livestock.<sup>28</sup>

Agriculture at Jamestown, Virginia, began as a fully communal enterprise, although the experiment was admittedly short-lived, and individual lots quickly be-

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hunting territories, both in the distant past and in more recent times. Highlights include Frank G. Speck, “Mistassini Hunting Territories in the Labrador Peninsula,” *American Anthropologist* 25, no. 4 (1923): 452–457; Eleanor Burke Leacock, *The Montagnais “Hunting Territory” and the Fur Trade* (Menasha, Wis., 1954); Toby Morantz, “Historical Perspectives on Family Hunting Territories in Eastern James Bay,” *Anthropologica*, n.s., 28, no. 1–2 (1986): 64–91; Adrian Tanner, “The Significance of Hunting Territories Today,” in Bruce Alden Cox, ed., *Native People, Native Lands: Canadian Indians, Inuit and Metis* (Ottawa, 1987), 60–74; Harvey Feit, “Les territoires de chasse algonquiens avant leur ‘découverte’? Études et histoires sur la tenure, les incendies de forêt et la sociabilité de la chasse,” *Recherches amérindiennes au Québec* 34, no. 3 (2004): 5–22; Colin Scott, “Property, Practice and Aboriginal Rights among Quebec Cree Hunters,” in Tim Ingold, David Riches, and James Woodburn, eds., *Hunters and Gatherers*, vol. 2: *Property, Power and Ideology* (Oxford, 1988), 35–51.

<sup>26</sup> Cronon, *Changes in the Land*, 48–53.

<sup>27</sup> Richard M. Morse, “Some Characteristics of Latin American Urban History,” *American Historical Review* 67, no. 2 (January 1962): 327.

<sup>28</sup> “Ordenanzas hechas para los descubrimientos, nuevas poblaciones y pacificaciones,” July 13, 1573, in Francisco de Solano, ed., *Cedulario de tierras: Compilación de legislación agraria colonial, 1497–1820* (Mexico City, 1991), 220–221. See also Gilbert R. Cruz, *Let There Be Towns: Spanish Municipal Origins in the American Southwest, 1610–1810* (College Station, Tex., 1988), 112–113; David J. Weber, *The Spanish Frontier in North America* (New Haven, Conn., 1992), 320.

came the norm in the colonial Chesapeake.<sup>29</sup> In New England, on the other hand, commons formed an integral part of most early settlements. For practical reasons, as well as through a commitment to Christian solidarity, many townships, including Watertown, Massachusetts, began the process of clearing the forest and tilling the soil collectively.<sup>30</sup> Truly collective agriculture, without particular claims to territory or produce, did not last long, but communal pastures and open-field tillage, systems combining individual ownership with collective management, became an established fact in many towns. Sudbury, an offshoot of Watertown, apportioned individual strips of arable land within two great “general fields,” fenced along the perimeter but without obstructions between each man’s holdings. Here, as in Andover and many other early Massachusetts towns, people were housed in a compact village, often a long walk from their plowlands.<sup>31</sup> Nucleated villages and open fields were by no means universal, even during the initial stages of New England settlements. David Grayson Allen proposes a differentiated analysis of Massachusetts towns, one that recognizes both open-field communities and fully enclosed, individuated landholdings (such as Newbury), as well as mixed townships with elements of both systems (such as Hingham). Allen attributes these variations to the influence of English regional customs by way of immigrants who settled a given locality and who hailed from either enclosed or open-field areas of rural England.<sup>32</sup> While the incidence of open-field tillage varied across early New England, common pastures were closer to universal. Within a given township, cattle generally grazed together, as did sheep in a different enclosure, all under the watchful gaze of the local herdsman. The fact that they were collective, however, does not mean that common pastures were sites of universal access and economic equality. Access to the commons could be tightly controlled, as in Rowley, Massachusetts, where “gates” or “stints” determined the number of animals allowed to each resident; and since grazing rights could be bought and sold, the commons sometimes came to be dominated by wealthy livestock entrepreneurs.<sup>33</sup>

Although common pastures proved quite durable in New England, open-field tillage and concentrated village communities tended to erode over the course of the seventeenth century as farmers bought, sold, and traded dispersed fragments of arable land to form consolidated holdings. At the same time, families showed an increasing inclination to build homes on their own farms, forming self-contained units of residence and production, even as nuclear settlements declined. In his study of Dedham, Massachusetts, Kenneth Lockridge found that the process was complete by 1686: “the common-field system was gone, taking with it the common decisions and the frequent encounters of every farmer with his fellows which it entailed.”<sup>34</sup> Over the long run, even the common pastures came under pressure, leading even-

<sup>29</sup> Edmund S. Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York, 1975), 81–82.

<sup>30</sup> Sumner Chilton Powell, *Puritan Village: The Formation of a New England Town* (Middletown, Conn., 1963), 92.

<sup>31</sup> *Ibid.*, 104; Philip J. Greven, *Four Generations: Population, Land, and Family in Colonial Andover, Massachusetts* (Ithaca, N.Y., 1970), 42.

<sup>32</sup> David Grayson Allen, *In English Ways: The Movement of Societies and the Transfer of English Local Law and Custom to Massachusetts Bay in the Seventeenth Century* (Chapel Hill, N.C., 1981).

<sup>33</sup> *Ibid.*

<sup>34</sup> Kenneth A. Lockridge, *A New England Town: The First Hundred Years, Dedham, Massachusetts, 1636–1736* (New York, 1970), 82.

tually to a full or partial division of the land among stakeholders. However, Brian Donahue argues that village herds and common pastures remained a feature of agriculture in Concord, Massachusetts, until the time of the American Revolution.<sup>35</sup>

Commons were also a feature of early settlement in New France. After early experiments in communal agriculture on the part of the Counter-Reformation idealists who founded Montreal in the 1640s, and in defiance of government policies favoring nucleated villages with outlying fields, the French settlers of the St. Lawrence Valley quickly established a pattern of "agricultural individualism," with each farm constituting a largely self-contained block of land with fields, a house, a barn, and a woodlot. Within each seigneurie, the lots were long and narrow, so they are sometimes referred to as "strips," but these were nothing like the small, scattered strips of arable land within the great fields of an open-field village in Europe; instead, each was a consolidated holding that combined both the residence and the agricultural enterprise of a rural household. Open-field agriculture never really took hold here. The movement to basically self-contained family farmsteads ran parallel to, but proceeded more rapidly than, a similar shift in early New England.

Yet, if this development recalls an aspect of Old World enclosure, fences and hedges seem to have been rather rare in the emergent countryside of seventeenth-century Canada. Here, as in New England, cattle, pigs, sheep, and goats shared the land with grain crops, although in the absence of any substantial market for livestock products, herds were never large. Custom consecrated by colonial "police" regulations required only that hay meadows be fenced. Otherwise, it was up to the owners of livestock to keep their animals supervised and confined to common pastures during the growing season.<sup>36</sup> After the crops were harvested, the custom of *vaine pâture* prevailed, meaning that animals could roam across the fields, grazing on the stubble and dropping their manure. Fences were incompatible with *vaine pâture*. The season of open grazing was short, however, as the onset of deep snow usually forced the habitants to resort to stall feeding through most of the winter. Then, with the coming of the spring thaw, plowing and sowing became urgent priorities, and animals were officially banned from the fields. In some localities, it was the seigneur who announced the dates on which animals could be turned loose in the harvested fields and when they needed to be confined. After the grain had been sown in the spring, however, it was up to the owners of livestock to keep their animals under control and out of the planted fields.<sup>37</sup>

While French Canada generally parted company with the British colonies in requiring the owners of livestock to control their beasts rather than placing the onus on farmers to protect their fields with fences, there was some ambiguity in practice. Even though they had the right to impound marauding cattle and shoot pigs on their property, farmers began erecting fences across the fronts of their narrow farms to prevent incursions from the roadway. In 1725, the colonial administration called for

<sup>35</sup> Donahue, *The Great Meadow*, 117–127.

<sup>36</sup> "Reglements de police," May 11, 1676, in Pierre Georges Roy, ed., *Ordonnances, commissions, etc., etc., des gouverneurs et intendants de la Nouvelle-France, 1639–1706*, 2 vols. (Beauceville, Quebec, 1924), 1: 197. Similar arrangements prevailed across much of *ancien régime* France; Bloch, *French Rural History*, 46–47.

<sup>37</sup> Louise Dechêne, *Habitants and Merchants in Seventeenth-Century Montreal* (Montreal, 1992), 175–177.

habitants to fence their fields, although livestock owners remained liable for damages even on unenclosed lands.<sup>38</sup> More and more fields were fenced, but many lands remained unenclosed at the time of the British conquest of Canada.<sup>39</sup>

Common pastures were a basic feature of stock-raising in many areas of New France. Commons were typically located in the marshy, low-lying areas adjacent to the river or on the many islands that dotted the St. Lawrence; the latter were particularly convenient, as the water helped keep the animals confined and safe from predators. Commons in Canada operated somewhat like those of colonial New England, except that here they were subject to seigneurial controls and exactions. Access was always limited, and sometimes it was contested. Ordinarily, a riverfront commons was available only to the owners of adjacent properties, not to more distant habitants, and it was usually inseparable from landownership (thus grazing rights could not be sold or leased to outsiders, as was the case in some New England towns). In some cases, the seigneur laid out the commons in advance of settlement and then charged censitaires an annual fee or *corvée* (labor service) for grazing rights; in other cases, the local settlers seem to have taken the initiative in establishing a common pasture.<sup>40</sup> Commoning rights proved to be a bone of contention among habitants, and they were also a focus of conflict between peasants and their landlords, as seigneurs struggled to impose their authority and extract revenue from the community pastures.<sup>41</sup>

If we can generalize about enclosures and the inner commons in the early stages of the European occupation of North America, it would be fair to say that settlers laid claim to land sometimes as individual families cultivating self-contained farms, sometimes as a community sharing a given space and its resources. Typically, there was a combination of “private property” and collective management. It is worth taking stock of settler commoning, if only to challenge the Lockean and neo-Lockean tendency to equate colonization, enclosure, and privatization. At the same time, it must be recognized that from the point of view of native dispossession, the balance of fully enclosed versus inner commons may not be of overriding significance. Where land was cleared and bounded for settler use, natives were generally excluded, open-field or no.

Still, the territorial extent of colonial assarts was actually quite limited during the early phases of colonization, and given the terrible depopulation occasioned by the spread of Old World diseases, they did not always cause great dislocation in and of themselves. In many places, natives welcomed settlers. “They doe generally professe to like well of our coming and planting here,” wrote the New England Puritan Francis Higginson, “partly because there is abundance of ground that they cannot possess nor make use of, and partly because our being here will be a meanes both of reliefe to them when they want, and also a defence from their Enemies, wherewith (I say)

<sup>38</sup> “Ordinance of Superior Council,” August 13, 1725, in Pierre Georges Roy, ed., *Inventaire des jugements et délibérations du conseil supérieur de la Nouvelle-France de 1717 à 1760*, 7 vols. (Beauceville, Quebec, 1932), 1: 261.

<sup>39</sup> Dechêne, *Habitants and Merchants in Seventeenth-Century Montreal*, 177.

<sup>40</sup> Allan Greer, *Peasant, Lord, and Merchant: Rural Society in Three Quebec Parishes, 1740–1840* (Toronto, 1985), 11–12; Colin M. Coates, *The Metamorphoses of Landscape and Community in Early Quebec* (Montreal, 2000), 35.

<sup>41</sup> See “Ordonnance de Jean Talon,” June 20, 1680, in Roy, *Ordonnances, commissions, etc., etc.*, 1: 266–275.

before this Plantation begun, they were often indangered.”<sup>42</sup> This was not entirely imperialist wishful thinking; it was also a reflection of the fact that “plantations” could be integrated, at least in theory, into an existing indigenous commons as part of an extensive network of places and resources governed by recognized rules of access. Obviously, the “improvement” of the land tended to undermine native subsistence in the long run as settler populations grew and as the environment was progressively transformed. But running ahead of the enclosed *ecumene* in many parts of the New World was a colonial outer commons: an area of settler hunting, timbering, foraging, and above all grazing that was arguably a more significant agent of dispossession than the fields and fences commonly associated with colonial settlement.

WHAT USED TO BE KNOWN in the United States as “the frontier” can be redefined as the zone of conflict between the indigenous commons and the colonial (outer) commons. These two commons were not different places, but rather contending customs and rules regulating the use of a given space and its resources. Over wide areas of New Spain, the intrusion of a new colonial commons into, alongside, and over the preexisting indigenous commons was central to the dispossession of Indian peoples in the sixteenth, seventeenth, and eighteenth centuries. Initially, the Spanish conquest of Mexico left the native peasantry in possession of their lands under tenures that preserved many of their pre-Columbian characteristics. A *cédula real* of 1532 is categorical: “The Indians shall continue to possess their lands, both arable tracts and grazing lands, so that they do not lack what is necessary.”<sup>43</sup> The conquerors gravitated to the new Spanish cities, drawing produce, revenue, and labor from the native countryside through the operation of systems of tribute and labor service derived from the customs of both the Iberian Peninsula and Mesoamerica. The expansion of colonial property out into what had been the indigenous countryside began in earnest only a generation or two after the conquest, with the steep decline of native numbers and the burgeoning demand for agricultural products that accompanied the growth of silver mining. In these circumstances, it became very profitable to raise cattle, sheep, horses, and mules, leading enterprising Spaniards to invest in large ranching operations and to turn their attention to potential grazing lands far from the centers of colonial settlement.

Peninsular Spain provided a model of stock-raising practices to this American colony. In a country that, like Mexico, contained extensive zones of rough, dry terrain, much of it conquered from the Moors and consequently still part of the royal domain, cattle ranching and sheep-raising tended to rely on open ranges and transhumance. Not only was much of the country classified as open-access *montes* (mountainous and “wasteland” areas), but the charter of privileges granted to the *Mesta* (a kind of ranchers’ syndicate) “guaranteed the right to use ‘deserted and uncultivated lands’ without distinguishing between privately owned and public lands.”

<sup>42</sup> Francis Higginson, *New-Englands Plantation* (1630; repr., New York, 1970), 4.

<sup>43</sup> *Recopilación de leyes de los reynos de las Indias*, 3 vols. (Madrid, 1681), 2: 103, libro 4, título 12, ley v, April 4, 1532, as quoted and translated in William B. Taylor, *Landlord and Peasant in Colonial Oaxaca* (Stanford, Calif., 1972), 67.

Around the time of the colonization of New Spain, the Habsburg monarchs were encouraging stock-raisers in the mother country with privileges allowing them almost unlimited access to water and pasture along transhumance routes. Spanish farmers complained constantly of the damage done by migrating herds.<sup>44</sup>

Authorities in New Spain found it perfectly normal that sheep and cattle would range across the grasslands and mountain slopes of the colony, as long as they did not impinge on the planted fields of natives or colonists. Accordingly, they began granting broad tracts of ranchland, called *estancias*, lying within notionally unoccupied zones. These could be large—an *estancia de ganado mayor* (cattle or horses) was supposed to measure over 4,000 acres, while an *estancia de ganado menor* (sheep or goats) was about 2,000 acres—but they did not at first imply anything resembling “full” ownership of the soil.<sup>45</sup> For example, the Jesuit hacienda of Santa Lucia, a collection of several sheep *estancias*, was described in 1576 as comprising grass, springs, ponds, and watering holes scattered over 70 square kilometers. However, neighboring Indian pueblos, which had long used these areas to gather roots, grasses, and salt and to hunt wild ducks and geese, retained control over these particular resources.<sup>46</sup> Elsewhere, some pastures were granted as *agostaderos*, meaning that they could be used only between December and May, when natives living in the area supposedly were not growing crops.<sup>47</sup> The grant of an *estancia* thus gave little more than grazing rights, and only for a specific class of livestock; these property rights were exclusive only insofar as they kept out other ranchers. And even these restricted rights could be difficult to enforce, since *estancias* lacked clearly designated boundaries. “Mercedes [grants] invariably specified a place and stipulated a size. Borders, even in the rare event that recipients limited themselves to the terms of the grant, were often the painful result of the *practice* of occupation, the equilibrium point between two forces pushing in opposite directions. When the state formally conveyed a merced, the focus was on the site named in the document, where symbolic possession was given of land at best only vaguely delimited.”<sup>48</sup>

*Estancia* grants were therefore more in the nature of licenses to make particular use of portions of the commons. And given the absence of fences and the expansive tendencies of grazing herds, the tracts granted by colonial officials served as a central base for ranching that depended on a broader commons. Writes William Taylor: “The Spanish custom of moving livestock between mountain and lowland pastures, and the principle of common pasturage, whereby unoccupied lands were open for all private cattle, meant that Spanish holdings were fluid and without specific boundaries. Often they were not confirmed in writing for a number of years.”<sup>49</sup> A Spanish version of the commons, one based primarily on ranging livestock, was being superimposed upon a preexisting native commons.

New Spain legislation on grazing and land grants always took the interests of

<sup>44</sup> David E. Vassberg, *Land and Society in Golden Age Castile* (Cambridge, 1984), 11, 36, 79–83.

<sup>45</sup> Gibson, *The Aztecs under Spanish Rule*, 275–279. Since rocky and swampy land was not counted toward the total, *estancias* generally covered much larger areas than what the law specified.

<sup>46</sup> Herman W. Konrad, *A Jesuit Hacienda in Colonial Mexico: Santa Lucia, 1576–1767* (Stanford, Calif., 1980), 28–34.

<sup>47</sup> *Ibid.*, 62, 85; Jonathan D. Amith, *The Möbius Strip: A Spatial History of Colonial Society in Guerrero, Mexico* (Stanford, Calif., 2005), 164.

<sup>48</sup> Amith, *The Möbius Strip*, 186, 188.

<sup>49</sup> Taylor, *Landlord and Peasant in Colonial Oaxaca*, 117.

native peoples into account. From the earliest years of colonial rule, Indians were guaranteed not only their cultivated fields but also an equal right, along with Spaniards, to the resources of the mountains, waters, and forests that constituted the common wasteland of Mexico.<sup>50</sup> Again and again over the course of the colonial centuries, laws and orders came down calling on ranchers to ensure that their stock did not undermine native livelihoods and threatening to revoke grants that infringed on Indian lands.<sup>51</sup> These regulations were not a dead letter—cases arose in which natives successfully pursued legal redress—but neither did they form a barrier sufficient to prevent wholesale dispossession of the indigenous population. Colonization created conditions favorable to the ambitions of ruthless ranchers who were determined to expand their enterprises at the Indians' expense. Attacked by successive waves of epidemic disease, native numbers fell dramatically over the course of the sixteenth century. To make matters worse, great herds of feral cattle and horses spread northward in advance of human conquerors, undermining the fragile ecology, and thus Indian subsistence, in northern New Spain.<sup>52</sup> There was massive dislocation for the survivors, battered by the economic demands of tribute and forced, in some cases, to relocate in concentrated settlements called *congregaciones*, the better to administer and christianize them.<sup>53</sup> As a result, colonizers could plausibly claim that great tracts of land, until recently held by native communities, were now unoccupied and abandoned. Where Indians did remain, subjugation and poverty made it difficult (though by no means impossible) for them to resist the powerful. Furthermore, their very subsistence was undermined in some areas by the environmental effects of overgrazing.

With unlimited forage always available beyond the horizon, and with few predators to control their numbers, the cattle, sheep, and goats introduced by Spanish ranchers thrived and reproduced at an astonishing rate. Elinor Melville refers to the explosion of herbivores in such virgin environments as an “ungulate irruption,” and in a study of sheep-raising in the Valle del Mezquital, she charts the thoroughgoing ecological effects of this rapid ovine takeover of the landscape. The “before and after” contrast she depicts could not be more striking. “When Europeans first entered these wide, flat valleys and plains they saw a landscape that had been shaped by centuries of human occupation. It was a fertile, densely populated, and complex agricultural mosaic composed of extensive croplands, woodlands, and native grasslands; of irrigation canals, dams, terraces, and limestone quarries. Oak and pine forests covered the hills, and springs and streams supplied extensive irrigation systems.” Once *ganado menor* were admitted, the fragile flora was quickly decimated, the ground eroded, and the region was transformed into a semi-desert of cactus and mesquite, barely supporting a handful of destitute natives, “eaters of beetles, bugs, and the fruit of the nopal cactus.”<sup>54</sup> In other regions, the environmental effects of

<sup>50</sup> *Recopilación de leyes de los reynos de las Indias*, 2: 113.

<sup>51</sup> See, for example, Solano, *Cedulario de tierras*, 173, 177, 198.

<sup>52</sup> Chantal Cramaussel, *Poblar la frontera: La provincia de Santa Bárbara en Nueva Vizcaya durante los siglos XVI y XVII* (Zamora, Mexico, 2006), 309–310.

<sup>53</sup> Gibson, *The Aztecs under Spanish Rule*, 281–285.

<sup>54</sup> Elinor G. K. Melville, *A Plague of Sheep: Environmental Consequences of the Conquest of Mexico* (Cambridge, 1994), 31, 115.

grazing were less dramatic, but everywhere cattle and sheep wandered, the landscape changed and Indian livelihoods were affected.

Across the dry grasslands, and in some tropical forest regions as well, a colonial commons was taking form, and its spatial extent kept growing.<sup>55</sup> This commons was shaped by colonial legislation and land-granting practices, as well as by the effects of ecological change and demographic shifts. The wasteland commons was not supposed to be for the use of Spaniards alone: the law was explicit as to natives' right to the resources of the mountains and the *tierras baldías* (public lands). Of course, these areas beyond the intensely cultivated valley lands were already part of the commons of one indigenous community or another, the use of their timber, water, game, and medicinal plants and roots governed by local rules of access. The colonial commons did not necessarily nullify the indigenous commons, but it could undermine it very severely, not least because of the way it revolved around the open-range grazing of herbivores. Melville nicely sums up the crux of the conflict: "Then as today, common grazing only works when all parties agree to the rules governing the use of specified areas of land; but the Spaniards regarded all land not sown with crops as potential grazing lands, and, as conquerors, Spanish pastoralists could afford to ignore their own laws and customs when it suited them."<sup>56</sup> As Indians fought to protect their crops and their access to the dwindling resources of the rough lands, they were, in effect, engaged in an unequal struggle to preserve their indigenous commons against the aggressive expansion of the colonial commons.

In the wake of this unequal clash of commons came a process of private property formation that bore some resemblance to enclosure. This is the story of the rise and consolidation of the Mexican hacienda. The term "hacienda" originally had a financial meaning, and in sixteenth-century Mexico it came to be attached to commercial livestock-raising enterprises. Insofar as "hacienda" had a concrete object, it designated not a tract of land—ranching at the time being a matter of grazing rights and open ranges—but rather a herd of cattle or sheep. As stock-raising on a large scale became increasingly profitable, and as the grazing lands in a given region began to fill to capacity, ranchers took steps to assert control over portions of the colonial commons, by both legal and extralegal means, and frequently at the expense of local Indian communities. Crucial to the process of hacienda formation was the intensification of property rights and the progressive removal of land from the colonial commons. It was not simply a matter of accumulating land, but of transforming what had started out as little more than a collection of licenses to graze into something more like private property. At one level, hacendados' grip over the land seems to have tightened through a thousand and one small usurpations, most of them invisible to the historical record, that kept other ranchers at bay and infringed upon the established customs of Indian communities. For example, natives were supposed, by explicit decree of the government, to have the right to gather firewood from rough lands (*montes*) whether or not these were privately owned; however, numerous court cases attest to the fact that hacienda owners tried to bar access to this resource or

<sup>55</sup> Andrew Sluyter, "The Ecological Origins and Consequences of Cattle Ranching in Sixteenth-Century New Spain," *Geographical Review* 86, no. 2 (1996): 161–177; Miguel Aguilar-Robledo, "Formation of the Miraflores Hacienda: Lands, Indians, and Livestock in Eastern New Spain at the End of the Sixteenth Century," *Journal of Latin American Geography* 2, no. 1 (2003): 87–110.

<sup>56</sup> Melville, *A Plague of Sheep*, 154.

to charge Indians a fee to cut wood.<sup>57</sup> It was a classic case of the rich prevailing, regardless of formal regulations, over the poor, the weak, and the racially stigmatized. Reinforcing and legitimating such informal techniques of dispossession was a legal procedure instituted by a financially strapped Spanish crown.

Finding his finances in crisis in the dying years of the sixteenth century, and with reports indicating that land policy in New Spain was in disarray, Philip II decreed a judicial procedure, *composición*, that, for a fee, would legitimize current practice, regularize titles, and set boundaries. Over the course of the seventeenth century, *composiciones* were accordingly granted to applicants who had some claim to notionally crown-owned land, by virtue of actual occupation of the terrain, whether or not that occupation had been formally authorized. Given the importance of revenue in the whole process, magistrates could be quite broad-minded in accepting flagrantly illegal claims; and notwithstanding reiterated royal instructions to protect Indian property, *composiciones* were often issued for Indian lands that had been occupied by haciendas.<sup>58</sup> To complete the process of *composición*, the lands had to be formally demarcated by a magistrate through an on-the-spot survey (*vista de ojos*) that involved the planting of markers, the measuring of distances with a long cord, and the creation of a plan and deed. The upshot, according to François Chevalier, was to erase the distinction between different types of land grants that had prescribed particular purposes for the component elements of a great estate. "True property rights had taken the place of the original usufruct rights, as the latter had been exemplified in the early estancia grants."<sup>59</sup> At the same time, the requirement of the *vista de ojos* was a crucial step in establishing boundaries on the land and recording title. The vast dimensions of the larger haciendas precluded fencing in most cases, but in important respects, this was a process of enclosure of the commons.

Indigenous peoples were not passive victims in this process. They could and in some cases did obtain *composiciones* for their lands, and when a *composición* infringed on their commons, communities frequently resorted to direct action to defend their lands.<sup>60</sup> Nevertheless, the configurations of power were such that haciendas tended to prevail in many regions; entire native settlements were sometimes gobbled up, along with their fields and commons. As with classic enclosure in England, the creation of more exclusive claims to land undermined the subsistence of the poor (Indians in the present case) and hastened the emergence of a class of low-wage agricultural laborers. In Mexico, ranching latifundia both depended on and contributed to the creation of a workforce of dispossessed native peasants.<sup>61</sup>

<sup>57</sup> Eric Van Young, *Hacienda and Market in Eighteenth-Century Mexico: The Rural Economy of the Guadalajara Region, 1675–1820* (Berkeley, Calif., 1981), 332–333; *Recopilación de leyes de los reynos de las Indias*, 2: 113v, libro IV, título XVII, "Que los indios puedan cortar madera de los montes para su aprovechamiento," October 7, 1559.

<sup>58</sup> Amith, *The Möbius Strip*, 95–98; *Recopilación de leyes de los reynos de las Indias*, 2: 104v, law of June 30, 1646.

<sup>59</sup> François Chevalier, *Land and Society in Colonial Mexico: The Great Hacienda*, trans. Alvin Eustis (Berkeley, Calif., 1963), 276. Subsequent research in the field suggests that Chevalier simplified this process somewhat, overlooking regions that did not fit the pattern he described. Eric Van Young, "Mexican Rural History since Chevalier: The Historiography of the Colonial Hacienda," *Latin American Research Review* 18, no. 3 (1983): 5–61.

<sup>60</sup> Taylor, *Landlord and Peasant in Colonial Oaxaca*, 84–85.

<sup>61</sup> In a late borderland variant on the New Spain pattern of dispossession through the instrumentality of the colonial commons, native populations of Alta California were driven, in the late eighteenth and

COLONIZATION PROCEEDED VERY DIFFERENTLY in the more northerly portions of North America, but here, too, a clash of commons was central to the dispossession of native populations. Extensive, market-oriented ranching was not economical in the wooded terrain of eastern North America, but forest foraging could still support enough domestic animals—hogs above all, but also cattle—to contribute significantly to colonial subsistence. Faced with the heavy demands of land-clearing and house-building, settlers tended to let their animals wander off and fend for themselves, trusting that they could round up those that survived when they were needed. Inevitably, some animals reproduced in the wild and went feral. Such practices were particularly widespread in the Chesapeake region, where the forests were comparatively open, the climate was mild, and the rewards for cultivating tobacco discouraged careful husbandry; however, New England settlers also allowed animals to roam.

As habits of open-range husbandry took root, the new colonies quickly passed legislation that overthrew a longstanding English legal tradition governing liability for crop damage due to livestock depredation. Since Western European agriculture was based on grain-growing and stock-raising in close proximity, its viability depended upon ensuring that the farm fauna did not destroy the flora. Human herders and village pastures were among the devices used to control grazing beasts, but if a cow did get loose in a cornfield, English law held that liability lay with the cow's owner. The latter was responsible for keeping his animals confined, failing which he could be sued for damages. In 1643, the Virginia House of Burgesses decreed that henceforth it would be up to the owners of croplands to erect fences to keep out marauding ruminants, effectively taking the onus off stock-raisers for keeping their animals fenced in. Similar legislation was passed in the New England colonies.<sup>62</sup> This inversion of the Old World legal norms constraining stock naturally tended to encourage free-range husbandry, and by that means to transform the commons.

Whereas English observers of the time deplored as a kind of partial reversion to nature the American tendency to allow animals to wander while concentrating efforts on developing the arable land, Virginia Anderson demonstrates that this practice played a significant part in dispossessing natives along the edges of English North America.<sup>63</sup> Depending on the numbers of Old World animals at large, the effects on Indian subsistence could range from the merely annoying to the utterly devastating. Cattle sometimes ate standing crops; hogs stole stored food or dug up clam beds along the beaches. As in Mexico, trampling hooves and excessive grazing could bring about environmental changes that affected deer and other game populations, while spreading weeds and contributing to soil erosion; to make matters worse, livestock acted as a vector to spread Old World diseases among humans and other animals.<sup>64</sup>

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the early nineteenth century, to accept baptism and the Franciscan mission regime after ranging Spanish livestock had undermined their subsistence. Steven W. Hackel, *Children of Coyote, Missionaries of Saint Francis: Indian-Spanish Relations in Colonial California, 1769–1850* (Chapel Hill, N.C., 2005), 67–80.

<sup>62</sup> Virginia DeJohn Anderson, *Creatures of Empire: How Domestic Animals Transformed Early America* (New York, 2004), 114; Richard Brandon Morris, *Studies in the History of American Law, with Special Reference to the Seventeenth and Eighteenth Centuries*, 2nd ed. (Philadelphia, 1959), 208–210; David Thomas Konig, *Law and Society in Puritan Massachusetts: Essex County, 1629–1692* (Chapel Hill, N.C., 1979), 118.

<sup>63</sup> Anderson, *Creatures of Empire*.

<sup>64</sup> *Ibid.*, 185–190; Cronon, *Changes in the Land*, 141–150.

Natives complained bitterly of the injuries they suffered through casual settler husbandry. In New England, efforts were made in the early decades to assist Indians in fencing their fields, and courts sometimes awarded compensation for crop damage; although the effects of these measures may have been slight, they did imply a sense of settler responsibility, something that was almost entirely absent in the southern colonies.<sup>65</sup> Moreover, with the passage of time and the rise of native-colonist tensions in New England and the Chesapeake, settler regimes grew less and less concerned about the effects of their animals on native livelihoods, to the point where some actually directed their horses and cows toward Indian fields in a deliberate effort to drive natives away and take over their lands.<sup>66</sup>

Allowing cattle and hogs to forage in the forest was clearly more than just a transaction between a settler and the natural environment. Crucial to the viability of this unsystematic system was the assumption that a cow or pig remained property wherever it might roam. In practice, identification of specific beasts could be uncertain, and theft was rife, in spite of the severe penalties prescribed by colonial laws; moreover, many animals went completely feral, creating uncertainty about the boundary between wild game and chattels. But these anomalies only made settlers all the more insistent on livestock's status as property, Virginia Anderson observes; she notes further that open grazing represented a claim to the land itself: "Colonists in effect appropriated Indian common lands to serve as their own commons."<sup>67</sup>

This point deserves to be underlined. Colonists were claiming more than just the livestock that they themselves had introduced to this region. The territory where their animals ranged was already a commons of sorts; in an intricate geography that we catch only obscure glimpses of through European sources, indigenous families, bands, and tribes maintained access rights to the resources of this region. When settlers proclaimed, in effect, that the Indians' deer, fish, and timber were open to all, colonists included, yet the hogs and cattle roaming these same woods remained private property, they were indeed attempting a wholesale appropriation. Beyond the limited clearings that were occupied and farmed by the English, they were asserting control over a larger zone that would correspond to the "wasteland" of rural Europe. Indians were allowed to live here and to support themselves as best they could, but the rules governing access to resources would be those of the colonists. In practice, the margin of subsistence could shrink to the vanishing point for Indians living on the colonial commons. In Maryland, a native leader named Mattagund addressed authorities in these terms: "Your cattle and hogs injure us you come too near to us to live and drive us from place to place. We can fly no further let us know where to live and how to be secured for the future from the hogs and cattle."<sup>68</sup> Here, as in New Spain, the commons functioned as a prime instrument of dispossession.

One crucial difference distinguishing Europe's common "waste" of mountains and marshes from the colonial commons of America was the basic stability of the former and the relentlessly expansionist dynamic of the latter. Mattagund's sense of

<sup>65</sup> *The General Laws and Liberties of the Massachusetts Colony* (Cambridge, Mass., 1672), 76–77.

<sup>66</sup> David J. Silverman, *Faith and Boundaries: Colonists, Christianity, and Community among the Wampanoag Indians of Martha's Vineyard, 1600–1871* (New York, 2005), 149.

<sup>67</sup> Anderson, *Creatures of Empire*, 139–140, 171.

<sup>68</sup> *Ibid.*, 221. See also James D. Rice, *Nature and History in the Potomac Country: From Hunter-Gatherers to the Age of Jefferson* (Baltimore, 2009), chap. 6.

being pursued was no illusion. Over the centuries, indigenous peoples over a broad and ever-moving front would feel the effects of the advent of four-legged invaders even before the two-legged variety became a settled presence. The process is familiar in its broad outlines—waves of immigrants, accompanied by their livestock, seeking more and more lands to settle—but Anderson points out that, quite apart from the demographic explosion, the foraging of the animals itself produced expansionist tendencies as the environmental damage inseparable from overgrazing induced them to range further and further afield in search of succulent herbage. A multi-species assault on the native commons really was under way as the colonial commons advanced across the face of the continent, bringing in its wake a colonial enclosure movement that left virtually no room for Indian people.

Needless to say, natives did not give up their commons without a fight. There is no way of knowing how often stray pigs and cows were killed, either for their meat or in retaliation for damaging crops or food caches. Indians made efforts to negotiate shared use of the land, but when colonists refused to cooperate and when local tensions rose, domestic animals were often targeted for destruction. The most dramatic and best-documented instances occurred in times of colonial wars, when natives slaughtered livestock with a zest that suggested accumulated resentment. During the Powhatan resistance of 1622, natives “fell upon the poultry, Hogs, Cows, Goats and Horses whereof they killed great numbers.” King Philip’s War broke out in New England in 1675 partly because of native grievances over livestock; as in the earlier conflict on the Chesapeake, domestic beasts became a prime target for Indian attacks.<sup>69</sup>

If New Spain and the English colonies present parallel histories of an expansive outer commons that facilitated later enclosure by undermining native subsistence, New France stands as a contrasting case. Here, climate, terrain, and demographic realities combined to ensure that the colonial outer commons remained a rather insignificant factor. During the long, cold winters that conditioned life and agriculture in the St. Lawrence Valley, livestock had to be stall-fed. This constraint, combined with the low population and the correspondingly limited market for meat and dairy products, tended to keep herds comparatively small, rarely more than a few head of cattle, pigs, and horses—enough to supply the modest needs of a habitant family.<sup>70</sup> Animals could graze on the arable land for a short time between harvest and snowfall, and in summer there were common pastures, typically along the river bank or on islands. Insofar as these pasture resources proved insufficient, the thick coniferous forest outside the cultivated zones offered little to attract domestic herbivores. Moreover, leaving animals to fend for themselves year-round would have been out of the question in this northern climate. Consequently, one searches in vain through the New France records for indications of settler commoning that affected indigenous subsistence. Complaints, such as there are, come not from Indians but from settlers, protesting that the natives’ dogs are slaughtering their sheep.<sup>71</sup> To the various explanations that have been advanced in the past for the comparatively

<sup>69</sup> Anderson, *Creatures of Empire*, 179, 224–240; Virginia DeJohn Anderson, “King Philip’s Herds: Indians, Colonists, and the Problem of Livestock in Early New England,” *William and Mary Quarterly*, 3rd ser., 51, no. 4 (October 1994): 601–624.

<sup>70</sup> Greer, *Peasant, Lord, and Merchant*, 40–42.

<sup>71</sup> Denys Delâge, “Microbes, animaux et eau en Nouvelle-France,” *Globe: Revue internationale*

peaceful relationship between natives and settlers in New France (such as the fur trade, low populations, and the Catholic approach to cultural diversity), we might add one additional consideration: the absence of an aggressive colonial commons.

DISPOSSESSION THROUGH COLONIAL COMMONS was not limited to seventeenth-century colonial North America; similar processes extended across broad sections of the globe in later centuries.<sup>72</sup> Dutch pastoralists, starting out from the Cape of Good Hope, moved their herds ever further into the South African interior, wresting control of vast grasslands from Khoikhoi herders without significant recourse to enclosure, improvement, or legally instituted property. Instead, they relied on firearms, horses, and government licenses (“loan farms”) to gain control of vital water sources; natives moved away or accepted subordinate positions as employees on white-controlled ranches.<sup>73</sup> A similar pattern developed across Australia in the nineteenth century, where sheep-raisers drove their herds onto what was regarded as a great interior common pasture, regardless of the prior claims of aboriginal foragers. As in Mexico, the ovine population explosion altered the landscape in ways that frequently undermined native subsistence; and as in South Africa, white pastoralists often monopolized precious water supplies. Surviving aboriginals then had to move away or accept a dependent position on the margins of settler society, subsisting on wage work and charity.<sup>74</sup>

The high plains of the western United States constitute an interesting variant on a nineteenth-century global pattern. Here, the key ecological development that undermined the subsistence, and therefore the strength, of indigenous populations was the disappearance of the bison herds; faced with starvation, natives could not resist dispossession and confinement to reservations. Many causes contributed to the destruction of the bison. The expansion from the east of open-range cattle ranching played a part, especially by blocking access to the moister zones where bison would otherwise have found sustenance in times of drought. Native equestrianism was also a factor. Having domesticated for their own use the first Old World herbivore to appear in their midst, the horse, plains peoples initially flourished as their bison hunt became more efficient; in the long run, however, their overhunting, not to mention the pressure that their growing herds of horses placed on grass resources, contributed to the decline of the bison. The U.S. Army helped the process along, strategically slaughtering bison in order to weaken Indian resistance. Far more animals

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*d'études québécoises* 9, no. 1 (2006): 126; Library and Archives Canada, MG8, A6, Ordonnances des intendants de la Nouvelle-France, May 29, 1751.

<sup>72</sup> For a good sense of the extent and variety of that process in the United States and the British dominions, one that emphasizes the property-making aspect of colonial expansion much more than the dispossession of natives, see John C. Weaver, *The Great Land Rush and the Making of the Modern World, 1650–1900* (Montreal, 2003), 264–308.

<sup>73</sup> Leonard Guelke and Robert Shell, “Landscape of Conquest: Frontier Water Alienation and Khoikhoi Strategies of Survival, 1652–1780,” *Journal of Southern African Studies* 18, no. 4 (1992): 803–824.

<sup>74</sup> Henry Reynolds, *Dispossession: Black Australians and White Invaders* (St. Leonards, N.S.W., 1989), chap. 3; Robert Foster, “Coexistence and Colonization on Pastoral Leaseholds in South Australia, 1851–99,” in John McLaren, A. R. Buck, and Nancy E. Wright, eds., *Despotic Dominion: Property Rights in British Settler Societies* (Vancouver, B.C., 2005), 248–265.

were killed by Euro-American hunters supplying the buffalo robe industry of the 1870s and early 1880s. These well-equipped hunters apportioned the open prairie among themselves and harvested skins by the thousands. According to Colonel Richard Dodge, "there are unwritten regulations recognized as laws, giving to each hunter certain rights of discovery and occupancy." The industrial hunters and the ranchers extended their respective versions of the colonial commons across the wide western plains, making major contributions to the annihilation of the bison and the destruction of the native commons.<sup>75</sup>

In the real world of colonial North America, the destruction of indigenous property forms and the establishment of new, colonial property regimes did not follow the pattern that John Locke and countless other theorists suggest. America (not to mention Australia, South Africa, and New Zealand) did not greet Europeans as an open-access universal commons, and settlers did not initially establish control of the land through procedures resembling enclosure. In the long run, of course, fences, surveys, registry offices, and other developments associated with private property made their appearance and stabilized new property regimes from which native peoples were largely excluded. But privatization of land was not the main mechanism by which indigenous territory came into the possession of colonizers; by the time that sort of enclosure occurred in many places, dispossession was already an accomplished fact, thanks in large measure to the intrusions of the colonial commons.

John Locke's misdescription of colonial property formation as the enclosure of a great universal commons was anything but an innocent mistake. It served both to erase native property in land at the outset and to assimilate colonial appropriation with "improvement," to be understood both in its specialized agricultural sense and in its more general meaning. Placing the focus on the pioneer, with his log cabin, his ax, and his plow, rather than on the cattle, hogs, and sheep he sent roaming across native common lands, has the effect of obscuring the central business of colonizing "new" lands, which is to say the dispossession of indigenous peoples and the imposition of new property regimes. Far more was involved, of course, than the intrusions of foreign animal species: the growing colonial commons required an imbalance of power, the product, in turn, of such familiar developments as commercial dependence, disease and depopulation, and violence or the threat of violence.<sup>76</sup> Property formation and state formation therefore proceeded in tandem; they were, in important respects, different aspects of the same process.

The notion that pre-Columbian America formed a universal commons and that colonization took the form of a massive program of enclosure, establishing property in land where no such thing had been known before, has had a long life.<sup>77</sup> A pro-

<sup>75</sup> On Indians, horses, and bison, see Pekka Hämäläinen, "The Rise and Fall of Plains Indian Horse Cultures," *Journal of American History* 90, no. 3 (December 2003): 833–862. On Euro-American hunting and ranching, see Andrew C. Isenberg, *The Destruction of the Bison: An Environmental History, 1750–1920* (New York, 2000), 130–143, Dodge quotation from 133. For an analysis of the colonization of the Canadian prairies in terms of successive forms of commons, see Irene Spry, "The Great Transformation: The Disappearance of the Commons in Western Canada," in Richard Allen, ed., *Man and Nature on the Prairies* (Regina, Sask., 1976), 21–45.

<sup>76</sup> This point is sometimes overlooked in environmental approaches to history that slight the role of human agency. See, for example, Alfred W. Crosby, *Ecological Imperialism: The Biological Expansion of Europe, 900–1900* (New York, 1986).

<sup>77</sup> To cite one example from a recent reference work, see Paul C. Rosier, "Land Tenure," in Shepard

colonialist, pro-enclosure variant can be traced from Locke and his predecessors through the Scottish Enlightenment, where the idea took root that private property was the very hallmark of civilization (and the justification for European rule over “rude” societies lacking that institution), to the modern notion that “property rights,” in the sense of strong and exclusive individual claims to land, are essential to economic development.<sup>78</sup> Many writers on the left are just as inclined to subscribe to Locke’s view of colonization-as-enclosure, though in this case the valences of commons and enclosure are reversed. The association of “commons” with the poor in England and the Indians in America, not to mention its overtones of sharing and cooperation, can lead to a romantic view that emphasizes the *collective* aspects of commoning to the neglect of the *exclusive* nature of most commons known to history. Thus the political thrust of Locke’s essay “Of Property” is inverted as the commons and unenclosed “America” are idealized rather than denigrated, but the basic understanding of colonization is still traceable to Locke.<sup>79</sup> A clearer sense of colonial property formation, purged of colonialist ideology, requires us to jettison the concept of the universal open commons and to explore the ways in which different property systems, each with its particular practices of commoning, confronted one another in an unequal struggle.

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Krech, John Robert McNeill, and Carolyn Merchant, eds., *Encyclopedia of World Environmental History* (New York, 2004), 751–752.

<sup>78</sup> Robert A. Williams, *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600–1800* (New York, 1997), 146; Adam Ferguson, *An Essay on the History of Civil Society* (Edinburgh, 1767), 112–164. For the modern property rights argument, see Douglass C. North and Robert Paul Thomas, *The Rise of the Western World: A New Economic History* (Cambridge, 1973); Hernando de Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (New York, 2000).

<sup>79</sup> See, for example, Peter Linebaugh, *The Magna Carta Manifesto: Liberties and Commons for All* (Berkeley, Calif., 2008).

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