

Legalizing the Imagination:
An Examination of How the Geographic Imagination of the
New World led to its Construction as Free Space within
International Law for the Purpose of the English
Appropriation of North America

by

Agnes Barr-Klouman
B.A. Hons., Carleton University, 2009

A thesis submitted to the Faculty of Graduate and Postdoctoral
Affairs in partial fulfillment of the requirements for the degree of
Master of Arts

in

Legal Studies

Carleton University
Ottawa, Ontario

© 2012, Agnes Barr-Klouman



Library and Archives
Canada

Published Heritage
Branch

395 Wellington Street
Ottawa ON K1A 0N4
Canada

Bibliothèque et
Archives Canada

Direction du
Patrimoine de l'édition

395, rue Wellington
Ottawa ON K1A 0N4
Canada

Your file Votre référence

ISBN: 978-0-494-94310-6

Our file Notre référence

ISBN: 978-0-494-94310-6

NOTICE:

The author has granted a non-exclusive license allowing Library and Archives Canada to reproduce, publish, archive, preserve, conserve, communicate to the public by telecommunication or on the Internet, loan, distribute and sell theses worldwide, for commercial or non-commercial purposes, in microform, paper, electronic and/or any other formats.

The author retains copyright ownership and moral rights in this thesis. Neither the thesis nor substantial extracts from it may be printed or otherwise reproduced without the author's permission.

AVIS:

L'auteur a accordé une licence non exclusive permettant à la Bibliothèque et Archives Canada de reproduire, publier, archiver, sauvegarder, conserver, transmettre au public par télécommunication ou par l'Internet, prêter, distribuer et vendre des thèses partout dans le monde, à des fins commerciales ou autres, sur support microforme, papier, électronique et/ou autres formats.

L'auteur conserve la propriété du droit d'auteur et des droits moraux qui protègent cette thèse. Ni la thèse ni des extraits substantiels de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation.

In compliance with the Canadian Privacy Act some supporting forms may have been removed from this thesis.

While these forms may be included in the document page count, their removal does not represent any loss of content from the thesis.

Conformément à la loi canadienne sur la protection de la vie privée, quelques formulaires secondaires ont été enlevés de cette thèse.

Bien que ces formulaires aient inclus dans la pagination, il n'y aura aucun contenu manquant.

Canada

Abstract

In this thesis I utilize the concepts of concepts of space, free space, the geographic imagination, and discovery to argue that the English geographic imagination, from the mid-1500s to the late-1600s, produced knowledge of the Americas. This knowledge played a key role in legitimating, naturalizing and legalizing appropriation and colonization. Maps, descriptive geographies, and international legal texts are examined to illustrate the manner in which the spatial identity of the Americas was constructed as free space, open for appropriation and exploitation, while simultaneously positioning Europe as the site of civilization, closed to appropriation. Through imaginative processes and the plantings of people, agriculture and law there was a transformation of the Americas from a free space to a geographically and legally bound space. The goal is to illustrate the manner in which early international law legitimated the existence of spaces beyond the dictates of the international legal order.

Acknowledgements

First, thank you to my supervisor Ummni Khan for giving me direction, allowing for me to be creative, and supporting me. Thank you to my second reader, Adrian Smith, for all of the valuable conversations, and encouraging words. Thank you to my external examiner, Ashwani Peetush, for going the extra mile to serve on my committee and the insightful feedback. Thank you to Trevor Purvis for encouraging me to engage in my interests. Thank you to the staff of the map section in MacOdrum Library, particularly Monica Ferguson, for helping to navigate and fall in love with maps. Thank you to the various geographers who took the time to respond to my questions and calm my nerves. Thank you to the administrative staff in the Law and Legal Studies department, particularly to Andrew Squires and Barb Higgins. Thank you to all of the Legal Studies students that I have met along the way for the many engaging conversations and friendship. Thank you to my dear friends and family, I will never be able to fully express how much you mean to me, you are my world. Sherri, Jennifer, Amanda, Danielle, Glenda, Carsten, Sean, Adelle, Elise, Sverre, Andrew, Mary, Nick, Marsha, Christina, Afua, Mariful, Nate, Kate, Simon, Monika, and Sasha: you all provided me with the support and encouragement during times of need that made it possible for me to complete this daunting project, thank you for being amazing people. Thank you to my parents, Karin Klouman and Wally Barr, for everything that you have taught me, completing this project would not have been possible without your support and encouragement. Thank you to my grandparents for being my role models. Lastly, thank you to Nik, if it were not for you I would not have come to Ottawa and ended up on this path, I hold the memory of you in a special place.

Table of Contents

Abstract	ii
Acknowledgements	iii
Table of Contents	iv
List of Illustrations	vi
Chapter 1: Introduction	1
1.1 Methodology.....	5
1.2 Chapter Outline.....	8
Chapter 2: Positioning the Field	10
2.1 The Americas at Contact.....	12
2.2 Literature Review	15
2.3 Chapter Summary.....	32
Chapter 3: Conceptual Framework	35
3.1 Space.....	35
3.2 Geographic Imagination	37
3.3 Free Space.....	41
3.4 Discovery.....	45
3.5 Conceptual Summary.....	50
Chapter 4: Appropriation Through Mapping Knowledge	52
4.1 Maps as Acquisition	53
4.2 Reading Maps	58
4.3 Mercator.....	64
4.3 (Re)Reading Maps.....	67

Chapter 5: Descriptive Geographies and English Promotional Literature.....	69
5.1 The Archbishop of Canterbury George Abbot.....	69
5.2 Hakluyt's Divers Voyages.....	74
5.3 Hakluyt's Discourse on Western Planting.....	80
5.4 Concluding Remarks	87
Chapter 6: Natural Law in the Laws of Nations.....	89
6.1 Hugo Grotius and Samuel von Puffendorf.....	90
6.2 Charles Molloy and Maritime Law.....	93
6.3 John Locke.....	95
6.4 Legalizing Appropriation.....	100
Conclusion	102
Bibliography	108

List of Illustrations

Illustration 1: Lok, M. <i>Illustri viro, domino Philippo Sidnaeo Michael Lok civis Londinensis hanc chartam dedicabat: 1582</i> in Chapter 3.....	55
Illustration 2: Stirling, A. <i>An Encouragement to colonies</i> in Chapter 3.....	56
Illustration 3: Speed, J. <i>America with those known parts in that unknowne worlde both people and manner of buildings Discribed and enlarged by I.S. Ano. 1626</i> in Chapter 3.....	60
Illustration 4: Speed, J. <i>Map of Europe from John Speed. A Prospect of the most famous parts of the World</i> in Chapter 3.....	61
Illustration 5: Wright, E. <i>A Plat of all the World. Projected according to the truest Rules Being far more exact then either the Plain-Card or the Maps of the World described in two Rounds</i> in Chapter 3.....	65
Illustration 6: Thorne, R. <i>Orbis Vniuersalis iscriptio</i> in Chapter 4	77

Chapter 1: Introduction

When Europeans first learned about the existence of the Americas, the European geographical understanding of the earth's landscape was drastically altered. For Europeans, first contact with the Americans in 1492 was experienced as a 'discovery' of a 'New World'. The term *world* encompasses the earth, its natural features as well as the people and nations contained within it. The European invocation of the Americas as the 'New World' simultaneously designated Europe as the 'Old World'. The binary of Old and New *worlds* thus already suggests a relationship of epistemological dominance.¹ The European perspective of what is experienced as old and what is experienced as new came to be privileged in the discourse. Europeans experienced the newness of the Americas on multiple levels: territorially, demographically, and culturally. For Europeans, 'the Old World' served as the reference point during the process of developing knowledge of this 'New World': social systems, economic systems, religion, legal principles, geographic tropes, and agricultural practices all served crucial comparative roles in constructing the identity of both the New and Old World. A binary was set up whereby the Americas were identified as being in a state of commons, whereas the Old World was understood to be within the state of civilization.

This thesis examines how knowledge of the Americas was constructed and how that knowledge was utilized to establish European colonies. Specifically, this project analyzes how the colonial geographic imagination came to understand and define certain regions as 'free space'. The central question that this project seeks to answer is: how did

¹ Americans use the binary of New and Old worlds in a very different manner. The Old world has been utilized in a manner that refers the backwardness (when applied to the Middle East) or historically minded (with respect to Europe), whereas America is seen as a site of progress.

the English geographic imagination, from the period spanning mid-1500 to the late-1600s, legitimate the appropriation and colonization of North America? I argue that the English geographic imagination produced knowledge of the Americas which played a key role in legitimating, naturalizing and legalizing appropriation and colonization. The English legitimization of the appropriation was founded upon principles present in ideological understandings of civil law, the laws of nature, and maritime law. For those who were active or passive actors within the colonizing mission, English geography served as a key discursive site. Geography provided the necessary descriptions and visualizations that supported the legal designation of the Americas as occupying a state of commons; 'free space' open for European appropriation. Geography further reinforced the legal designation of Europe as a space closed to appropriation.

Over the course of the European appropriation of the New World, the land of the Americas was transformed discursively and legally² from free space to bounded territories. Thereby the land of the Americas was brought under the European mode of governance that privileged the nation-state over all other forms of organization. By employing a number of geographic, discursive and material tactics this transformation was accomplished. The tactics included, but were not limited to, map-making, and planting: planting people, planting agriculture, and planting law. European standards of agriculture altered the landscape of the New World, further stamping a European identity onto the soil. As colonial rulers imposed European legal systems in the Americas, they reconceived the land as property, facilitating their declarations of first 'discovery' and later 'ownership'. The European appropriation of the New World involved processes that

² Discursively and legally are separated as there can be discursive arguments that are not in relation to legal arguments. Descriptive geographies in developing knowledge of the world would purport to gain knowledge through reason but not be characterized as legal truisms.

accomplished a physical transformation of the land, and an ideational transformation towards the land: from a space of the commons, free and open to all, to being territorial and legally bound.

My goal is not to show the *reality*³ of legal control but rather to examine how the idea of the appropriation of the Americas was tied to the metropolitan colonial rationalization of space. In this way, the thesis investigates how geographical and cartographic discourse ideologically supported colonial projects in the Americas. I do this by examining tools – maps, descriptive geographies, promotional literature, and legal texts - that developed the imagination of the New World as free space. I accomplish my analysis by examining the mutually reinforcing epistemological relationship between Law and Geography. As Holder and Harrison note, in the introduction to their edited collection of essays *Law and Geography*, the synthesis of the disciplines is meant to:

...identify how law and geography bear upon each other, and to draw out the points of contrast, support, and complicity, especially with respect to taken-for-granted distinction between the social and the material, the human and non-human, and what constitutes persons and things.⁴

This anthology explores the conceptual frames of “boundaries, land, property, nature, identity (persons, peoples, and places), culture and time, and knowledge”⁵ to illustrate the variety of intersections where law and geography meet and bear upon each other. My thesis draws upon these frameworks with regards to the importance Europeans placed upon these concepts while legitimizing the appropriation of the Americas. I illustrate the

³ By this I mean that the thesis is not an examination of the legal control in the colonies themselves but rather examining the English perceptions of the reality of the Americas through distance. Thus, the focus is on the perceptions of colonial actors in European metropolitans.

⁴ Holder, J. & Harrison, C. ‘*Connecting Law and Geography*’ in Holder, J. & Harrison, C. (eds) *Law and Geography* (Oxford : Oxford University Press, 2003) at 3.

⁵ *Ibid* at 5.

manner in which these intersections geographically grounded law through the act of appropriation.

Historically, the academic study of the relationship between law and geography has been sparse. There is even less research that investigates the correlation between the national laws and geographic discourse. One of the difficulties of utilizing a Law and Geography model of analysis is identified by Nicholas Blomley: “Law and geography does not exist. More accurately, the Library of Congress Dictionary of subject headings has no entry for ‘law and geography.’”⁶ The underrepresentation of dialogue between law and geography within current classificatory systems and studies “derives from some longstanding intellectual blockages. In particular, law and space, in various ways, have long been ‘closed’, that is, understood as distinct from or only partially related to something called ‘society’.”⁷ Blomely illustrates that, within the past fifteen years, new scholarship has emerged to move past these blockages, reckoning with the complex relationship between law and space.⁸ I situate this thesis within these interdisciplinary interventions, which have come to be loosely conceptualized under the banner of ‘critical legal geography’. The field of critical legal geography is useful as it incorporates the critical streams of the three fields that are present within this project: cartography, geography, and law.

This thesis provides an original contribution to critical legal geography through an analysis of the relationship between geographic and legal discourses. In this way, the range of sources that I analyze has not been examined together. There is significant

⁶ Blomley, N. “From ‘What?’ to ‘So What?’: Law and Geography in Retrospect in Holder & Harrison (eds) *Law and Geography* (Oxford : Oxford University Press, 2003) at 17.

⁷ *Ibid* at 17.

⁸ *Ibid* at 22.

amount of scholarship that addresses the link between empire and international law, as well as the link between geography and empire. This thesis bridges these two fields of inquiry. I do this by examining the supporting role that geographical discourse played in legitimizing the European appropriation and subsequent transplantation of colonial (international and domestic) law in the Americas. By situating this thesis in the intersection between the geographic imagination and the operation of the laws of nations, I interrogate the question: how can there be 'spaces' that fall beyond the borders of international law? In answering this question I draw upon Carl Schmitt's concept of 'free space' to analyze how geographical and religious thought contributed to the legal designation of the Americas as being in a state of commons. The spatial designation of the Americas as 'free space' provided the ideological basis for the European appropriation of the Americas. The spatial turn that has occurred within legal studies has largely been silent on the construction of spatialities in international law in an historical context. This thesis endeavors to address this research gap by exploring the construction of spaces that are deemed to be outside the domain of international law.

Methodology

My research engages in a historical analysis of texts and maps. The primary texts which I examine are divided between geography and law. I focus on instances when the Americas, particularly North America, were referenced or represented. Through this close reading of historical texts I interrogate the discursive relationship between the references and depictions of the Americas in maps, geographical descriptions, and legal texts. I chose a time period of just over a hundred years. The order in which the sources appear is based on thematics rather than chronology.

Maps provide the visual support for geographic and territorial claims. The six maps that were chosen represent a number of different characteristics that supported either the development of the geographic imagination or claims to territory. The first map, Michael Lok's 1582 map of the Atlantic Ocean was chosen to illustrate the construction of the 'Northwest Passage' and the 'Sea of Verrazano' as colonial designations. Alexander Stirling's 1624 map depicts the importance of place naming in the colonization of the Americas. John Speed's 1631 atlas *A Prospect of the Most Famous Parts of the World* contained maps of the world, as well as texts concerning the knowledge of the different parts of the world. The two maps from this atlas that were chosen are artistically decorated representations of the Americas and Europe, respectively. These maps were chosen to serve a comparative role of how maps reproduced social knowledge of the Americas and Europe respectively as open and closed to appropriation. Edward Wright's 1655 map illustrates the application of the Mercator projection as well as the visualization of the Americas as a blank space. Lastly, Robert Thorne's 1582 map, which appears in the section concerning descriptive geographies, identifies and demarcates spatio-political identities. Furthermore, I chose Thorne's map to provide the visual justification to his claim that the Americas desired to be colonized by the English due to the geographical location of the Northern parts of the Americas to England.

The three sources that are included in the second section, The Archbishop of Canterbury's *A Briefe Description of the Whole World* (1644), Robert Thorne's letter to the King of England as published in Richard Hakluyt's *Divers Voyages* (1582), and Richard Hakluyt's *A Discourse Concerning Western Planting* (1584) represent the textual

establishment of the geographic imagination. These sources are descriptive texts that present geographical information about the earth, resources, and spatio-political groups. These sources were chosen because the authors had not travelled to the Americas, therefore they provide insight into the metropolitan colonial imaginative perception of the geographic character of the Americas. Furthermore, Abbot and Hakluyt provide evidence of the English colonial identity.

The third set of sources, Hugo Grotius's *Of the Law of Warre and Peace* (1623), Samuel von Puffendorf's, *The Whole Duty of Man according to the Law of Nature* (1673) Charles Molloy's *De Jure Maritimo et Navali: Or a Treaties of Affaires Maritime and of Commerce In Three Books* (1682) and John Locke's *Second Treatise of Government* (1690) represent how the geographic imagination manifested itself in the discourses of international legal power. These texts present the geographic imagination through discussions on the origins of property and the different stages of civilization. These texts reference the Americas as occupying the state of commons, whereby individuals could only claim ownership over the land which they immediately occupied.

All the sources, legal and geographic, originated out of the metropolitan centres of the colonial empires. Though the authors had not travelled to the Americas, they were in a position to influence either, the perception of, or European interaction with, the continent. I focus on the general idea of the nature of the Americas, without interrogating specific regional differences. I also do not consider how the actual patents and charters led to the establishment of specific English colonies in the Americas. Instead, my analysis addresses how the international legal schema during the first stages of the British Empire was premised upon a geographical imagination of the nature of the New World. I

hypothesize that international law's definitions and conceptualization rendered the Americas open for appropriation, as the continent was largely designated as 'free space'. The legal designations of property that originated out of the acts of appropriation provided evidence for competing European powers that land was no longer open for appropriation.

Chapter Outline

Chapter one will provide a brief illustration of the Americas at the time of contact that challenges the colonial account of the Americas as sparsely populated by unsophisticated peoples. Chapter one also provides a literature review to position this thesis' contribution to critical legal geography. Chapter two provides the conceptual framework engaging with space, the geographic imagination, free space, and discovery. Chapter three is devoted to the role cartography played in the establishment of the geographic imagination of the New World as free space. The analysis of cartography further illustrates how maps concurrently encouraged and legitimated appropriation. Chapter four provides an analysis of descriptive geographies. I highlight three descriptive geographies which also served as English promotional literature: the Archbishop of Canterbury's *A Briefe Description of the Whole World*, Richard Hakluyt's *Divers Voyages*, and Hakluyt's *A Discourse Concerning the Western Planting*. Chapter five provides an analysis of the representation of the Americas in texts concerning the Laws of Nations as found within Hugo Grotius, Samuel von Puffendorf, Charles Molloy, and John Locke's work. The texts utilized by the first two authors are representations of Natural Law whereas Molloy writes on the topic of Maritime Law. Locke is utilized to provide a discussion on the distinction between the modes of existence that characterize

state of commons and the civil state and through conceptions of property. The conclusion provides a summary of the key points of this thesis as well as contemplates the future direction of this project.

Chapter 2: Positioning the Field

This chapter begins with a brief challenge to the colonial account of the nature of the Americas at the time of contact. Drawing on recent literature that evidences the complex societal structure and technologies employed by America's First Nations, I demonstrate how the colonial truth-claim of Indigenous populations as 'backwards' or 'simple' was a profound ideological distortion. The rest of this chapter provides a literature review for this project. The literature review starts with an examination of the concept situated knowledge, to highlight the importance of time and place in the formation of world views, emphasizing the idea that geographic knowledge is socially produced. I then develop the principles that underlie the fields of critical geography and critical cartography, to illustrate the relationship between geography, cartography, and Empire through the knowledge-power paradigm. In order to deconstruct the power of cartography, I set out what constitutes a map and how maps are representations of world-views. The discussion on the link between maps and world-views highlights the importance of the grid system to the 'Western world view' that the earth can be known and controlled. The discussion on maps is rounded out by illustrating how maps serve as a site in which meaning and identity are inscribed unto space.

The next section highlights the importance of descriptive geography to Imperial projects of appropriation. Descriptive geography played a key discursive role in the formation of the identities of foreign spaces. By utilizing firsthand accounts of the objective nature of the earth, the identities of both Self and Other were constructed. Descriptive geographies played a key role in creating the identities of spatio-political entities, the precursor to the modern-nation state. The identities were formed through

narratives of exoticism that were compared socially, politically, and economically against the internal English identity. The creation of the imagined communities allowed for the fostering of internal and external identities, grounded in epistemological knowledge. I then address the importance of racial categories in the colonial appropriation of the Americas. European knowledge regimes drew upon the Americas as a racialized space and perpetuated dichotomies of racial superiority/inferiority. The epistemology of difference that was divided along racial lines supported the construction of the Americas as free space.

I close the chapter by considering the role of law in the appropriation of the Americas. This section begins with the observation that Empire viewed law as being a marker of civilization that illustrated Empires will to appropriation and domination. I highlight the variations in the manner in which colonial metropolitan law constructed the Americas as open for appropriation and the practices of colonial agents on the ground. Law and geography reinforced each other during the colonial era of appropriation. The basis of the imperial legal control of the Americas was founded upon control over narrow bands and enclaves. The planting of law unto the Americas developed variations in application of law that differed from the mother country. Although the transplantation of law to the Americas created variations in legal practice, transplantation provided the basis for establishing title to land. I then discuss to the importance of appropriation in the establishment of a legal and social order upon land. Appropriation plays a constitutive role for both law and society. The premises of the European act of appropriation involved both physical and intellectual labour that allowed for planting of law and order, societal

order and international order. The chapter concludes by highlighting the relationship between colonialism, international law, and sovereignty from a Third World perspective.

The Americas at Contact

The establishment of context with regards to the Americas pre and post contact is more difficult than Europe.⁹ The lack of written accounts from the original occupants contributes to this difficulty.¹⁰ To begin to establish an accurate picture of what the Americas was like requires an analysis of evidence from a variety of disciplines that is beyond the scope of this project. However, there are some questions that are of important to establish the context of the Americas at the time of contact: Who lived in the Americas? For how long did people live in the Americas? And, how many people lived in the Americas? These three questions rest at the heart of furious debates.

⁹ The European context of this project is woven throughout the body of the text. The English populist history is quite well known; particularly for those of us who live in the colonial successor states in North America. As the English national mythology has largely been transplanted into the American and Canadian perspectives of history; 'we' (as in those of us that live in these geographically defined spatio-political identities) would not exist without the English. This is sustaining and legitimating our continued identity. The 'beginnings' of post-colonial nation-states is premised upon the relationship with Colonial and Imperial Britain. The great men and women of history are evidenced throughout our culture from festivals (The Stratford Shakespeare Festival), to national holidays (Victoria Day), to place names (New Brunswick). The origins of all of these national-cultural artefacts establish the Canadian relationship to Britain. The historical mythology of the United States of America establishes a different relationship to Britain which is also based upon the populist history. The reinforcement of this relationship is noted in the manner in which political/legal/ideological decisions are conducted, the reinforcement of the arts and politics through film, and differences in place-naming pre and post independence. It must be noted however, understanding that there were some events that helped to shape the English perception of the world. 'English thought' is to represent those members of society that helped to set off the appropriation of North America from metropolitan England and did not travel to North America. However, when there is a discrepancy between how these members of society perceived the world and what evidence now suggests what was actually happening in the Americas at that time what do we do? How can we both acknowledge and ignore the blurriness of our past? It is complicated even more when we take a historiographical perspective, where we look at what were the motives of historians as they were writing our history. Which parts of our past we accept and which parts we reject has both positive and negative implications for members of society today and tomorrow.

¹⁰ This is not a suggestion that all indigenous groups did not have a form of writing but rather that their writings have not survived as Mann, C.C. *1491: New Revelations of the Americas before Columbus 2nd Edition* (New York : Knopf, 2011) explains that by 750 B.C. "the Zapotec were not only on the way to some form of writing, but had also assembled some of the astronomical and mathematical knowledge necessary for a calendar... what took the Sumerians six thousand years apparently occurred in Mesoamerica in fewer than a thousand. Indeed, Mesoamerican societies during that time created more than a dozen systems of writing, some of which are known from a single brief text." At 247

In his book *1491: New Revelations of the Americas before Columbus* Charles C. Mann illustrates how a variety of disciplines and new technologies have been employed to develop a holistic understanding of the Americas before 1492.¹¹ Prior to this interdisciplinary investigation, colonial epistemologies constructed the Americas in a way that supported and legitimized European claims to territory. Mann's analysis of diverse sources of evidence, and his use of different hermeneutic techniques, has shifted our understanding of the nature of the Americas before Columbus. Mann's central arguments were that "the Indian societies were bigger than had been previously believed... they were older and more sophisticated than previously believed... [and] they had greater impact on the environment than previously believed."¹²

The origins of human population in the Americas is estimated to date as far back as twenty to thirty thousand years ago, which would mean that "people were thriving from Alaska to Chile while much of northern Europe was still empty of mankind and its works."¹³ Conversely, there were colonial estimates that the original occupants belonged to the lost tribes of Israel, inhabiting the Americas from 500 B.C..¹⁴ The same sort of discrepancy applies to the colonial estimates of the total population. The difficulty of establishing the number of people who lived in the Americas at the time of contact is compounded with the rate at which disease spread. Many of the colonial population estimates were made "after epidemics, [which] would have represented population nadirs,

¹¹ These methods include: "Demography, climatology, epidemiology, economics, botany, and palynology (pollen analysis); molecular and evolutionary biology; carbon-14 dating, ice core sampling, satellite photography, and soil assays; genetic microsatellite analysis and virtual 3-D fly-throughs" Mann, C.C. *supra* note 14 at 17.

¹² *ibid* at xiv.

¹³ *ibid* at 196.

¹⁴ *ibid* at 164.

not approximation of precontact numbers.”¹⁵ The contemporary numbers of the total population in 1491 vary from 8.4 million to 112 million, with the numbers in North America ranging from 900,000 to 1.15 million¹⁶, with an estimate of 100,000 people alone in sixteenth century New England.¹⁷ One estimate, on the impact that contact had upon the indigenous population, states that 95% of the pre-contact population died in the 130 years following contact.¹⁸

The high counter estimate of the total number of people demonstrates how populous the Americas were, but the region was also extremely diverse with regards to number of its civilizations. The Inca, Maya, Iroquois, Wampanoag, Narragansett, Haudenosaunee, Mexica, Nauset, Massachusetts, Nahua, Olmec, Tainos, Mi’kmaq, Anishinaabe, Cree, and Omaha all occupied the Americas, along with many others, at the time of European arrival. These different civilizations produced environments to fit their societal needs and wants. The manipulation of the land involved:

[a]nnually burning undergrowth, clearing and replanting forests, building canals and raising fields, hunting bison and netting salmon, growing maize, manioc, and the Eastern Agricultural Complex, Native Americans had been managing their environment for thousands of years.... [with] the wholesale transformation seen in places like Peru, where irrigated terraces cover huge areas were exceptionally well done. But all of these efforts required close, continual oversight. In the sixteenth century, epidemics removed the bosses.¹⁹

This provides just a brief introduction into the various techniques that the original occupants of the Americas employed to sustain their cultures. Following contact, the European conclusion was that the indigenous population occupied a lower stage of civilization and had not developed the arts. This perspective has been challenged by

¹⁵ *ibid* at 106.

¹⁶ *ibid* at 107-108.

¹⁷ *ibid* at 48.

¹⁸ *ibid* at 106.

¹⁹ *ibid* at 363.

contemporary historians, archeologists, linguists, and anthropologists who have studied the practices and the environmental impact of the original occupants. The new evidence illustrates that the Americas in the pre-Columbian era was populous, diverse, and sophisticated in its own right.

Literature Review

How can we account for the differences between the European perspective of the Americas as uncivilized and the evidence that contradicts this perspective? There are a number of authors who explain how difference is produced along geographical, psychological, historical, and societal lines. Members of the elite classes in society have access to finances and technology that will influence perceptions of the identity of the Self and Other by emphasizing difference. The construct of the Other is predicated on an emphasis of constructs of race, geographical, historical, linguistic, and religious differences between a core group and peripheral groups. The experience, place, and time an individual occupies will influence the knowledge that will serve as the reference point for their evaluations of their community and its relationship to Other communities. The following literature review will highlight authors who have influenced the direction of this thesis. The interdisciplinary nature of the literature review is meant to synthesize the fields of geography, cartography, and law. The correlation between the fields is predominately located in the role that these fields play in the construction of Self and Other. I begin by highlighting the concept of situated knowledge, to illustrate the importance of place and time in the formation of perceptions of the world.

In her article “Situated Knowledge, Reflexivity” Audrey Kobayashi provides a useful discussion of the manner in which the concept of situated knowledge has been

utilized by geographers. Situated knowledge, which arose from debates within feminist theory regarding epistemology, has been utilized by geographers to explain how “geographical knowledge is produced, emphasizing both the specific social location of, and the spatial interactions among, people.”²⁰ Geographers that apply the concept of situated knowledge, as well as social constructivism, emphasize that geographic knowledge is socially produced. As Kobayashi argues, “geographical vision-knowledge is partial, shifting, contingent, and powerful – and has profoundly affected the ways in which geographers see the world and convey their understanding to others.”²¹ The concept of situated knowledge is used by geographers in two ways. The first is for geographers to use reflexivity in their research through the acknowledgement of their position in relation to ‘others’.²² The second manner in which situated knowledge is applied emphasizes “the complexity of social landscapes in which ‘others’ are defined by the process of the geographic imagination.”²³ The discursive turn in geography resulted in the trend of locating “knowledge within the production of texts, broadly conceived as stretching from words to landscapes, or any form of representation that carries meaning, and can be ‘read’.”²⁴ Kobayashi brings attention to the work of Edward Said and Michel Foucault for theories of how the Other is constructed “through practices of surveillance, organization, naming, subjugation, and other means of knowledge-power, [this construction] is at once an imaginative engagement and the imposition of a normative gaze upon/within specific landscapes.”²⁵ Kobayashi further points to Derek Gregory as

²⁰ Kobayashi, A. “Situated Knowledge, Reflexivity” in *International Encyclopedia of Human Geography*, 2009, Pages 138-143 at 138

²¹ *ibid* at 139.

²² *ibid* at 138.

²³ *ibid*.

²⁴ *ibid* at 141.

²⁵ *Ibid*.

providing an important contribution to our understanding of the manifestations of the geographical imagination and its relationship to situated knowledge:

... geographical imaginations comprise the history of a discipline that situates knowledge through specific cartographic acts: visualizing the world, embodying its inhabitants, in conjunction with particular forms of spatial organization such as colonialism, or under the rubric of metanarratives such as modernism or postmodernism.²⁶

Geographical knowledge and imagination were intrinsic to the creation of colonial epistemologies. The colonization of the New World was a spatial project that was dependent on the geographical imagination which at the same time produced the Self (the colonizers) and the Other (the indigenous population).

In *Mapping: A Critical Introduction to Cartography and GIS*, Jeremy Crampton outlines three principles of critical geography (taken from Nicholas Blomley) and four principles of critical cartography. The former is characterized by its oppositional, activist, and theoretical nature.²⁷ Critical cartography shares these characteristics with critical geography as it scrutinizes the unexamined assumptions about our organization and produced knowledge incorporated in maps.²⁸ The historical and spatialized knowledge in which maps were created influence their appraisal thus, maps should be read in the context of when and where they were created.²⁹ Critical cartography imbues the understanding that “geographic knowledge is shaped by a whole array of social, economic, and historical forces, so that knowledge does not exist except in relation to *power*. When we speak of maps as political, it is this relationship between knowledge and

²⁶ *ibid* at 142.

²⁷ Crampton, J. *Mapping: A Critical Introduction to Cartography and GIS* (Malden, Mass.: Wiley-Blackwell, 2010) at 17.

²⁸ *ibid*.

²⁹ *ibid*.

power that is at stake.”³⁰ Critical cartography is also activist in form as it challenges official and specific forms of geographic knowledge. Critical geography and critical cartography both aim to destabilize the relationship between geographic knowledge and power. These subfields seek to challenge the scientific discourse of geography, as an objective and empirically based field of study, by exposing how geography has supported ideological agendas, such as colonialism.

In order to understand these critical deconstructions, it is useful to define what a map is. J.B Harley and David Woodward put forward the expansive definition of maps as “graphic representations that facilitate a spatial understanding of things, concepts, conditions, process, or events in the human world.”³¹ Crampton notes that this definition emphasizes the role that maps serve in the human experience.³² The analysis of maps within critical cartography suggests that “mapping is not just a reflection of reality, but the productions of knowledge, and therefore, the truth.”³³

In *Maps are Territories: Science is an Atlas*, David Turnbull argues that spatiality is fundamental to all cultures however different cultures interpret the relationship between objects in space in manners embedded in a given world view.³⁴ Turnbull explains that

[t]hose who are imbued with what is sometimes called ‘the Western world view’ think of objects as having fixed characteristics and defined boundaries and as having a position specifiable by spatial co-ordinates. It may well be that Western ontology is in part reinforced by the centrality of maps in Western thinking and culture.³⁵

³⁰ *ibid.*

³¹ Harley, J.B. & Woodward, D. as found in *ibid* at 21.

³² Crampton *supra* note 27 at 21.

³³ *ibid* at 46.

³⁴ Turnbull, D. *Maps are Territories: Science is an Atlas* (Chicago: University of Chicago Press, 1993) at 2.

³⁵ *ibid* at 3.

The ability of a map to be able to convey information depends on its use of conventions, however “conventions often follow cultural, political and even ideological interests, but if conventions are to function properly they must be so well accepted as to be almost invisible.”³⁶ One example of a convention that has come to dominate the Western style of mapping is the use of grid systems. The grid, the mathematical division of space, is characteristic of the Western World View. The use of the grid is the result of Brunelleschi’s development of perspective geometry. In the early 1400s Europe was introduced to Ptolemy’s *Geographia* which:

...mapped the entire world and presented all the known information in a standardised and consistent way with grid lines of latitude and longitude. This metrication meant that all points were commensurable: that is, distances and directions could be established between one place and any other. Further unknown places could be given co-ordinates. It was the synthesis of perspective geometry and Ptolemy’s work that enabled the imposition of a grid on the known world. Once that grid was imposed, the mathematician Toscanelli was able to argue plausibly that sailing westwards across the Atlantic was a shorter voyage to the Spice Islands than the traditional route around the Cape of Good Hope and on to the East. Thus Columbus ‘discovered’ America even though in 1492 he was convinced that Cuba and Japan were one and the same.³⁷

The grid system of mapping therefore played a greater role than merely locating the distance between different geographic areas; it helped to provide the intellectual understanding that Europeans *could* sail westwards to the spice lands.

Maps are a site upon which identities are inscribed onto space. John Pickles stated that we should “focus on the ways in which mapping and the cartographic gaze have coded subject and produced identities.”³⁸ In his *History of Spaces* Pickles illustrates that the map serves “as a practice and discourse that names the world, categorizes people,

³⁶ *ibid* at 8.

³⁷ *ibid* at 25-26.

³⁸ Pickles, J. as found in Crampton *supra* note 27 at 18.

bounds places, and territorializes socio-politico-economic regions.”³⁹ One of the central concerns of his work is the “double crisis of representation – democratizing information while representing specific interests.”⁴⁰ This double crisis characterized the cartography of the Enlightenment where maps sought to represent the real world at the same time as serving the interests of the printer/state.⁴¹ Pickles acknowledges that his work is inspired by Brian Harley whose own goal was to illustrate “how cartography also belongs to the terrain of the social world in which it is produced.”⁴² Just as much as it has been said that a place is not ‘discovered’ until it is mapped, it can be said that a spatio-political entity does not gain its identity until it is mapped: identity and the territory are mutually reinforcing.

In her book *Charting an Empire: Geography at the English University*, Lesley Cormack discusses the importance of geography in the establishment of the English imperial ideology.⁴³ The literary complement to mathematical geography is descriptive geography, which is “the natural and political description of other lands both exotic and well known”.⁴⁴ It served as a form of eye witness accounts. Cormack argues that descriptive geography for the English colonial project provided the basis of “narratives of exotic and distant peoples and places. It supplied practical economic, political, and social information while helping to create the ‘other’ against which a typical English person

³⁹ Pickles, J. *History of Spaces: Cartographic reason, mapping and the geo-coded world* (New York: Routledge Taylor & Francis Group, 2004) at 21.

⁴⁰ *ibid* at 13.

⁴¹ *ibid*.

⁴² Harley, B. J. as found in *ibid* at 12.

⁴³ Cormack, L. B. *Charting an Empire: Geography at the English Universities, 1580-1620* (Chicago: University of Chicago Press, 1997) at 1.

⁴⁴ *ibid* at 15.

could be assessed.”⁴⁵ Therefore descriptive geography provided the foundation for understanding the New World but also played a role in establishing what it meant to be English in the new global context. This dual production of identity was not solely achieved through the use of descriptive geographies of distant lands, but in tandem with the study of chorography or local history. Students at English universities developed “a picture of themselves. Through its study, chorographers placed themselves in time and space, named themselves, and began the process of defining who they were.”⁴⁶ As a discipline, descriptive geography encouraged readers “to regard the world as an endless source of wondrous tales and new goods, thereby creating a mentality that would condone and encourage the exploitation of foreign peoples and resources.”⁴⁷ The study of the physical and political nature of the earth facilitated the exploration and exploitation of the world, while challenging the “ancient and religious authorities... [creating] an ideology that combined national pride with growing distrust of foreigners.”⁴⁸ Chorography and descriptive geographies produced the knowledge of an English national identity.

In his highly influential book *Imagined Communities*, Benedict Anderson defines the nation as:

...an imagined political community ... imagined as both inherently limited and sovereign. It is *imagined* because the members of even the smallest nation will never know most of their fellow-members, meet them, or even hear of them, yet in the minds of each lives the image of their communion.⁴⁹

⁴⁵ *ibid* at 15.

⁴⁶ *ibid* at 15.

⁴⁷ *ibid* at 162.

⁴⁸ *ibid* at 11.

⁴⁹ Anderson, B. *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 1983) at 15.

How communities are distinguished from each other depends upon the style in which their imagination is represented.⁵⁰ Textual representations such as novels and newspapers can be understood as cultural artefacts that signify the national imaginary. Anderson's work is illustrative of how people form the identity of the Self as tied to a nation and a sovereign. The internal identity underlies how a spatio-political identity will engage with other spatio-political identities. In order for the project of appropriation to occur there needs to be an internal belief that supports the idea of the imagined community and the goals of that community. The imagined community is reinforced through representations of foreign spatio-political identities, thereby separating the 'us' from the 'them'.

In *Orientalism*, Edward Said provides a useful understanding of how power is manifested in the constructions of 'us' and 'them', with a focus on how the British, French and Americans have identified and spoken for the Orient. Said argues that "Orientalism is a style of thought based upon an ontological and epistemological distinction made between 'the Orient' and (most of the time) 'the Occident.'"⁵¹ A variety of writers within the West have reified the distinction between the East and the West as a natural phenomenon. Said challenges the notion of the Orient and the Occident as objective and natural categories by emphasizing:

Vico's great observation that men make their own history, that what they can know is what they have made, and extend it to geography: as both geographical and cultural entities – to say nothing of historical entities – such locales, regions, geographical sectors as 'Orient' and 'Occident' are man-made [sic]. Therefore as much as the West itself, the Orient is an idea that has a history and a tradition of thought, and imagery, and vocabulary that have given it reality and presence in and for the West. The two geographical entities thus support and to an extent reflect each other.⁵²

⁵⁰ *ibid.*

⁵¹ Said, E. *Orientalism* (New York: Random House, 1994) at 2-3.

⁵² *ibid* at 4-5.

The relationship between the East and West, much like the relationship between the Old World and New World, is characterized through “the relationship of power, of domination, and varying degrees of complex hegemony.”⁵³

Both Anderson and Said depict the relationship between power and development of collective imaginations. Said’s work can explain the establishment of an ‘external’ imagination, whereas Anderson’s explains the development of the ‘internal’ imagination. It is through combination and interplay between these two imaginations⁵⁴ that the Europeans justified their appropriation of the Americas. There was a dynamic relationship between the colonial national imagination of the internal community and external geographical locales. The construction of the internal English identity played a crucial role in the appropriation and colonization of the Americas, as much as the construction of the nature of the Americas allowed for its appropriation. Contributing sources to the production of internal and external identities are literature that concerned chorography and descriptive geographies. The internal identity is further inscribed into legal texts that are the official representation of the internal logic concerning what the world is or what it ought to be. The distinctions between ‘us’ and ‘them’ is developed through objective representations of the world. These representations become inscribed into legal systems, both domestic and internationally.

The separation of the English and Others was predicated on the emphasis of difference. David Theo Goldberg argues that ‘racial knowledge’ is “dependent upon...established scientific fields of the day, especially anthropology, natural history,

⁵³ *ibid* at 5.

⁵⁴ When I reference the internal imagination and the external imagination I am talking about the national imagination of itself and the imagination that it creates of the outside world. Which can be separated from any given persons internal and external imagination, but more importantly can also be part of that individuals’ imagination.

and biology... This scientific cloak of racial knowledge, its formal character and seeming universality, imparts authority and legitimation to it.”⁵⁵ Racial knowledge is grounded in an epistemology of difference. As Goldberg goes on to argue:

Power is exercised epistemologically in the dual practices of naming and evaluating. In naming or refusing to name things in the order of thought, existence is recognized or refused, significance assigned or ignored, beings elevated or rendered invisible. Once defined, order has to be maintained serviced, extended, operationalized. Naming the racial Other, for all intents and purposes, *is* the Other.⁵⁶

The naming of the Other (Indians) and their space (America after the explorer Amerigo Vespucci) are two examples of how Europeans privileged their perception of the Americas over that of the original occupants. Through this privileging of perception the racialized Other was socially produced through an archive of information establishing “a set of guiding ideas and principles about Otherness”.⁵⁷ These guiding principles were premised upon European calculations of the mind and abilities of the Other. The Other was objectively constructed, “reified as natural, and so extended universally... The universal claims of western knowledge, then, colonial or postcolonial, turn necessarily upon the deafening suppression of its various racialized Others into silence.”⁵⁸

Michael Banton provides a historical genealogy of the concept of race. Banton argues “that as new modes of explanation of human variation have arisen, so the word ‘race’ has been used in new ways, but the old uses have often continued side by side with the new one.”⁵⁹ Banton illustrates that up until the eighteenth century the main measure of accounting for difference between peoples was religiously based. The genealogies of

⁵⁵ Goldberg, D.T. “Racial Knowledge” in Back, L. & Solomos, J. (eds) *Theories of Race and Racism: A Reader* (New York: Routledge Taylor & Francis Group, 2000) at 154.

⁵⁶ *ibid* at 155.

⁵⁷ *ibid*.

⁵⁸ *ibid* at 156.

⁵⁹ Banton, M “The Idiom of Race: A critique of presentism” in Back, L. & Solomos, J. (eds) *Theories of Race and Racism: A Reader* (New York: Routledge Taylor & Francis Group, 2000) at 49.

the Old Testament made it possible to trace the emergence of different groups of people, their movements, and the relationships between each other.⁶⁰ From the sixteenth through to the eighteenth century the principle use of ‘race’ was meant to denote “[a] group of persons, animals, or plants, connected by common descent or origin.”⁶¹ Another manner in which race was utilized in the sixteenth century was to signify likeness without common descent.⁶² The manner in which difference between people was accounted for was either based upon “moral or physical causes. Moral causes would today be called culture: they consisted of the ways in which men responded to their environment. Physical causes were inherited dispositions and capacities.”⁶³ Racialist distinctions that constructed, and brought meaning to, both the Self and Other were integral to the appropriation and colonization of the Americas.

Robert A. Williams Jr. provides a thorough analysis of the European legal treatment of the American indigenous populations in *The American Indian in Western Legal Thought: The Discourses of Conquest*. Williams analyzes the treatment of the indigenous populations by Spain, England, and the United States. He argues

...that law, regarded by the West as its most respected and cherished instrument of civilization, was also the West’s most vital and effective instrument of empire during its genocidal conquest and colonization of the non-Western peoples of the New World, the Indians.⁶⁴

The three Empires that Williams examines “sought power over the vision of truth that would be imposed in the New World. All relied on law as a vital supplement to their

⁶⁰ *ibid* at 52.

⁶¹ *ibid* at 53.

⁶² *ibid*.

⁶³ *ibid*.

⁶⁴ Williams, R.A. *The American Indian in Western Legal Thought: The Discourses of Conquest* (New York: Oxford University Press, 1990) at 6.

respective visions of empire in the Indian's America."⁶⁵ The goal of Williams' analysis is to situate the role that law and legal discourse played in the "West's will to empire in the New World."⁶⁶ Law and legal discourse served an important instrumental role for the Western dominance over the indigenous populations as it would energize, legitimize and constrain imperial actions.⁶⁷

In his book *How the Indians Lost Their Land: Law and Power on the Frontier* Stuart Banner refutes the "near-consensus among historians and lawyers"⁶⁸ that during "the colonization of North America ... the English did *not* recognize Indian property rights."⁶⁹ Banner argues that by the end of the seventeenth century "[i]n principle, if not always in practice, the English recognized the Indians as the owners of North America. If the English wanted Indian land, they would have to buy it."⁷⁰ The practice of purchasing land illustrates that there was disconnect between the perspective of the Americas in metropolitan England and the reality within the colonies. As J.H. Parry discusses in *The Westward Enterprise*:

Perhaps the most striking characteristic of the English settlements in Americas was their diversity. No other colonial empire employed so wide a range of the legal devices in establishing settlements, or allowed so many diverse forms of social, religious, and economic organization. Many factors contributed to this diversity: the habit of eclectic borrowing already noticed; differences in time, place, and circumstance; differences in personality and purpose; and the absence of sustained interest and continuous effective control by the government.⁷¹

⁶⁵ *ibid* at 7.

⁶⁶ *ibid*.

⁶⁷ *ibid* at 8.

⁶⁸ Banner, S. *How the Indians Lost Their Land: Law and Power on the Frontier: Law and Power on the Frontier* (USA: The Belknap Press of Harvard University Press, 2005) at 12.

⁶⁹ *ibid* at 10, emphasis in original.

⁷⁰ *ibid*.

⁷¹ Parry, J.H. "Introduction: the English in the New World" in Andrews, K.R., Canny, N.P. & Haid, P.E.H. (eds) *The Westward Enterprise* (Liverpool: Liverpool University Press, 1978) at 5.

As a result of these contributing factors there were legal variations in practices. Should circumstance and opinion necessitate the purchasing of land, then it would be beneficial to do so. Purchasing land from natives does not undermine the central argument that the geographical imagination of the New World was constructed as free space. The geographic imagination is premised upon the situated knowledge of authors. Without having *experienced* the New World, those within the metropolitan centres of England would have a different perspective of the nature of the original inhabitants and their relationship to land than those who were on the ground in the North American colonies. The appropriation of the Americas was a multi-layered project that relied on a number of tactics. In this thesis I examine how the international legal schema legitimized the appropriation of the Americas which will, in instances dictated by geography and circumstance, conflict with the facts on the ground. The international legal schema set up an understanding of the Americas in as a state of commons and thereby a free space open for appropriation.

Two books that have influenced the legal dimensions of this project are *A Search for Sovereignty* by Lauren Benton, and *Nomos of The Earth* by Carl Schmitt. Benton states that her purpose is to examine “the interrelation of geographic discourse, colonial legal politics, and international law in the production of imperial space between the years 1400 and 1900.”⁷² During the colonial era law and geography reinforced each other. “Law formed an important epistemological framework for the production and dissemination of geographic knowledge, while geographic description encoded ideas

⁷² Benton, L. *A Search for Sovereignty: Law and Geography in European Empires 1400-1900* (New York: Cambridge University Press, 2011) at 9.

about law.”⁷³ Benton seeks to challenge the story of European imperial conquest as the linear rationalization of space which she attributes to J.B. Harley, Robert Sack, Mathew Edney, and Bruce McLeod.⁷⁴ Instead, she argues, it would be better to view the nature of European overseas expansion as being “tempered by control that was exercised mainly over narrow bands, or corridors, and over enclaves and irregular zones around them.”⁷⁵

Law played a role in acquiring geographic knowledge through the application of title to new territories:

...law and legal practices provided methods for the collection and organization of geographic knowledge, Law also operated as a medium for conflicts over the size and shape of imperial territories. Further, because conflicts were spatially distributed and legal stories or cases possessed a spatial dimension, associations formed with surprising ease between patterns of law and landscape. As the associations forged new categories of social space and drew attention to variations within those categories, observers struggled to define their fit within broader frameworks of spatial and legal ordering.⁷⁶

The uneven operation of law further established that the formation of overseas colonies was not itself an even process that produced a monolithic replication of imperial practices. Although, the reproduction of legal norms within the colonial territories established a system of rewards for loyalty to and the advancement of crown interests,⁷⁷ colonialism produced fragmented enclaves. These enclaves were shaped by geographic factors and the particularities of social relations within colonies. The legal practices in the New World diverged from the mother country:

...as with geographic knowledge, imperial ventures provided new stimuli to analogy-driven approaches to legal analysis. Disputes in empires were defined simultaneously as similar to other conflicts and as in some respects singular. The very qualities that made law transplantable to distant places guaranteed that legal conflicts in those places would generate phenomena resistant to analogies or categorization.⁷⁸

⁷³ *ibid.*

⁷⁴ *ibid* at 1.

⁷⁵ *ibid* at 2.

⁷⁶ *ibid* at 22.

⁷⁷ *ibid* at 24.

⁷⁸ *ibid* at 28.

The resistance of legal analogies between colonized spaces and the mother country produced anomalous legal spaces which spurred innovation in legal (and geographic) knowledge.⁷⁹ Although the process was uneven, the transplanting of the legal culture of the colonial power played an important role in establishing title over land.

The relationship between land and law is undeniable. As Carl Schmitt noted: "...the earth is bound to law in three ways. She contains law within herself, as a reward of labor; she manifests law upon herself, as fixed boundaries; and she sustains law about herself, as a public sign of order. Law is bounded to the earth and related to the earth."⁸⁰ The historical belief was: when 'man' utilizes his intellectual and physical labour upon land, god rewards him with property in the land. The relationship between labour and the ability to name geographical spaces as territory is a power relationship that exists through all territorial relationships – private ownership through to nation-state boundaries. Once there is a legitimate claim of ownership over a territory, laws produce the dictates that will order the territory.

The New World appropriation project marked the beginning of a truly global international order. The European empires possessed the technological⁸¹ power of appropriation and as a result they were able to lay the framework for the modern international legal, economic, political and moral orders. Appropriation and the establishment of order on land are intricately linked as:

⁷⁹ *ibid* at 29.

⁸⁰ Schmitt, C. *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum* (U.S.A.: Telos Press Publishing, 2006) at 42.

⁸¹ Technological power is an encompassing term that includes: navigational tools, agricultural tools (including beasts of burden), the printing press, monetary systems, and weaponry (although weaponry has come to represent the significant divide between Europeans and the Original Occupants, it must be noted that the Original Occupants possessed a precision with their weapons that the guns of Europeans could not compete with. Disease was a major contributing factor to the ability of Europeans to deplete the population of the Original Occupants).

...the constitutive process of a land-appropriation is found at the beginning of the history of every settled people, every commonwealth, every empire. This is true as well for the beginning of every historical epoch. Not only logically, but also historically, land appropriation precedes the order that follows from it. It constitutes the original spatial order, the source of all further concrete order and all further law. It is the reproductive root in the normative order of history. All further property relations – communal or individual, public or private property, and all forms of possession and use in society and in international law – are derived from this radical title.⁸²

The constitutive role that appropriation plays between a society and land is as true for the indigenous societies of the Americas as it was for Europeans. The Americas, south of the Rio Grande, were home to some of the oldest cities and largest empires in the world. Furthermore, throughout the continent societies adapted to and transformed the landscape to further perpetuate their societies. However, for all of the great American developments and advancements, Europeans not only dominated the American continent to establish their own orders through the act of appropriation, they believed they were legally, morally and religiously entitled to do so. The Europeans were able to imagine, and believe, that the American continent did not have any rightful owners; the original occupants only owned that which they immediately occupied. The continent at large was free for European appropriation. After appropriation, European colonizers established and imposed their own understanding of legal order over the land.

In *Imperialism, Sovereignty and the Making of International Law*, Antony Anghie argues that the civilizing mission of Europeans was incorporated into international law through questions of cultural difference.⁸³ Anghie utilizes the phrase ‘dynamic of difference’ in his characterization of “the endless process of creating a gap between two cultures, demarcating one as ‘universal’ and civilized and the other as ‘particular’ and uncivilized, and seeking to bridge the gap by developing techniques to normalize the

⁸² Schmitt *supra* note 80 at 48.

⁸³ Anghie, A. *Imperialism, Sovereignty and the Making of International Law* (New York: Cambridge University Press, 2005) at 3.

aberrant society.”⁸⁴ Anghie argues that this dynamic of difference is self-sustaining and endless.⁸⁵ Through attempts to overcome difference, “international law extends itself horizontally, to encompass the entire globe and, once this is achieved, vertically, within each society, to ensure the emergence of civilized states.”⁸⁶ In order to be included within the international legal order, the identity of spatio-political entities needs to internally conform to the international legal system.

Anghie positions the traditionalist account of international law as being framed around “how order is created among sovereign states.”⁸⁷ However, the colonial encounter was not a meeting between “sovereign states, but rather between a sovereign European state and a non-European society that was deemed by jurists to be lacking in sovereignty – or else, at best only partially sovereign.”⁸⁸ Therefore, the defining problem of international law, order between sovereigns, specifically addresses the peculiarities of a European centered account of the history of international law.⁸⁹ The traditionalist history of international law therefore only allows for the interpretation of the history of international laws relationship with the non-European world as

...a history of the incorporation of the peoples of Africa, Asia, the Americas and the Pacific into an international law which is explicitly European, and yet, universal...the very mechanism by which the civilizing mission is furthered prevents its fulfilment... the process of incorporation that is conventionally understood to be empowering and liberating for the Third World is, in significant ways, debilitating and excluding.⁹⁰

The incorporation of the non-European spaces into the international legal system, based upon the European model of sovereignty derived from the Peace of Westphalia, has been

⁸⁴ *ibid* at 4.

⁸⁵ *ibid.*

⁸⁶ *ibid.*

⁸⁷ *ibid* at 5.

⁸⁸ *ibid.*

⁸⁹ *ibid.*

⁹⁰ *ibid* at 5-6.

accounted for as a gradual inclusion of the colonial periphery into European notions of sovereignty. Anghie alternatively argues “that sovereignty was improvised out of the colonial encounter, and adopted unique forms which differed from and destabilized given notions of European sovereignty.”⁹¹ Questions of what constitutes sovereignty are central to the international legal argumentation for appropriation. It was through European understandings of “the relationship between ideas of culture and sovereignty and the ways in which sovereignty became identified with a specific set of cultural practices to the exclusion of others”⁹² that legitimized the appropriation of the Americas.

Literature Review Summary

I began this chapter by destabilizing the colonial account of the nature of the original occupants to illustrate that the Americas was more populous, diverse, and sophisticated than had been previously believed. The dominant themes that I explored revolved around the fields of cartography, geography, and law. The three fields are unified through discussions regarding the manifestation of internal and external identities. Furthermore, I addressed how identities are projected unto space in order to legitimize the act of appropriation. Through the preceding discussion, I attempted to illustrate how various authors have accounted for the manner in which cartography, geography, and law supported the appropriation of the Americas. The acts of Empire were dependent upon the embedded relationships of these disciplines with the operation of power. The act of appropriation required various forms of knowledge that first imagined the Americas as occupying a state of commons (non-sovereign) and later reconceptualising it as property (sovereign).

⁹¹ *ibid* at 6.

⁹² *ibid* at 7.

Geographic knowledge is socially produced, which predicated the creation of world views formed through time and place. Critical streams of cartography and geography challenge hegemonic worldviews that are socially produced through the dissemination of cartographic and geographic knowledge. Within the context of this thesis, these critical streams have brought to the forefront the intimate relationship between geographic endeavours and Empire. Geographic knowledge supported claims of the knowability and controlability of foreign spaces. Cartography and descriptive geographies played crucial discursive roles in the formation of homogeneous identities of Self and Other. These geographically centred identities were the basis of social, political, economic, and racial dichotomies that justified the appropriation of the Americas. The geographic knowledge of the division of the earth provided 'objective' truths that supported European legal claims of the right to appropriate the Americas. Although there were variations in the application of laws on the ground of the colonies, the legal imagination of the Americas was reinforced by the geographic imagination. Through the act of appropriation Europeans were able to establish the order of the land and gain the benefits of resource extraction that were core to the functioning of colonialism and Empire.

The following chapter will build upon the intimate relationship between imagination and space. The two concepts play a crucial role in the processes that help us make sense of the world and its ordering. Appropriation, in its essence, is a spatial project that is justified and legitimated on the basis of a geographic imagination of what a space is and what it ought to be. Through imaginative processes there was a transformation of

the Americas from free space, with no limits and constrained only by the laws of nature,
to a space which was geographically and legally bound.

Chapter 3: Conceptual Framework

This chapter engages in a critical discussion of the concepts of space, geographic imagination, free space, and discovery. To begin with space is to set out that space is relational. The discussion will focus on a Western conception of space and relationality. The second section develops the concept of the geographic imagination. This section examines how individuals understand the ‘reality’ of foreign spaces through imaginative processes. The next section looks specifically at these imaginative processes in relation to the Americas, which rendered the land as ‘free space’. I then turn to the Doctrine of Discovery, which laid the geographical and legal framework for claims of appropriation. The Doctrine of Discovery was premised upon a geographic imagination that spaces not yet discovered by Europeans were free spaces for European appropriation.

Space

Knowledge as a form of power is integral to the production of, and control over, geographical space. *Space* does not have a singular or accepted definition, which is largely the result of differences in how and why the concept of space is utilized. Space is not absolute, but rather relational and changing. The way that people engage with space influences how they perceive space. Although space is fluid, it is often perceived to be fixed. The fixed character of objects in space provides artificially constructed spaces with a characteristic of permanence and meaning. Geographical space, however, is not natural, nor is it unplanned, but rather has an identity that is constructed by those who have the power to control its representation. Space is a field of representation, as it represents the nature of the inhabitants, and the inhabitants represent the space. How space is represented depends on an individual’s relationship with the particular space in question,

whether they are an observer of it or a participant within it. It is through our gaze upon geographical space that we are able to view “the *trace* of humanity on Earth, and its habitat: imprint and matrix.”⁹³ As individuals, families, and societies, humans have constructed geographical spaces to fit their needs and wants.

The common conception of space is not that it is controlled or commanded but rather that spaces are natural in their composition and growth, particularly when the space is located within ‘nature’. However, there are very few ‘natural’ spaces. A natural space is wilderness that has been untouched by the power and manipulation of mankind and solely occupies the domain of the natural elements. Even the Amazon, which is considered to be one of the last true natural landscapes, is a by-product of human intervention.⁹⁴ Thus, the notion that there are natural spaces, that are located purely within nature without human intervention, ignores the intimate relationship between humans and the development of landscapes to fit the needs of the people who reside within that space.

The ‘western world view’ represents space as something which could be “commanded or controlled... the abstraction of places into a grid or coordinate system as if the observer or controller is outside of or looking down on the places that constitute it.”⁹⁵ The notion of space as falling within a grid is an invention of the Western cartographic movement which divides spaces into a “system of vertical and horizontal lines that structures the way we see and represent space...To see the world enmeshed in a

⁹³ Brunet, R. *Sustainable Geography* (Hoboken, New Jersey: Wiley, 2011) at 7.

⁹⁴ Mann, C. *supra* note 14 has a wonderful discussion on how the Amazon was developed through selective agricultural processes that would support human populations.

⁹⁵ Cloke, Paul & Johnston, Ron (eds) *Spaces of Geographical Thought: Deconstructing Human Geography's Binaries* (Thousand Oaks, Calif.: SAGE Publications, 2005) at 81.

grid implies a sophisticated grasp of mathematics.”⁹⁶ One example of a geometric grid is the use of longitude and latitude that divides the globe into a series of coordinates. When the planet began to be represented, in Europe, as purely geometric it allowed for it “to be plotted and replotted, mapped and remapped, represented and reimagined.”⁹⁷

The manner in which geographic space is conceptualized is influenced by social space. Geographic space is often construed as objective whereas social space is often thought of as subjective. However, the separation between the two concepts is a construct; we use objective and subjective reasoning to order and understand surroundings. Social space materializes through the exercise of power in geographical space. The European construction of the social space of the indigenous populations in the Americas in relation to that of Europeans was intrinsically tied to the European geographic imaginations of the Americas.

Geographic Imagination

Our lived experiences determine what is known and foreign. Foreign derives from the Latin word *foris* meaning outside. One of the methods in which we acquire an understanding of the character of foreign spaces is through the use of imagination. Imagination is a process of gathering knowledge from “the association and synthesis of ideas without direct sensory input.”⁹⁸ Imagination plays an important role in the formation of our understanding of reality as it is

⁹⁶ Short, J.R. *The World Through Maps: A History of Cartography* (Toronto: Firefly Books, 2003) at 20.

⁹⁷ *ibid.*

⁹⁸ Peuquet, D.J. *Representations of Space and Time* (New York: Guilford Press, 2002) at 35

...shaped by the position and pressure of an array of contrapuntal concepts such as reason, experience, reality, objectivity, morality and materiality; the imagination has conventionally taken up a location somewhere between the domains of the factual and fictional, the subjective and objective, the real and representational.⁹⁹

The information that is formed through an imaginative process can be understood as premised upon relative associations within space and time. “Relative space and relative time are defined in terms of relationships between and among locations or in terms of relationships between and among objects.”¹⁰⁰ Through our minds’ eye we are able to visualize the relationship between places through time.

Ordering the relationship between spaces and objects is often achieved through the use dichotomies. Dichotomies such as superior/inferior, us/them, and inside/outside, help to order of the world and an individual’s relative position within it.¹⁰¹ Dichotomies order information to understand things that are foreign to the individual experiences. Dichotomies facilitate the ability to make sense of places that have not directly experienced. When knowledge of a foreign geographical space is developed through imaginative processes, there is an accompanying visual imagination of that space. These imaginations are grounded in the information accumulated over a lifetime regarding the nature of spatio-political entities and peoples. An individuals’ geographical location will influence what types of imaginations are formed about foreign geographical spaces.

Individuals over the course of a life time develop geographic imaginations about the characters of different ‘worlds’ that exist on the earth. These imaginations are formed

⁹⁹ Daniels, S. “Geographical Imagination” *Transactions of the Institute of British Geographers*, 2011, 36, 2 at 182.

¹⁰⁰ Peuquet *supra* note 98 at 28.

¹⁰¹ There is a drive to separate ourselves from the binaries of us and them, superior and inferior, and inside and outside because these binaries are simplistic evaluations of reality however they are essential binaries that help us to understand how societies and individuals order the world on the level of everyday abstractions: binaries in and of themselves are not negative. The problem is when these binaries are used as a form of manipulation or propaganda as a means to achieve an end that will result in the degradation or destruction of the ‘them’ on the basis that ‘they’ are ‘inferior’ to ‘us’.

by “the places we live in, those we visit and travel through, the worlds we read about and see in works of art, and the realms of imagination and fantasy each contribute to our images of nature and man.”¹⁰² Therefore there are two types of geographic imaginations that are developed. The first is the result of our direct lived experience, which will generally support the existence of the spatio-political identity the individual resides in. The second is built on information relating to the nature of foreign spaces. When an individual develops geographic imaginations it “can be regarded as hypotheses or assumptions regarding how space and relations in space initiate and shape societal processes and changes, and how these processes and changes are spatially expressed.”¹⁰³ The geographic imagination helps to make sense of the lived experience in our known world, the character of those (un)known worlds that are foreign to the lived experience, and the relationship between the two different worlds. The geographic imagination that is built upon lived experience is an individual’s direct reality. The geographical imagination of foreign places is still a reality to the individual but this type of reality is more subject to fantastical notions.

The dissemination of information contributes to the development of collective or societal imaginations of both what is perceived to be known and unknown. When the collective, societal imagination engages in this process of ordering through dichotomies it is possible to instill a belief of societal superiority. One extreme example of societal superiority is evidenced in the mentality that contributed to the realization of European

¹⁰² Lowenthal, D. “Geography, experience, and imagination: towards a geographical epistemology” in *Annals of the Association of American Geographers Vol. 51, Issue 3, 1961* at 94.

¹⁰³ Ek, R. (2006) “Media Studies, Geographical Imaginations and Relational Space. Geographies of Communication.” in Falkheimer, J & Jansson, A (eds.) in *Geographies of Communication: The Spatial Turn in Media Studies* (Göteborg: Nordicom, 2006)at 49

colonialism. As colonialism is a geographic project, a geographic imagination of a targeted space was employed to justify a right to invade and control space. In order for the governing and sponsoring powers to be able to rationalize the costs of exploring an unknown world, they had to firmly believe that exploration and subsequent colonization was a just and worthy project. Those who occupied positions of power would utilize targeted information to construct a geographical imagination of the outside world through an ideological lens. Those who lived in the colonies would have been in a better position to assess and contest colonial truth-claims of the land and the indigenous populations. Settlers would identify that information either did not match or matched their lived experience, as “the real world is much more easily understood among people who really have to deal with the facts than among those... [who create the] ideological cover and support for the doctrines of the faith.”¹⁰⁴

The European institutions of governance, law, family, and agriculture, influenced how Europeans perceived the New World. A person’s world view necessarily is influenced by where they come from; therefore, Europeans drew upon their world to make sense of the New World. The geographic imagination was developed through writings that were utilized by active and passive actors in projects of imperialism and colonization. An example of a geographic imagination is El Dorado where “a native king said to possess so much gold that in an annual ritual he painted his body with gold dust and then rinsed off the brilliant coating in a special lake. After centuries of these baths, gold dust carpeted the lake floor.”¹⁰⁵ This mythic city has spurred a great number of

¹⁰⁴ Chomsky, N. “What the World is Really Like: Who Knows It -- and Why” as found at <http://www.chomsky.info/books/reader02.htm> Accessed on March 10, 2012

¹⁰⁵ Mann, C.C. *supra* note 14 at 320.

explorers to find the gold and wealth that lies somewhere within the Amazonian jungle. The stature of this mythic city, then, is based upon a geographic imagination that was filled with the promise of riches. As a geographic imagination resides between fact and fiction, the accounts and the gold that had been accumulated during expeditions into the South would provide a basis within reality for the belief in the existence of El Dorado. As explorers would engage in the search for the magnificent city they acquired knowledge of the landscape and the peoples. This newly found knowledge would contribute to a sophistication of the European geographic imagination of the New World, grounding it in a more objective framework. The Age of Discovery resulted in excited geographic imaginations that would both drive and justify European navigational endeavours for the purposes of engaging in commerce, colonization, and conversion upon the soil of the New World.

Free Space

The characterization of space as free space was conceptualized by Carl Schmitt, in *Nomos of the Earth*, to explain the Europeans perception of the Americas following its ‘discovery’. As Schmitt notes, following 1492 “...the emerging new world did not appear as a new enemy, but as *free space*, as an area open to European occupation and expansion.”¹⁰⁶ The categorization of free space was in relation to the absence of European populations in the Americas not the absence of an indigenous population. In this context, the notion of free space arises from the fact that the Americas were not included within the European order of the earth.¹⁰⁷ Europeans constructed this notion of free space by projecting European understandings of the nature of property, law, and

¹⁰⁶ Schmitt *supra* note 80 at 87, italics in original.

¹⁰⁷ *ibid* at 95.

society upon the space of the Americas. Through the European imposition of these concepts upon the space of the Americas, the New World was epitomized as *the* state of nature as opposed to the “orderly ‘civil’ mode of existence” as found in European states.¹⁰⁸

The control over the geographic free space – “the New World, America, the land of freedom, i.e., land free for appropriation by Europeans”¹⁰⁹ – was closely interlinked with the designation of oceans as free spaces. For Europeans to maximize their ability to navigate to foreign lands oceans were designated as free space, thereby opening waterways and causeways for passage. Navigation of the open seas was vital for commerce. The project of exploration was driven by a desire to access new markets as well as to find more accessible routes to the Orient. Europeans considered navigation to be “among the Inventions which human reason hath found out for general benefit thus: *what nature any land deny’d By Navigation is supply’d*”.¹¹⁰ The free passage of expeditions on the seas allowed for Europeans to venture into the New World for the purposes of exploitation of resources, information gathering, and subsequent planting of colonies.

The European belief that the Americas constituted a free space illustrates the:

...historical and structural relation between such spatial concepts [as] free sea, free trade, and free world economy, and free exploitation. The ‘free spaces’ created thereby may appear in the favourable light of zones designated for agonal tests of strength; however, they also may become a desolate chaos of mutual destruction.¹¹¹

¹⁰⁸ *ibid.*

¹⁰⁹ *ibid* at 94.

¹¹⁰ Grotius, H. *Of the Law of Warre and Peace* (London: T. Warren, ND) at 216-217.

¹¹¹ Schmitt *supra* note 80 at 99.

The importance is that mutual destruction would come at a greater cost with overseas colonies. The provisions of an order between European powers beyond the borders of the amity lines would allow for the greater accumulation of wealth for the colonizing powers. Amity lines made in the 16th and 17th centuries illustrate that there were two open spaces free for European appropriation, one territorial and the other oceanic. European powers utilized amity lines as a form of verbal legal agreements between competing nations for the legal designation of the Americas as free space. These lines signified that within “the European area from the zone of colonial expansion, the rules which governed the European state system did not bind the European powers.”¹¹² The use of the amity line meant that the legitimacy of colonial expansion was determined through effective power.¹¹³ The positioning of these lines differentiated the European legal space from the free spaces of the Americas. One crucial aspect of the concept ‘free space’ is that it is a space in which the dictates of the international legal order do not bind the actions of Empires. Free spaces are created as exceptions to the dictates that govern state to state relations within the international legal order. The nation-states (empires) that control the international legal order construct free spaces as sights where they can implement a colonial agenda free from the constraints of law (or rather to construct law in accordance with this agenda).

A primary purpose of the colonial agenda was to advance economic gain. The encounters with the New World set off one of the largest land appropriations in human history. The term appropriation, which denotes ‘to take possession of’, is at once a

¹¹² Truyol y Serra, Antonio “Discovery of the New World and International Law” in *Toledo Law Review*, No. 43, 197 at 312

¹¹³ *ibid.*

geographical and a legal act. In the act of appropriating space, a society applies their understandings of how space should be used, and how it should be organized to meet the needs of the land appropriating society. During the act of appropriation, a geographic imagination is employed in the assessment of what the space is and what it ought to be. In the case of the Americas, Europeans constructed it as a wilderness, that is, a space that had not been transformed from its original state through the labour of man. The first law in the production rest on "... territory appropriation: only appropriated territory can be durably worked."¹¹⁴ Therefore, in order to produce space, it needs to be possessed and made into a territory. Territory is a state of mind, requiring a conscious acknowledgement of the taking of, and the belonging to, a bounded geographic space. The imagination of the Americas as wilderness meant that the space had not been produced as a cultivated 'man' made environment therefore it was not conceptualized as territory; it was a free space.

Land-appropriation is intrinsically linked with law as to take possession of land will ground law both internally and externally.¹¹⁵

Land appropriation thus is the archetype of a constitutive legal process externally (*vis-à-vis* other peoples) and internally (for the ordering of land and property with a country). It creates the most radical legal titles, in the full and comprehensive sense of the term *radical title*.¹¹⁶

The internal component is a mental awareness of the act of appropriation. This awareness occurs during the initial land division and distribution that establishes the internal order of ownership and property relations.¹¹⁷ The internal component becomes rooted in an internal order of law, the law of the land, and thereby is only applicable to those

¹¹⁴ Burnet *supra* note 93 at 53.

¹¹⁵ Schmitt *supra* note 80 at 45.

¹¹⁶ *ibid* at 46-47.

¹¹⁷ *ibid* at 45.

individuals contained within that order. Whereas, the external component of appropriation comes from the land-appropriating groups encounter with similar land-appropriating groups. As Schmitt notes, land-appropriations are recognized through:

...a legal title in international law in two different ways. Either a parcel of land is extracted from a space that until then had been considered to be *free* i.e., having no owner or master recognized by the foreign law of the land-appropriating group, or a parcel of land is extracted from a formerly recognized owner and master.¹¹⁸

From Schmitt's categorization, if groups were not recognized within the legal order of the land-appropriating group, namely the European international legal order, the land was constructed as free. As a result of the indigenous populations of the Americas not being recognized as sovereigns within this international legal order, Europeans were free to appropriate the spaces beyond that which the original inhabitants immediately occupied.

Discovery

The concept of free space is illustrative of the European conceptualization of the land and peoples of the America. Imagining the Americas as free space allowed for the act of appropriation to take place. To establish European legal title to land in the New World, land first needed to be 'discovered'. Black's Law Dictionary defines discovery as, "[in] a general sense, the ascertainment of that which was previously unknown; the disclosure or coming to light of what was previously hidden".¹¹⁹ For Europeans, the existence of the Americas was largely unknown until Columbus landed upon the shores of modern-day Bahamas. The nature of discovery in international law "is the foundation for a claim of national ownership or sovereignty, discovery is the finding of a country, continent, or island previously unknown, or previously known only to its uncivilized

¹¹⁸ *ibid* at 45-46.

¹¹⁹ Black, H.C. *A Law Dictionary, 2nd Edition* (NP: West Publishing Company, 1910) at 374.

inhabitants.”¹²⁰ Only during the historically specific time period of the Age of Discovery was the international legal categorization of discovery applicable.¹²¹ The classification of the epoch as the Age of Discovery is illustrative that “the discovery of America became the Discovery, the discovery *par excellence* which suddenly placed Europeans in the presence of men and peoples unknown”.¹²² The naming of the Age of Discovery imbues a presumption of the superiority of the European explorers over all others.

During his summation of Francisco de Vitoria’s analysis of discovery, Schmitt states that:

...the meaning of the legal title ‘discovery’ lay in an appeal to the historically higher position of the discoverer *vis-à-vis* the discovered... They could be made only by peoples intellectually and historically advanced enough to apprehend the discovered by superior knowledge and consciousness.¹²³

The supposed superiority of the European ‘discoverers’ was bolstered by the fact that they were the bearers of a legal system that would provide legal title to land. It is a fallacy to believe, in the contemporary period, that the Europeans were indeed superior to the indigenous populations of the Americas. When superiority is used to describe the course of events between Europeans and indigenous peoples a white supremacist imagination is invariably invoked. It is an imagination that is based upon the assumptions that “the Indians lost because they were primitive, because their societies were weak, because they were few, because they were superstitious, and so forth.”¹²⁴ The stubborn persistence of these assumptions up until the present day illustrates the power that the

¹²⁰ *ibid.*

¹²¹ Schmitt *supra* note 80 at 131, emphasis in original.

¹²² Truyol y Serra, *supra* note 112 at 307.

¹²³ Schmitt *supra* note 80 at 131-132.

¹²⁴ Wright, R. *Stolen Continents: Five Hundred Years of Conquest and Resistance in the Americas* (Boston: Houghton Mifflin, 2005) at 13.

geographic (as well as the historical) imagination of the New World has had in laying the legal title to the Americas.

The Doctrine of Discovery provided the foundation for European legal titles to land in the Americas. The 1823 US Supreme court ruling of *Johnson v. M'Intosh* emphasised discovery as a legitimate means of territorial acquisition. The emphasis illustrates that Europeans, and the subsequent states that resulted from European colonization, viewed discovery as a legitimating factor for the existence of the state on American land. Robert J. Miller's analysis of the ruling discerns ten elements that fashioned the use of discovery as a means of legal appropriation of land. Those elements are: first discovery, actual occupancy and current possession, preemption/European title, Indian occupancy title, Indigenous nations limited sovereign and commercial rights, contiguity, *terra nullius*, Christian supremacy, European civilization, and right of conquest.¹²⁵ I shall briefly discuss these elements to give context to how the Doctrine of Discovery would provide Europeans with legal title to the free-spaces of the Americas. Claims of discovery required that newly discovered spaces were previously unknown to Europeans. For Europeans, acts of 'discovery' expanded their worldview. Upon discovery, spaces would undergo a transformation to bring them into the international order, which privileged the European nation-state system over all other forms of organization.

The establishment of legal title to newly found lands (over other European nations) first discovery, actual occupancy, and contiguity were the most crucial. Upon

¹²⁵ Miller, R.J. "The Doctrine of Discovery" in Miller et al. *Discovering Indigenous Lands: The Doctrine of Discovery in the English Colonies* (Oxford University Press: New York, 2010) at 6-8.

first discovery, the European nation to find previously unknown lands would gain property and sovereign rights over that land. The act of discovery would generally serve as an incomplete title.¹²⁶ A title would become complete through the physical possession of land, within a reasonable length of time, after the first discovery. Queen Elizabeth I added the element of effective occupation to the Doctrine of Discovery to facilitate English claims to unoccupied territories.¹²⁷ As a result of the element of contiguity:

Europeans had claim to a reasonable and significant amount of land contiguous to and surrounding their actual settlements and discovered lands... contiguity held that discovering the mouth of river gave a European country a claim over all the lands drained by that river.¹²⁸

This principle of contiguity, particularly with respect to the manner in which it granted title to rivers, illustrates that the European community held the preconceived notion that an indigenous society did not have title beyond the spaces that they immediately occupied. The elements of first discovery, actual occupation, and contiguity are acts that initiate claims of title.

The Doctrine of Discovery includes a second set of elements that entail descriptions that position newly discovered lands as ‘uncivilized’ worlds in comparison to the ‘civilized’ European world. *Terra nullius* is a description of land as being empty or vacant. However, as it was liberally applied by Europeans, the designation of land as *terra nullius* also reflected European understandings of proper use of land.

Under, this element, lands that were not possessed or occupied by any person or nation, or were occupied by non-Europeans but not being used in a fashion that European legal systems understood and/or approved, were considered to be empty and waste and available to be claimed... Europeans considered lands that were actually owned, occupied, and being actively utilized by Indigenous peoples to be vacant and available for

¹²⁶ *ibid* at 6.

¹²⁷ *ibid* at 7.

¹²⁸ *ibid*.

Discovery claims if they were not being properly used according to European laws and cultures.

The manner in which *terra nullius* applied to land claims illustrates that the European understanding of the world would determine how non-European spaces would be regarded and whether they were free for appropriation. The acquisition of geographic information about the newly found lands would construct American land as either *terra nullius* or a bastardized version of this element to fit European claims to land. The other two descriptions that were utilized to justify appropriation of land on the basis of discovery were premised upon the European belief in the superiority of Christianity and European civilization. It was held that

...non-Christian peoples did not possess the same human and natural rights to land, sovereignty, and self-determination... Europeans thought that God had directed them to bring civilization, education, and religion to Indigenous peoples and exercise paternalism and guardianship powers.¹²⁹

The rights that derive from discovery would position the colonizing power as having “the sole power and authority to buy land from Indigenous peoples and governments... The government that held the power of pre-emption thus prevented or pre-empted any other European government from buying the discovered land.”¹³⁰ The nature of first discovery, in that it granted title to the first European state, automatically diminished the rights of indigenous sovereignty and freedom of trade, as they were to deal exclusively with the discovering nation.¹³¹ However, in circumstances where indigenous peoples would interfere with European settlements or commerce, Europeans would engage in just war which would legalize invasion and appropriation of Indigenous lands.¹³²

¹²⁹ *ibid* at 8.

¹³⁰ *ibid* at 7.

¹³¹ *ibid*.

¹³² *ibid* at 9.

Conceptual Summary

I started this chapter positing space as relational. The position occupied by an individual in space and time will influence how space is perceived. The geographic imagination is a concept that explains how individuals understand spaces that are foreign to the direct lived experience. Furthermore, the geographic imagination can help an individual to identify with the hegemonic identity of the spatio-political in which they reside. The European conceptualization of the Americas as free space was a central component of the colonial geographic imagination. The concept of free space was predicated on the imposition of understandings of European institutions such as law, governance, agriculture and territory onto the space of the Americas. The notion that the Americas was free space resulted in its separation from the Old World and its system of international order; the New World was diametrically different from the Old World. The conceptualization of the Americas as free space allowed for the Americas to be appropriated by discovering European powers. The appropriation of the land was constitutive of the legal order that was transplanted to the Americas. The first step in the process of appropriation was the 'discovery' of land and waterways. The Doctrine of Discovery provided the basis for legal title to the Americas premised upon the understanding that Europeans were superior to indigenous population. Following discovery, the colonizers were able to implement a Western form of territoriality that revolved around the control of demarcated territorial units. The imposition of this form of territorial control allowed Europeans to legitimize their claims to land to other European actors. The visualization of space, the demarcation of territories, and visual

representations of geographic imaginations will be explored in the following section that focuses on the role of maps in the appropriation of the Americas.

Chapter 4: Appropriation through mapping knowledge

This chapter will analyse the importance of maps as a sight in which the geographic imagination as free space was created and perpetuated. Maps thereby established the visual evidence supporting the belief that the space of the Americas was open for appropriation. As noted in the literature review, a map contains “graphic representations that facilitate a spatial understanding of things, concepts, conditions, process, or events in the human world.”¹³³ Maps serve as graphic images that convey indirect spatial information to the reader. The cognitive strength of graphic images in the development of knowledge comes from two factors:

They first utilize the ability hardwired into the human visual system to derive pattern and coherence instantly. Second, these patterns suggest image schemata (e.g., front-back, centre-periphery, part-whole). In this way, higher level associations are made at a very abstract level with the viewer’s knowledge.¹³⁴

The graphic representation of space therefore helps to convey indirect geographic knowledge of the world. The knowledge conveyed through maps are constructions meant to communicate the message of the mapmaker. “Every map is a purposeful selection from everything that is known, bent to the mapmaker’s ends. Every map serves a purpose. Every map advances an interest.”¹³⁵ This chapter will explore how maps advanced the interests of the English Empire by providing a graphic representation of the Americas as a blank space open for appropriation. The world map “serves a key role of ‘making the invisible visible,’ providing a means of experiencing geographic reality indirectly on a scale we cannot normally perceive directly through the senses.”¹³⁶ The communication

¹³³ Harley, J.B. & Woodward, D. *supra* note 31.

¹³⁴ Peuquet, D.J. *supra* note 98 at 141.

¹³⁵ Wood, D. *Seeing Through Maps: Many Ways to See the World* (Oxford: New Internationalist, 2006) at 4, emphasis in original.

¹³⁶ Peuquet, D.J. *supra* note 98 at 144.

of 'invisible' is what will be primarily examined in this section. Maps provided the visualization that made the English worldview of the Americas as free space a *reality*. The maps that were chosen for selection illustrate how the English perceived the Americas and how maps serve as a tool of appropriation. Further, the maps that were chosen for analysis illustrate a number of different purposes and distortions along with the communication of beliefs about the geographic nature of the New World. The inscription of meaning unto space through naming is another aspect of maps that will be addressed.

Maps as acquisition

Maps played an important role in the discovery of the Americas and the establishment of colonies as “[m]uch of the history of cartography has been concerned with the ‘unrolling’ of the world map... it can be said that a place is not really discovered until it has been mapped so that it can be reached again.”¹³⁷ Maps serve as the visual representation through which we can look through the window of the past into the Age of Discovery. Furthermore, cartography provides various forms of evidence that would secure claims of discovery and subsequently title to discovered lands. Maps supported the idea that the Americas was under-populated and served as the basis of legal title through inscribing place names, titles, unto the space of the Americas.

Discovery, in and of itself, was not sufficient to lay title to land. The acquisition of cartographical information became “of great significance, both for navigation and for international law argumentation. A scientific cartographical survey was a true legal title

¹³⁷ Thrower, N.J.W *Maps and Civilization: Cartography in Culture and Society* (Chicago: The University of Chicago Press, 2007) at 63-64.

to a *terra incognita* [uncharted territory].”¹³⁸ As the Americas were deemed *terra incognita*, claim to the land would come from colonization through scientific knowledge.¹³⁹ Although the understanding of geographic character of land was gained through scientific processes, these processes helped colonists with imagining the New World. Their reports on the discoveries reinforced the established imagination of the Americas as free space.

Maps projected the belief that the Americas was an open space for discovery and appropriation, they also served a form of acquisition during the stages of exploration into the New World. One example comes from a 1493 map that accompanied Columbus’s letter to his patrons, this map “shows Columbus sailing solo through the islands of the Bahamas, which he renamed. This is an early example of European ‘acquisition’ of territory through cartographic nomenclature”¹⁴⁰ or cataloguing in other terms. The acquisition of land in the Americas was facilitated through maps through the visual depiction of the form and structure, erasing the settlements of the original occupants, and the imposition of European place names onto the Americas. Many of the cartographic projects undertaken by Europeans, in the 16th and 17th centuries, of the New World would symbolically often erase the existence of indigenous populations. It was not that the original occupants were left off the map, “but that the resulting surface – of trees, rivers, hills – took on the appearance of a window through which the world was seen...as it *really was*.”¹⁴¹ The world was devoid of markers that would represent indigenous

¹³⁸ Schmitt *supra* note 80 at 133.

¹³⁹ Daniels, S. *supra* note 99 at 184.

¹⁴⁰ Thrower *supra* note 136 at 67.

¹⁴¹ Wood, D. & Fels, J. *The Power of Maps* (Guilford Press: New York, 1992) at 2.

ownership, such as demarcated territories, thus maps became the representation of this European reality.

Illustration one, exemplifies the erasure of the original occupants through map-making. The names on the map emphasize proposed English colonies as a source title to the land.

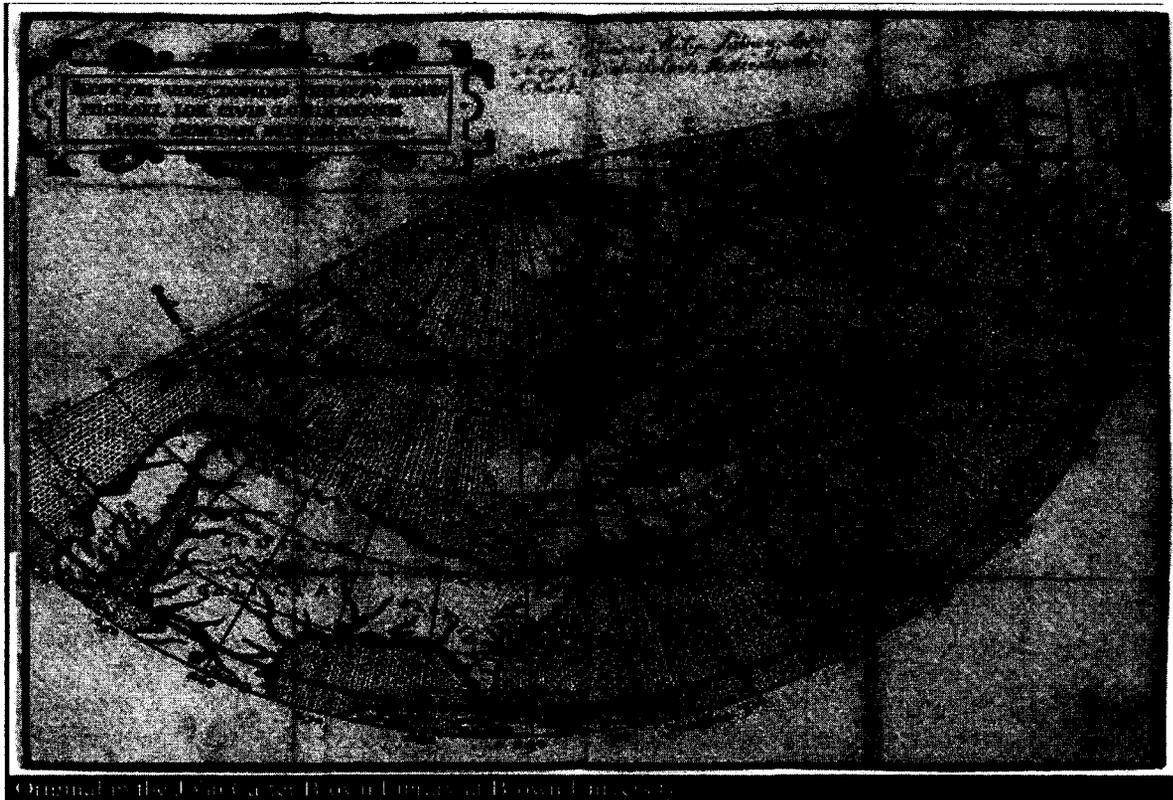


Illustration 1

Illustration one is a woodcut titled *Illustri viro, domino Philippo Sidnaeo Michael Lok civis Londinensis hanc chartam dedicabet: 1582* that was created by Michael Lok, produced by Richard Hakluyt in *Diverse voyages touching the discoverie of America, and the ilands adjacent unto the same*.¹⁴² This is a map of the Atlantic ocean which includes

¹⁴² The John Brown Carter, Brown University Archive of Early American Images *Illustri viro, domino Philippo Sidnaeo Michael Lok civis Londinensis hanc chartam dedicabet: 1582* accessed at <http://jcb.lunaimaging.com/luna/servlet/detail/JCBMAPS~1~1~1059~103460001:01804?sort=Normalize>

the western coast of Europe and Africa along with the Eastern coast of North America, part of Mexico and the Caribbean. Aside from leaving the original occupants off the map, another notable aspect of this map is the prediction that access to the spice lands could be gained through a Northern passage. These predictions take the form of the Northwest Passage and the Sea of Verranzo, the Sea of the West. There were two purposes that this map served; the first was to encourage investors for Sir Humphrey Gilbert's colonization project.¹⁴³ The second purpose was to encourage the search for the Northwest Passage, either around the continent or through the river out of the Sea of Verranzo which was believed to feed into the Pacific.¹⁴⁴ The inclusion of the Northwest Passage and the Sea of Verranzo is a representation of using a map to project the English desire to control one of the four navigational corners of the earth.

Another example of the importance of place names as a sight of the anticipation of Empire is found below in Illustration two.

d_date%2CGeographic_Area%2CCreator%2CMap_title&qvq=q:northwest%2Bpassage;sort:Normalized_date%2CGeographic_Area%2CCreator%2CMap_title;lc:JCBMAPS~1~1&mi=3&trs=51>

¹⁴³ *ibid.*

¹⁴⁴ *Ibid.*



Illustration 2

William Alexander Stirling created this map and it was published by William Stansby in London in 1624. Stirling titled the map *An encouragement to colonies*. Under the title of New England appear the names of individuals involved in colonization. Following a Council for New England meeting in 1623, twenty patentees were granted title to land in New England.¹⁴⁵ This map records the names of the patentees for the first time.¹⁴⁶ The placing of the names of colonizers upon the map illustrates the process of appropriation through naming.

¹⁴⁵ The John Brown Carter, Brown University Archive of Early American Images *An encouragement to colonies* as found at <<http://jcb.lunaimaging.com/luna/servlet/detail/JCB~1~1~260~100003:-Map-of-northeastern-North-America-?qvq=w4s:/what/Geography,%20maps,%20city%20views%20and%20plans/where/North%20America/London;lc:JCB~1~1,JCBBOOKS~1~1,JCBMAPS~1~1,JCBMAPS~2~2&mi=5&trs=96>>

¹⁴⁶ *Ibid.*

When land becomes the territory of a sovereign, maps are utilized in “defense and warfare, in internal administration linked to the growth of centralized government”.¹⁴⁷ A centralized government would become legitimate through mapping out the territorial component that is essential to spatio-political identity. Just as maps serve the function of establishing contained communities, they were also integral to the colonial enterprises in the Americas, as they helped to lay claim to land:

...on paper before they were effectively occupied, maps anticipated empire.... Maps were used to legitimize the reality of conquest and empire. They helped create myths which would assist in the maintenance of the territorial *status quo*. As communicators of an imperial message, they have been used as an aggressive complement to the rhetoric of speeches, newspapers, and written texts, or to the histories and popular songs extolling the virtues of empire.¹⁴⁸

Therefore the maps that were created over the course of the imperial enterprises stirred “the geographical imagination... [playing a] double function in colonialism of both opening and later closing a territory.”¹⁴⁹

Reading maps

Reading maps help us to see the gains that Europeans made in understanding the geographical character of the New World. Maps and the development of cartographic tools in the Renaissance provide visual evidence that in a hundred years European perceptions “of world land and water relationships changed more than it did in any comparable period.”¹⁵⁰ These shifts are recorded in maps, which are a visual representation of how a map maker perceives the world.¹⁵¹ Maps provide insights into

¹⁴⁷ J. Brian Harley “Map, Knowledge, and Power” in George L. Henderson, Marvin Vaterstone (eds) *Geographic Thought: A Praxis Perspective*” at 131.

¹⁴⁸ *ibid* at 132.

¹⁴⁹ Harley, B. as found in Wood & Fels *supra* note 141 at 45.

¹⁵⁰ Thrower *supra* note 137 at 64.

¹⁵¹ *ibid* at 1.

societal¹⁵² representations of space and the known (and sometimes unknown) characteristics of that space. The way in which maps are representations of the world is,

...not of an independent 'real' world but of relativistic human knowledge, 'constructed according to culturally defined semiotic codes; the knowledge is constructed using various intellectual and instrumental technologies...' the 'natural' and objective appearance of maps is seen as a mask covering which is mostly a cultural and social agenda favouring those in position of power in a variety of ideological contexts.¹⁵³

Maps are but one form of the value-laden family of representation, they are not solely "inert records of morphological landscapes or passive reflections of the world of objects, but are regarded as refracted images contributing to dialogue in a socially constructed world."¹⁵⁴ This is as much a truth for small-scale maps as it is for global maps. The form and structure of most maps illustrate that:

[t]hey are a class of rhetorical images and are bound by rules which govern their codes and modes of social production, exchange, and use just as any other discursive form. This in turn can lead us to a better appreciation of mechanism by which maps – like books – became a political force in society.¹⁵⁵

John Speed is a mapmaker who projects ideals of the socially constructed world through his maps.

Illustration three below is Speed's depiction of the Americas titled *America with those known parts in that unknowne worlde both people and manner of buildings Discribed and enlarged by I.S. Ano. 1626*. The map is a representation of an artistic map, with the borders depicting the original occupants. Although the map does include the

¹⁵² In order for a map to qualify as a medium which conveys spatial information to the readers it has to follow certain conventions that are dominant within the society that the map maker occupies. There are indigenous forms of maps that had not been regarded as maps by members of Western culture because the conventions did not match the Western form of cartography. For a map to make sense to the reader the map must take on the conventions that have been accepted as integral to displaying spatial information.

¹⁵³ Johnston, R.J. (et. al.) *Dictionary of Human Geography 4th Ed.* (Malden, Mass.: Blackwell Publishers, 2000) citing Edney, 1996 at 64.

¹⁵⁴ Harley, J. B., *supra* note 147 at 129.

¹⁵⁵ *ibid* at 130.

original occupants, the manner in which they are clothed¹⁵⁶ supports beliefs that the people of the Americas had not progressed past the point of the state of commons. Furthermore, the top border depicts European settlements. By emphasizing European settlements overtop of the Americas, Speed is illustrating the manner in which the Americas were being transformed from a state of commons to property through the imposition of European architecture onto the American landscape. Furthermore, emphasizing European settlements implicitly conveys the message that the original occupants did not have city centres.

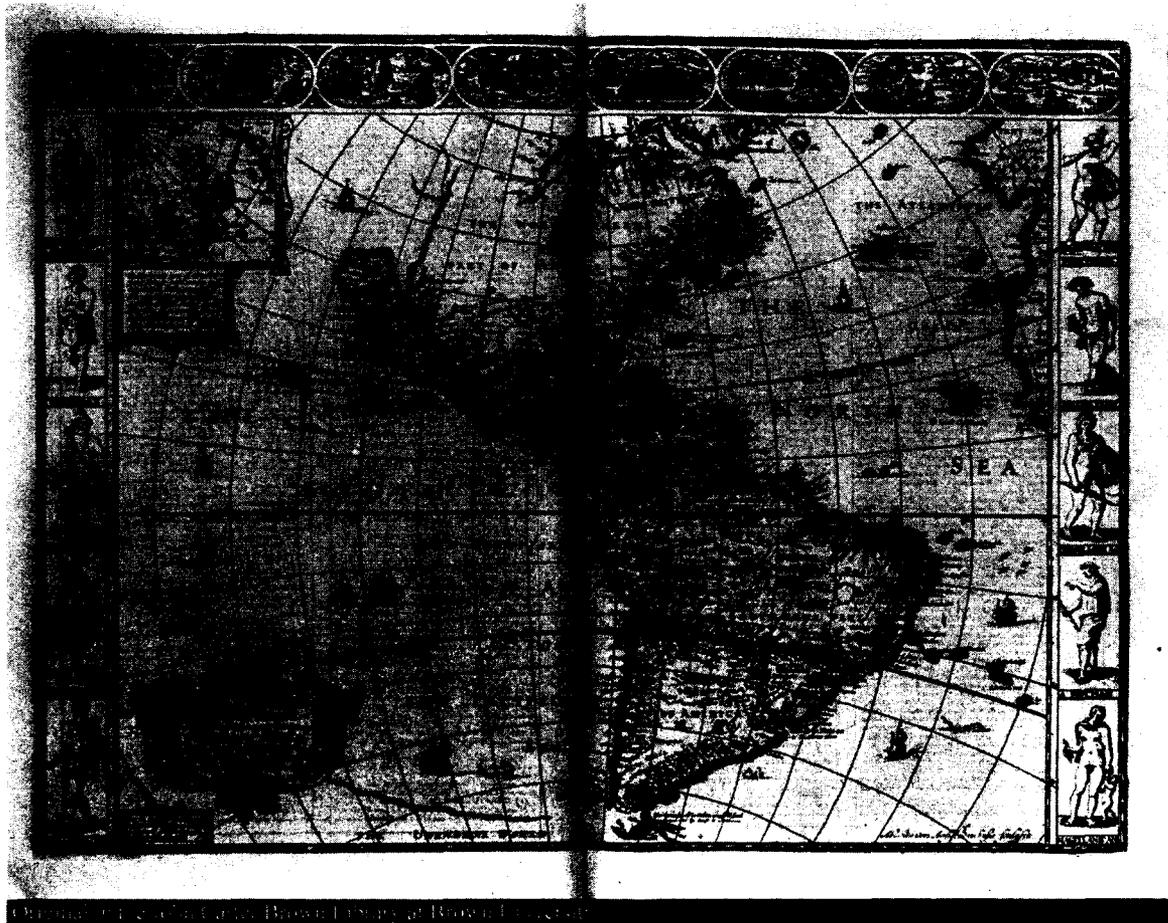


Illustration 3

¹⁵⁶ In the following chapter there will be a greater discussion of the importance of the manner in which people are clothed to English perceptions of the stages of civilization.

In the atlas in which this map appears Speed explains that:

What lyeth beyond her toward each Pole from the *AEquator* appears as yet but as waste ground in our Mappes: for the experience of our Travellers have not reached so farre, as to search fully into the Commodities of the Countries, or nature of their Inhabitanes. Yet questionlesse there are many, and may hereafter yield us as much profit as any other region.¹⁵⁷

In this account Speed establishes that the Americas is largely *terra incognita* to Europeans. That land lies in waste until it is discovered, mapped, and incorporated in the European system. Maps, such as Speed's, would drive the imaginations of individuals involved in exploration. Explorers and financiers desired to fill in the blanks on maps to establish title over the Americas. Blank spaces reinforced the idea that there was subsequent land to be discovered beyond the horizon. Through the Doctrine of Discovery, the land would fall under the ownership of the sovereign responsible for its 'discovery'. Speed's map helps to illustrate the manner in which the identity of the Americas was in a state of transformation through the processes of discovery, appropriation and colonization. It is European presence that gives meaning to land, without the presence of Europeans the land of the Americas would not reach its full potential for exploitation and profit. Therefore, Speed's map does more than one thing; it creates the shifting identity of the Americas through the representation of the original occupants and European settlements while calling for subsequent exploration.

¹⁵⁷ Speed, J. *A Prospect of the Most Famous Parts of the World together with all the Provinces, counties, and Shires, contained in that large Theator of Great Brittaines Empire* (London: Printed by John Dauson, 1631) at 9.



Illustration 4

Illustration four is John Speed's representation of the European continent. This map also appears in Speed's *A Prospect on the most Famous Part of the World*. This map, when put into comparison with illustration three, establishes representations of European superiority vis-à-vis the Americas. In the text, Speed states this belief of superiority:

In the Latine Empire the *Romanes* beare the swat, and scarce left a corner of the earth then known unconquered. And to this day the Princes of *Europe* enlarge their Dominions upon the Regions of the other three. A small portion as we are of this little Ile, in respect

of their vast Continent, yet we have a part too in America for our peculiar, and hope still to bring more into our possessions, that we may bring then unto Christ.¹⁵⁸

This statement illustrates the historical justification of both appropriation and Empire. It is the duty of Empires to bring all known corners of the earth under their control. Speed exalts the belief England occupies a superior social space in comparison to the larger geographic space of the Americas. Furthermore, Speed references the worldview that there is a symbiotic relationship between spreading the word of Christ and gains in material goods.

Speeds belief of the superiority of Europe, and England specifically, is reinforced when the maps of the Americas and Europe are compared. These two maps provide the visual depictions that help to construct the identities of the Americas, as occupying a state of commons, and Europe, as the bearer of civilization. The difference in the manner of dress is a representation of the civilized self and the exotic (largely naked) other. A further identification of the difference in the civilizations is noted in the comparison between the European cities versus the European settlements in the Americas. The European map highlights the architectural achievements of major imperial city centres, by illustrating the network interconnections, marine power, or artificial landscapes. The privileging of European settlements in the Americas implies that the original occupants had no comparable city centres. Through excluding the artificial environments of the original occupants, Speed reinforces the idea that there are no spatio-political identities who could claim ownership over the continent. Speed's map represents Europe as being filled with spatio-political identities, while the Americas are represented as vast blank spaces. Through the demarcation of identities, the idea that Europe is not free for

¹⁵⁸ *ibid* at 7.

appropriation is represented. Therefore the gaze is projected unto the Americas which in the northern part, which is left blank to be discovered, appropriated, and colonized.

John Speed's maps of the Americas and Europe ideologically divide the earth and reinforce colonial understandings of space. Speed's map of the Americas represents the desires for further appropriation of land. The decorative borders of the map reinforce ideas of the stages of civilization that the two spaces occupied. The two spaces are further differentiated in the filling in of the maps: blank spaces are open for discovery and therefore appropriation. These maps taken in tandem provide visual cues regarding how Speed projected his, and the English, world view onto both the Americas and Europe. These identities reinforced the legal designations of the Americas as falling under the title of the European sovereign who discovers, appropriates, and colonizes the blank spaces on the map.

Mercator

The decorative maps that are represented in John Speed's work provide overt ideological representations of space while using a grid framework of spatial division. Developments in geography encouraged a mathematical control of the world building upon a mentality that sanctioned its exploitation. In the English context, geography played a key discursive role in the realization of imperialism. Geography stressed the superiority of the English people and customs along with the belief in the knowability, controllability, and the inferiority of the wider world.¹⁵⁹ The hard-science of mathematics, that is commonly associated with cartography, was utilized to provide "a mathematical structure within which to contain the natural world. Those who understood

¹⁵⁹ Cormack *supra* note 43 at 8.

this mathematical language were thereby granted mastery over those who did not”.¹⁶⁰ The development of geography into a more hard science through the use of mathematics provided an objective way of viewing the world. The more scientific knowledge that was gained about a space, the greater control could be exerted over a territory. Maps thereby served a crucial role in the ability of colonies to exert territoriality over their newly gained land.

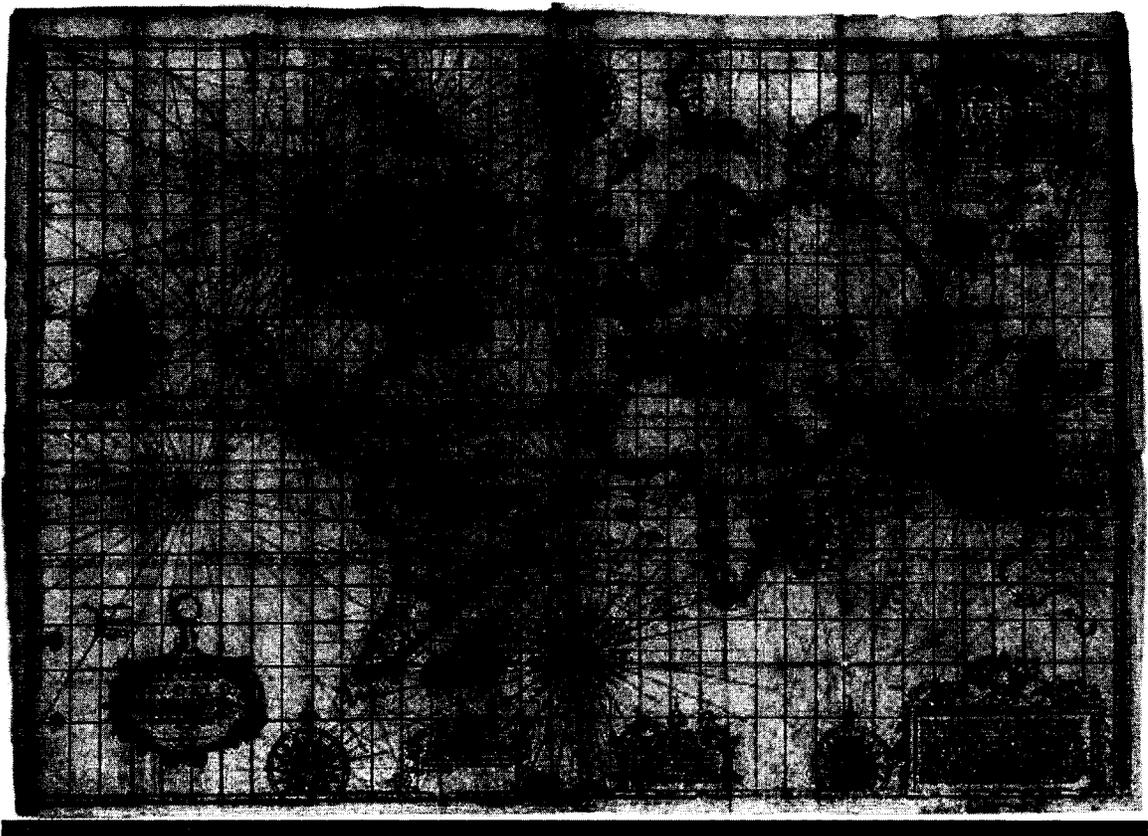


Illustration 5

Illustration five is an engraving titled *A Plat of all the World. Projected according to the truest Rules Being far more exact then either the Plain-Card or the Maps of the*

¹⁶⁰ *ibid* at 13.

World described in two Rounds produced by Edward Wright in London during 1655.¹⁶¹ It was Wright, a British mathematician, who had provided an analysis of the properties of Mercator's projections.¹⁶² Mercator was the first "to produce a true world navigational chart with graticules on which a compass line intersects each meridian at a constant given angle, [however] he left no instructions for its construction and utilization."¹⁶³ Mercator's projections on charts of the seas represented the world "as a square, with the polar regions flattened out to the same extent as the equator... while it magnified the surface area of the poles, it maintained constant compass directions."¹⁶⁴ The map was included in Wright's book *Certain Errors in Navigation*.¹⁶⁵ The publication of the map led to navigators favouring the Mercator projection due to its utility in being able to illustrate the most direct route from point A to B. The Mercator projection became most popular in the 18th century. It was at this time that the projection came to represent the standard world map: "*the map of the seaman, the map of the navigator, the map of the professional world traveler. As Western nations made themselves into colonial powers, Mercator's map of the world came to be seen as an important icon of Western Superiority.*"¹⁶⁶ The representation of European superiority through the Mercator projection is a result of the distortions of proportion. The Mercator projection distorts the area of places closer to the poles which are proportionally larger than those areas located near the equator. This

¹⁶¹ The John Brown Carter, Brown University Archive of Early American Images *A Plat of all the World. Projected according to the truest Rules Being far more exact then either the Plain-Card or the Maps of the World described in two Rounds* as found <<http://jcb.lunaimaging.com/luna/servlet/detail/JCBMAPS~1~1~2043~107830005:13794?qvq=q:world%2Bmap;lc:JCB~1~1,JCBBOOKS~1~1,JCBMAPS~1~1,JCBMAPS~2~2&mi=5&trs=248>>

¹⁶² Thrower *supra* note 137 at 77.

¹⁶³ *ibid.*

¹⁶⁴ Short, J.R. *supra* note 96 at 127.

¹⁶⁵ Note should be taken of the title of the book in which the map is produced. The book serves as a correction of issues in navigation. The push towards a more mathematical understanding of the world was received as beneficial for those who would materially gain from the colonization of the Americas.

¹⁶⁶ Wood, D. *supra* note 141 at 5-6, emphasis in original.

distortion of proportion is a result of the fact that “it is *impossible* to make compass bearings straight lines on a map that also give places their proper proportions... No map can show both of these things together. To show one truth you have to distort another.”¹⁶⁷ The Mercator projection is more appropriate for small scale maps as the distortion of area is greatly reduced. When the Mercator projection is applied to political world maps the primary purpose of the projection, that is direct navigation, is removed.

For two other respects Wrights map is notable: laying English title and blank spaces. There is the statement, over top of modern Newfoundland: “This land was discovered by John Sebastian Cabot for King Henry the 7 1497”. The naming of the Americas is not the only important aspect of this map, but also the express claim to title through discovery that is important. Furthermore, the incomplete nature of the representation of the Americas inspired the colonial mentality of the English, encouraging a desire to possess these blank, free spaces. The world was “full of empty spaces ready for the taking by Englishmen.”¹⁶⁸

(Re)reading Maps

When European nations engaged in cartographic projects they transformed an unknown free space into territory, and by extension, imagined control over land. Without the visual reference that maps provide the belief in control sits solely within the abstract realm of the imagination. When space was mapped, control became a reality. Maps are a sight of representation that reflects the mapmaker’s purpose. Reading maps helps to understand the manner in which the identity of the Americas was transformed through the

¹⁶⁷ *ibid* at 8, emphasis in original.

¹⁶⁸ Harley, B. as found in Wood, D. & Fels, J. *supra* note 141 at 45.

processes of discovery, appropriation, and colonization. There are a number of commonalities that spread across the maps that were examined in this chapter: blank spaces, naming, and spatial representations. The transformation of the Americas as blank spaces to a geographically secured area promoted claims of discovery and therefore title over the Americas. Blank spaces would be transformed through the imposition of English place names. Place names further served as a source of title legitimizing appropriation to other European actors. The reproduction of the socially constructed ideologically centred worldview was predominately represented in Speeds maps of the Americas and Europe. Wright's map expressed the development of a scientifically verifiable world that could be known and controlled. The grounding of a scientific knowledge of the world helped to support claims of objectively verifiable truths of the world. The division of the earth into grids made it possible to compartmentalize territorial units in the world therefore claims of territoriality could be identified not only through naming but also through locating the place within the grid. The following chapter will examine how descriptive geographies built the external identity of the Americas, and the internal identity of the English. These identities played a key discursive role in naturalizing the existence of the Americas and legitimizing the appropriation of its 'blank' spaces for the purposes of economic gain and colonial glory.

Chapter 5: Descriptive Geography and English Promotional Literature

Promotional literature was a medium through which authors could advance their interests in “overseas exploration, trade, and colonization in the New World.”¹⁶⁹ Promotional literature is often constructed as a form of propaganda, and therefore not representational of the factual truth of the subject matter.¹⁷⁰ However propaganda “is always psychologically true in that it represents the thought of the time, if not the writer’s, at least what he believes to be the readers.”¹⁷¹ English promotional literature would often take the form of descriptive geographies. Descriptive geographies would provide information that would form the English geographic imagination of the character of the land, the original inhabitants, as well as the actions of competing European empires. The Spanish empire served as the rival against whom the British would develop their colonial identity as the keepers of the world. Furthermore, the experience of the Spanish in South America would provide important financial incentives for the development of the British colonial practice.

In this chapter I begin by examining the 1644 version of the Archbishop of Canterbury, George Abbot’s, *A Briefe Description of the Whole World*. The emphasis of the analysis of this text is the representation of the original occupants as occupying a stage of civilization that negates the possibility of them having legitimate claims of territorial sovereignty, beyond that which they immediately occupy. The analysis also highlights the importance the natural character of land. However it is not the original

¹⁶⁹ Pennington, L.E. “The Amerindian in English promotional literature, 1575-1625” in Andrews, K.R., Canny, N.P. & Hair, P.E.H. *The Westward Enterprise: English Activities in Ireland, the-Atlantic, and America 1480-1650* (Liverpool University Press: Liverpool, 1978) at 176.

¹⁷⁰ *ibid* at 177.

¹⁷¹ *ibid*.

occupants that spatial divide the Americas but rather through European presence that the spatial division is given meaning. Lastly the text illustrates the nature of the English identity through the use of references to both the nature of the original occupants and the Spanish. I follow by analyzing Robert Thorne's letter to the King of England reproduced in Richard Hakluyt's *Diverse Voyages*. The last section examines Richard Hakluyt's *Discourse Concerning Western Planting*.

Archbishop of Canterbury George Abbot

The Archbishop of Canterbury, George Abbot, wrote *A Briefe Description of the Whole World*¹⁷² published in 1664. The first notable aspect of this work is the descriptions of the original inhabitants in the southern part of the Americas. He depicts them as being woefully ignorant people:

...ignorant of shipping, without all kind of learning, having no remembrance of History or writing, among them; never having heard of any such Religion as in other places of the world is known, but being utterly ignorant of Scripture, or Christ, or Moses, or any God, neither having among them any token of Crosse, Church, Temple, or Devotion...¹⁷³

This passage illustrates that they were believed to be a people without a capacity for understanding history and therefore could not understand the concept of time. History and time were both considered as representations of a developed society therefore the original occupants were constructed to be a primitive people in the absence of a temporal character.

¹⁷² With the exception of changing *f* to *s*, *v* to *u*, *I* to *j*, and removing 'e's from the ends of some words (ex followinge to following, lesse to less) when appropriate for easier reading, the quotations from historical texts are as they appear in their original form with respects to capitalization, spelling, punctuation, and grammar.

¹⁷³ Abbot, G. *A Briefe Description of the Whole World Wherein is Particularly Described all the Monarchies, Empires and Kingdoms of the Same, with their Academies, as also their severall titles and Scitutions thereunto adjoyning* 5th Ed. (1664) at 249.

More importantly for the construct of the identity of original occupants and claims of discovery is the emphasis on the ignorance of the Christian religion, the ‘true faith’. The lack of knowledge of Christianity was explained as the basis of the populations’ sinful nature. The devil used ignorance to blind them in order to expand his earthly kingdom.¹⁷⁴ The proof of the sway that the devil possessed over the inhabitants was illustrated through the examples of the many:

...grievous sins amongst them: as adoration of Devils, Sodomie, Incest, and all kind of Adultery; Ambition in high measure; a deadly hatred each of other: which proceeded all from the fountain of ignorance wherewith Satan had blinded their eyes: yet there were among them some, which by a kind of blind witch-craft had to evil purpose, acquaintance, and entercourse with foul spirits.¹⁷⁵

The Archbishop paints a mental image of a naked¹⁷⁶, ugly¹⁷⁷, and simple,¹⁷⁸ kind¹⁷⁹, people without a conception of time or appreciation of the value of earthly goods¹⁸⁰ blinded by the devil. These descriptions of the original inhabitants illustrate the importance of that religious symbolism played in the descriptions in constructing the understanding of the character of the original inhabitants.

The richness of the land is the next notable description of the New World in the Archbishops’ account. Particularly the description of precious metals which were so readily available that “out very good and big pieces of gold, which without melting and trying, was of reasonable perfection, and the like was to found in many places of the Land, when the people did dig for their husbandry, or for any other use.”¹⁸¹ The

¹⁷⁴ *ibid* at 261.

¹⁷⁵ *ibid* at 271.

¹⁷⁶ *ibid* at 248.

¹⁷⁷ *ibid* at 272.

¹⁷⁸ *ibid* at 270.

¹⁷⁹ *ibid*.

¹⁸⁰ *ibid*.

¹⁸¹ *ibid* at 273.

availability of the precious metals in the Americas resulted in an increase in the supply of gold, silver and pearls in Europe.¹⁸² The increase in these symbols of wealth provided a lucrative incentive for Westwards exploration and expansion.

The descriptions of the inhabitants and of the rich supply of precious metals are not the most significant descriptions of the New World. Abbot's focus was the brutality of the Spanish in their quest for greater riches. Abbot's emphasis on Spanish violence in the New World positions the British colonial agenda as a more civil and just alternative. The brutality was noted in the reported numbers of people who had died at the hands of the Spanish in Hispaniola. Abbot estimated the population at about 2 million before contact with the Spanish, to just a few thousand after fifty years of contact.¹⁸³ The treatment of indigenous populations was repeated by the Spanish as they moved further inland:

The desire of gain caused the Spaniards to seek further into the Countries: but the tyranny and the covetousness of the Spaniards was such, in taking from them their goods, in deflowering their Wives and Daughters; but especially in forcing them to labour in their Gold Mines without measure, as if they had been Beasts, that the people detesting them, and the name of Christians for their sake, dis some of them kill themselves, and the mothers destroyed their children in their bellies, that they might not be born to serve so hate full a Nation: an some of them did in war conspire against them; so that by slaughter and otherwise the people of the Countrey are almost all wasted not being within a hundred years, being before many millions: and those which remain are as Slaves, and the Spaniards almost only inhabit those parts.¹⁸⁴

The emphasis on the Spanish brutality in Abbot's account is illustrative of the role that the Spanish had occupied as the antagonist within the British imperial interest of the day. Abbot described the actions of the Spanish as "...blasphemers and swearers, riotous and great Drunkards, ravenous tyrannous, and oppressors, unsatisfied, covetous, fornicators...

¹⁸² *ibid* at 272-271.

¹⁸³ *ibid* at 259.

¹⁸⁴ *ibid* at 278.

exercising even among themselves all kind of envie, contention, murders, poisonings, and all sort of inhumane behaviour.”¹⁸⁵ These descriptions position the actions of the Spanish against Christian values. As a result of the tensions between Catholic Spain and Protestant England such statements went to differentiate the two streams of Christianity just as much as it did to differentiate between the two Empires.

Abbot’s account of Northern America, where the British had settled, places less of an emphasis on the original inhabitants. Unlike the descriptions of the natives’ perception of the Spanish, the English were regarded in a more favourable light. Abbot states that the natives would be willing to subject themselves to English rule: “where they have found good entertainment, and the King thereof yeelded himself to the subjection of the Queen of England”.¹⁸⁶ Although there was a favourable description in relation to the relationship between the natives and the English, Abbot did still construct the natives as “men rude and uncivill, without the knowledge of God.”¹⁸⁷ The ignorance of god is similar to the illustrations of the natives in the Spanish territories, however, they were also noted to be “apt enough by hospitality to yield favour and entertainment to strangers: but it is added withal, that they are marvellously addicted to Wichcraft, and the adoration of Devils”.¹⁸⁸ The only description that focused on the same sort of ‘barbarity’ as the South was in illustration of natives in the far North of America, “whose countenance was very tawny and dusky, which cometh not by any heat, but the great cold of the Climate, chilling and pricking them ... their feeding was... upon raw meat, their maners otherwise

¹⁸⁵ *ibid* at 280.

¹⁸⁶ *ibid* at 301.

¹⁸⁷ *ibid*.

¹⁸⁸ *ibid* at 302.

being barbarous and suitable to their diet.”¹⁸⁹ Abbot’s work could serve as a geographical account of the Americas, as it depicts the nature of people and land, as well as promotional literature. The space between the Spanish and French territories in the New World was favourably depicted to incentivize settlement. Although fabulous stories of barbarity and savagery would stir the imaginations of the English public, they would be counterproductive to the colonizing mission.¹⁹⁰ Therefore, the natives in the areas not controlled by competing Europeans are depicted as accepting of English colonialism.

In Abbot’s accounts of the New World, different spatial groupings were loosely based upon the environment and the original occupants, however the emphasis of the spatial divisions was the presence of European powers. Spatial distinctions were thus based on the exploratory patterns of Europeans. Descriptive geographies, such as the Archbishops, promoted the identities that legitimized European claims to sovereignty within the New World. Although, the British, at the time of Abbot’s account had not established a presence equal to the Spanish in the South, it did construct a ‘free’ space between the Spanish in the South and the French to the North. This space was free because it “was not inhabited by any Christians”¹⁹¹ furthermore “[t]he rest of the Iland (being a huge space of earth,) hath not hitherto by any Christian to any purpose been discovered”.¹⁹² The British were anticipating their empire within this unknown space that, to which texts such as Abbot’s would serve as a promotional tool. The geographic imagination of the space that was targeted for English appropriation was depicted as

¹⁸⁹ *ibid* at 298-299.

¹⁹⁰ Pennington *supra* note 169 at 178.

¹⁹¹ Abbot *supra* note 173 at 295.

¹⁹² *ibid* at 301.

without ownership and within a favourable light. It was a space that would differentiate English empire from the Others – European others, and indigenous others.

Hakluyt's Divers Voyages

The second illustration of a descriptive geography that produces the geographic imagination supporting legal claims to land in the Americas is Richard Hakluyt's collection *Divers Voyages*. This is a collection of travel writings, descriptive geographies, and promotional literature that were gathered through "interviewing mariners, navigators, and travellers and collecting stories of new countries, hair-raising adventures and sea dramas."¹⁹³ This work spurred the imagination leading the call for the English 'nation' to promote the colonial enterprises into the New World. Hakluyt's work contributed to the internal awareness of the sovereignty of England, the desire to control commerce and establish colonies.¹⁹⁴ Lesley Cormack in her analysis of *Principal Voyages*, successor to *Divers Voyages*, notes that the importance of the collection is that it

... helped the English to identify themselves as separate from the continental unrest they saw before them and encourage them to regard the world as an endless course of wondrous tales and new goods, thereby creating a mentality which would condone and encourage the exploitation of foreign peoples and resources. In the short term, this study provided court polish, skill in vernacular languages, economic information and political comparisons. In the long run, it set in place a mentality of separateness and exploitation that would facilitate the growth of the English Empire.¹⁹⁵

Descriptive geographies constructed the internal and external identities that were integral to the project of colonization: the English imperial identity and the imaginative New World. The English belief in the North West passage is a prime example of this imagined New World.

¹⁹³ Cormack, Lesley B. "The fashioning of an Empire: Geography and the State in Elizabethan England" in Neil Smith and Anne Godlewska *Geography and Empire* (Oxford : Blackwell, 1994) at 21.

¹⁹⁴ *ibid* at 22.

¹⁹⁵ *ibid*.

North America posed a barrier for a direct route to the Orient for commercial purposes. The notion of a North West Passage promised to overcome this barrier. English merchants, due to the geographical positioning of England, were the most invested in discovering the Northwest Passage. Robert Thorne, in a letter addressed to King Henri of England, argued that:

...with a small number of shippes there may bee discovered divers new lands and kingdoms, in the which without doubt your Grace shall winne perpetual glory and your Subjects infinite profit. To which places there is left one way to discover, which is into the North: For that of the four parts of the world it seemeth three partes are discovered by other Princes... So that now rest to be discovered the said North partes the which it seemeth to me, is onely your charge and duetie. Because the situation of this your Realme is thereunto nearest and aptest of all other: and also for that you have already taken it in lande: And in mine opinion, it will not seem well to leave so great and profitable an enterprise, seeing it may so easily and with so little cost, labour, and daunger, be followed and obtained¹⁹⁶

The text emphasises the wealth, symbolic and material, that would be gained from such ventures. The four parts of the world are in reference to the routes to the opportunities for commerce in the East. To be able to secure the last remaining route would help to establish the rightful place of England within the world stage of commercial trade. The argument for discovering the Northwest Passage was as much based upon geography as it was commerce and glory. The nature of the text speaks to those explorers charged and identified as English. Such individuals would be excited by the opportunity to extend the Realm of England, while discovery of new lands would garner wealth and glory. The descriptive imaginative geography utilized in the letter was accompanied by a visual imagination, Illustration six below.

¹⁹⁶ Thorne, R. "A declaration of the Indies and lands discovered, and subdued unto the Emperour, and the king of Portugal. And also of other parts of the Indies and rich Countries to bee discovered, which the worshipfull master Robert Thorne merchant of London (who dwelt in the City of Sivilia Spaine) exhorted king Henri the eight to take in Hande" as found in Hakluyt, R. *Divers Voyages Touching the Discoverie of America (1582)* at B2.

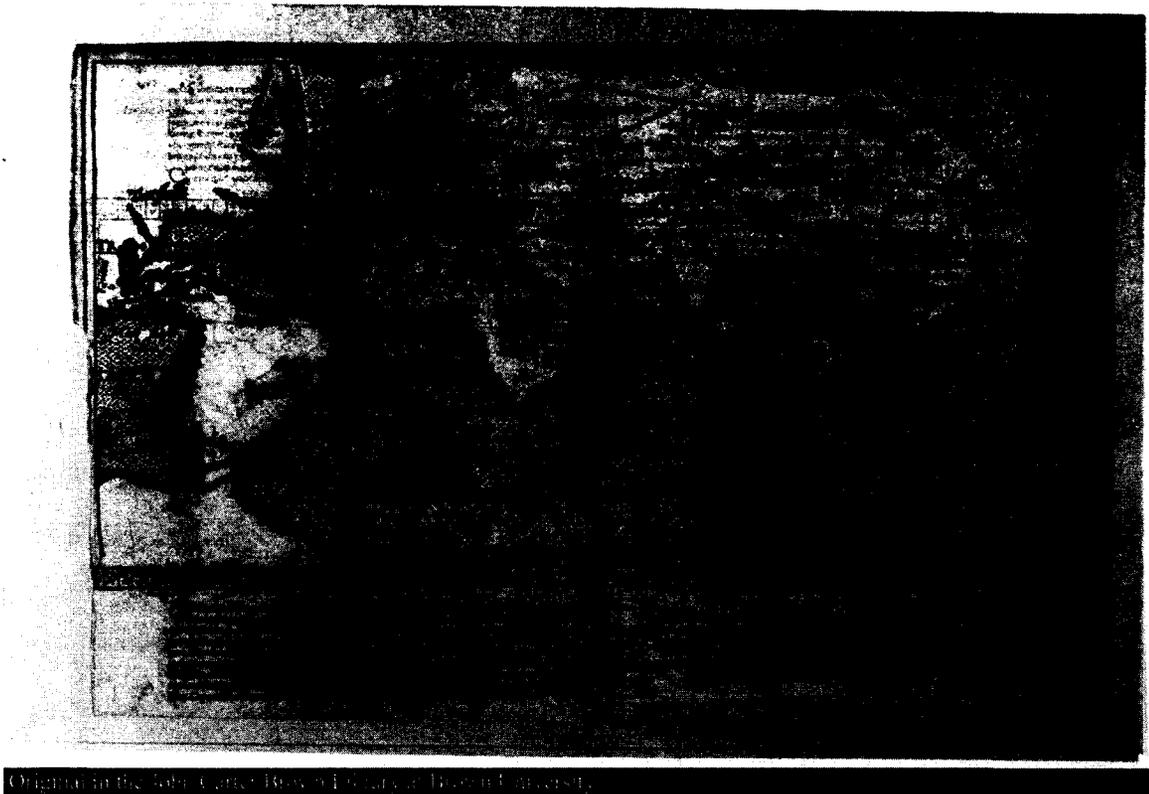


Illustration 6¹⁹⁷

Thorne's map demarcates the borders between political groupings in the known world. Compared to the divisions in the Old World the New World is represented as a blank and incomplete space, again reinforcing the idea that without the presence of Europeans there is no spatio-political identities in the Americas. The blank space of the Americas is therefore a representation of the anticipation of Empire. The geographical proximity of North America to England projected the belief that the English are favourably situated to access and control the Northern hemisphere. Hakluyt acknowledges the importance of the map in the text below stating that:

¹⁹⁷ The John Brown Carter, Brown University Archive of Early American Images *Orbis Vniuersalis Descriptio* as found at http://jcb.lunaimaging.com/luna/servlet/detail/JCBMAPS~1~1~1131~101820011:15228?sort=Normalized_date%2CGeographic_Area%2CCreator%2CMap_title&qvq=q:thorne;sort:Normalized_date%2CGeographic_Area%2CCreator%2CMap_title;lc:JCB~1~1,JCBBOOKS~1~1,JCBMAPS~1~1,JCBMAPS~2~2&mi=0&trs=1

This is the forme of a Mappe sent 1527. from Sivill in Spayne by maister Robert Thorne marchaunt... And although the same in this present may seem rude, yet I have set it out, because his book could not well be understood without the same. The imperfection of which Mappe may be excused by that time: the knowledge of Cosmographie not then being entred among our Marchautes, as now it is.

Hakluyt acknowledges the importance of the distortions for there to be an understanding of Thorne's argument. Therefore, Hakluyt acknowledges the importance of even a false visual depiction of the earth reinforces the call for appropriation and colonization.

The proximity of the Northern part of the continent was a driving factor in the planting of colonies. Figuratively the continent "seem[s] to offer themselves unto us, stretching neerer unto her Majesties dominions, then to any other part of Europe."¹⁹⁸ That the land offers itself to the British, merely by nature of its location, emphasizes that there is no legitimate claims of ownership. Furthermore, the use of the word 'offer' personifies the land as an agent who desires colonization, transplantation and resource extraction. The New World wanted to be transformed as much as the Old World desired to be the engine of transformation. The geographic imagery establishes that the project of colonization was beneficial for both spaces. The benefits for the British was wide ranging, however there were some core incentives which were economic and political at their core. For the New World, the benefit would come from its transformation from a 'natural' world to a civilized, cultivated and artificial one. From the perspective of early modern English men and women nature was considered to be "uncongenial; the word 'natural' meant underdeveloped or, in the human case, simpleton. 'Artificial' was a word of highest praise."¹⁹⁹ The negative connotation of nature and the positive understanding of artificial put the two spaces, and the inhabitants, within two different levels of

¹⁹⁸Esquire, P.S. "To the right worshipfull and most virtuous Gentleman master) as found in Hakluyt, R. *Divers Voyages Touching the Discoverie of America* (1952) at ¶

¹⁹⁹ Kupperman, K.O. *America in European Consciousness: 1493-1750* (Chapel Hill University: North Carolina, 1995) at 272.

development; the advanced European model of civilization against the natural state of the New World. The manner in which both spaces were constructed helped to legitimate the actions associated with the colonization of Northern America.

The *Voyages* combines claims of British superiority and destiny that are at the heart of the colonial attitude with promises of richness. The intended reader for Hakluyt would have been the active or passive participants in the colonial project. *Voyages* marvels at the ingenuity, sophistication, and adventure tied to the projects of discovery and colonization. Without the internal desire to engage in the discoveries Britain would not be able to fulfill its projected imperial destiny as being the Empire. The *Voyages* serves as propaganda material developing the mindset that through discovery the English would gain wealth appropriation and resource exploitation. It was crucial to have knowledge of navigational waterways, the natural resources, and the nature of the original occupants. Without knowledge of what the natural conditions and natural resources of the Americas, these spaces would not be able to be exploited nor able to be brought into the global economic network. Hakluyt's work helped to provide the necessary information that would facilitate the project of colonization. This information would be utilized by the people at the forefront of the enterprise to those who finance the endeavours. The *Voyages* were particularly useful for:

When a group of merchants sat down to plan a voyage, purchase ships, hire crews to sail them, and to buy cargoes to fill them, they wanted to know not only where they would find the best opportunities for profit, but what cargoes to purchase, what merchandise they might find at the end of the voyage, the kinds of people with whom they were going to deal, and the nature of the climate and land their captains would encounter.²⁰⁰

²⁰⁰ Blacker, I.R. "Introduction" as found in Blacker, I.R. (ed) *Hakluyt's Voyages: The Principal Navigations Voyages Traffiques & discoveries of the English Nation* (New York: The Viking Press, 1965) at 2.

The *Voyages* helped those participating in the expansion of the British Empire to understand the world that they were going to encounter during their journeys into foreign spaces.

Hakluyt's Discourse on Western Planting

Hakluyt's *Divers Voyages* was a collection of writings, preceding his *Principal Voyages*, including travel writings, patents, maps, and texts concerning all areas of the earth that the British were engaged with. The two *Voyages* are comprised of the original letters as they were given to Hakluyt. In *A Discourse to Western Planting* Hakluyt takes his knowledge of the Americas, gained through producing his *Voyages*, to argue for the colonization of the Americas. The *Discourse* incorporates the firsthand accounts of regions in the Americas along with inventories of the resources. What sets the *Discourse* apart from his edited collections is that Hakluyt, as the author, is advocating for the colonization of the Northern parts of the America's. He authored the *Discourse* in 1584, two years after *Divers Voyages* was published. To promote the planting of the Americas there are a number of key arguments that Hakluyt draws upon: the character of the original occupants and the English, the commodities that are available, the legal title that the English currently possessed, and Spanish antagonism. The following section will highlight these aspects of *Discourse* to illustrate the bridge between geographic knowledge and law in the appropriation of the Americas. In *Discourse* Hakluyt racializes and commodifies the Americas at the same time as establishing the identity of the English as the rightful bearers of civilization. Hakluyt utilizes the Americas as a space in which the destiny of the English can be realized through the trifecta of plantings (people, agriculture and law).

Hakluyt sets forth the arguments for endeavouring in the colonization of a mathematically defined portion of the Americas, because “the people of the parte of AMERICA from 30. degrees in Florida northewarde unto 63. degrees (which is yet in no Christian princes actuall possession) are idolaters”.²⁰¹ The original inhabitants are considered to be idolatrous because they worshiped the sun and the moon. It was believed that the nature of the original occupants would lead to easy conversion as they are easy to persuasion “with like imitation and devotion, and [they] were very desirous to become Christians”.²⁰² Hakluyt therefore perceives the original occupants as having a simplistic mentality. The condition of the original occupants leads Hakluyt to argue that in order:

...for the salvation of those poor people which have sitten so long in darkeness and in the shadow of death, that preachers should be sent unto them. But by whom should these preachers be sent? By them no doubt which have taken upon them to the protection of the Christian faith. Now the Kings and Queenes of England have the name of Defendours of the Faith. By which title I think they are not onely charged to mayneteyne and patronize the faith of Christ, but also to inlarge and advaunce the same.²⁰³

Through the expansion of the true Christian religion in the Americas there will also be material gain. On the basis of Mathew 6, material goods will be ministered unto the English through the expansion of the Kingdom of God.²⁰⁴ The conversion of the original occupants was considered as beneficial to both parties:

...the people of AMERICA cry out unto us, their next neighboures, to come and help them, and bring unto them the glad tidings of the gospel. Unto the prince and the people that shalbe the occasion of this worthie work, and shall open their cofers to the furtheraunce of this most godly enterprise, God shall open the bottemles treasure of his riches, and fill them with aboundaunce of his hidden blessings; as he did to the good Queen Isabella, which being in extreme necessitie, laied her own jewells to gage for money to furnish out Columbus for the first discovery of the West Indies.²⁰⁵

²⁰¹ Hakluyt's *Discourse on Western Planting Written in the year 1584* (Press of John Wilson and Son: Cambridge, 1877) at 7.

²⁰² *ibid* at 7-8.

²⁰³ *ibid* at 8.

²⁰⁴ *ibid* at 9.

²⁰⁵ *ibid*.

There is a geographic emphasis that reinforces the claim that the Americas desire to be colonized by the English due to its geographical proximity to England. Further, the land would provide rewards to those who engage in the planting of colonies in the Americas.²⁰⁶ For colonies to be successful they had to be planted in safe free spaces and preachers would have to learn the language of the original occupants to facilitate the spread of the gospel.²⁰⁷ For the first Europe Christian nation that brings the gospel to the Northern parts of the Americas, the land is free for exploitation and resource extraction. From the European perspective, this belief forecloses the possibility that the original occupants had ownership over the land at large. The tying of wealth to colonization the British Empire would be able to extend its influence and replicate its world view and internal logic in the Americas through appropriation. By establishing these premises Hakluyt achieves multiple things: he diminishes the claims to property of the original occupants, Christianity is put in a position of superiority (particularly English Protestantism) and he reinforces the Doctrine of Discovery as a basis of appropriation of foreign spaces by Europeans.

After establishing European entitlement to appropriation and colonization, Hakluyt examines the prospects and dangers for trade globally. The global trade is construed as dangerous in areas controlled by other European powers. Therefore, there is a financial risk for investors to engage with markets dominated by other Europeans.

Hakluyt argues:

... it behoveth us to seek some new and better trade, of less daunger and more securitie, of less damage and of more advantage; the rather to avid the wilfull perjurie of such of our English nation as trade to Spain and other of King Phillipps domynions, where this oath following is usually ministred unto the master of our shippes.²⁰⁸

²⁰⁶ *ibid.*

²⁰⁷ *ibid.*

²⁰⁸ *ibid* at 16-17.

The emphasis on the Spanish harm to trade and capital accumulation strengthens the argument that the English should seek control over new markets. Thereby Hakluyt reinforces Thorne's argument that it would be most beneficial for the English to turn their gaze unto North America, where European presence is limited.

Hakluyt argues that through Western planting the English would surpass the Spanish in influence and wealth. The title of the chapter in which this argument is strongest is: "That this western voyadge will yelde unto us all the commodities of Europe, Affrica and Asia, as far as we were wonte to travell, and supply the wants of all our decayed trades."²⁰⁹ In this section, Hakluyt lays out the resources and the condition of the environment in the Americas. He synthesizes the knowledge of the Americas that he had amassed through the production of his *Voyages* to advocate for the colonization of the Americas.

I declare unto you the comodities of this new western discoverie, and what marchandize are there to be had, and from thence to be expected; wherein first you are to have regard unto the situation of the places which are left for us to be possessed. The contries therefore of AMERICA where unto we have just title, as being first discovered by Sebastian Gabote, at the cost of that prudent prince Henry the Seaventh, from Florida northwarde to 67. Degrees, (and not yet in any Chrestian princes actual possession,) beinge aunserable in climate to Barbary, Egypte, Siria, Persia, Turkey, Greece, all the islands of the Levant sea, Italie, Spaine, Portingale, Fraunce, Flaunders, Highe Almayne, Denmarke, Estland, Poland, and Muscovye, may presently or within a shorte space afford us, for little or nothing, and with moche more safetie, eyther all or a greate parte of the comodities which the aforesaid contries do yelde us at a very dere hand and with manifold dangers.²¹⁰

This passage illustrates a number of crucial points. First, it highlights the legal title to a specific geographic area in America, based upon the principles of discovery. The inclusion of the phrase 'not yet in any Christian princes actual possession' reasserts claims to title. The emphasis on Christian princes further emphasizes the belief that the

²⁰⁹ *ibid* at 19.

²¹⁰ *ibid*.

original occupants do not have title over the spatial demarcation north of 67 degrees. Next, the use of reference points reinforces spatio-political identities. The variation in the conditions of the Americas allows for the maximization of resource extraction and wealth. Through possession, the English receive a monopoly over resources and trade. Hakluyt focuses his description of the Americas on his knowledge of resources that would, through agricultural planting, result in material gain for the English.

In the chapter of the *Discourse* titled “That this enterprize will be for the manifold employment of numbers of idle men, and for breeding of many sufficient, and for utterance of the great quantitie of the comodities of our realm”.²¹¹ Hakluyt argues that before Spain and Portugal had discovered their respective parts of the New World, these kingdoms were barren, poor, and unable to sustain their populations.²¹² For these kingdoms, the discoveries allowed for ‘honest ways’ of gaining wealth through the incorporation of the masses into the workforce.²¹³

The English and the French commonly engaged in acts of piracy as they did not have sufficient title to foreign spaces. Despite the good laws in England, the masses were idle, lazy or petty criminals as a result of the lack of opportunities for ‘honest employment’.²¹⁴ The population of England had grown as a result of a prolonged period of peace and a lack of disease, which further spurred a growth in arts, along with a growth in the idle masses.²¹⁵ Without opportunity to work, the masses are left idle and therefore prone to “be either mutinous and seek alteration in the state, or at least very burdensome to the commonwealth, and often fall to pilfering and thieving and other

²¹¹ *ibid* at 36.

²¹² *ibid.*

²¹³ *ibid.*

²¹⁴ *ibid.*

²¹⁵ *ibid.*

lewdnes, whereby all the prisons of the land are daily pestred and stuffed full of them”.²¹⁶

Hakluyt’s solution to the problems that unemployed masses pose, to the order of England, is planting them in colonies in the Americas.²¹⁷ Through expansion into the Americas the masses would gain honest employment and therefore no longer pose a risk to the order of the land.

And to answer objections; where fooles for the swarming of beggers alleage that the realm is too populous, Salomon saieth, that the honour and strength of a prince consisteth in the multitude of the people. And if this come about, that work may be had for the multitude... And the soil thus abounding with corn, flesh, milk, butter, cheese, herbs, roots, and frutes, and the seas that envyon the same so infinitely abounding in fish, I dare truly affirm, that if the number in this realm were as great as all Spain and Fraunce have, the people beinge industrious... wee shall sett on worke in this realm, besides sailers and such as shalbe seat there in those western discovered contries, at least [commonwealth] subjects, to the great abating of the good estate of subjects of forreine princes, enemies, or doubtfull frendes, and this *absque injuria*, as the lawyers say, albeit not *sine damno*.

Engaging in the colonization of the Americas will be beneficial on multiple fronts. By employing the masses the possibilities of internal threats are diminished. The extension of the realm would expand the population thereby giving power to the Empire globally. It was anticipated that the colonization would be profitable without financial or property cost.

The *Discourse* highlights the antagonistic relationship between the Spanish and English. The Spanish appropriation of large parts of the New World led to their rapid economic growth. Hakluyt juxtaposes Spanish barbarity to English righteousness. The comparison builds the internal identity of the English through reference to the external identity of the Spanish. When Hakluyt positions the legal argument for title to the New World the discussion focuses on the legitimization of appropriation vis-à-vis other European actors, therefore within the framework of the international legal discourse.

Hakluyt states that:

²¹⁶ *ibid* at 36-37.

²¹⁷ *ibid* at 37.

To confute the general claim and unlawfull title of the insatiable Spaniards to all the West Indies, and to prove justenes of her Majesties title and of her noble projenitours, if not all, yet at leste to that part of America which is from Florida beyond the Circle articke, we are to set down in true order, according to the just observation of time.... Then are we to answer in general and particularly to the moste injurious and unreasonable donation graunted by Pope Alexander the Sixte, a Spaniarde borne, of all the West Indies to the Kinges of Spain and their sucessors, and to the great prejudice of all other Christian Princes but especially of the Kings of England.²¹⁸

Hakluyt's discussion on the legal claims to the Americas seeks to delegitimize Spanish title in the New World. The legality of appropriation is not considered with regards to the relationship between the original occupants and the proposed English colonization. Hakluyt argues that the basis of the Spanish title to the Americas through first discovery is incorrect because Cabot had found the Americas in 1496, two years earlier than Columbus in 1498:

...we of England are the first discoverers of the continent above a yere and more before them, to witt, 1496, or, as Clement Adams saieth, 1494 in the chapter of Gabotts map *De terra nova*, which is above three yeres before the Spaniarde, or any other for the Kinges of Spain, had any sight of any part of the firm land of the Indies. At least wise, by Gomera his own confession, from 58 degrees northerly latitude to 38 towards the equinocial, we have best right and title of any Christian.²¹⁹

The chapter in which this passage appears is dedicated to undermining Spanish claims of first discovery. The importance of first discovery is that it allows for the planting of colonies onto the land. Again the emphasis on the title of Christians to land in the Americas reinforces the belief that the original occupants do not have title of the continent at large. Furthermore, the title of the Spanish on the basis of the discovery of the Americas cannot apply to those parts which were not occupied.

In the *Discourse*, Hakluyt combines his geographic knowledge of the world, which is in his series *Divers Voyages* and subsequent *Principal Voyages*, with legal and economic arguments for the colonization of the Americas. The religious construction of

²¹⁸ *ibid* at 43-44.

²¹⁹ *ibid* at 128.

the original occupants, as willing and desiring to be converted by a just kingdom, establishes that they do not have title on the basis that they are not Christian. Hakluyt's knowledge of geography is focused on trade and wealth extraction, therefore emphasising the importance of colonization for the growth of capital. The *Discourse* explicitly promotes and legitimates the English colonization of North Americas. Hakluyt, as one of the principle activists of Empire, utilized religious, geographical, social, and legal arguments to justify the worthiness of the extension of the English realm into the Americas.

Concluding remarks

Descriptive geographies helped to construct the English worldview. The human geography of the world presented in descriptive geographies represented the internal belief that England was superior to all external entities. The texts that have been examined served as descriptive geographies and promotional literature. The naturalization of the original occupants facilitated claims that they could not have sovereign title to the Americas. The English understandings of religion and civilization promoted the idea that the colonization of the Americas was a desire that was mutually beneficial for both the original occupants and the English. Although, the sources propagated European ideals of civilization, all the texts emphasized the antagonistic role that the Spanish Empire played in developing the desire for England to become a global empire. The realization of the English Empire would materialize through the extraction of resources in the Americas through appropriation and colonization. The anticipation of Empire was presented in Throne's map which demarcated the spatio-political identities in Eurasia in opposition to the blankness of the Americas. Through the

combination of using text and a map, the idea that the Americas was a free space open for appropriation was materialized. Through the planting of people, agriculture, and law the resources of the Americas would provide the safest option for reinvigorating the British trade. Furthermore, the appropriation of the Americas would expand the English earthly and heavenly realms while providing honest employment for the masses. It was believed that this colonial tactic would thereby limit the threat that unoccupied persons pose to the social order of England.

The following section will discuss the importance of international legal discourse for the appropriation of the Americas. The geographic information of the Americas that is presented in descriptive geographies helps to position the Americas as occupying a state of commons. Geographic depictions of the Americas naturalized and racialized their existence as bountiful spaces that were being wasted. Through utilizing geographic knowledge of the Americas, its existence was construed as a free space ready for appropriation on the basis that it occupied a state of commons. Descriptive geographies purported to rest on objective and factual data. The legal and the geographic constructions of the world therefore reinforced their respective truth-claims to legitimize title to the discovered and appropriated lands in the Americas.

Chapter 6: Natural Law in the Law of Nations

This chapter explores how the geographic imagination of the New World as free space was incorporated into legal texts. The focus of this chapter is on the geographic treatment of the Americas in texts concerning the Laws of Nations. The rules that characterized the Laws of Nations did not arise out of a vacuum, but rather reflected historical roots and concerned issues in the European communities. The 'western world view' was embedded in the Laws of Nations, thereby placing supremacy on European values as a means to govern the rules of the international community, the compact between nations. During the Age of Discovery one of the central issues concerning the European community related to the grounds on which the land of the Americas could be appropriated. Through analysing texts concerning the tenants of natural law, the laws of nations, and maritime law, it is evident that there are two dominant types of space: those which are common to all (free space) and those which are property (private and sovereign territory). To transform free space to one that constituted property would require engaging in a process involving the labour and industry of people. The transition from free space to property required the internal and external awareness that the space was property. The European understanding of the origins of property was crucial to the construction of the Americas as a free space. Europeans, particularly those who had not travelled to the Americas, believed that the original occupants did not have the capacity or self-awareness that was a requirement for ownership over land beyond that which they immediately occupied. The European understanding of the development of civilization placed the first stages of society as being characterized by ownership over that which was directly occupied or movable. Europeans broadly understood that the original inhabitants

did not, and could not, have the conceptual capabilities to have both the internal awareness and external action that characterized ownership of the continent.

Hugo Grotius and Samuel von Puffendorf

Both Grotius and Puffendorf in their treaties on the Laws of Nature, discuss the origins of ownership of land and the division of space between peoples. The sections that discuss property specifically reference the Americas. Therefore, questions of ownership frame the discussion regarding the Americas. Before examining how these two theorists regarded the division of space, it must be noted that they are of Dutch and German origins, respectively. Although the focus of this project is on the English creation of the geographic imagination in the New World, it is still useful to draw on the conclusions of these writers. Their texts were translated into the English language, whereas detrimental works to the colonizing mission were not published in English. These authors illustrate the European (international) understanding of land divisions and property at the time. The use of 'void' and 'desolate' in describing the non-Christian lands reinforces the knowledge of the Americas as not under the control of any one people. These terms provide the original presupposition of land acquisition. Thus, these international legal scholars echo the understandings of the English political theorists, namely that land which is 'wild' can be appropriated through the intellectual and manual labour of people, for the purposes of establishing ownership over a territory.

Europeans perceived the original inhabitants of the Americas as incapable of having territorial claim of the Americas at large because they were understood to be transient peoples who occupied a space that was characterized as common to all. The nature of the original occupants' 'transient' lifestyles rendered much of the Americas as

lacking ownership within the colonial imagination. If land was considered to be void it could be rightfully taken under ones possession. Grotius notes the general principle that:

*They do no offence, who inhabit and manure a part of the land, that lyes neglected. The Ansibarians in Tacitus cry out: As the Heaven to the Gods, so is the Earth granted to mortals, and what is void is publick: looking up to the Sun and Stars, they did openly as it were enquire of them, whether they were pleased in beholding any ground empty and without inhabitant...*²²⁰

This principle establishes that if land is neglected, and thus in a state of wilderness, people could geographically expand and take the land under their possession. Men of reason and industry could fulfill the moral obligation imposed upon them by God to make proper use of land through the processes of settlement and occupation. The only legitimate means to acquire title to land was through labour. This belief derives from “the curse placed upon Adam [that] required men to labour because of their impoverished and destitute condition. Only sustained labour yields the full potential of the fruits of the earth.”²²¹ A driving force in settlement and dispossession of aboriginal land was the idea that God had ordained the cultivation of land:

it is the duty imposed by God upon humanity of self-preservation that requires making the earth productive and bountiful...To optimize productivity of soil and fulfill man’s duty to God requires the development of techniques of cultivation and just as importantly the establishment of civil society or sovereignty, to ensure good governance and security in order to protect citizens from harm and to allow them to cultivate the land in safety.²²²

The lack of European forms of cultivation, that is, ‘appropriate’ forms of cultivation, reinforced the notion that the land at large was not within the possession of any one at the time of European arrival in the Northern parts of the Americas.

²²⁰ Grotius *supra* note 110 at 220, emphasis in original.

²²¹ D. Boucher, “The Law of Nations and the Doctrine of *Terra Nullius*” in O, Asback, & P. Schröder, *War, the State and International Law in Seventeenth-Century Europe* (Burlington, U.S.A.: Ashgate Publishing, 2010), at 78.

²²² *ibid* at 77.

Both Grotius and Pufendorf discuss *how* land came to be divided within the context of the Natural Law. It was understood that ownership and the division of land were natural phenomenon necessary to maintain order amongst man. Pufendorf argued that:

It was at first, while the Human Race was but a small Number, it was agreed, that *whatever any one did first seize should be his, and not be taken from him by another*, with this Provision that he should apply it to his own use... But afterward, when Mankind was multiplied, and they began to bestow *Culture* and *Labour* upon those things which afforded them Food and Raiment: for prevention of Quarrels, and for the sake of good Order, those *Bodies* or *Things* also, which produc'd such Necessaries, *were divided among particular men*, and everyone had his proper Share assign'd him, with this general Agreement, that *Whatsoever in this first Division of Things, was yet left unposses'd, should for the future be the Propriety of the first Occupant.*²²³

The principle was that the first occupant of unused land, after the original division, would become the rightful owner. The first stage of this division of space was characterized by Communion whereby “every man might take unto his uses what he pleased, and spend what might be spent. Which use of the universal right was then instead of propriety.”²²⁴ Therefore land was common to all and as such it marked as a stage within human societal development that of great simplicity. Grotius noted that not all societies had moved past this stage, as it was not:

... impossible for that state to have continued, if either men had persisted in a great simplicity, or had liv'd together in a certain great simplicity, or had liv'd together in a certain mutual excellent charity. One of these, to wit, Communion by reason of an exceeding simplicity, may be observed in some people of America; who, though many Ages, without any incommmodity, have persisted in that custome...²²⁵

The reference to the simplicity of the original occupants in the Americas is important. The space in which the indigenous peoples occupied was still within a state common to all. Therefore, it could be appropriated by the first occupant to with the outward

²²³ Puffendorf, S. *The Whole Duty of Man According to the Law of Nature* (London: Benj Motte, 1673) at 146-147, emphasis in original.

²²⁴ Grotius *supra* note 110 at 198.

²²⁵ *ibid* at 199.

expression of establishing proprietorship of land. There needed to be a state of mind and awareness that the first occupant was making the land theirs as Pufendorf explains “...titles are made to desolate Regions, which no man ever claim’d which become his who *first enters* upon’em with an Intention of making them his own, provided he cultivate’em and assign *Limits* how far he propounds to occupy”.²²⁶ This statement highlights that finding wild lands was not sufficient in the establishment of property. For land to become under possession of someone there needed to be intent to make it theirs through both physical and intellectual labour. Without an awareness of borders land would be common to all and open to the first who has the intent to transform it from a state of wilderness into a spatially divided and demarcated territory.

Charles Molloy and Maritime Law

Grotius and Pufendorf illustrate that within continental Europe treaties concerning the laws of nature and laws of nations legally constructed the Americas as open for appropriation through principles concerning the rightful occupation. In his treaty on Maritime law *De Jure Maritimo et Navali: Or a Treatise of Affaires Maritime and of Commerce In Three Books* Charles Molloy’s provides a British colonial perception of the nature of property. Molloy was the first English lawyer who addressed issues of maritime law in 1676.²²⁷ As with Grotius and Pufendorf, his treaty discusses of the origins of ownership.

Molloy argues that property developed from a state where every man could “take to his use what he pleased, and make consumption of what he thought good in his own

²²⁶ Puffendorf *supra* note 223 at 150, emphasis in original.

²²⁷ Marke, J.J. *A Catalogue of the Law Collection at New York University* (Lord Baltimore Press: Baltimore, 1953) at 351.

eyes; which use of the Universal Right was then instead of Property, for what any one had so taken, another could not without injury take away from him.”²²⁸ He cites Grotius in illustrating that such a state which is characterized through mutual charity was found in the Americas,²²⁹ however “this simple and innocent way of life, all Men persisted not, but some apply’d their minds to various *Arts*; the most ancient of which was *Agriculture and Pasture*”.²³⁰ The imagination being promoted is that the original inhabitants of the New World did not need to progress past the state of common. Life was supported by the fruits of the earth herself instead of through the industry of man. Without agriculture and pasteurization the land had not been divided:

...there remain’d amongst Neighbours a Communion not of Cattle, but of Pastures, because in the small number of Men so great was the latitude of Land, that without any incommmodity it might suffice to the uses of many, until the number of Men, so of Cattle increased, Lands every where began to be divided, not among Nations as before, but among Families; an instance of which we have hourly before our eyes in those vast immensities that are daily appropriating and a planting in *America*.²³¹

From this perspective, if there had been any property claim of the original inhabitants in the Americas, it could not take the form of national state boundaries but rather on small familial collectives. As a result the continent was largely a free space which was open for appropriation.

Molloy perpetuates the imagination of the innocent original occupants in a state of community who did not the desire, nor possess state of mind, to have developed the concept of property:

...Men not content to live in that innocent state of Community, how things went into Property, not only by the act of mind (for they could not know the thoughts of one

²²⁸ Molloy, C. *De Jure Maritimo et Navali: Or a Treatise of Affaires Maritime and of Commerce In Three Books, 3rd Edition* (London: Three Bibles, 1682) at 1.

²²⁹ *ibid.*

²³⁰ *ibid* at 2.

²³¹ *ibid.*

another, what every one would have to be his own, that they might abstain from it, and many might desire the same thing) but by a certain *Covenant*, either *express* as by division, or *tactic* as by *occupation*; for so soon as communion did not please them, and division was not made, it ought to be supposed an agreement amongst all, that every one should have proper to himself what he seized on...²³²

To externally demonstrate that land is under the dominium of a particular group, there needs to be a written law that presupposes ownership, without ownership there is no right to defend. This is why it was important to transplant the British civil law to the colonies in the Americas as it was recognized as a legal system and not merely a system of customs. Through the planting of law in the Americas the British legal title is strengthened.

John Locke

John Locke is one of the most influential English political theorists. His work underpins Western Liberalism. Locke provides evidence of the internal logic of the relationship between law and society. The importance of highlighting the internal logic is because the international legal order is a reflection of the dominant Empires internal legal logic. Furthermore, to be able to show that a spatio-political unit conforms to the international legal order there needs to be an internal legal logic that supports the prepositions of the international legal logic. There is a synthesis between the Empires legal logic and the international legal logic, resulting from the latter being dominated by former. Therefore, it is useful to touch upon the manner in which the internal English legal/political logic of the world supported propositions of the international logic, particularly that the Americas were constructed as a free space for appropriation.

²³² *ibid.*

In the *Second Treatise of Government* Locke's references to the Americas is found predominately in the section that deals with the nature of property, as it does in Grotius, Puffendorf, and Molloy. Therefore, the section on property will be the focus of analysis. I will also briefly examine how Locke frames the political structure of the Americas as occupying the first stages of civilization. Locke exposes a particularly strong geographic imagination in his analysis of the origins of property. He utilizes the Americas as the reference point for illustrating the progressive stages of the formation of property. This espousing of the geographic imagination can be summed up in Locke's phrase: "in the beginning all the world was America".²³³

Locke intends to show how property arises out of that which was given to mankind in common by God.²³⁴ Locke emphasizes the state of commons in the development of the idea of property:

God, who hath given the world to men in common, hath also given them reason to make use of it to the best advantage of life, and convenience. The earth, and all that is therein, is given to men for the support and comfort of their being. And tho' all the fruits it naturally produces, and beasts it feeds, belong to mankind in common, as they are produced by the spontaneous hand of nature; and no body has originally a private dominion, exclusive of the rest of mankind, in any of them, as they are thus in their natural state: yet being given for the use of men, there must of necessity be a *means to appropriate* them some way or other, before they can be of any use, or at all beneficial to any particular man. The fruit, or venison, which nourishes the wild *Indian*, who knows no inclosure and is still a tenant in common, must be his, and so his, *i.e.* a part of him, that another can no longer have any right to it, before it can do him any good for the support of his life.²³⁵

There are a number of points to be highlighted from this passage. What is seen here is a reinforcement of the idea that 'in the beginning' all was common. With the Americas being characterised as occupying the beginning stages of societal development, it is thereby occupying a state of commons. There are certain societies that progressed past

²³³ Locke, J. *Second Treaties of Government* (Indianapolis: Hackett Publishing Company, Inc., 1690) at 29.

²³⁴ *ibid* at 18.

²³⁵ *ibid* at 18-19.

the point of communion and others who are still occupying the original state. Dominion is not 'characteristic' in a state of common, as there is no sovereign and all men are equal in a state of common. In order to transform an object into property the act of appropriation must occur through labour. The reference to the original occupants as wild and not knowing inclosure (ie the demarcation of land through fencing) illustrates Locke's belief that the original occupants could not claim to occupy a higher state of civilization marked by sovereignty.

Locke places a particular importance on money and commerce in the distinction between the state of commons and the civil state. In a state of commons if goods vanished before they were used, the proprietor would have "offended against the common law of nature...liable to be punished; he invaded his neighbour's share, for he had *no right, farther than his use* called for any of them, and they might serve to afford him conveniences of life."²³⁶ Therefore, in a state of commons, an individual can only appropriate as much as is necessary for the convenience of life, to take more than necessary would violate the laws of nature. Through the invention of money, a person would be able to enlarge their possessions, because in the Americas there was no money there was no need for the original inhabitants to expand their possessions.²³⁷ Without money the original occupants could only claim ownership over that which they immediately occupy and needed for the conveniences of life, to take more than necessary would violate the natural laws of the state of commons.

²³⁶ *ibid* at 24.

²³⁷ *ibid* at 29.

It is through labour that land is transformed into property, labour would give “men distinct titles to several parcels of [the world], for their private uses; wherein there could be no doubt of right, no room for quarrel.”²³⁸ It is through labour that a right to property is gained.²³⁹ Locke positions the original inhabitants of the Americas as “rich in land and poor in all the comforts of life... nature having furnished as liberally as any other people, with the materials of plenty... yet for *want of improving it by labour* have not one hundredth part of the conveniences, we enjoy”.²⁴⁰ As the original occupants have not put their labour into the land, thereby leaving it in its natural state, through “pasturage, tillage, or planting, is called, indeed it is, *waste*”.²⁴¹ Locke argues that God had not intended for land to remain in a state of commons and uncultivated but for land to be improved upon by the rational and industrious.²⁴² It is through labour that property becomes fixed unto the land.²⁴³ Land that had been improved upon by labour fixes title to the land. Locke emphasises that “it is *labour* then which *puts the greatest part of value upon land*, without which it would scarcely be worth any thing”.²⁴⁴ Through the mixing of labour and land, property and value are therefore gained.

The Americas as occupying a state of commons, where there is no money, value in the land, or property, is contrasted against:

... some parts of the world, (where the increase of people and stock, with the *use of money*, had made land scarce, and so of some value) the several *communities* settled the bounds of their distinct territories, and by laws within themselves regulated the properties of the private men of their society, and so, *by compact* and agreement, *settled the property* which labour and industry began; and the leagues that have been made between

²³⁸ *ibid* at 25.

²³⁹ *ibid* at 27.

²⁴⁰ *ibid* at 25.

²⁴¹ *ibid* at 26.

²⁴² *ibid* at 21.

²⁴³ *ibid* at 20.

²⁴⁴ *ibid* at 26.

several states and kingdoms, either expressly or tacitly disowning all claim and right to the land in the other possession, have, by common consent, given up their pretences to their natural common right, which originally they have had to those countries, and so have, by *positive agreement, settled a property* amongst themselves, in distinct parts and parcels of the earth...²⁴⁵

In this statement Locke positions the main differences between the Old World and the New World. There is the express agreement between communities that there are certain parts of the earth that are not open for appropriation. The treaty of Westphalia is an example of the express consent amongst kingdoms. This treaty formed the basis of the modern nation-state system prohibiting spatio-political societies from appropriating the land of another recognized spatio-political society. This agreement put into motion the solidification of the European politically defined territorial borders.

The enclosure of Europe meant that if Europeans wanted to expand their territory, they had to look to those areas of the earth that remained open for appropriation. After establishing that positive agreement amongst states prevented certain regions from being open to legitimate appropriation, Locke argues:

...there are still *great tracts of ground* to be found, which (the inhabitants thereof not having joined with the rest of mankind, in the consent of the use of their common money) *lie waste*, and are more than the people who dwell on it do, or can make use of, and so still lie in common; tho' this can scarce happen amongst that part of mankind that they have consent to the use of money.²⁴⁶

Therefore, the Americas that occupy the state of commons could be appropriated through labour and the imposition of a monetary system upon the land. Through mixing labour and land an individual will obtain rights of property. The demarcation of property provides the outward expression of ownership. The expansion of property is achieved through the introduction of a monetary system which will provide value to land that would otherwise lie in waste.

²⁴⁵ *ibid* at 27-28.

²⁴⁶ *ibid* at 22.

Locke positions the primary purpose of political society, or the body politic, as the protection of property. In the state of nature, there is the natural power to protect property: life, liberty, and estate.²⁴⁷ In this natural state the power resides in the ability to be the “judge of, and to punish the breaches of that law in other, as he is persuaded the offence deserves”.²⁴⁸ Through the express or tacit consent of a number of members of a society a civil society is created to ensure the protection of life, liberty, and estate:

...because no *political society* can be, nor subsist, without having in itself the power to preserve the property, and in order thereunto, punish the offences of all those of that society; there, and there only is *political society*, where every one of the members hath quitted his natural power, resigned it up into the hands of the community in all cases that exclude him not from appealing for the protection to the law established by it.²⁴⁹

This is the basis of the nation-state model of governance. By expressly or tactically supporting a political society, an individual gives up his right to be the judge and jury of offences. The benefit of which is to exit out of the state of commons into a political state whereby property can both be expanded and protected.

Legalizing the Appropriation

Grotius, Puffendorf, Molloy, and Locke commonly reference the Americas through discussions of property. The Americas was legally constructed as occupying a state of commons. The legal identity of the Americas as a state of commons was supported through reference to the simplicity of the people and the waste of the land, the evidence of which is found in descriptive geographies and colonial promotional literature. The legal designation of the Americas as a state of commons mutually reinforces the geographic imagination that the Americas was a blank space desiring to be colonized. The legal treatment legitimized the appropriation on the basis that there was no

²⁴⁷ *ibid* at 46.

²⁴⁸ *ibid.*

²⁴⁹ *ibid.*

conception of property amongst the original occupants. The legal designation of the Americas legitimated the constitution of the political society that appropriated the land. The designation of the Americas as occupying a state of commons conversely designated Europe as being territorially bound. Through the mixing of labour and land, appropriation could occur resulting in property and monetary gain.

Conclusion

In his 1924 essay, Joseph Conrad characterized the early phase of European exploration into the New World as 'Geography the Fabulous'.²⁵⁰ This phase in geography "was marked by speculative mixes of pre-scientific magic and mythology with graphic and verbal representation of new worlds."²⁵¹ These mythic representations of space would stir imaginations and provide the incentive for imperial expansion. Implicit in geographical narratives was the belief that the world was, ultimately, a knowable, describable place, that could be predicted, mastered, and governed. This belief was to be central to the evolution of scientific thought in the seventeenth century. Geographical practice developed three components that would become standard for the study of the natural world by the late seventeenth century: mathematical control of the earth, gathering information in an incremental and inductive way, and a desire to make the knowledge useful for the commoner.²⁵² The combination of the three streams of geography helped to produce a complex narrative of the relationship between the New and Old Worlds.

The basis of the appropriation of the new world relied upon a geographic imagination that denied the existence of a spatio-political sovereignty of the original occupants. This denial rested on Euro-centric notions of the origins and nature of property and the civil state. Europeans believed that as a result of their system of organization, they had reached the pinnacle of human development; their history, religion(s), philosophy, technology and legal systems made them the bearers of

²⁵⁰ Godlewska, A. & Smith, N. "Introduction: Critical Histories of Geography" in Godlewska, A. & Smith N. (eds) *Geography and Empire* (Oxford : Blackwell, 1994.) at 1

²⁵¹ *ibid.*

²⁵² Cormack *supra* note 43 at 16.

civilization. It was their duty to bring civilization to the four corners of the earth. The benefit of being able to control the earth was that it secured new markets for the expansion of capitalism. Promoters of English Empire, such as Robert Thorne, argued that England, due to its geographical positioning, was destined to secure a position superior to all others in the globe. Mathematical developments made it possible to master the seas and embark on explorations for the North West Passage to Cathay. Maps made it possible to anticipate empire. Descriptive geographies developed the identity of both the Self and the Other. Furthermore, descriptive geographies served as the promotional literature calling upon the English to colonize the Americas. Legal texts from both continental Europe and England designated the Americas as a land that was common to all, therefore legitimizing the appropriation of land for European purposes. The concept of property, which has both spatial and legal dimensions, underpinned the construction of the Americas as free space and Europe as occupying the highest stage of civilization. The legal designation of the Americas as occupying a state of commons had the effect of establishing which spaces were and were not free for appropriation. The international legal agreements between European sovereigns further helped to establish who was included in the international legal order and who was excluded. Political societies included in the international community through express agreement, through territorial borders, were not open for appropriation. Recognition in the international political community was centred on shared political, religious, monetary and property relations.

England played a key role in the establishment of the international legal system which legitimated the appropriation of the Americas. The English geographic imagination produced knowledge of the Americas that legitimated English appropriation

and colonization. The space was naturalized and legalized to fit the Imperial desires of England. The horizons were visually depicted as falling outside the realm of the international legal order on maps. This thesis has explored the process of appropriation by examining how the Americas were depicted through maps, descriptive geographies and legal texts. Each source played an important role in developing the discourse that allowed for the appropriation. The legal understanding that the Americas occupied a state of commons was supported visually in maps and discursively through descriptive geographies. The key map makers, including John Speed, Alexander Stirling, Edward Wright, Michael Lok, and Robert Thorne, all projected a 'Western world view' unto the space of the Americas that opened up and closed off the Americas, while promoting imperialist goals. George Abbot and Richard Hakluyt's work provided the geographical information that spurred the imaginations of colonial actors who were eager to materially and symbolically gain a foothold in the New World. Grotius, Puffendorf, Molloy and Locke utilized the geographical imagination of the New World to legitimate claims of property. Taken together, these sources provide a snapshot to the dominant discourses that allowed for the construction of a space beyond the reaches of international law.

While this project has endeavoured to explicate the intersection of geographic and legal discourse in the colonization of the Americas from a historical perspective, I have also sought to provide a prequel to current day 'legal black holes' where certain geographical spaces have been constructed to be exempt from the dictates of international law. A 'legal black hole' can be understood as "when statutes or legal rules 'either explicitly exempt the executive from the requirements of the rule of law or explicitly

exclude judicial review of executive action.”²⁵³ They are spaces in which practices that would otherwise constitute as violations under the laws of war are perpetuated unto the bodies of people who are considered to be threats to the hegemonic international order. The decision to focus on the appropriation of the Americas originally stemmed from an interest in the law-security paradigm post 9-11. I realized that in order to answer the question, how legal black holes can exist in international law, I needed to examine the history of international law and its conceptualization of space. The appropriation of the Americas coincided with the early formative period of the international legal system and order over the earth. This time period established a divide between spaces that fall under the dictates of international law and spaces that do not. Europeans employed Universalist conceptions of the origins of property and civilization to construct the Americas as occupying a state of commons, therefore lacking a legal order that would prevent its appropriation. The appropriation of the America’s came as the result of an intersection of a number of forces: navigation, capital, exploitation, internal and external imaginations, culture, early constructions of race, space, free space, time, history, writing, art, agriculture, geography, mathematic, ethics, international law, domestic law, property, sovereignty, order, and territorial control. The construction of spaces behind the horizons of international legal dictates is the result of forces intersecting in both time and space. This becomes particularly problematic for the bodies that are further constituted as falling outside the realm of international law.

I would like to conclude with some of the ways in which I have been challenged over the course of writing this thesis as someone living in a settler colonized nation.

²⁵³ Steyn, J. as found in Vermeule, A. *Our Schmittian Administrative Law*, 122 HARV. L. REV. 1095, 1096 (2009)

Writing this thesis has challenged my own position on colonized land, particularly since I am the decedent of English settlers on my fathers' side. The examined texts did not consider the physical, spiritual, and psychological impact that was felt by the indigenous population in the process of appropriation and colonization. The impact of opening and then closing borders uprooted and destroyed societies. Practices of assimilation and cultural genocide have perpetuated to this day. The legacy of colonialism, dislocation and dispossession of land has left a generational impact on aboriginal communities. The negative impact of this legacy is noted in, but not limited to, continued disputes with the Canadian government regarding land claims and resource use, the disproportionate representation of aboriginals in the Canadian Criminal justice system and sex-trade. This thesis has challenged the hegemonic geographical discourse that has supported the legal basis of the appropriation of the Americas. It has been a project of unlearning the historical narrative of the 'discovery' of the Americas, a narrative that continues to be reinforced in our institutions that support the historical existence of the nation-state. Through the course of writing this thesis I encountered the foundations of the North American nation-states. The premises upon which these states were brought into existence relied upon denials of self-determination, the denial and violent upheaval of alternative modes of existence. As Theodore Roosevelt said in 1892 at a Lowell Institute Lecture in Boston:

This continent had to be won. We need not waste our time in dealing with any sentimentalist who believes that, on account of any abstract principle, it would have been right to leave this continent to the domain, the hunting ground of squalid savages. It had to be taken by the white race... The man who puts the soil to use much of right dispossess the man who does not, or the world will come to a standstill²⁵⁴

²⁵⁴ Roosevelt, T. as found in Thompson, M. *American Character: The Curious Life of Charles Fletcher Lummis and the Rediscovery of the Southwest* (New York: Arcade Publishing, Inc.) at 214.

The sentiment Roosevelt promotes is the foundation of the territorially demarcated spatio-political entities in the Americas. It is the constitutive relationship between land, labour, and law that provide the sovereignty of these entities. The idea of the rationalization of space rests upon the violent denial of the freedom to choose alternative modes of organization that do not support the hegemonic capitalistic order. In order for alternative modes of organization to exist within the contemporary international order there would have to be a reconceptualization of the geographic basis of sovereignty.

Bibliography

- Abbot, G. *A Briefe Description of the Whole World Wherein is Particularly Described all the Monarchies, Empires and Kingdoms of the Same, with their Academies, as also their severall titles and Scituations thereunto adjoining* 5th Ed. (1664).
- Anderson, B. *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 1983).
- Anghie, A. *Imperialism, Sovereignty and the Making of International Law* (New York: Cambridge University Press, 2005).
- Banner, S. *How the Indians Lost Their Land: Law and Power on the Frontier: Law and Power on the Frontier* (USA: The Belknap Press of Harvard University Press, 2005)
- Banton, M. "The Idiom of Race: A critique of presentism" in Back, L. & Solomos, J. (eds) *Theories of Race and Racism: A Reader* (New York: Routledge Taylor & Francis Group, 2000).
- Benton, L. *A Search for Sovereignty: Law and Geography in European Empires 1400-1900* (New York: Cambridge University Press, 2011).
- Blomley, N. "From 'What?' to 'So What?': Law and Geography in Retrospect in Holder & Harrison (eds) *Law and Geography* (Oxford : Oxford University Press, 2003).
- Boucher, D. "The Law of Nations and the Doctrine of *Terra Nullius*" in O, Asback, & P. Schröder, *War, the State and International Law in Seventeenth-Century Europe* (Burlington, U.S.A.: Ashgate Publishing, 2010).
- Brunet, R. *Sustainable Geography* (Hoboken, New Jersey: Wiley, 2011).
- Chomsky, N. "What the World is Really Like: Who Knows It -- and Why" as found at <http://www.chomsky.info/books/reader02.htm> Accessed on March 10, 2012.
- Cloke, Paul & Johnston, Ron (eds) *Spaces of Geographical Thought: Deconstructing Human Geography's Binaries* (Thousand Oaks, Calif.: SAGE Publications, 2005).
- Cormack, L. B. *Charting an Empire: Geography at the English Universities, 1580-1620* (Chicago: University of Chicago Press, 1997).
- Cormack, Lesley B. "The fashioning of an Empire: Geography and the State in Elizabethan England" in Godlewska, A. & Smith, N. (eds) *Geography and Empire* (Oxford: Blackwell, 1994).
- Crampton, J. *Mapping: A Critical Introduction to Cartography and GIS* (Malden, Mass.: Wiley-Blackwell, 2010).

- Daniels, S. "Geographical Imagination" *Transactions of the Institute of British Geographers*, Vol. 36. Issue 2. April 2011.
- Ek, R. (2006) "Media Studies, Geographical Imaginations and Relational Space. Geographies of Communication." in Falkheimer, J & Jansson, A (eds.) *Geographies of Communication: The Spatial Turn in Media Studies* (Göteborg: Nordicom, 2006).
- Godlewska, A. & Smith, N. "Introduction: Critical Histories of Geography" in Godlewska, A. & Smith N. (eds) *Geography and Empire* (Oxford: Blackwell, 1994).
- Goldberg, D.T. "Racial Knowledge" in Back, L. & Solomos, J. (eds) *Theories of Race and Racism: A Reader* (New York: Routledge Taylor & Francis Group, 2000).
- Grotius, H. *Of the Law of Warre and Peace* (London: Printed by T. Warren, ND).
- Hakluyt, R. *Divers Voyages Touching the Discoverie of America* (1582).
- Hakluyt's *Discourse on Western Planting Written in the year 1584* (Cambridge: Press of John Wilson and Son, 1877).
- Holder, J. & Harrison, C. 'Connecting Law and Geography' in Holder, J. & Harrison, C. (eds) *Law and Geography* (Oxford: Oxford University Press, 2003).
- Johnston, R.J. (et. al.) *Dictionary of Human Geography 4th Ed.* (Malden, Mass.: Blackwell Publishers, 2000).
- Harley, J. B., "Map, Knowledge, and Power" in Henderson, G.L. & Vaterstone, M. (eds) *Geographic Thought: A Praxis Perspective* (New York: Routledge, 2009).
- Kobayashi, A. "Situated Knowledge, Reflexivity" in *International Encyclopedia of Human Geography*, 2009, Pages 138-143.
- Kupperman, K.O. *America in European Consciousness: 1493-1750* (North Carolina: Chapel Hill University, 1995).
- Locke, J. *Second Treaties of Government* (Indianapolis: Hackett Publishing Company, Inc., 1690).
- Lowenthal, D. "Geography, experience, and imagination: towards a geographical epistemology" in *Annals of the Association of American Geographers* Vol. 51, Issue 3, 1961.
- Mann, C.C. *1491: New Revelations of the Americas before Columbus, 2nd Edition* (New York: Knopf, 2011)

- Marke, J.J. *A Catalogue of the Law Collection at New York University* (Baltimore: Lord Baltimore Press, 1953).
- Miller, R.J. "The Doctrine of Discovery" in Miller et al. *Discovering Indigenous Lands: The Doctrine of Discovery in the English Colonies* (New York: Oxford University Press, 2010).
- Molloy, C. *De Jure Maritimo et Navali: Or a Treaties of Affaires Maritime and of Commerce In Three Books, 3rd Edition* (London: Three Bibles, 1682).
- Parry, J.H. "Introduction: the English in the New World" in Andrews, K.R., Canny, N.P. & Haid, P.E.H. (eds) *The Westward Enterprise* (Liverpool: Liverpool University Press, 1978).
- Peuquet, D.J. *Representations of Space and Time* (New York: Guilford Press, 2002).
- Pennington, L.E. "The Amerindian in English promotional literature, 1575-1625" in Andrews, K.R., Canny, N.P. & Hair, P.E.H. (eds) *The Westward Enterprise: English Activities in Ireland, the Atlantic, and America 1480-1650* (Liverpool: Liverpool University Press, 1978).
- Pickles, J. *History of Spaces: Cartographic reason, mapping and the geo-coded world* (New York: Routledge Taylor & Francis Group, 2004).
- Puffendorf, S. *The Whole Duty of Man According to the Law of Nature* (London: Benj Motte, 1673).
- Said, E. *Orientalism* (New York: Random House, 1994).
- Schmitt, C. *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum* (U.S.A.: Telos Press Publishing, 2006).
- Short, J.R. *The World Through Maps: A History of Cartography* (Toronto: Firefly Books, 2003).
- Speed, J. *A Prospect of the Most Famous Parts of the World together with all the Provinces, counties, and Shires, contained in that large Theator of Great Brittaines Empire* (London: Printed by John Dauson, 1631).
- Thompson, M. *American Character: The Curious Life of Charles Fletcher Lummis and the Rediscovery of the Southwest* (New York: Arcade Publishing, Inc.).
- Thrower, N.J.W *Maps and Civilization: Cartography in Culture and Society* (Chicago: The University of Chicago Press, 2007).

Truyol y Serra, Antonio “Discovery of the New World and International Law” in *Toledo Law Review*, No. 43, 1971.

Turnball, D. *Maps are Territories: Science is an Atlas* (Chicago: University of Chicago Press, 1993).

Vermeule, A. *Our Schmittian Administrative Law*, 122 HARV. L. REV. 1095, 1096 (2009).

Williams, R.A. *The American Indian in Western Legal Thought: The Discourses of Conquest* (New York: Oxford University Press, 1990).

Wood, D. *Seeing Through Maps: Many Ways to See the World* (Oxford: New Internationalist, 2006).

Wood, D. & Fels, J. *The Power of Maps* (New York: Guilford Press, 1992).

Wright, R. *Stolen Continents: Five Hundred Years of Conquest and Resistance in the Americas* (Boston: Houghton Mifflin, 2005).

Maps

Lok, M. *Illustri viro, domino Philippo Sidnaeo Michael Lok civis Londinensis hanc chartam* *dedicabat:1582.*
<http://jcb.lunaimaging.com/luna/servlet/detail/JCBMAPS~1~1~1059~103460001:01804?sort=Normalized_date%2CGeographic_Area%2CCreator%2CMap_title&qvq=q:northwest%2Bpassage;sort:Normalized_date%2CGeographic_Area%2CCreator%2CMap_title;lc:JCBMAPS~1~1&mi=3&trs=51 > (August 15, 2012)

Stirling, A. *An Encouragement to colonies*
<<http://jcb.lunaimaging.com/luna/servlet/detail/JCB~1~1~260~100003:-Map-of-northeastern-North-America-qvq=w4s:/what/Geography,%20maps,%20city%20views%20and%20plans/where/North%20America/London;lc:JCB~1~1,JCBBOOKS~1~1,JCBMAPS~1~1,JCBMAPS~2~2&mi=5&trs=96> > (August 15, 2012)

Thorne, R. *Orbis Vniuersalis Discriptio*
<http://jcb.lunaimaging.com/luna/servlet/detail/JCBMAPS~1~1~1131~101820011:15228?sort=Normalized_date%2CGeographic_Area%2CCreator%2CMap_title&qvq=q:thorne;sort:Normalized_date%2CGeographic_Area%2CCreator%2CMap_title;lc:JCB~1~1,JCBBOOKS~1~1,JCBMAPS~1~1,JCBMAPS~2~2&mi=0&trs=1 > (August 15, 2012)

Speed, J. *America with those known parts in that unknowne worlde both people and manner of buildings Discribed and enlarged by I.S. Ano. 1626*
<<http://jcb.lunaimaging.com/luna/servlet/detail/JCBMAPS~1~1~1261~100230267:0494>

[1B?sort=Normalized_date%2CGeographic_Area%2CCreator%2CMap_title&qvq=q:speed;sort:Normalized_date%2CGeographic_Area%2CCreator%2CMap_title;lc:JCB~1~1,JCBOOKS~1~1,JCBOOKS~1~1,JCBOOKS~2~2&mi=1&trs=6](#) > (October, 15 2012).

Speed, J. *Map of Europe from John Speed. A Prospect of the most famous parts of the World.*

<<http://luna.folger.edu/luna/servlet/detail/FOLGERCM1~6~6~102831~107049:A-prospect-of-the-most-famous-parts>> (October 15, 2012)

Wright, E. *A Plat of all the World. Projected according to the truest Rules Being far more exact then either the Plain-Card or the Maps of the World described in two Rounds*
<<http://jcb.lunaimaging.com/luna/servlet/detail/JCBMAPS~1~1~2043~107830005:13794?qvq=q:world%2Bmap;lc:JCB~1~1,JCBOOKS~1~1,JCBOOKS~1~1,JCBOOKS~2~2&mi=5&trs=248>> (August 15, 2012)