Introduction

Property, Law, and Race in the Colony

> To think about distant places, to colonize them, to populate or depopulate them: all of this occurs on, about, or because of land. The actual geographical possession of land is what empire in the final analysis is all about. At the moment when a coincidence occurs between real control and power, the idea of what a given place was (could be, might become), and an actual place—at that moment the struggle for empire is launched. This coincidence is the logic both for Westerners taking possession of land and, during decolonisation, for resisting natives reclaiming it.
> —Edward Said, *Culture and Imperialism*

In *Culture and Imperialism*, Said reversed the tide against a literary criticism that had long approached European literature as having nothing to do with empire and imperialism. As he noted, "[t]o read Austen without also reading Fanon and Cabral—and so on and so on—is to disaffiliate modern culture from its engagements and attachments."[1] As Said excavated in unsparing detail, the English novel (in particular) as a "cultural artefact of bourgeois society" fortified the "structures of attitude and reference" that were of central import to imperial (and colonial) endeavors. The novel, as a cultural form, contributed to the sedimentation of narratives and language as the means through which land, territories, and entire geographical regions were rendered as colonial possessions.

The novel became a powerful means of both expressing and consolidating a European, colonial vision of the world, while often, as Said explored, disavowing the very existence of a colonial relation. Alongside other cultural and political forms, it served to identify the true subjects of history, and thus it is no mystery as to why property ownership and propriety form such a colossal backdrop or, in some cases, explicit focus of so many key works of nineteenth-century English literature. Property law was a crucial mechanism for the colonial accumulation of capital, and by the late nineteenth century, had unfolded in conjunction with racial schemas that steadfastly held colonized subjects within their grip. Property laws and racial subjectivity developed in relation to one another, an articulation I capture with the concept of racial regimes of ownership. As a juridical formation, racial regimes of ownership have retained their disciplinary power in organizing territory and producing racial subjects through a hierarchy of value constituted across the domains of culture, science, economy, and philosophy.

In Walter Scott's *Waverley*, the historical fictionalization of the dramatic events of the 1745 Jacobite rebellion, to take one example, a multitude of different forms of land tenure covering the Scottish highlands, lowlands, English rural estates, and lavish homes in the city are thoroughly entwined with the character, habits, cultural practices, and kinship of owners, landlords, tenants, and laborers alike. Waverley initially confronts the brutish character of the Scottish highlanders—and their primitive, quasi-feudal system of landholding—before developing a benevolent respect for their ways; however, this does not ultimately change the narrative thrust that sees the onward march of progress (dramatized in the resounding defeat of the rebellion) as one defined by the development of an English agrarian capitalism.

In Maria Edgeworth's *Castle Rackrent*, published prior to Scott's *Waverley* and widely regarded as the first historical novel, the cultural, economic, and affective dimensions of the relations between the Anglo-Irish colonial rentier class and the Irish underclass charged with the upkeep of the estates is rendered in glaring terms. The power that generations of one family of owners wield, in spite of desperately negligent management practices, over the lives of those in their service is brought into stark relief with the story of the landlord family's eventual decline. The novel is written in the shadow of the Act of Union, and the crisis in property ownership occasioned by it.

Edgeworth addresses the dispossession of the Irish Catholic bourgeoisie and the possession of their lands by the Irish-Anglo class by treating the estate "as a microcosm of the nation itself."[2] As with so many genre-defining novels of the nineteenth century, relations of ownership provide the lens through which economy, cultural practices, state governance, military exploits, kinship, and relations of intimacy—nineteenth-century social formations—are revealed, explored, and, in Edgeworth's case, parodied to some extent.

Property constitutes a central part of the narrative foundation in a way that is so ubiquitous, it is akin to the furniture in the drawing room of a manor house, shoring up and naturalizing possession and occupation. If the possession of land was (and remains) the ultimate objective of colonial power, then property law is the primary means of realizing this desire. (Colonial endeavors that were focused on the exploitation of capital markets often relied on property laws in a more expansive sense for their realization and operation.)[3] Further, as we will see throughout the exploration undertaken in this book, laws of property also reflect and consolidate language, ways of seeing, and modes of subjectivity that render indigenous and colonized populations as outside history, lacking the requisite cultural practices, habits of thought, and economic organization to be considered as sovereign, rational economic subjects, much like Scott's highlanders.

To study modern laws of private property ownership without accounting for the significance of the colonial scene to their development is to disaffiliate the development of modern law from its deep engagements with colonial sites in ways that parallel the literary disavowals of colonialism diagnosed by Said. There cannot be a history of private property law, as the subject of legal studies and political theory in early modern England that is not at the same time a history of land appropriation in Ireland, the Caribbean, North America, and beyond. A central argument developed throughout this book is that modern property laws emerged along with and through colonial modes of appropriation. For instance, as explored in chapter 2, the system of formal ownership prevalent in many (if not most) common-law jurisdictions, which requires the registration of land title in a state-regulated system, was implemented first in the colony of South Australia, and then British Columbia, decades prior to being implemented on a national scale in the United Kingdom. In South Australia, the sovereignty of indigenous nations was vitiated by a colonial vision of that space as lacking in civilized

inhabitants, and therefore empty and ripe for appropriation. As Nasser Hussain so cogently argued, colonial spaces were ones in which questions of law shaped the practice of colonial rule; and the development of legal doctrines in the colony "in turn, affected the development of Western legality."[4]

Property law holds a unique and distinctive place in Enlightenment thought and ensuing discourses of modernity. It operates as a set of both techniques and mechanisms encapsulated in legislation, legal judgments, and myriad everyday practices of ownership that have structured colonial capitalist modes of accumulation.[5] It is also a central fixture in philosophical and political narratives of a developmental, teleological vision of modernization that has set the standard for what can be considered civilized. The nearly uniform justification for casting indigenous populations as premodern was found in the absence of private property laws and particular forms of cultivation. As Peter Fitzpatrick has argued, law—and property law specifically—became "integrally associated with the mythic settling of the world—with its adequate occupation and its bestowal on rightful holders, the Occidental possessors and owners."[6] The English common law of property became the sine qua non of civilized life and society, an axiom sharpened at the expense of indigenous peoples throughout the colonial world. As explored in each chapter, the evolution of modern property laws and justifications for private property ownership were articulated through the attribution of value to the lives of those defined as having the capacity, will, and technology to appropriate, which in turn was contingent on prevailing concepts of race and racial difference. The colonial encounter produced a racial regime of ownership that persists into the present, creating a conceptual apparatus in which justifications for private property ownership remain bound to a concept of the human that is thoroughly racial in its makeup.

Thus not only was property law the primary means of appropriating land and resources, but property ownership was central to the formation of the proper legal subject in the political sphere.[7] Analyzing the techniques of ownership that remain a primary mode of dispossession in settler colonies cuts across the economic, cultural, political, and psychic spheres of colonial and postcolonial life. Modernity ushered in a relationship between ownership and subjectivity, wherein the latter was defined through and on the basis of one's capacity to appropriate. While the relationship between

property ownership, propriety, and the proper subject of law has been excavated by other scholars, this book departs from the existing literature in the field by focusing on the centrality of race to the formation of modern legal subjectivity.[8] Drawing on the work of Stuart Hall, Cheryl Harris, Cedric J. Robinson, and others, I develop the argument throughout the book (and in further detail below) that legal forms of property ownership and the modern racial subject are articulated and realized in conjunction with one other.

RACIAL REGIMES OF OWNERSHIP

Being an owner and having the capacity to appropriate have long been considered prerequisites for attaining the status of the proper subject of modern law, a fully individuated citizen-subject. In the colonies specifically, one had to be in possession of certain properties or traits, determined by racial identity and gender, to own property. In this way, property ownership can also be understood as complicit in fabricating racial difference and gender identities. Fanon wrote incisively of how the ontology of settler and native was produced through a system of property: "The settler and the native are old acquaintances. In fact, the settler is right when he speaks of knowing 'them' well. For it is the settler who has brought the native into existence and who perpetuates his existence. The settler owes the fact of his very existence, that is to say his property, to the colonial system."[9] Here, Fanon pointedly reveals the centrality of property ownership to the life and existence of the settler, and in *Black Skin, White Masks* renders bare the core racial dimension of colonization. As Fanon's first published work, *Black Skin, White Masks* presented an excoriating critique of the psychoaffective and phenomenological dimensions of life for the colonized in Martinique and upon his arrival in France. Thinking through his concept of "epidermalization" (whereby the racial schema of colonization is grafted onto the figure of *le nègre* and resides parasitically on black skin), alongside the critique of colonial and anticolonial bourgeois nationalism in the later *Wretched of the Earth*, one gleans how relations of ownership, propriety, and racial subjectivity can be better grasped through a more expansive understanding of property law as a form of colonial domination.

The relationship between a racial concept of the human and property relations has long been the subject of critical histories of the transatlantic

slave trade.[10] The brutal rendering of black lives as objects of economic commerce produced a racial regime of ownership whose legacies remain very much alive in the economic, social, and legal value accorded white lives over black lives (along with the racial and gendered legacies of contractual forms of domination present in the history of indentured labor, particularly with Chinese and Indian workers in the Americas).[11] However, while it may be intuitive to locate the origins of a racialized system of ownership in the transatlantic slave trade, Cedric J. Robinson has argued otherwise. "Simply put, the Atlantic slave trade was not the first slave system, nor the first slave system engaged in by Europeans, nor the first slave system of Europeans or their ancestors, and not the only slave system to produce a racialist culture."[12] Relatedly, Cornel West has also argued that racism predates capitalism, finding its roots "in the early encounter between civilizations in Europe, Africa and Asia, encounters which occurred long before the rise of modern capitalism."[13]

What distinguishes the emergence of a modern racial regime of ownership in settler colonies, and indeed those places where slavery was a core part of economic development, is the articulation of a commodity form of real property in conjunction with a globalized "economy of difference."[14] The racialism that had thoroughly infused social relations in feudal Europe was globalized with the advent of modern colonialism.[15] The transatlantic slave trade, and the appropriation of indigenous lands that characterized the emergence of colonial capitalism on a worldwide scale, produced and relied upon economic and juridical forms for which property law and a racial concept of the human were central tenets. Scientific techniques of measurement and quantification, economic visions of land and life rooted in logics of abstraction, culturally inscribed notions of white European superiority, and philosophical concepts of the proper person who possessed the capacity to appropriate (both on the level of interiority and in the external world) worked in conjunction to produce laws of property and racial subjects.

This book excavates the juridical formation constituted by modern property law and the racial subject, by examining the development of the specific legal form of private property relations in the settler colonial sites of Canada, Australia, and Israel/Palestine. In thinking through the relationship between modern forms of property and race, it becomes clear that this ju-

ridical formation has played a central role in the historical development of racial capitalism. The multitude of rationales for the colonial appropriation of indigenous lands (upon which slavery in the Americas was contingent), and the concomitant development of liberal democracy in the settler colony required legal and political narratives that equated English common-law concepts of property with civilized life, and were coupled with a belief in the inherent superiority of people whose cultural and economic practices bore resemblance to a burgeoning agrarian capitalism in England. Colonialism took root on the grounds of this juridical formation, twinning the production of racial subjects with an economy of private property ownership that continues to prevail over indigenous and alternate modalities of relating to and using land and its resources.

In many ways, Cheryl Harris's article "Whiteness as Property" remains unsurpassed in the novelty of the theoretical framework she developed for understanding how whiteness has come to have value as a property in itself, a value encoded in property law and social relations. Harris analyzes how the system of chattel slavery was premised upon the appropriation of indigenous lands, pointing to the deployment of different racial logics in the treatment of black slaves as objects of property and indigenous nations as lacking the cultural practices of white Europeans that defined them as inferior, and consequently as non-owners of their land. She critically interrogates the way in which the concept of race interacted with conceptions of property, to "establish and maintain racial and economic subordination."[16]

More specifically, Harris argues that the propertizing of human life—the lives of black slaves—forms the historical basis for the merger of white identity with property. Slavery created a form of property that would eventually become contingent on race; by the latter half of the seventeenth century in the United States, "only Blacks were subjugated as slaves and treated as property."[17] Writing incisively about the legacy of race-based chattel slavery, she maps the transition from whiteness as status property to whiteness as an entitlement to social goods that persists as the unspoken backdrop to contemporary litigation over affirmative action policies. Whiteness, argues Harris, shares the critical characteristics of property. The right to use and enjoyment, the reputational value, the power to exclude, are all characteristics of whiteness shared by various forms of property. Whiteness is, on Harris's analysis, an analogue of property.

While the arguments pursued in this book are in debt to and inspired by Harris's work, the analysis offered here also parts company in some significant ways. I develop the idea that modern concepts of race and modern laws of property share conceptual logics and are articulated in conjunction with one another. For instance, as I argue in chapter 2, the violence of abstraction that transformed land more fully into a commodity over the course of a long transition (from feudal land relations to forms of ownership that facilitated agrarian capitalism and market capitalism) has a counterpart in racial thinking that figured entire populations in a hierarchy of value with whiteness at its apex. As Ruth Wilson Gilmore has written, "racism is a practice of abstraction, a death-dealing displacement of difference into hierarchies that organise relations within and between the planet's sovereign political territories."[18] This is certainly not to suggest that all logics of abstraction are the same, but I argue that the commodity logic of abstraction that underlies modern forms of private property shares conceptual similarities with the taxonomization and deracination of human life based on racial categorizations, the early traces of which are evident in the work of natural historians such as Linnaeus.

It is, then, more than an interaction between race and property that I excavate in this work; my argument is that racial subjects and modern property laws are produced through one another in the colonial context. In relation to the appropriation of indigenous lands, Harris argues that "only particular forms of possession—those that were characteristic of white settlement—would be recognised and legitimated."[19] This is certainly true; however, in my view it was not solely whiteness or the cultural practices of whites that determined the kinds of use that would give rise to the right to own land. I argue in chapters 1 and 3 that the types of use and possession of land that justified ownership were determined by an ideology of improvement. Those communities who lived as rational, productive economic actors, evidenced by particular forms of cultivation, were deemed to be proper subjects of law and history; those who did not were deemed to be in need of improvement as much as their waste lands were. Prevailing ideas about racial superiority were forged through nascent capitalist ideologies that rendered race contingent on specific forms of labor and property relations. Property ownership was not just contingent on race and notions of white supremacy; race too, in the settler colonial context, was and remains subtended by property logics

that cast certain groups of people, ways of living, producing, and relating to land as having value worthy of legal protection and force.

To understand the relationship between the production of racial subjects and property law, how it functions in colonial contexts at different historical moments, and how it continues into the present, it is necessary to grapple with a formation whose genesis cannot be reduced to any one singular system or structure. As pointed out by scholars theorizing the relationship between race and class, neither phenomenon is reducible to the other; political ideologies, economic rationalities, and cultural and juridical practices operate in conjunction to produce structures of domination that work through and continually reproduce relations of class, racial difference, gender, and sexuality. The production of racial subjectivity and the constitution of private property relations are articulated conjointly, in ways that are neither inevitable nor transhistorical. Rather, the juridical formation that I refer to as the racial regime of ownership requires continual renewal and reinstantiation to prevail over other ways of being and living. I draw on Stuart Hall's theorization of articulation, and Cedric Robinson's conceptualization of racial regimes in order to emphasize three different aspects of the constitutive relationship between modern property laws and the racial subject: the noninevitable yet nonarbitrary nature of this juridical formation; the (consequential) necessity for this formation to be continually renewed in the colonial drive to appropriate indigenous land; and the recombinant nature of the constituent parts of the racial regime of ownership.[20]

Race, for instance, as a concept is a variable amalgam of social, cultural, and biological markers and, practically speaking, amasses in its arsenal a range of different traits including "colour, physiognomy, culture, and gene pools" in order to differentiate.[21] While very broad shifts in dominant conceptions of race can be traced, it is also true that modern concepts of race draw on this wide range of factors for their rationalization. Biological and cultural explanations for racial difference are not mutually exclusive. Avery Gordon observes that the biological justification for racial inferiority "was a relative newcomer" in the nineteenth century. And while the "authority of Western science as the unquestioned standard of Western civilized knowledge" certainly set scientific racism apart from earlier forms, she argues that both "prescientific Western theorizing" that attributed racial difference to divine will, and biologically based racism posited the notion that "the inferior

could be redeemed either by religious conversion or . . . by assimilation to the conquering tribe, empire or group."[22] Racial regimes of ownership make use of the plasticity inherent in both of its constitutive dimensions—race and property—and deploy rationalizations for the way these phenomena are articulated in conjunction with one another in a recombinant manner, using both scientific and prescientific modes of thought as a matter of brutalizing convenience.

As discussed above, Cheryl Harris has described race as an analogue of property in the sense that it shares many of its critical characteristics. The presumption that race is natural, much like private property ownership, is one that many scholars of critical race theory and scholars of property continue to spend time and effort undoing. The need to denaturalize race and property ownership, to reveal the techniques of their fabrication, and the historical sediment that haunts contemporary structures of racial oppression and appropriation are testament to their continual reiteration and reinvention. As such, the different manifestations of the racial regime of ownership explored in this book do not fall neatly into a chronology. The very nature of the appropriation of indigenous lands justified by the tripartite reliance on possession, use, and the abstract proof of ownership in the form of registered title exemplifies the fractured and disjointed nature of temporality in the colonial context. For instance, as we will see in the case of the Bedouin, explored in chapter 3, the Israeli state has relied on the absence of registered title along with an ideology of improvement that privileges European forms of cultivation as proof of ownership, along with continual attempts to physically remove Bedouin who are in occupation of their own land.

In thinking about racial subjectivity and modern property laws as articulations that are realized in conjunction with one another, Stuart Hall's theorization of the relationship between race and class is indispensable. Drawing on methods developed by Marx, Gramsci, and Althusser, Hall elaborated a theory of how race and economic structures are practically and conceptually connected to one another, and how this relationship produces specific forms of racism at different historical junctures. He rejected the economic reductivism of orthodox approaches to Marxist theory (which reduce the causes of race and racism to economic determinants or to the functional demands of social domination) and instead grasped the

complex relationship between race and class through examining how they are articulated together as historically specific social forms of identity and domination. While class as a concept is not strictly analogous to property, it is a relation determined by, among other things, one's position as a producer in a hierarchy of ownership, alienation, and exchange and, further, intersects with race, gender, and sexuality in how it is lived. In this way, class is rendered as a core part of social formations very much in the way that property ownership operates as a legal, social, political, and economic relation in contemporary social formations, and we could say more specifically, juridical formations. Hall's analytical trajectory is thus particularly relevant for this study, which seeks to trace how modern legal forms of property ownership emerge in colonial capitalist contexts, articulated with and through modern concepts of race and racial difference that appear as specific juridical formations.

Drawing on the work of Gramsci, Hall writes that the concept of the social formation enables an understanding of how economic, political, and ideological relations constitute complexly structured societies, "where the different levels of articulation do not by any means simply correspond [to] or 'mirror' one another" but produce uneven, nonlinear, and sometimes contradictory effects. "Racism and racist practices," writes Hall, "frequently occur in some but not all sectors of the social formation; their impact is penetrative but uneven."[23] We will examine the relevance of Hall's observation below, where I draw out some examples of the uneven and sometimes contradictory ways in which juridical formations of race and property law appear in different settler colonial contexts.

While Hall stresses the contingency present in the development of social formations, he also (drawing on Althusser) defines the social formation as a "structure in dominance," in order to emphasize its determinate and systemic qualities.[24] The concept of the social formation is taken by Hall as an analytic to theorize a relationship between race and class, to open up the question of value to factors normally excised from Marxist understandings of the general operation of the law of value, such as the cultural and racialized nature of labor practices.[25] The more general point is that both social and juridical formations take shape within particular economic systems, in relation to both specific cultural norms and practices and different regimes of race, gender, and sexuality.

In his 1985 essay on Althusser, Hall identified articulation as a new concept, one that facilitates analysis of how political and economic and, I would add, juridical practices are "condensed" into forms of domination over particular social groups and classes.[26] The concept of articulation opens an avenue for understanding how different practices operate as a series of interconnected but differentiated processes. Here, we can draw an analogy with the limits of considering property as having distinct economic and juridical forms that are separate from the social, historical, and political milieu in which they exist; a conceptual error, ironically perhaps, committed by both Marxists and legal positivists. Paul Hirst pointed to the fallacious tendencies among some Marxist legal theorists (namely, Evgeny Pashukanis and Karl Renner) to reduce conceptions of legal subjectivity and juridical forms of property to their existence as mere expressions of economic exchange. While the very problem of what capital is cannot be separated from the modes of its legal organization, legal forms are not solely determined by economic processes of production or exchange. Juridical forms of property, in all their complexity and plasticity, have been central to multiple modes of capital accumulation (and dispossession), as Balibar has noted. To that end, I want to emphasize that juridical forms of property reflect much more than the life of property as a commodity form of exchange.[27] Indeed, even within Marxist discourse, the term "juridical form" denotes not formal structures but a variety of "political, juristic, philosophical theories, religious views" and "the reflexes of all these actual struggles in the brains of the participants" in the making of political struggles, in the making of history.[28] My use of the term "juridical" denotes the fabrication of legal techniques that define legality and illegality, produce legal subjects, operate as a form of governance, and in all of these guises functions as a form of disciplinary power.

The concept of articulation as conceived of by Hall expresses the noninevitable—yet nonarbitrary—nature of social formations; here I consider it in terms of the means by which racial regimes of ownership must be continually sustained and renewed by specific social, economic, and juridical practices:

> By the term "articulation" I mean a connection or link that is not necessarily given in all cases, as a law or fact of life, but which requires particular conditions of existence to appear at all, which has to be positively sustained by specific processes, which is not eternal but has constantly to

be renewed, which can under some circumstances disappear or be overthrown, leading to the dissolving of old linkages and the forging of new connections—rearticulations. It is also important that an articulation between different practices does not mean that they become identical or that the one is dissolved into the other. Each retains its distinct determinations and conditions of existence.[29]

Hall's conceptualization of articulation presents a means of understanding how the relationship between race and class cannot be cast as inevitably taking any particular form; there is no "necessary correspondence between one level of social formation and another" that is determined primarily by an economic base. There is also, however, no necessary noncorrespondence between different levels of a social formation, contra post-Marxist claims for total contingency. There are, rather, as Hall puts it, "no guarantees" that a given class or social group will respond to economic relations in a particular way, or that the "ideology of a class" necessarily corresponds with the position they hold within economic relations of capitalist production. In part, this is because class conflicts are not "wholly ascribable within 'social relations of production.'"[30] Race and racism, gender, and sexuality shape the nature and form that class relations take and, significantly, how they are experienced.

Analogously, there are no guarantees that a given articulation of race and property ownership will appear in the same configuration across time or jurisdictions.[31] In part this is because of the sheer heterogeneity contained within articulations of race and property ownership, occasioned by the resistance, refusal, negotiation, or recognition and acceptance of colonial relations of ownership by First Nations and other racialized subjects in settler colonial contexts. As we will consider in the conclusion, the continual renewal of racial regimes of ownership is not an inevitability, as political imaginaries that exceed the confines of this juridical formation demonstrate. The more immediate focus here, however, is on the specific processes of colonial land appropriation and the historical emergence and contemporary dominance of markets in land-as-commodity that work to articulate a racial concept of the human in conjunction with modern laws of property. This conjuncture is continually renewed through the persistent but differentiated reiteration of a racial concept of humanity defined in relation to logics

of abstraction, ideologies of improvement, and an identity-property nexus encapsulated in legal status.

The task that Hall set for himself was to think about how race and class are theoretically connected to one another. The conclusion he reaches, that there is no necessary correspondence, but also no necessary noncorrespondence, between different levels of any given social formation (between, for instance, race, class, and gender) opens up space for considering how social relations do not inevitably adhere across time and space to a particular form. The noninevitability and contingent, yet nonarbitrary character of the articulation of race and class, for Hall, reveals the potential for political transformation and rupture. This emphasis on the possibilities of transformation is shared by Cedric Robinson, whose concept of the racial regime incorporates a recognition of how radical traditions of resistance exist in relation to the production of race and racism. Despite the many significant differences between the work of Hall and Robinson, not least their remarkably divergent relationships to Marxist traditions of thought, there is a contact point in their explorations of the potentiality for political transformation and change that exist in the structures, systems and relations of domination.

Cedric J. Robinson argues that racial regimes are "unstable truth systems."[32] Writing against the tendency of American race studies to obscure the chaos and contingency that characterize historical research, he critiques the inevitable "unitarianism where all the relations of power collaborate in and cohabit a particular discursive or disciplinary regime." Robinson seeks to open a space for thinking the "coincidences of different relations of power" that might collide, interfere with, or even "generate resistance."[33] Simply exposing how race is a fabrication, and how raced subjects are invented, is not a sufficient means for explaining racism and racial difference. Rather, one must be attuned to the contingencies, "the intentional and unintended," the fractured and fragmented means by which relations of power and cultural forms coalesce in racial regimes.[34]

In *Forgeries of Memory and Meaning*, Cedric J. Robinson examines early American cinema and the burgeoning American film industry at the turn of the twentieth century as a site where a new racial regime, one that persists in our present moment, came to dominate representations of race and racial difference. To quote from Robinson: "Moving pictures appear at

that juncture when a new racial regime was being stitched together from remnants of its predecessors and new cloth accommodating the disposal of immigrants, colonial subjects, and insurgencies among the native poor. With the first attempts at composing a national identity in disarray, a new whiteness became the basis for the reintegration of American society."[35] Robinson analyzes how a racial regime is produced at a historical moment of uncertainty and flux, and appears in the emergence of a new technology that builds upon the racial representations of preexisting cultural forms (the world exhibition, for instance) and capitalist infrastructure and investment in new media.

Robinson criticizes both Marxist and Foucauldian approaches to the study of race and racism. Whereas Marxist accounts of race reduce its production down to an originary point—the commodification of African bodies during the slave trade—Foucauldian approaches elide the complex, contradictory, and contingent nature of how race comes to operate as a form of domination. "It is as if," writes Robinson, "systems of power never encounter the stranger, or that strangers can be seamlessly abducted into a system of oppression." These readings of race leave no space for understanding how racial regimes, described by Robinson as "makeshift patchworks masquerading as memory and the immutable . . . possess history."[36] These histories of how race is produced, when examined carefully, throw up moments of resistance and rupture that are also part of the constitution of racial regimes. In obscuring this complexity, resistance remains nothing more than a "fugitive consideration," a description replete with double meanings given the fugitive was an exemplary figure of resistance and rebellion against the established order during the era of slavery and has been reprised recently in works of critical theory that seek to analyze and revivify traditions of radical thought and praxis.

The forgetting of these histories of resistance not only attests to the kind of willful blindness engendered by racist ideologies but warps our understanding of how racism maintains its lethal grip over political, cultural, and social spheres. This is not a simple dialectic of opposing forces, of racist representations of people of color on the one hand, and resistance to it on the other; nor is it simply a matter of relations of power that capture us within their web in some a priori fashion, even though that is also true sometimes.

There is a dialectic at play in Robinson's analysis of racial regimes, but one that is sufficiently plastic to permit the possibility of unforeseeable rupture and change; where negation (racist representations of black life, for instance) and the negation of negation (antiracist resistance) are mired in other dynamics, such as deterioration and neglect. He describes, for instance, the decline of late nineteenth- and early twentieth-century antiracist imagery in black film, even while these instances of antiracist resistance were part of what a white supremacist vision, typified by films such as *Birth of a Nation*, were responding to and attempting to suppress. Robinson identifies contradictions and complex historical processes by reading across archives, with an interpretive gaze defined by the view that individuals and collectives have never been wholly determined by dominant racial paradigms. His method requires us to think race as produced by regimes of disciplinary power and capitalist modes of production and accumulation that are, in turn, composed of individual acts and collective agency, rebellion and rupture, across domains of science, economy, philosophy, and culture.

Robinson examines, for instance, how the emergence of the moving motion picture coincided with Jim Crow, a system of legalized segregation that was a central pillar in the South's strategy of economic development.[37] Robinson argues that the Jim Crow era was marked by a coalescence of infrastructure development (railroads) built with unfree (predominantly black) convict labor and capital investment (by railroad corporations and their complements) in the sponsorship of world fairs and exhibitions, sites where the new racial regime was on display and, after such events as the 1893 Chicago world's fair, transposed into an array of racist films.[38] This mapping illuminates the interconnectivity of a legal system that provided the scaffolding for new forms of racial capitalism in the era of Reconstruction, the use of exhibitions and fairs to fetishize and commoditize the cultural production of racist caricatures, and how the emergent motion picture industry became the eventual landing place for the newly consolidated figure of the Negro.

Whereas race is, as Robinson notes, mercurial and mutable, racism based on the idea of white supremacy is the constant and persistent factor characterizing the modern racial regime.[39] In this book, I take Robinson's theorization of racial regimes into the domain of property. Whereas ownership is mutable and mercurial, despite several hundred years of its naturalization as a concept by political philosophers, capitalist entrepreneurs, and juris-

prudents (men who often occupied all three roles at once), private property persists as a political and legal form that characterizes and defines the modern era in many ways. The analogy between race and property is productive insofar as we regard both forms as historically contingent rather than natural; and as being produced by and through complex interrelations between capital, science, and culture.

Following Robinson, it becomes clear that the means by which racial regimes of ownership take shape require us to consider how it is not always the case that an ideology of white supremacy determines a particular economic or legal form in a straightforward or easily discernible causal sense; indeed, as discussed in chapter 1 in relation to the actions of colonial surveyor Joseph Trutch, a racial discourse of white supremacy coalesces with individual greed and the desire for personal advancement in decisions taken with respect to the surveying of indigenous lands in British Columbia and the redrawing of reserve boundaries. In this instance, racialized relations of power allow his greed and ambition to flourish. Conversely, nationalist discourses of racial and ethnic supremacy in settler colonial contexts are not always realized, in the first instance at least, through commodity forms of property. As explored in chapter 3, the ethnonational imperatives of the Israeli settler state have, until very recently, prevented a rational market in private land ownership from emerging. Racial regimes of ownership develop in uneven and sometimes contradictory ways; in the settler colony, state authorities and capitalist classes have utilized different juridical forms of property to secure, in most instances, "actual geographical possession" and, significantly, economic control over land.

PROPERTY

Property is notoriously difficult to define, particularly when we account for some of the more conceptually innovative scholarship in the field of intellectual property. In relation to real property, or land to be more specific, the literature on theories of property is truly vast. My aim here is not to provide (yet another) overview or discussion of the field of property theory but rather to identify the approach to property taken in this study. To begin with, I can be explicit about types of property that are not addressed in this book. I do not discuss, for instance, communal forms of property. While

I critique the manner in which courts have defined aboriginal title, I do not engage with indigenous concepts of ownership and relationships to land. There are examples of course, of alternate ways of holding property, as recent scholarship on the commons attests to. However, the racial regimes of ownership that I trace in this book persist as hegemonic juridical formations in liberal democratic settler states and beyond. The key political and philosophical question that I address by way of conclusion is how to resist contemporary forms of dispossession without replicating logics of appropriation and possessiveness that rely upon racial regimes for their sustenance.

While I do not focus on state property, in the colonial context, there is an intimate bond between state property and private property ownership, the latter often materializing only on the basis of sovereign colonial claims to underlying or radical title to territory. There is an undeniable relationship between the sovereign assertion of control over territory and the mechanisms through which the state organizes individual property ownership, which is primary to the overall apparatus of governance that characterizes the colony. The concept of possession in one register is taken as analogy in another, the rhetorical force of mastery deployed across a multitude of incongruent fields of ownership. As Ranajit Guha, in his classic study *A Rule of Property for Bengal*, observed, the English did "often speak of the Company's territories as an 'estate.' . . . England was thus required to assume the responsibilities of an improving landlord in Bengal."[40]

This book examines private property relations and their articulation with concepts of race through an examination of their historical trajectories in several different colonial sites, primarily South Australia, British Columbia, and the Naqab, the southern desert region of Israel/Palestine. I also draw on the work of scholars exploring property relations in other colonial sites, including colonial Bengal, Hawai'i, and other regions of Australia. (As I discuss below, the development of racial regimes of ownership cannot be neatly partitioned between settler colonial and colonial contexts.) I do not attempt to provide, nor do I draw on a singular, overarching theory of property or model of ownership. Rather, I trace the legal and philosophical justifications for appropriation and private ownership as they appear at distinct historical conjunctures of colonial settlement. The approach taken

here can thus be contrasted with major works of property theory, which tend to examine the important role of property law in society, competition between individual interests and government regulation, the historical development of prevailing forms of ownership, property's relationship to social and cultural norms, and the role that property relations play in the distribution of social goods.[41]

Many of the key works of contemporary property theory of the last decades have charted a progressive path for considering the power of property law in maintaining economic inequality and, relatedly, in both producing and relying upon particular cultural and social norms. Joseph W. Singer, for instance, problematizes the dominance of the "ownership model" in prevailing understandings of property law, revealing how the latter is in reality troubled by restrictions and regulations on the (perceived) absolute right of an owner to do whatsoever she pleases with her property.[42] Property law is, rather, relational in the sense that it involves competing interests between people in relation to control over and the use of space and resources such as land.[43] Nicholas Blomley has revisited his earlier work on the contested nature of the boundary between public and private property, which he explores through interviews with private renters and owners on the perception of private and public property in light of their encroachment onto public boulevards through gardening and planting flowers. Blomley demonstrates that relationality is indeed a complex phenomenon, one that challenges the notion that property is constituted through a conceptual and spatial fixity, and that understanding relationality requires grounded research into the everyday property practices of particular communities.[44] The boundary in this particular instance demonstrates that ownership (whether it is ostensibly private or public) can be a space of overlapping interests and negotiation.

The ownership model is often contrasted with another idea of property, derived from the work of Hohfeld in particular, which is property ownership as a bundle of rights that can be rearranged and redistributed depending on the social and political norms that legislators aim to promote through the state regulation of property.[45] Laura Underkuffler emphasizes that the degree to which each of these rights is protected varies; the "stringency" with which each of these rights in the bundle, such as the right to

use, possess, exclude, devise, alienate, etc., can be understood as existing in a hierarchy whereby some rights (such as the right to exclude) are more powerful than others.[46] The bundle of rights theory of ownership is often upheld as an alternative to the ownership model, which is premised on the idea that the owner has, or ought to have, an absolute degree of control over the object of ownership. This alternative model is often proposed without fully considering, in my view, the dramatic if not revolutionary changes in political economy that are the precondition for a substantive rebundling of property rights in a capitalist system of private ownership.

However, as property theorists have emphasized, this is a matter not only of economy but of the social and political imaginaries that subtend and structure contemporary property laws. Singer takes great care to emphasize the particular set of images that dominate American consciousness when it comes to "imagining the meaning of property," namely, the idea that ownership translates into an absolute right to do what one desires with the object of ownership, and near-total control over the object of ownership.[47] Given the importance of the social imaginary to the forms that ownership takes, he argues that "disputes over property use can be solved only by reference to human values, to a normative framework that helps us choose between freedom and security."[48] But what if the very concept of freedom to use property as a social good or resource in the American political and legal landscape is itself thoroughly tainted by a racial regime of ownership that was forged through slavery and the colonization of indigenous lands? This is the question posed by Saidiya Hartman, who, in the wake of W. E. B. Du Bois, points out that freedom for the previously enslaved meant entering new forms of debt bondage and exploitative labor relations. The freedom to contract (of the self-owning subject), a corollary of the freedoms associated with those of the owner of property, meant and still means, for vast numbers of people, the freedom to alienate one's labor in a highly stratified, racialized, and gendered labor market. In arguing for a balance between the owner's freedom to use his property and another's security from the harm that may be caused by the exercise of that right, a question arises about the very nature and concept of freedom that is being deployed here.

We could also ask whether the prevailing and persistent idea that ownership means absolute control over a thing has somehow shed its history as a

primary technique of subjugation over the bodies of black people that facilitated massive amounts of capital accumulation by white plantation owners during the birth of the United States as a nation. How does this particular idea of ownership as absolute control appear in social relations structured by race and gender? (Cheryl Harris, as discussed above, offers an answer in her theorization of whiteness as property.) Furthermore, what happens if we consider the dominant field of perception that continually posits black bodies as a threat to the security of others? Is it possible that freedom to use property, to alienate it, and to freely enter contractual relations, and the other side of that coin, security from harm, are both still enmeshed in the racial and colonial legacies of property law formation in settler colonies, such as the United States? My intention here is not to pose these questions to Singer's text, because the parameters of his careful and detailed problematization of dominant conceptions of ownership are clearly set out, but rather to indicate the shift in orientation that my investigation reflects.

A sizeable body of sociolegal and critical legal scholarship on aboriginal rights has undertaken the task of deconstructing the Eurocentrism and cultural bias of settler courts and the contours of legal recognition. This literature has challenged the way in which aboriginal rights to land and resources have been defined according to English common-law ideals of cultivation, abstract representations of land in the form of registered title, and so on. While many of these scholars readily assume that the basis of the importation of common-law concepts of property into the content of aboriginal title is Eurocentric if not racist, this literature provides little if any theorization of how racial subjects are produced by these modes of legal recognition, and does not consider the constitutive relationship between property law and racial subjectivity.[49] It is as if acknowledging the fact that the history of land law in the settler colony had a racialist or racist dimension is sufficient for understanding how property law operates as a form of colonial domination. The omission of race and racial subjectivity as concepts worthy of serious theoretical reflection bears some resemblance to the acceptance of capitalism as the inevitable political landscape in which forms of legal mis- or nonrecognition could be ameliorated (an assumption forcefully challenged by Glen Coulthard's *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*). I seek to examine the shared logics

of racial subjectivity and private property ownership that have been central to the development of racial capitalism.

Accordingly, this book is in dialogue with the research trajectories set by legal scholars dealing squarely with histories of racial oppression and private law domains such as property or contract, and scholars engaging with global histories of racial subjectivity and capitalism than with legal literature on aboriginal rights jurisprudence.[50] Most recently, Patrick Wolfe, in *Traces of History: Elementary Structures of Race*, argued that race is the idiom and modality through which colonization takes place on a global scale. Wolfe employed the idea of regimes of race to express the comprehensiveness that a "given regime of race coordinates and mobilises," and along with racial doctrine, "economic, political, moral, mythic, legal, institutional, sexual and aesthetic" dimensions constitute the regimes of race that operate as "instrument[s] of overlordship."[51] Race, for Wolfe, is a contested set of practices, a never-ending project through which labor and land appropriation throughout the colonial world is structured and rationalized.

The focus of this book is on the political ideologies, economic rationales, and colonial imaginaries that gave life to juridical forms of property and a concept of human subjectivity that are embedded in a racial order. This work can thus be distinguished from property theory emanating from the legal field in that my primary concern is not with assessing the relative merits and justness, emanating from concerns for legal and political equality, of contemporary property relations generally, and particularly in relation to First Nations. I turn to the more general question of property law and political transformation only in the conclusion. A work of property theory that engages very directly with the question of how property law can or ought to be reconfigured in specific political contexts, including the transformation of the racial regime of apartheid in South Africa, is André van der Walt's *Property in the Margins*. I discuss van der Walt's scholarly and political intervention in depth in the conclusion. Writing in the aftermath of the transition from apartheid to a liberal democratic constitutional order, to which the reform of property law was pivotal, van der Walt seeks to examine what justice demands of property law: "[C]ertain justice-driven qualifications of and amendments to the property regime are so fundamental that they cannot be accommodated within or explained in terms of the current doctrine—they require a rethink of the system, a

reconsideration of the language, the concepts, the rhetoric and the logic in terms of which we explain and justify choices for or against individual security and systemic stability in the property regime."[52] Van der Walt explicitly distinguishes his work from the body of property theory that examines the limits of property within the presumed stability of political, economic, and social structures.[53] By way of conclusion, I discuss van der Walt's argument that in order for genuine political transformation to occur, the perspectives and political imaginaries of those without property, those in the margins, must replace the lexicon of rights embedded at the core of much property doctrine.

COLONIAL MODERNITIES AND SETTLER COLONIALISM

As noted above, articulations of race and property law do not emerge in a consistent, linear, or even fashion. The temporalities of colonialism, as with modernity itself, are multiple and uneven. Contrary to the colonial (and imperialist) narrative that modernity unfolds in a linear, developmental fashion, with the non-European world placed either at some earlier stage of development or outside history altogether (as with Hegel's infamous description of Africa in *The Philosophy of History*), there is no "homogenous 'law of development'" that can determine and define what constitutes improvement or indeed progress.[54] Postcolonial critiques of modernity, as David Lloyd observes, "supplement the recognition of the internal contradictions of modernization with the apprehension of other forms of unevenness, forms of unevenness that call into question the historicist narrative that understands modernity as the progress from the backward to the advanced, from the pre-modern to the modern."[55] As noted above, property law plays a significant role in the colonialist narrative of modern progress. The imposition of modern laws of private property are cast in developmental terms, shifting from early modern justifications for ownership based in possession and use to more abstract forms of ownership embodied in systems of title by registration. However, as we see in the settler colonial context, rationales for property ownership do not adhere to this developmental narrative. In this way, examining property laws in settler colonial contexts, and specifically rationales for ownership (including forms of ownership recognized in aboriginal title doctrine) presents an exemplary

instance of how fractured and multiple the temporalities that characterize modern colonialism are.

Settler colonialism, as a structure, a continually unfolding process (a much-quoted observation of Patrick Wolfe), requires flexibility in the legal devices and rationales it utilizes to maintain state control—and possession—of indigenous lands. This is quite evident in the Palestinian context, where the perceived demographic threat of the Palestinian population leads the Israeli state to truly rely on a combination of older and newer rationales for appropriation and ownership, coupled with a range of other legal orders including military, land use planning, and criminal laws. These recombinant forms of appropriation and ownership, and the racial logics articulated through them, produce uneven landscapes and scenes of dispossession. In this way, this book is not a comparative analysis of different jurisdictions, but an exploration of how property, and its legal form, emerges in conjunction with modern concepts of race at different moments and in different settler colonies.

While the book focuses on settler colonialism, the economic, political, and social conjunctures that produce juridical formations of modern property law and race cannot be confined to the settler colonial context. One could certainly examine colonial and postcolonial contexts and find such articulations. However, the similarities in the development and contemporary expression of the relationship between modern property laws and race in settler colonies point to specificities and commonalities that are significant when considering how demands for justice and movements for decolonization confront the racial regimes of ownership that have so fundamentally shaped the nature of dispossession of indigenous and racialized migrant populations, the latter of which Jodi Byrd has termed "arrivants."

The place of law and the specifically juridical forms that colonial governance assumes in the settler colony inform a wide and rich terrain of literature on various aspects of settler colonialism. The nature of the political and legal recognition, misrecognition, and nonrecognition of First Nations in North America, for instance, has been addressed through analyses of the structures of indigenous self-governance, membership, and citizenship; land appropriation and status; and sovereignty and its ontologies of racialization and possession.[56] Land, territory, and the forms of life attached to, or embedded within them are a permanent site of contestation and

struggle between settler state authorities and First Nations. Audra Simpson and Glen Coulthard, among others, have deftly explored the complex, and sometimes contradictory, political forms of refusal and rejection of the colonial politics of recognition that characterize many First Nations' resistance to colonial settlement. While this book does not address itself explicitly to the discourse of recognition or the problem of sovereignty, in my view, property ownership and appropriation are quite central to the form that the legal recognition of indigenous rights has taken in common-law jurisdictions such as Canada and Australia. As I have argued previously, property ownership and a dynamic of appropriation are both primary to a Hegelian dialectics of recognition, evident in juridical forms of recognition and nonrecognition.[57]

The continual struggle for ownership and control over indigenous land distinguishes settler colonialism from the postcolony. This is not to say that the legacies of territorial reorganization and the partitioning of land during colonial rule do not continue to plague postcolonial nation-states, creating sometimes lethal conflicts over land and resources; however, in the settler colony the colonial animus is driven by the need to control the land base for the continued growth of settler economies and for the security of settler populations.[58] Land, which is "necessary for life" as Wolfe puts it, thus becomes a site of contestation for nothing less than life itself.[59] As I demonstrate throughout this book, property law has proved itself to be one of the most significant orders, an amalgam of legal techniques, through which colonial appropriation of land and the fashioning of colonial subjectivities take place and are secured. Jodi Byrd articulates the "aggregation" of the global nature of forms of settler colonization and their deployment of racialization and property: "[r]acialisation and colonization should thus be understood as concomitant global systems that secure white dominance through time, property, and notions of self."[60]

The focus on land and property relations in this study intervenes against a theoretical tendency, a mode of thought, identified by Jodi Byrd, through which the conflation of racialization and colonization works to erase the central function played by territoriality in colonization and contemporary modes of dispossession. She asks, "what happens to indigenous peoples and the stakes of sovereignty, land, and decolonisation when conquest is reframed through the global historicities of race?"[61] Byrd deftly reveals

how indigeneity comes to function, across a broad spectrum of continental philosophy and critical theory, as a "transit," in the sense that a wide range of historical experiences of exclusion and racism, in the multicultural liberal settler society, may acknowledge (and indeed, as Byrd points out, lament) the originary violence of colonial settlement only to move beyond it, as if it could be surpassed. Although indigenous dispossession is a constitutive part of the ground upon which other forms of racial subjugation take place in the settler colony, indigeneity becomes a space that is traversed, and often rendered as an artifact of the past. Examining how race and racialization are articulated through legal forms of property rooted in a spectrum of early modern and late modern rationalities shows how there is not a temporality of transit at work in the concept of the racial regime of ownership developed here, but rather the constant presence of territoriality, land, and possession.

The temporalities of property law's iterations and operations in the settler colony can be grasped by observing the difference between the myth of modernity instantiated in the wide-scale imposition of the English common law of property as the means through which the undeveloped would enter the pale of civilized life, and the actual use and manipulation of a wide range of rationales for the assertion of both colonial sovereignty and individual private ownership (which are of course dependent upon one another to a great extent) that do not adhere to a linear, teleological development of property law. The chasm between the myth of developmental progress and the often contradictory deployment of early and late modern rationales for ownership reflects the rather fragmented character of the temporalities of modernity itself. The chapters in this book thus do not adhere to a chronology, but attempt to trace three different economic, political-philosophical, and cultural rationales for specific legal modalities of ownership that appear at particular historical junctures in settler colonies: the ideology of use that casts both land and its native inhabitants as in need of improvement, the logics of abstraction that underlie increasingly commodified visions of land and human life from the seventeenth century onward, and the use of the juridical concept of status to bind together identity and property relations.

The inclusion of Israel/Palestine in this study presents an exemplary instance of the temporally fragmented and nonlinear nature of the racial regimes of ownership that typify the settler colony. There is a common ten-

dency among some scholars of Israel/Palestine to assert that Israel is the last settler colony, engaging in practices of colonial settlement that were accomplished in North America and Australia in the nineteenth century. These assertions imply that colonization was accomplished in these older settler colonies and that somehow their past is Palestine's present.[62] Contrary to this view, I seek to emphasize that the juridical techniques of appropriation and dispossession utilized across the settler colonial sites that I examine continue to inform the ongoing processes of settlement and displacement in Canada, Australia, and elsewhere.

At the same time, it is undeniable that, as David Lloyd and Patrick Wolfe have written, "the twenty-first century context in which Israel is seeking to complete the seizure of what remains of Mandate Palestine differs crucially from the nineteenth-century context in which settlers in Australia and North America completed their seizure of the Native estate."[63] I don't entirely agree that the settler states of Australia and North America have "completed" their seizure of indigenous lands, in the sense that First Nations continue to mount effective forms of resistance against this long history of appropriation, and because these settler states are imposing new means of appropriating and reappropriating indigenous lands that are consistent with the organization of contemporary land markets.[64]

Notwithstanding this point, Lloyd and Wolfe present one of the most persuasive and insightful theorizations of how Israel's contemporary modes of settlement exist in relation to ongoing modes of appropriation and dispossession in other settler colonies. They argue that settler colonialism "is not some transitional phase that gives way to—even provides a laboratory for—the emergent global order." Rather, it is "foundational to that order."[65] New modes of accumulation, the "second enclosure" heralded by the ongoing privatization of public goods, which are aptly described by Lloyd and Wolfe as "public patrimonies of the modern liberal state that emerged from an earlier moment of enclosure and dispossession," are positioned in a relation of continuity with the very neoliberal settlement practices of Israel through the common objective of managing surplus populations.[66]

Lloyd and Wolfe argue that in both older settler colonies and Israel/Palestine, the native population has invariably occupied the place of a surplus population, necessitating the creation of a wide range of "techniques of

elimination." The logic of elimination is as much figural as it is literal, and is as present in attempts to assimilate indigenous populations into nationalist iconography and multicultural narratives as it is evident in the techniques of spatial confinement. The massive differences between the nineteenth century, the era dominated by the growth of industrial capitalism, and contemporary modes of neoliberal capitalism require close attention to the ways in which modes of appropriation, rationales for ownership, and the legal form(s) of property have adapted themselves to the imperatives of colonial domination.

CHAPTER OVERVIEW

In chapter 1, I examine the enfolding of the valuation of land and the attribution of lesser value to the lives of indigenous populations in a racial regime of ownership based on an ideology of improvement. I analyze the policies of preemption and homesteading as the primary legal devices used to appropriate indigenous land in British Columbia. I also look at the actions and attitudes of colonial administrators, in particular Joseph Trutch, whose land surveys created the conditions for appropriation to take place on a greater scale than prior to his interventions. The ideology of improvement that informed the legal policies and colonial attitudes toward First Nations and their land finds one of its historical antecedents in Ireland. I trace the history of the articulation of racial inferiority with particular forms of land use through the work of William Petty and examine the manner in which he justified the fusing together of the value of Irish land with the value of Irish people. The technologies of measurement utilized to survey the land and its productivity are examined alongside Petty's view of the Irish peasantry as racially inferior and brutish. By way of conclusion, I analyze the Supreme Court of Canada judgment *Tsilhqot'in v. British Columbia* [2014] 2 S.C.R. 257, where the court expands the concept of aboriginal title to include indigenous conceptions of land use and ownership. I argue that while the court's modification of the doctrine of aboriginal title is legally and politically significant, it remains tethered to a racial, anthropological schema in its conceptualization of the claimants' mode of land use and ownership as seminomadic.

In chapter 2, I explore the commodity logic of abstraction that finds expression in a system of landholding that is premised on the erasure of prior interests in land. The system of title by registration that was implemented in the colony of South Australia in 1858, some seventy years prior to being fully implemented on a national level in the United Kingdom, reflects the commodity vision of land that British land reformers carried with them to the colony. In fact, the use of a system of individual fee simple titles, captured in a state-run registry, was a key means of diminishing indigenous systems of land tenure that did not conform to an economic and legal system based on an ideology of the possessive individual. Further, I argue in chapter 2 that the abstract logic of the commodity form found its counterpart in another form of abstraction, related to the racial classification of human life. The burgeoning pseudoscience of racial classification incorporated abstraction as a mode of ostensibly scientific thought, underpinning methods of measurement and the evaluation of human value based in anatomy and biology.

The racial regime of ownership consolidated at this historical conjuncture, in the mid-nineteenth century, certainly reflects a transition to a more abstract basis for ownership that is, in the settler colony, rendered possible by the racial taxonomization of human life that placed aboriginal people low on the scale of civilization. However, as I have argued above, the articulation of property law and race in racial regimes of ownership does not adhere to a linear, developmental temporality. By examining the contemporary status of title held by Palestinians in East Jerusalem, it becomes clear that possession, a much older rationale for ownership diminished by a logic of registration, retains its force as the primary colonial animus in Israeli attempts to displace Palestinians from the city of Jerusalem.

Chapter 3 follows the ideology of improvement to Palestine. I examine how Zionist settlers in the late nineteenth and early twentieth centuries viewed existing modes of cultivation in Palestine, and the notion that Palestinian modes of land use reflected an inferior intellectual capacity and less developed culture. Land that required improvement was a consequence of its stewardship being in the hands of people who themselves required improvement. I argue in chapter 3 that the establishment of agricultural settlements during this early period of settlement in Palestine provided a basis for the

Zionist narrative of a successful return to the land; a negation of exile that was realized through working the land. Cultivation was the means through which Zionist political claims could be realized territorially. Further, I examine how cultivation retains its force primarily as an ideological phenomenon rather than a reflection of actual economic and social realities, playing a significant role in land claims by Bedouin communities, for whom specific forms of cultivation remain a key legal threshold for proving historical occupancy and ownership of their lands.

Chapter 4 departs from the rationales analyzed in chapters 1 through 3, to focus on a racial regime of ownership characterized by what I refer to as the identity-property nexus. In chapter 4, through a largely historical analysis of Canadian Indian Act legislation, I examine how the colonial determination of the legal status of First Nations men and women, through the juridical category of the Indian, bound together legal identity and access to land. The concept of status articulates a nexus, a juridical knot, between identity and relations of ownership. I argue that this modern legal concept of status is in part the inheritance of modern property law as figured through the self-possessive individual. As such, I excavate the racial and gendered ontology of the self-possessive subject, as the ideal status against which the juridical category of the Indian was legislatively defined.

Avtar Brah makes a crucial intervention in conceptualizations of race by arguing that race represents gendered phenomena. Race is articulated with "socio-economic, cultural and political relations of gender, class and other markers of 'difference' and differentiation."[67] Race is thus articulated with gender, sexuality, class, and other modalities of difference in racial regimes of power, a fact explored and excavated by numerous feminist traditions of thought.[68] As I explore specifically in chapter 4, the nexus of identity-property relations that is captured by the use of legal status to dispossess First Nations women in Canada of their land and communities provides a stark instance of how a racial ontology of the human that informs the proper subject of ownership is thoroughly gendered. Relatedly, colonial representations of indigenous land as feminized, available for appropriation, or as waste land in need of being rendered fertile through cultivation, inform the discussion in chapter 1. While the primary focus in the book is on race and its articulation with private property relations, I have attempted to address

the way in which gender is articulated within racial regimes of ownership by devoting a specific chapter to the topic.

The formations that I analyze appear across jurisdictions and at different moments of time. The voracious nature of capitalist forms of property does not adhere to a linear or teleological model of development. Expressed with and through ethnoracial nationalisms in the settler colony, the objectives of possessing and exploiting indigenous lands require a panoply of property logics that at times, as discussed above, can retard or hamper the development of rational markets in land. Possession, no longer the strongest basis of a property claim in many common-law jurisdictions, remains quite central to property relations in the settler colony. In Palestine, asserting colonial control over land and public space requires the displacement and dispossession of Palestinians, even in the face of formalized and well-documented ownership. In other words, even where indigenous ownership conforms to European standards of proof, the imperative to legally possess and displace indigenous populations from their land overwhelms more contemporary rationales for ownership. In Canada, attempts by the federal government to settle land claims through the conversion of lands held under aboriginal title to fee simple is perhaps another means of ultimately gaining possession of indigenous lands—bringing it within the mainstream market in land renders it in a form capable of being bought up by nonindigenous proprietors, unlike lands held under aboriginal title.

This book cannot do justice to the violence of dispossession of First Nations in Canada and Australia, and Palestinians living in exile, or in the West Bank, Gaza, or Israel. The effects of dispossession and displacement on indigenous people have not been captured in this analysis of the legal techniques and political-economic formations utilized by settler colonial authorities to continue their occupations. Similarly, I do not in this book discuss modes of resistance to colonization. To be very clear, this should not lead the reader to infer that in my view, settler colonial projects have been successful in their genocidal ambitions. This book is about a juridical formation that emerges with the advent of modern property laws and modern conceptualizations of race. The striking similarities in the articulations of modern property law and racial logics across the settler colonial jurisdictions examined in this

book, despite the differences between these sites, reveal how the repertoire of legal techniques used to appropriate land and the philosophical rationales underlying them are not, necessarily, infinite in number. This book is an attempt to better understand what I refer to as racial regimes of ownership in the hope that they can be dismantled.