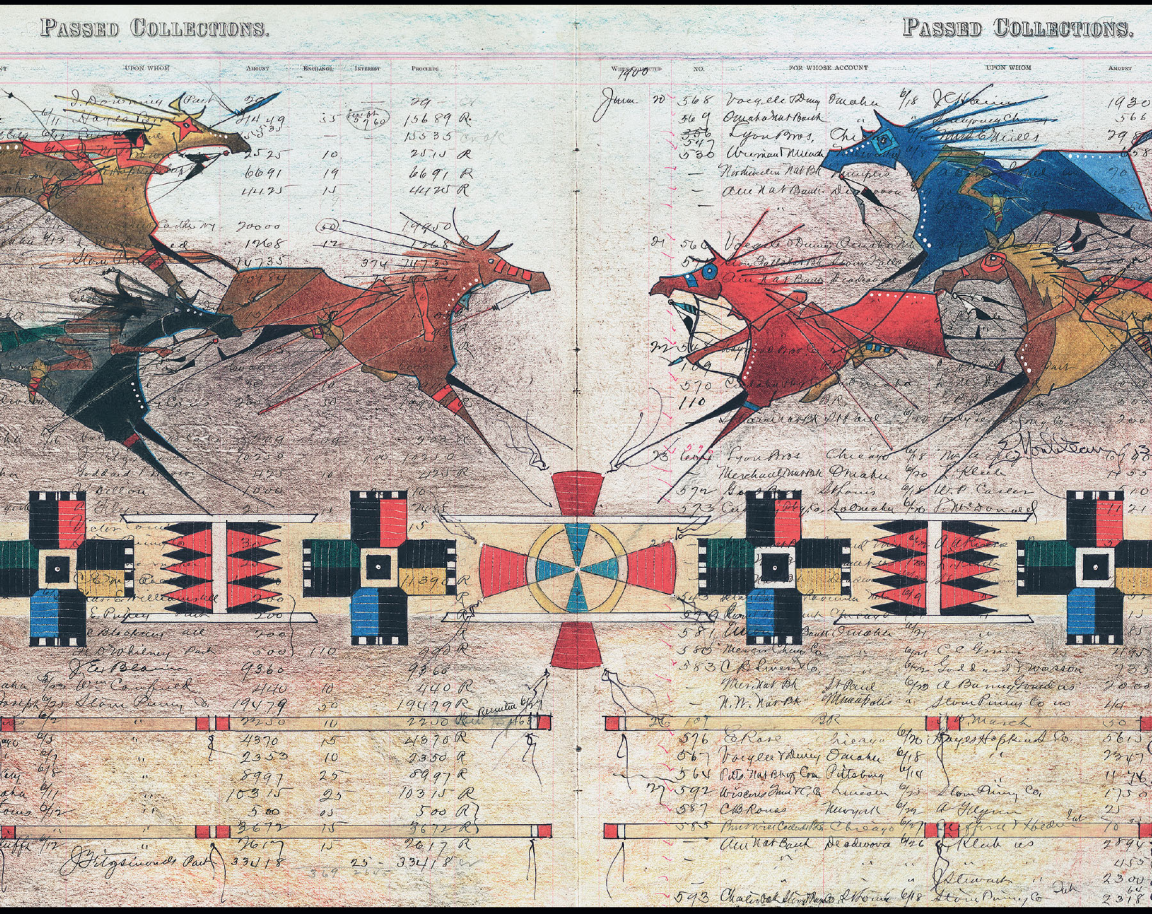
THEFT IS PROPERTY!



DISPOSSESSION *and* CRITICAL THEORY

ROBERT NICHOLS

THEFT IS PROPERTY!

RADICAL AMÉRICAS

A SERIES EDITED BY BRUNO BOSTEELS
AND GEORGE CICCARIELLO-MAHER

THEFT IS PROPERTY!

DISPOSSESSION & CRITICAL THEORY

Robert Nichols

DUKE UNIVERSITY PRESS *Durham & London* 2020

© 2020 Duke University Press
This work is licensed under the Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License. To view a copy of this license, visit http://creativecommons.org/licenses/by-nc-nd/4.0/.
Printed in the United States of America on acid-free paper ∞
Designed by Matthew Tauch
Typeset in Garamond Premier Pro by Westchester Publishing Services

Library of Congress Cataloging-in-Publication Data
Names: Nichols, Robert, [date] author.
Title: Theft is property! : dispossession and critical theory / Robert Nichols.
Other titles: Radical Américas.
Description: Durham : Duke University Press 2020. | Series: Radical Americas | Includes bibliographical references and index.
Identifiers: LCCN 2019013470 (print)
LCCN 2019981358 (ebook)
ISBN 9781478006732 (paperback)
ISBN 9781478006084 (hardcover)
ISBN 9781478007500 (ebook)
Subjects: LCSH: Indians of North America—Land tenure. | Indians of North America—Claims. | Indians of North America—Legal status, laws, etc. | Indigenous peoples—Land tenure—North America.
Classification: : LCC E98.L3 N534 2020 (print) | : LCC E98.L3 (ebook) | DDC 970.004/97—dc23
LC record available at https://lccn.loc.gov/2019013470
LC ebook record available at https://lccn.loc.gov/2019981358

Cover art: Donald F. Montileaux, *Con.Fron.Ta.Tion*, 2013. Courtesy of the artist.

This book is freely available in an open access edition thanks to TOME (Toward an Open Monograph Ecosystem)—a collaboration of the Association of American Universities, the Association of University Presses, and the Association of Research Libraries—and the generous support of the University of Minnesota. Learn more at the TOME website, which can be found at the following web address: openmonographs.org.

This work is dedicated to my mother.

This page intentionally left blank

CONTENTS

ACKNOWLEDGMENTS ix

Introduction 1

One · That Sole and Despotic Dominion 16

Two · Marx, after the Feast 52

Three · Indigenous Structural Critique 85

Four · Dilemmas of Self-Ownership, Rituals of Antiwill 116

Conclusion 144

NOTES 161

BIBLIOGRAPHY 203

INDEX 225

This page intentionally left blank

ACKNOWLEDGMENTS

This book was written in two very different locales; it bears the marks of both. It was initially conceived while I was serving as an Alexander von Humboldt Fellow in the Department of Philosophy at the Humboldt Universität zu Berlin (HU). I am especially grateful to Rahel Jaeggi for her generous support, to Martin Saar and Eva von Redecker for their friendship and intellectual acumen, and to the entire colloquium on practical philosophy at HU for the community they provided during my years in Berlin.

In the fall of 2015, I joined the Department of Political Science at the University of Minnesota, Twin Cities. Since then, I have been enormously fortunate to work in a very supportive department. I owe particularly large debts to my two extraordinary political theory colleagues: Nancy Luxon and Joan Tronto. I also feel very lucky to work at an institution that takes Indigenous politics and scholarship so seriously. In 2017–18, I participated in a yearlong Sawyer Research Seminar on "The Politics of Land," which gave me an opportunity to work with a truly interdisciplinary group of faculty members and graduate students, all of whom pushed the conversation in demanding and important ways. I continue to reflect on many of the questions raised that year and am grateful to you all for that experience.

I have presented aspects of this work at Columbia University; Humboldt Universität zu Berlin; Goldsmiths, University of London; Koç University–Istanbul; McGill University; Pennsylvania State University; Yale University; Universität Leipzig; University of Alberta; University of British

Columbia; University of California, Santa Cruz; University of Cambridge; Universität Mainz; University of Minnesota; at the SAVVY Contemporary Art Gallery in Berlin and Performing Arts Forum in St. Erme, France; and at the American Philosophical Association, the American Political Science Association, the Association for Political Theory, the Native American and Indigenous Studies Association, and the Western Political Science Association. In the spring of 2018, Michele Spanò and Alice Ingold were kind enough to invite me to serve as visiting faculty at the École des Hautes Études in Paris. This came at the perfect time, as I was in the final stages of preparing my argument. Thank you as well to all of the graduate students who participated in the seminars. Financial support for this project has been provided by the McKnight Land-Grant Professorship at the University of Minnesota.

The ideas presented in this book are the result of extensive conversations with dozens of people, each of whom has made significant, positive contributions to its content. Thanks in particular to Phanuel Antwi, Banu Bargu, Joanne Barker, Brenna Bhandar, Glen Coulthard, Jaskiran Dhillon, Nick Estes, Denise Ferreira da Silva, Mishuana Goeman, Alyosha Goldstein, Juliana Hu Pegues, Ulas Ince, John Monroe, Jeani O'Brien, K-Sue Park, Shiri Pasternak, William Clare Roberts, Audra Simpson, Jakeet Singh, Chloë Taylor, and James Tully. I would also like to acknowledge the labor of the Duke University Press staff, including the editors, proofreaders, and design team. Special thanks to Courtney Berger for her early faith in this project and to the anonymous reviewers for their insightful comments and corrections. Just as I was putting the finishing touches on this manuscript, I received a copy of Brenna Bhandar's *Colonial Lives of Property* (Durham, NC: Duke University Press, 2018). I did not have the opportunity to incorporate the insights of her book into my own but wish to flag the importance of her work in thinking through similar concerns as those that animate this book.

The person who has most sustained and supported me through this long process is Travis McEwen. Thank you so much, again and again.

INTRODUCTION

◇◇◇◇◇◇◇◇◇◇◇◇◇◇◇◇

> The land is ours, by every natural right and every principle of international law recognized in relations among European powers. The land that is ours by every natural right was coveted by European powers. Seizure of our land for the use of their own people could not be justified by the law of nations or the principles of international law that regulate relations among European powers. So it became necessary to concoct a theory that would justify the theft of land.
> —GEORGE MANUEL (Shuswap), 1974

> Brother! We are determined not to sell our lands, but to continue on them. . . . The white people buy and sell false rights to our lands. . . . They have no right to buy and sell false rights to our lands.
> —SAGOYEWATHA (Seneca), 1811

No Justice on Stolen Land. This slogan is emblazoned on pins, posters, and banners at protest events and organizing meetings held by Indigenous peoples and their allies around the globe. It reflects the high stakes and normative force of these struggles, and marks in dramatic fashion the acceleration and intensification of conflicts over land use in recent decades. In the course of writing this book, an especially important instance of this mobilization was taking place: thousands of Indigenous peoples from North

America and beyond gathered at the Sacred Stone Camp in joint opposition to the Dakota Access Pipeline. An estimated $3.8 billion project, the pipeline is scheduled to transport between 470,000 and 570,000 barrels of crude oil per day over 1,200 miles, traversing the Missouri River immediately upstream of the Standing Rock Sioux reservation.[1] On October 23, 2016, Indigenous activists declared they were enacting *eminent domain* on the contested lands, claiming rights from the 1851 Treaty of Fort Laramie.[2] As Joye Braun, organizer with the Indigenous Environmental Network, stated, "If [Dakota Access Pipeline] can go through and claim eminent domain on landowners and Native peoples on their own land, then we as sovereign nations can declare eminent domain on our own aboriginal homeland."[3]

To truly understand the struggle at Standing Rock, we need to situate it in a longer history. For, although rare, this is not the only such major gathering. In 1851 ten to fifteen thousand Great Plains Indigenous peoples met nearby with representatives of the United States. Among other agreements, this historic gathering produced the Treaty of Traverse des Sioux and the first Fort Laramie Treaty, securing lands for the Dakota peoples in what was then the Minnesota Territory, as well as safe passage through "Indian country" for settlers on their way to California. By 1862, however, the United States was already beginning to abrogate its responsibilities. The Homestead Act of that year effectively opened up some 270 million acres of land west of the Mississippi for settlement by providing incentives for squatter-settlers. Subsequent encroachment on Dakota land quickly led to the 1862–64 Great Sioux Uprising. In this conflict, thousands of Dakota civilians were held in an internment camp at Fort Snelling (near where I write, in present-day Minneapolis-St. Paul), where hundreds perished of cold and starvation. Thirty-eight Dakota men were sentenced to death in the single largest penal execution in U.S. history.[4]

In 1868 a second Fort Laramie Treaty set aside large sections of Montana, Wyoming, and South Dakota for the Sioux Nation, including the sacred Black Hills (one of the last official treaties made before the 1871 Indian Appropriations Act declared a formal end to the process). After gold was discovered, however, thousands of settlers streamed into the area in direct violation of the treaty, sparking a second Great Sioux War (1876–77), during which Colonel Custer and the 7th Cavalry were famously defeated at the Battle of Greasy Grass (Little Bighorn). In response to this defeat, the U.S. Army undertook the mass killing of buffalo as a means of undermining the subsistence economy of the Plains nations. The conflict ended

with the Black Hills Acts of 1877 (known colloquially as the "Sell or Starve Act"), which demanded the Sioux relinquish control of the Black Hills in exchange for government rations to mitigate starvation.[5]

In 1887 the Dawes Act once more opened up tribal and reservation lands for sale by the federal government to settlers and, two years later, the United States again violated the Fort Laramie Treaty when it unilaterally broke up the Great Sioux Reservation into five smaller units and imposed private property ownership as a means of rendering the land more alienable. In response, the Oceti Sakowin took up the Ghost Dance, a religious movement aimed at reviving the spiritual foundations of their society. The U.S. Bureau of Indian Affairs called in the army to suppress the movement, leading to the 1890 assassination of famed leaders Crazy Horse and Sitting Bull, followed by the Wounded Knee massacre, at which the 7th Cavalry killed hundreds of Dakota civilians, mostly women and children.[6]

In 1924 American Indians were unilaterally declared citizens of the United States, ushering in a long period of "termination."[7] From 1945 to 1960, more than one hundred tribes and bands were officially dissolved and incorporated into the United States without their consent. During this same time, the Army Corps of Engineers built a dam on Lake Oahe, blocking the Missouri River on Cheyenne and Standing Rock Sioux reservation lands and submerging more Native land than any other water project in U.S. history.

In the 1960s and 1970s, a new wave of Indigenous activism emerged, led by the American Indian Movement (AIM), which was involved in the 1969 occupation of Alcatraz and the 1973 standoff of the Pine Ridge Sioux Reservation. Purposefully chosen as the symbolically charged site of the Wounded Knee massacre nearly one hundred years earlier, the conflict lasted seventy-one days until forcibly broken up by U.S. marshals, FBI agents, and other law enforcement officers.[8]

In 1980 the U.S. government admitted to having illegally seized the Black Hills and offered $120 million in compensation. The Lakota rejected the monetary offer and to this day insist on the return of their land.[9] In 1999 Bill Clinton became the first sitting U.S. president since Calvin Coolidge to meet with the Oceti Sakowin when he made a stop at the Pine Ridge Reservation. President Barack Obama followed suit in 2014 with a visit to Standing Rock. One year later, the U.S. Army Corps of Engineers began work on the Dakota Access Pipeline. A collection of Indigenous peoples, including the Lakota, Dakota, Osage, and Iowa nations, voiced their concerns with

the project at that time, saying, "We have not been consulted in an appropriate manner about the presence of traditional cultural properties, sites, or landscapes vital to our identity and spiritual well-being." In August 2016, the Standing Rock Sioux filed an injunction against further work. The parent company of Dakota Access LLC, Energy Transfer Partners, sued the Standing Rock Sioux chairman and other leaders for blocking construction, leading to the standoff. One of the first acts of the new Donald Trump administration was to give a green light to the project, setting the stage for renewed battles.

Standing Rock is only the most recent in a long series of conflicts. In countries such as Canada, Australia, New Zealand, and the United States (CANZUS), Indigenous peoples are currently involved in a wide range of protracted legal and political battles with their respective settler governments. Very often, these focus on the matter of use of and access to land, including control over natural resources development, extractive industries, and ecological protection. In what follows, I explore these struggles as part of a longer and larger set of historical processes that, following the usage favored by Indigenous activists and scholars themselves, I term *dispossession*. My aim is to explore the myriad conceptual and political challenges posed by these issues, historically and in the present. In so doing, I aim to reconstruct dispossession as a category of critical theory, one that may serve to mediate between critiques of capitalism and colonialism, with a particular focus on the late modern and contemporary Anglo settler world.

WHAT IS DISPOSSESSION?

Over the course of the last few decades, the concept of *dispossession* has been increasingly pressed into service by a wide range of contemporary critical theorists, including Étienne Balibar, Daniel Bensaïd, Judith Butler and Athena Athanasiou, Nancy Fraser, David Harvey, and Edward Said.[10] Most interestingly, they are joined by a new generation of Indigenous and Native American scholars for whom the term has had most purchase, for whom it does most theoretical work.[11] Found in the indexes of publications by such leading scholars as Joanne Barker, Jodi Byrd, Glen Sean Coulthard, Mishuana Goeman, J. Kēhaulani Kauanui, Audra Simpson, and Leanne Simpson—just as it is used in activist and social organizing contexts—*dispossession* is now indelibly written across an intellectual discourse and a political movement.[12]

At the most general and abstract level, in the intellectual and political field with which we are most concerned here, dispossession is typically used to denote the fact that in large sections of the globe, Indigenous peoples have not only been subjugated and oppressed by imperial elites; they have also been divested of their lands, that is, the territorial foundations of their societies, which have in turn become the territorial foundations for the creation of new, European-style, settler colonial societies. So dispossession is thought of as a broad macrohistorical process related to the specific territorial acquisition logic of settler colonization. As a result, within these parts of the world, Indigenous scholars such as Glen Coulthard (Yellowknives Dene) and Audra Simpson (Kahnawà: ke Mohawk) frequently define their peoples' experience of colonialism as simply a "form of structured dispossession."[13]

As dispossession has taken a more central role in debates over colonization, property relations, racial capital, and slavery and its afterlives, a number of tensions and outright conflicts have emerged between differently positioned communities and modes of analysis.[14] While such conflicts may reflect genuinely contradictory interests, they also emerge from misapprehension since shared terms of critique frequently mask distinct and divergent histories, intellectual contexts, and traditions of interpretation, all of which feed polysemic conceptual intension. As with most useful terms of political articulation, the concept of dispossession can be mobilized in a variety of manners, for diverse and competing purposes. Its appeal and utility resides precisely with its protean quality. Moreover, in its most common usages, the term dispossession is clearly not intended as a neutral description of a historical process but rather is used simultaneously to describe and critique. In this dual operation, the term takes on diverse normative valences. Following from this, however, certain conceptual difficulties arise.

In any study that employs a single word or concept as its fulcrum, there is a danger of conceptual reification. It is easy to be lulled into believing that because a term is used across a range of contexts, there must be some single, unified meaning undergirding them all. As thinkers from Wittgenstein to Foucault have cautioned, this is more often than not an illusion. A purely nominalist approach would avoid this by amassing a catalog of every use of the term, considering any particular application of a term as valid as the next. By contrast, one could also attempt to construct an ideal normative theory of the concept, which would state the necessary and sufficient conditions for the application of such a general term.[15] The study undertaken here takes a different tack. Although I use the concept of dispossession as a gravitational

center, this is really an analysis of a "space of problematization" (in Foucault's language) rather than a singular concept. The problem-space in question brings together shifting configurations of property, law, race, and rights and has been previously examined in a variety of languages (including expropriation and eminent domain) and in diverse normative registers.

One concern stands out most prominently. To speak of dispossession is to use a negative term. It is "negative" both in the ordinary language sense (i.e., pejorative) but also in the more philosophical sense, in that it signals the absence of some attribute. Most intuitively, a condition of dispossession is characterized by a privation of possession. In this obvious, ordinary, and commonly used sense of the term, dispossession means something like a normatively objectionable loss of possession, essentially a species of *theft*. Inasmuch as this is implied by the concept, however, a new set of conceptual and practical complications arise. For such a formulation appears, first, generally parasitic upon a background system of law that could establish the normative context in which a violation (e.g., theft) could be recognized, condemned, and punished. Second and more specifically, the term seems necessarily appended to a proprietary and commoditized model of social relations. Insofar as critical theorists generally seek to leverage the category of dispossession as a tool of radical, emancipatory politics in the critique of extant legal authority and proprietary relations, recourse to this language thus seems potentially contradictory and self-defeating.

In the Anglo settler colonial countries of Canada, Australia, New Zealand, and the United States, this concern has taken on a very specific form. In this context, Indigenous peoples have often been accused of putting forward a contradictory set of claims, namely, that they are the original and natural owners of the land that has been stolen from them, *and* that the earth is not something in which any one person or group of people can have exclusive proprietary rights. The supposed tension between these claims has been exploited to significant success by a number of critics, particularly right-wing populists in these societies, who view white settlers as the true owners of these lands, both collectively (through the extension of territorial sovereignty and public law) and individually (through the devices of private property).

The Indigenous social and political theorist Aileen Moreton-Robinson (Goenpul Tribe of the Quandamooka Nation) has recently provided a concrete instantiation of this logic and the stakes of its apprehension. As part of a more general investigation into the diverse manifestations of what she terms the "possessive logic of white patriarchal sovereignty," Moreton-

Robinson analyzes the so-called history wars in her native Australia.[16] Sparked by the publication of Keith Windschuttle's *The Fabrication of Aboriginal History*, this debate centered on his polemical claim that the colonization of Australia was fundamentally a nonviolent process that eventually benefited its Indigenous inhabitants. As Windshuttle put it, "Rather than genocide and frontier warfare, British colonization of Australia brought civilized society and the rule of law."[17] Of most relevance to our purposes here, however, Windshuttle has also asserted that at the point of contact with Europeans, Australian Aborigines lacked any conception of "property," or perhaps even of "land" as a discreet entity in which one could claim property.[18] Aileen Moreton-Robinson unpacks the logic of the argument: if Indigenous peoples "did not have a concept of ownership . . . there was no theft, no war, and no need to have a treaty."[19]

Although formulated in more sophisticated and sympathetic terms, a range of academic treatments has voiced similar concerns. Work by the legal and political philosopher Jeremy Waldron provides a case in point. In a series of essays covering more than a decade, Waldron questions the underlying coherence of the very idea of an "indigenous right." In particular, he has explicitly raised the objection that, inasmuch as Indigenous rights appear to rest upon claims to "first occupancy," they are often appeals to untenable and unverifiable chains of ownership back to "time-immemorial."[20] By eschewing precision in the defining of "indigeneity," Waldron moreover warns, proponents import an "ineffable, almost mystical element" to the term, the ascription of which leads to the "rhetorical heightening of the unexceptional fact of having been here first."[21] Although Waldron's argument derives from a specific contractualist tradition of liberal analytic thought, it finds an unlikely resonance with a set of more radical left critics. Nandita Sharma and Cynthia Wright, for instance, voice similar concerns with the "autochthonous discourses of 'Native' rights" in which Indigenous peoples are "subordinated and defined (by both the dominated and the dominating) *metaphysically* as being *of* the land colonized by various European empires."[22] Similar unease with the trajectory of Indigenous political critique has been voiced by important contributors to critical race theory.[23] In each of these cases, the concern is that Indigenous peoples' claims to "original ownership" are untenable, politically problematic for their implications on other, non-Indigenous communities, or both.

One could say much more about these contemporary disputes. Indeed, many Indigenous and non-Indigenous scholars alike are currently engaged in these heated debates. Initially, however, I wish simply to flag how such

concerns drive at a basic conceptual ambiguity at the heart of dispossession. Critics wish to catch Indigenous peoples and their allies on the horns of a dilemma: either one claims prior possession of the land in a recognizable propertied form—thus universalizing and backdating a general possessive logic as the appropriate normative benchmark—or one disavows possession as such, apparently undercutting the force of a subsequent claim of dispossession.[24] And indeed, in one sense at least, this critique does highlight a curious juxtaposition of claims that often animate Indigenous politics in the Anglophone world, namely, that the earth is not to be thought of as property at all, and that it has been stolen from its rightful owners.

This book responds to this challenge, first, by providing an alternative conceptual framework through which to view dispossession and, second, by substantiating this as relevant to the actual historical development of Anglo settler colonialism and Indigenous resistance. I argue that, in the specific context with which we are concerned, "dispossession" may be coherently reconstructed to refer to a process in which new proprietary relations are generated but under structural conditions that demand their simultaneous negation. In effect, the dispossessed come to "have" something they cannot use, except by alienating it to another.

This process has been notoriously difficult to apprehend because it is novel in a number of important ways. First, dispossession of this sort combines two processes typically thought distinct: it transforms nonproprietary relations into proprietary ones while, at the same time, systematically transferring control and title of this (newly formed) property. In this way, dispossession merges commodification (or, perhaps more accurately, "propertization") and theft into one moment. Second, because of the way dispossession generates property under conditions that require its divestment and alienation, those negatively impacted by this process—the dispossessed—are figured as "original owners" but only *retroactively*, that is, refracted backward through the process itself. The claims of the dispossessed may appear contradictory or question-begging, then, since they appear to both presuppose and resist the logic of "original possession." When framed correctly however, we can see that this is in fact a reflection of the peculiarity of the dispossessive process itself. In the extended argument of this book, I plot this movement as one of *transference*, *transformation*, and *retroactive attribution*. In the interests of giving this peculiar logic a name and as a means of differentiating it from other proximate processes, I theorize this specifically as *recursive dispossession*.

Recursion is a term that is used in a variety of fields of study—most notably, logic, mathematics, and computer science—each of which employs its own specific, technical definitions.[25] At a general level, however, these different technical and discipline-specific uses of the terms share the general sense of a self-referential and self-reinforcing logic. Recursion is not, therefore, simple tautology. Rather than a completely closed circuit, in which one part of a procedure refers directly back to its starting point, recursive procedures loop back upon themselves in a "boot-strapping" manner such that each iteration is not only different from the last but builds upon or augments its original postulate. Recursion therefore combines self-reference with positive feedback effects. (If it has a geometric form, it is the helix, not the circle.) In the context with which we are concerned here, dispossession can rightly be said to exhibit a "recursive" structure because it produces what it presupposes. For instance, in a standard formulation one would assume that "property" is logically, chronologically, and normatively prior to "theft." However, in this (colonial) context, theft is the mechanism and means by which property is generated: hence its recursivity. Recursive dispossession is effectively a form of property-generating theft.

The conclusion I draw from this is that dispossession can be reconstructed as a core term of critical theory by attending to the unique set of historical processes to which it is appended. My concern with doing so is both practical and theoretical. The project is motivated by a sense that the predicament of dispossession is a real problem for Indigenous peoples (and their allies), who seek to leverage a critique of these ongoing processes but often find they must do so in a manner that is constrained by the dominant vocabularies available to them. Thus, one practical objective is to diagnose the sources of this dilemma, while remaining cognizant of the ways in which Indigenous peoples have thwarted its constrictions (and continue to do so). On a second level, the book is also animated by an interest in a set of more abstract theoretical considerations. In this register, I develop a conceptually innovative rendering of dispossession, one that offers resources to critical theorists more generally in our shared project of understanding and critiquing colonialism, capitalism, and modern property relations in their global context.

Before delving into and unpacking the details of this argument, two qualifications are in order. They pertain to scope and method, respectively. I wish to emphasize that this is not a book about colonization in the whole.

Colonization typically entails a complex array of different processes not mentioned here, including labor exploitation, enslavement and racial domination, gendered and sexual violence, cultural defilement, and the usurpation of self-governing powers, to name only a few. It also entails cases of theft in the perfectly ordinary sense. This book makes no attempt to survey all these elements, let alone subject them to effective critique. Instead, I attend to one particular process that has been historically essential to the colonization process in the Anglo settler societies (which form the primary empirical locus of my concern) but which has yet to receive a systematic conceptual reconstruction. If I focus here on one subsystem within this broader complex, then, it is not because it is exhaustive but because it is distinctive. Moreover, while it is my hope and intuition that the concept of recursive dispossession may be of some use in the critical analysis of other processes beyond the Anglo settler world, I leave this possible extension to others.

Regarding method, this work is intended as a contribution to critical theory. What this entails is, however, itself a matter of endless debate. Those who identify with the designator typically recognize narrow and broad senses. The narrow definition (most often written with capitalization: Critical Theory) is identified with the Frankfurt School of German philosophy and social theory, and includes such figures as Max Horkheimer, Theodor Adorno, Herbert Marcuse, Jürgen Habermas, Alex Honneth, and so on. The classic definition associated with this school comes from Horkheimer, who wrote that a "theory is critical to the extent that it seeks human 'emancipation from slavery,' acts as a 'liberating . . . influence,' and works 'to create a world which satisfies the needs and powers' of human beings." Critical theorists "seek 'human emancipation' in circumstances of domination and oppression. This normative task cannot be accomplished apart from the interplay between philosophy and social science through interdisciplinary empirical social research."[26] As James Bohman points out, however, because Critical Theorists aspire to "explain and transform *all* the circumstances that enslave human beings," the methods and interpretive languages of Critical Theory have expanded and proliferated to take account of a much wider range of social pathologies (and their corresponding resistance movements) than classical Frankfurt School thinkers ever envisioned.[27] Thus, a broader definition has emerged, now pluralized and relatively detached from the specific methodological commitments of the Frankfurt School (and written without capitalization). The feminist philosopher and social theorist Iris Marion Young provides an apt characterization of this expanded view when she writes:

> Critical theory is a normative reflection that is historically and socially contextualized. Critical theory rejects as illusory the effort to construct a universal normative system insulated from a particular society. Normative reflection must begin from historically specific circumstances because there is nothing but what is, the given, the situated interest in justice, from which to start. . . . Unlike positivist social theory, however, which separates social facts from values, and claimed to be value-neutral, critical theory denies that social theory must accede to the given. Social description and explanation must be critical, that is, aim to evaluate the given in normative terms.

While it is considered quite damning for contemporary political philosophy to evince only empirical insight at the expense of normative confusion, Young points us to the inverse dangers as well: "Good normative theorizing cannot avoid social and political description and explanation. Without social theory, normative reflection is abstract, empty, and unable to guide criticism with a practical interest in emancipation."[28]

I will not say much more about this here as this is best worked out through the substantive debates contained within the book, except to say that this framework rejects the disciplinary division of labor that has emerged within political theory between normative and historical-descriptive analysis. As it currently stands, "normative theory" is generally taken to concern itself with the largely abstract and decontextualized inquiry into ideal standards of rightness, goodness, justice, and the like, as well as the meta-ethical investigation into the background moral language that makes such claims intelligible in the first place. By contrast, historical approaches largely eschew such normative evaluation in favor of descriptive inquiry for its own sake. This bifurcation has, however, produced some troubling tendencies when articulated through the study of empire, imperialism, and colonization. This project offers an alternative. Here, the normative and explanatory power of this argument is dependent on reframing the relation between concepts and historical processes. It presses into service concepts such as dispossession, which order and explain the historical material and offer normative resources for its critique. But these concepts are also themselves the *products or effects* of the very processes they seek to define, explain, and critique. Most obviously, what we mean by dispossession is necessarily related to conceptions of possession, property, theft, expropriation, and occupation, each of which is, at least in part, indebted to the history of colonization. There is, therefore, another level on which the theme of recursivity

operates, namely, in the relation between historical processes and the social theory meant to explain and critique them. The subtext then is that the following analysis of dispossession functions as a means to interrogate the relationship between *historical-description* and *conceptual-explication* with an eye to demonstrating the tensions between their respective methods and aims of inquiry, while nevertheless insisting on the necessity of both for critical theory.

One consequence of Young's expanded definition of critical theory is that we begin to see normative concepts as immanent to particular, historically and sociologically located struggle. To understand a concept requires then that we reconstruct the struggle of which it is a part. In what follows, I draw upon an eclectic mixture of thinkers—anarchists, feminists, Marxists, critical race, and Indigenous theorists alike. In doing so, one aim is to show how Indigenous thought can be put into conversation with other languages of critical theory, including genealogical and dialectical traditions. I do so not because Indigenous political thought requires external resources to correct or complement it (one major aim of this work is to demonstrate the novelty and coherence of this work). Rather, the work of conceptual translation is undertaken here because those working within a wide range of different forms of critical theory continue to impute to Indigenous peoples a mystifying exoticism that belies their intellectual contributions—essentially continuing to treat them as "peoples without history." By undertaking something of a conceptual translation of the terms of Indigenous critique, I hope to draw attention to the potential connections and imbrications of these distinct theoretical languages, aiding us in the composition of a new constellation of critical theory under the rubric of dispossession and counterdispossession.

More specifically, I contend that the range of semantic resonance and conceptual intension characteristic of "dispossession" is symptomatic of the distinct historical processes out of which it has emerged. Two are of particular importance here. As I unpack at length in chapter 1, the critical import of the concept of dispossession emerged, on the one hand, out of the upheaval and transformation of land tenure within Europe—the dismantling of feudalism and slow, uneven emergence of capitalist private property and commodity markets in "real estate." On the other hand, this process took place alongside and in relation to a second context: the territorial expansion of European societies into non-European lands and, in the specific case of Anglo settler expansion, the construction of new systems of liberal-capitalist land tenure in the absence of a dominant European feudal system.

This expansionist system of land appropriation and property generation serves as a second horizon of meaning through which theories of dispossession have been articulated. As such, the colonial world is not simply an interesting "case study" for a general theory of dispossession. Rather, alongside and in conjunction with the critique of European feudalism, it is the most significant context to frame the development of original debates over dispossession and expropriation. In short, the colonial world is not an *example* to which the concept applies but a *context* out of which it arose. Since virtually no work of critical theory has even attempted to reconstruct the historical context out of which contemporary Indigenous struggles have emerged, scholars of this ilk persistently mischaracterize and malign these struggles. If this is true, however, then a proper critical-theoretic approach to these questions will not proceed by applying the concepts and methods of critical theory (however broadly conceived) to Indigenous struggles against colonialism. Rather, it will take seriously those struggles as themselves always already voicing a mode of critique.

CHAPTER OVERVIEW

Chapter 1 offers two genealogies of the concept of dispossession as a tool of social critique and radical politics. It begins by examining its role in eighteenth- and nineteenth-century struggles against European feudal land tenure. Particular attention is paid to the shifting meanings of the concept (and related terms such as *eminent domain* or *expropriation*) in liberal, republican, anarchist, and Marxist iterations. The second half of the chapter turns to the use of the term in Indigenous struggles against colonization. Through a reconstruction of arguments by Indigenous scholars and activists, I seek to show the coherence and novelty of their formulation. The chapter concludes by substantiating this argument by providing specific historical examples in the form of nineteenth-century Anglo settler property law concerning squatters and homesteaders.

Chapter 2 builds out the underlying philosophical architecture of my understanding of recursive dispossession through a critical engagement with Karl Marx and Marxism. I turn here to a close reading of Marx's writings on primitive accumulation in *Capital: Volume 1*, and the subsequent renovation and use of the category by contemporary critical theorists. Examination of these debates enables us to interrogate the more general relation between historical-descriptive and conceptual-explicative forms of

analysis, as well as between categories of expropriation and exploitation, labor and land.

Chapter 3 investigates the history of Indigenous resistance to dispossession as an enacted and embodied mode of structural critique. The first section of the chapter mobilizes resources from various contributions to critical theory (broadly conceived) in order to interrogate the very idea of "structural critique," which leads me to an analysis of the Hegelian-Marxist language of *alienation* and *diremption*. The chapter evaluates the utility of this language for articulating the relation between structures and subjects in the context of dispossession. The second section offers a selective history of Indigenous critiques of dispossession in the nineteenth and early twentieth century. The focus here is on the normative claims of Indigenous peoples—claims that express an experience of injustice—but also how the very activities of claims-making give new shape and content to the subjectivities of the claimants, in this case, the political identity of "Indigenous." The chapter concludes with reflection on the *belatedness* of normative evaluation.

Chapter 4 turns to the Black radical tradition, where dispossession also functions as a key concept, albeit more often in relation to the body than to land. I begin with an argument that critical-theoretical treatment of dispossession in this sense has been plagued by a familiar unease, since it too appears to presuppose a commitment to possession, this time in the form of self-ownership or "property in the person." The chapter then rereads key thinkers in the history of Black political thought—from Frederick Douglass to Patricia Williams and Saidiya Hartman—as a means of reframing the debate. I contend that Black political thought offers crucial resources to a critique of dispossession by highlighting the source of the enduring ambivalences concerning the concept: a sliding historical backdrop that gives variable configurations of race, rights, legal personhood, and property their concrete content. The final two sections explore the intuition that notions of *antiwill* may serve as a possible link between Black and Indigenous intellectual traditions. In this way, incorporating Black political thought not only complements but also completes the broader analysis of this book.

In addition to summarizing and recapitulating the overarching theoretical argument, the conclusion also considers possible alternative modes of organizing the relation between land, law, property, and power. The chapter examines how Māori activists in Aotearoa/New Zealand are—as part of a global Indigenous movement—experimenting with new ways of ordering human relationships to the land by, for instance, according legal personhood