

*Fragile Settlements: Aboriginal Peoples,
Law, and Resistance in South-West Australia
and Prairie Canada*

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In the early twentieth century, Canada was viewed in national settler narratives as a place of ‘gentle occupation’; likewise, Australia was deemed the ‘quiet continent’, a country that had been ‘settled but not invaded’. Both were cast triumphantly as homogenous ‘whiteman’s lands’. Canada and Australia share deep genealogies and long legacies of settler colonialism and, thanks largely to persistent indigenous political activism, a present and urgent requirement to face historical injustices. Over the last two decades, both Canada and Australia have moved towards various programs for national reconciliation and redress and, more recently, national apologies to indigenous peoples.

In *Fragile Settlements*, it is not only the violence of indigenous dispossession that is revealed and its legacies today that are addressed, but, taking a critical historical-legal analysis, the book looks deeply at the ways that the law was used to assert a much-desired ‘perfect settler sovereignty’ (to use the terms of historian Lisa Ford). As the authors show, this desired complete settler sovereignty was (and is) in reality always precarious, and yet underpins such myths of ‘gentle occupation’ and ‘quiet settlement’, as well as whiteness.

Fragile Settlements is a comparative study of South Australia and Western Australia with the Canadian prairies in the nineteenth century, examining the processes through which British colonial authority was asserted over Indigenous peoples. Looking at the years 1830–1914, the period of the so-called ‘settler revolution’, marked by rapid and expanded colonisation and the concurrent rise of humanitarian governance in

the first half of the century, the book seeks to highlight the parallels and divergences between these connected British frontiers by examining how colonial actors and institutions interpreted and applied the principle of law in their interactions with Indigenous peoples 'on the ground'. The very title, *Fragile Settlements*, gestures well to the precarious nature and risk of this endeavour. 'Settlements' is suggestive both of European newcomers, in particular the British, seeking to make a home, and also of the extensive negotiations, deals, treaties and associated British legal and juridical procedures that were enacted by the state, the law courts, the church and through missionaries and the police and the native mounted police in bringing – or coercing – indigenous peoples under their jurisdiction. Likewise, and crucially, the volume charts the legal practices of indigenous peoples, who did not concede but sought agreement on their own cultural and political terms.

With a sweeping introduction looking at 'British Law and Colonial Legal Regimes' and extended chapters on policing and the courts, the authors find that legal pluralisms were 'more alive in the nineteenth century than previously thought' (p. 60). They demonstrate in the chapters that aspirations for a perfect sovereignty would never be wholly fulfilled. Rather, echoing scholar Lauren Benton, they find that these colonial frontiers were 'anomalous legal zones'. One of the major observations of this multi-authored book then is the way that these legal pluralisms – where indigenous law and practices did for a period coexist with British colonial law – ultimately shifted to a legal uniformity as settlement proceeded, albeit by different pathways.

Such comparative regional histories and transcolonial studies demand extremely hard work, and require reading across complex and divergent historiographies and multiple and often different archives and source materials. For some decades, 'comparative studies' fell out of favour as a turn to the 'transnational' seemed to take its place. Yet, this volume represents a new style of successful and fresh comparative history, which not only sheds light on each site and overturns 'pseudo-local causes' – as all good comparative history should do – but, taking the lead of the transnational turn and new imperial studies, it also looks beyond and across these sites to interconnections and flows of empire. Here, the comparative study is embedded in an important set of transnational and analytical ideas that are currently being worked through in the fields of critical colonial legal studies, settler colonialism and the British world. These concern questions of liberal empire, the law and its encounter with diverse indigenous societies in many locales. Not only do these new transnational approaches radically transform Australian and Canadian history, but national histories are currently being radically rewritten into the histories of other countries and regions, thus palpably reshaping our understandings of the past. In this case, as the authors rightly argue, for these two sites it is 'their divergences, as well as their similarities, make them ideal comparative settings for unravelling broader transcolonial historical processes associated with the subjugation of indigenous peoples through law, and their resistance to it' (p. 6).

Treaty making or its absence figures highly here and, as the chapters show, the trajectories of these colonial sites have unfolded in varying ways; yet, for indigenous peoples, they ultimately faced the same fate of control, transformation and dispossession. As Nettelbeck shows in Chapter 3 in 'Policing Aboriginal people on the frontier', in both places policing was a key aspect of state building, but asserting jurisdiction played out in different ways. The North West Mounted Police were participants in negotiating treaties with aboriginal peoples on the Canadian Plains, leading to reserves and practices of aboriginal containment, whereas in South Australia and Western Australia, without treaties and no real reserves as such, Aboriginal people were dispersed from their lands in service to a rapacious pastoralism. Policing in Australia was then markedly different from the Canadian prairie, they argue, with policing in Australia more punitive and based on notions of 'hard policing' and 'giving them a lesson' (p. 76). The chapter on native policing shows too how at both sites indigenous men had some agency and occupied a fluid space as insider/outside. In Canada, treaties, even if dishonoured, meant at the very least that aboriginal people had an agreement around which to argue their rights and to make powerful claims on the state, a legacy today that cannot be ignored.

One of the key themes addressed in this book, and a matter of current scholarly interest, is the way that liberal humanitarian tenets were applied in these two sites in the dispossession and subjugation of indigenous peoples. Yet, this was short lived, and too often gave way to more harsh policies and far less equal treatment for indigenous peoples. In terms of arrest, and in the courts, we find that Aboriginal people were drawn into the legal system as witnesses and offenders; despite this, throughout the nineteenth century, Aboriginal peoples in South Australia and Western Australia 'remained in some ways outside the legal system' (p. 223). Unsurprisingly, the law rarely fell in their favour. As the authors of this rich and fine-grained book conclude, in this period settler sovereignty was never perfect due to myriad legal pluralisms that were far more prevalent than we appreciate. This was due in no small part to indigenous resistance in both sites as 'Aboriginal peoples displayed a continuous ability to understand, accommodate, resist, and adjust to consequences of the strategies of elimination imposed on them through and beyond settler legal systems' (p. 223).

This volume, an ambitious collaboration of four authors, is a challenging and important work of legal history, revealing the continuity of the settler project at two sites on either side of the Pacific Ocean, and the entwined legacies of law and dispossession that continue to challenge indigenous peoples today.

Reference

Ford, Lisa 2010, *Settler Sovereignty: Jurisdiction and Indigenous People in America and Australia, 1788–1836*, Harvard University Press, Cambridge.