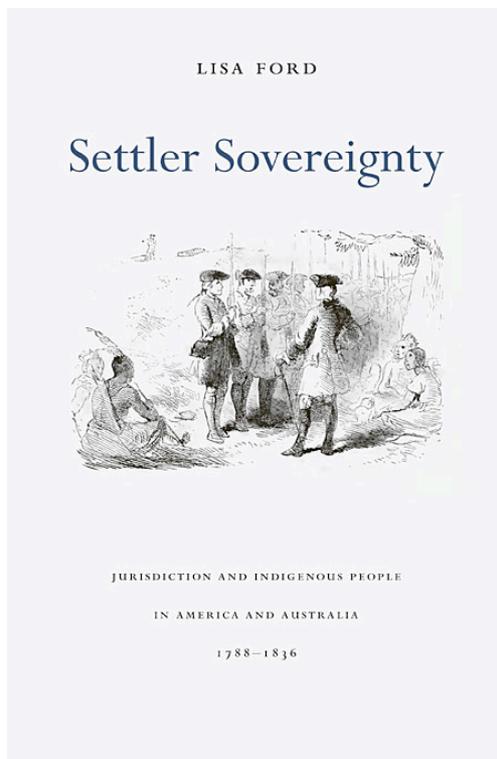


Settler Sovereignty: Jurisdiction and Indigenous people in America and Australia, 1788-1836 by Lisa Ford. Cambridge, Massachusetts and London: Harvard University Press, 2010, pp. 313, US \$52.50 Paperback, ISBN: 9780674035652.



In 1826, after a series of attacks by the Wonnarua people on the northern frontier of the colony, a mounted policeman Lieutenant Nathaniel Lowe arrested and executed an Aboriginal man called Jackey Jackey. Jackey Jackey was handed to Lowe by a local constable, then bound and shot in plain sight of a number of British subjects from the neighbourhood. Other rumours also abounded: that Lieutenant Lowe or his men had shot at least three other Aboriginal men [...]. Lowe's counsel argued [...] that Aborigines as cultural outsiders without civil rights could not be subjected to jurisdiction. If Jackey Jackey could not be justly punished by British law for killing settlers, then natural law rather than British law governed his crimes. Natural law sanctioned the killing of a murderer. So Lieutenant Lowe acted lawfully when he shot Jackey Jackey. (120, 126)

In 2011, after a series of attacks on the United States and its outposts, the mastermind behind these attacks, Osama bin Laden, was located in Abbottabad, Pakistan and killed by U.S. special forces. Following bin Laden's death, President Barack Obama announced that 'justice has been served.' While I in no way intend to analogize bin Laden and Jackey Jackey here (the former the rightfully reviled leader of a terrorist organization responsible for the deaths of thousands of people worldwide, the latter driven to violent resistance on the theft and pillage of his homeland), nor make the claim that the two cases are unproblematically parallel, these two moments of extralegal execution occurring at two equally transformative moments in the history of the modern nation state serve to illustrate Lisa Ford's opening contention that the 'legal trinity of nation statehood – sovereignty, jurisdiction, and territory – has a recent history that is yet to be told,' and a history that is still ongoing. Nationhood, she argues, has 'a history suspended between empire and statehood, between local and global'. (1)

At the heart of Ford's book – a work of legal history comparing Georgia and New South Wales in the 1820s and 30s – lie global and enduring questions: by what legal right one nation can compromise or dissolve the sovereignty of another? What is the history of this process and what are its implications in a post- and neo-colonial world? *Settler Sovereignty* addresses these questions by tracking the development of what Ford calls 'perfect settler sovereignty' in Georgia and New South Wales. Via a highly readable account that combines analysis of legal treatises alongside a related archive of newspapers, letters, and government records, Ford details how a 'logic of territoriality' came to displace a hitherto pluralist discourse of sovereignty based on subject-hood in both territories. That is, by reconstructing everyday practices, Ford is able to show the ways in which criminal jurisdiction claimed across ever-increasing geographical areas supplanted earlier, multiplicitous forms of frontier justice based on natural and/ or tribal law. As late as 1830 in Georgia and 1836 in New South Wales, violence enacted between settlers and indigenous peoples was not uniformly understood as criminal action. Rather, violence frequently constituted either an act of war, or

more surprisingly, the dispensing of justice. ‘Violence drew meaning from a shared [and mutually understood] blend of legal regimes encompassing natural law retaliation, common law culture, and customary indigenous law’ (3).

The first half of the book examines the ‘intimate pluralism’ in which settlers and indigenous peoples shared space from the time of first settlement through to the 1830s, but were in fact subject to their own laws. (78) The case of *R. v. Lowe* described in the epigraph above is a key Australian example from this period. Lieutenant Lowe stood trial for the murder of Jackey Jackey, yet was acquitted on the grounds that Aboriginal people were not British subjects and therefore neither bound, nor protected, by the long arm of the law. This case (and the Georgian rape case with which it is paired) illustrates the ways in which the colonial metropole attempted to control the unruly frontier, only to have its efforts blocked by settler communities on the periphery for whom both ‘unfettered geographical expansion’ and the maintenance of ‘amicable economies of exchange’ with indigenous peoples were of paramount importance. (127)

But if the *Lowe* case was evidence that legal pluralism was alive and well in New South Wales, it was also evidence that the juridical tide had begun to turn. The second half of *Settler Sovereignty* traces the establishment of territorial sovereignty in Georgia, which ultimately facilitated the infamous Removal policies of the 1830s. Over the course of this decade, the State of Georgia perfected ‘full legislative and juridical control over its territory’ (183), holding its own against attempts by the U.S. Supreme Court to nullify state jurisdiction over Cherokee peoples. By 1838, when Cherokee Indians were rounded up at gunpoint and marched westwards, Georgia had become the first state to perfect settler sovereignty ‘by dissolving indigenous polities and forcing indigenous peoples from its [very] borders’. (196)

In the Australian context, Ford demonstrates how the establishment of the New South Wales Supreme Court in 1823 was implicated in the (no less brutal for being less obvious) displacement of Australian Aborigines. (203) Combined with escalating indigenous resistance on the frontier and ongoing urban violence, the establishment of the Supreme Court ensured that momentum towards the incorporation of all settlers and Aborigines under British jurisdiction reached a tipping point by 1835. In that year, John Batman’s attempts to broker a treaty with the Kulin people of Port Phillip forced Governor Bourke to formalize the precedence of the Crown in any questions of land ownership. Concurrently, no fewer than twenty-one Aborigines were tried for violent crime. (158) Culminating in *R. v. Murrell* in 1836, these trials paved the way for the establishment of a new settler sovereignty defined by territorial jurisdiction and the subordination of indigenous law to that of Britain.

Ford’s examination of her legal sources is thorough and convincing. However, the voices and testimonies of the indigenous participants in the legal and extra-legal procedures described are markedly absent. She takes care to note that settlers and convicts in early Australia monopolised the processes of giving evidence and that any testimony offered by Aboriginal peoples was often inadmissible (105-7), but her own failure to explore a range of sources outside of the legal archive means that *Settler Sovereignty* potentially reproduces certain silences in the historical record. While Bain Attwood and Andrew Markus’s *The Struggle for Aboriginal Rights: A Documentary History* places the first written acts of resistance to settler sovereignty in 1837, outside of Ford’s time period, an examination of debates around removal staged in the *Cherokee Phoenix*, the newspaper edited by Cherokee Elias Boudinot 1828-1832, might have redressed this silence in the Georgian context.

Although the absence of indigenous voices is discomfiting, Ford is nevertheless justified in focussing on particular watershed cases that marked the transformation of these former penal colonies into modern nation-states ‘whose legitimacy was predicated on the subordination of indigenous rights’. (206) What her analysis shows is how jurisdiction became defined by territoriality, which in turn begat national sovereignty. What the death of

bin Laden at the hands of US forces on Pakistani soil shows is that this foundational logic of territoriality is now itself in the throes of a set of challenges. The continuing tensions of post- and neo-coloniality show nationhood to be located indeed in suspension between empire and statehood. What crises like the executions of Jackey Jackey and bin Laden reveal is that this suspension is the result of an ongoing dialectic, the operations of which Ford's important historical account lays bare.

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