Lisa Ford, *Settler Sovereignty: Jurisdiction and Indigenous People in America and Australia, 1788–1836*. Cambridge, Mass.: Harvard University Press, 2010. Pp. 324. $49.95 (ISBN 878-0-674-03565-2).
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Lisa Ford has written an important and readable history of the role of law in the transition from an imperial setting to an early national one in which the authority of the Anglo settler polity is consolidating and intensifying its juridical command over its territory and inhabitants. The settings are the state of Georgia and the British colony of New South Wales in Australia in the first half of the nineteenth century. The collocation of these two jurisdictions is both novel and surprising, yet, to the author's credit, it is also convincing. She is able deftly to demonstrate underlying similarity of themes and juridical conceptualization and practice as "two parts of a related history of Anglophone legal pluralism" (82). She readily acknowledges the differences between the jurisdictions in the early nineteenth century, but those become less pronounced – indeed they tend to be pushed to the background (sometimes, one senses, perhaps a little too much) – when set alongside the similarities.

There were differences in constitutional form. Georgia was a state feeling and muscling its way in the federal system of the young American republic whereas loyalist New South Wales had started as a penal colony, governed martially as such, but transitioning into Crown colony form. In both jurisdictions, the politics of law were at a raw and formative stage. There were also important anthropological differences between the Cherokee and Creek Nations of Georgia, the latter especially with a strongly creolized element and leadership; and the hunter–gatherer Aborigines of New South Wales. Ford's tale is legal and focused on Anglophone practice and the internal legal logic of that practice rather than the nature of the tribal customary law, which, appropriately and sensitively, she does not try to penetrate. It is enough that earlier in the historical story there is an Anglophone perception of the distinctiveness of tribal law-ways. However, in describing that distinctiveness by reference both to its similarities to white legalism (for example Creek and Cherokee) and its "illegibility" (in New South Wales) one can sometimes feel the author is having it both ways (83).

Making use of archival material, Ford is able to construct a history of commonality that synthesizes her own valuable and original archival research with emergent secondary literature in the field. In doing this, she takes that secondary literature a considerable distance further. She describes the transition from a pluralistic conception of jurisdiction in which indigenous systems cohabited – and, by her account, were perceived as rightfully entitled to do so – alongside the introduced legal system of the Anglo settler community. During the second quarter of the nineteenth century that accommodation diminished and disappeared, to be replaced by what Allan Greer has descriptively termed the "colonial leviathan," the insistence of the settler polity upon its own absolute and

overriding sovereignty. Ford demonstrates how changes in the pattern of both jurisdictions' assertion of criminal jurisdiction over tribespeople were key indicators of their perception of the spreading and deepening reach of their sovereign authority. An initially qualified and personalized conception of jurisdiction, one that was provisional and often tentative, and in some dialogue or at least mood of accommodation to tribal law-ways, hardened into an intolerant and more thoroughgoing form perfectly comfortable (as once it was not) with its own assertions of inherent exclusivity. The journey is described through Ford's accounts of particular incidents played out along a timescale from the ravishment (or was it rape?) of Mrs. Hilton in Georgia (1798) to the demise of Jackey Jack in New South Wales (1826). It also occurs along a spectrum of juridical engagement from the diplomatic forms of treaty and emissary to the stifling and peremptory assertion of summary jurisdiction over tribespeople.

Ford uses the term "jurisdiction" to mean autochthonous sites of legal authority. Because the indigenous and settler systems had that autochthonous quality, their jurisdictional status did not depend upon the benediction of the other. However, at the outset of the encounter, these jurisdictions' needs must co-exist beside one another. Initially both systems, indigenous and transplanted, practiced forms of mutual acknowledgement, sometimes in contest, or sidelined bewilderment (Aboriginal spear throwing on Pitt Street, Sydney), and other times in conversation if not cooperation (as, for example, extradition clauses in the treaties affecting Cherokee and Creek country). The early history of encounter entailed a tacit and spontaneous choreography around one another, based upon shared perceptions of retaliation and self-defense – jurisdictional apartness and self-consciousness.

Ford purposefully describes this as a predominantly legal story rather understating the impact of the huge socioeconomic and demographic changes that turned into steamrolling settler sovereignty. She could stress more emphatically that the earlier plurality and fluidity she describes was being ground down and away not simply because of changes in legal perception but also because of the devastating impact of (what Jamie Belich has recently and aptly termed throughout his book *Replenishing the Earth: The Settler Revolution and the Rise of the Angloworld* [Oxford: Oxford University Press, 2009]) the "explosive colonization" that licensed such a change. Explosive colonization, the sudden change from a trickle (usually welcome) of white settlement to unwelcome inundation, changed everything for the tribes. White settlers outnumbered, outgunned, and ravaged them with disease, leading to their collapse, crisis, depletion, and, in Georgia, forced removal. This simple but brutal phenomenon propelled the legal change that Ford describes. Greater emphasis upon this would slot her legal story into more of a context, highlighting the link between the physical crowding in of the tribes and the juridical transition at the center of her book.

Where this context is given, her narrative acquires extra power, giving a strong sense of the spatial, economic, and other factors enmeshed with the legal ones. One excellent example involves the role of roads through Indian Country in facilitating the demographic explosion of the Old Southwest. By skilful and vivid use of archival material, she shows how these roads presented important legal and spatial issues (many to this day never fully resolved). The "jurisdictional problem of the roads [was] very evident in their name, their legal classification, as well as their vital economic function" (68). They were key, incident-ridden sites of intercultural engagement that became more pressing and tension-ridden as yet more crisscrossed Indian Country (see Ford's helpful maps showing their dramatic increase from 1796 to 1823) (72–73).

At such moments, one needs to remember Ford's notion of jurisdiction as autochthonous practices that were abided and validated by a course of dealing, ranging across what she presents as a juridical spectrum ranging from "diplomacy" (which accepts indigenous jurisdiction) through courts' pronouncement of their own jurisdictional reach (which does not). Her characterization suggests a more self-consciously "legal" pattern of behavior than one senses the historical actors – white officialdom most especially – conceived. These figures were not necessarily thinking juridically so much as improvising on the realpolitik of the frontier. Ford's narrative suggests that the settler players were deliberatively reaching into a legal toolbox to shape their management of relations with the tribes and their own governmental hierarchies. In that sense, the legal story reads at times as somewhat rather over-egged.

For example, she describes the actions of Governor Macquarie in incarcerating twenty-two Aborigines in Sydney in 1816. Here, she argues, Macquarie displays conceptual slippage and confusion, responding with "a jumble of diplomacy and jurisdiction" and an "awesome exhibition of ambivalence" (52). Yet, if Macquarie was confused, his statements seem unaware, and certainly he was not strategizing consciously in terms of a rigid either/or dichotomy between Aborigines as foreigners outside colonial law or as subjects inside it. "Jumble" and "ambivalence" are not necessarily the same as "fluidity" (the viscosity of which was thickening and setting into settler sovereignty).

Those were violent times, and much of that fact – especially its use by settlers against tribal peoples – went undocumented. Ford reminds us periodically and pointedly of much of that which, by its very nature, is unknowable. The reader must heed those signposts lest the centrality of the book's legal path mask the grimmer, crueller facts through which it is wending. This history is not a glorification of the spread of the rule of law, rather it is uncomfortably the opposite. Recourse to law by "savvy settlers" entailed performative gesturing and strategizing that was as often matched, if not surpassed, by unrevealed recourses to violence. Recognition of the interplay between theatrical legalism and unknown brutality is threaded through Ford's book (for example the

killing of two Aboriginal boys by a local constable and farmers on the Hawkesbury River in 1799 (97–103). As the high-placed officials of the settler polity (governors, appellate judges) set about consolidating its jurisdictional reach, Ford notes the resistance rather than the complicity of settlers and local minor officials who "fought the logic of territoriality" (105). Settler sovereignty, we are reminded, was not itself an uncontested process within itself (echoing Professor J. G. A. Pocock's observation (in "Law, Sovereignty and History in a Divided Culture: The Case of New Zealand and the Treaty of Waitangi" [1998] 43 McGill L.J. 481) that a contestation of sovereignty is an exercise of it). The assertion of criminal jurisdiction over tribespeople therefore becomes a window for the constitutional politics, history, and destiny of the national polity. Not only is this an internalized transposition and continuation of the center/periphery dynamics of the imperial era, it is also a portent of the centralizing vs. regionalizing dynamics that are to be a hallmark of both nations' ensuing constitutional history. Importantly, this is not only a history of the making of constitutional ascendance over the tribes. We see that the tensions that will drive the history of settler sovereignty in other spheres and eras (not least internally and doctrinally) were there at its very tentative outset.

Nonetheless in concentrating upon criminal jurisdiction, the narrative does not encompass other aspects of the early encounter in which tribal agency and autonomy might have remained or experienced more interactive, less strangulating histories, notably, in the vexed questions surrounding land. The book's conclusion compendiously straddles the period from the early nineteenth century to the present. In opening her epilogue, Ford indicates that her panning out to a wide span is calculatedly provocative . She states that the "watershed cases of the 1830s were not unimportant: they were central" (206). They "redefined settler sovereignty as a territorial measure of authority that left little or no space for indigenous rights to property, to sovereignty, or to jurisdiction" (206). Her characterization of the *Mabo No 2* (1992) case in terms of a blend of *imperium* and *dominium* underplays the subtleties of the legal foundation of native title, and, more crucially, the histories of settler sovereignty that lie beyond the 1830s. These dramatizing conclusions do not diminish so much as reaffirm her opening insistence that histories of sovereignty need careful contextualizing in the actualities of their exercise. Ford's provocative conclusion is, essentially, a challenge for contextual histories of settler sovereignties in other eras. This is an important book, full of valuable material, injecting constitutional theory into histories and localities where it has rarely been – but has needed to be - seen.

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