

## **A Legacy of Exploitation**

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Figure 1.1 Map of North America, 1779 (detail) | Source: Lionel Pincus and Princess Firyal Map Division, New York Public Library Digital Collections

# Introduction

## Exploitation and Autonomy

*You cannot dominate without seeking to possess the dominated.*

– AILEEN MORETON-ROBINSON<sup>1</sup>

THIS QUOTATION FROM Aileen Moreton-Robinson resonates in two events of varying magnitudes.

First, the Hudson's Bay Company (HBC) History Foundation released promotional videos in 2015. These slickly produced vignettes depict grimacing white men overpowering the forces of nature.<sup>2</sup> Each centres on one of two explorers who worked to expand the commercial fur trade networks of the company between the 1780s and the 1850s, men who had in common a steely endurance and a desire to conquer the terrain. Their perseverance made Canada, it is implied, punctuated by the voiceover declaring that “we are a country of adventurers.”<sup>3</sup>

Second, in an investigative report titled “After Tina Fontaine: Exploitation in a Prairie City,” Martha Troian writes that “her death shook the nation,”<sup>4</sup> referring to the killing in August 2014 of a fifteen-year-old Indigenous girl in Winnipeg, Manitoba. After the trial of the accused killer ended with an acquittal, Nahanni Fontaine, a provincial politician representing the jurisdiction that includes the Red River Colony site established in 1812 (in the area of what is now Winnipeg's North End), wondered “if this was a non-Indigenous girl murdered, and the accused was an Indigenous man, I ask and I pose the question: what would be the response?” She added that “it is an uncomfortable question and an uncomfortable experience that we as Canadians have to explore.”<sup>5</sup> A national public inquiry was announced in 2015 after Tina Fontaine's killing drew attention to a problem long ignored,<sup>6</sup> namely the habitual negligence at different levels of law enforcement when it came to investigating cases involving missing or murdered Indigenous women and girls. By 2018, however, Troian wanted to assess what had changed when it came to addressing sexual exploitation in Winnipeg, especially among those in the “racially coded ... ‘at-risk’” category.<sup>7</sup> One woman whom she interviewed was drawn into exploitation at twelve years of age. In reflecting on what led to this, Troian comments that “I can't help but look at the city differently. I am left wondering who is being exploited and for whose gain.”<sup>8</sup>

These two facets of the legacy of exploitation of Indigenous peoples define Canada as a settler colonial state. In what follows, I contest the claims of the HBC vignettes by exploring the “uncomfortable” roots of exploitation, offering a longer view of dispossession that rejects the parochialism lurking in studies of Canada’s settler colonial history.<sup>9</sup> By accounting for the processes of dispossession intrinsic to the colonial settlement at Red River, I target a bias that, to this day, celebrates the “adventurers” and ignores the exploitation.

As the first planned settlement initiated by the Hudson’s Bay Company, the Red River Colony is an apt case study for the purpose of analyzing exploitation, particularly at the crossroads of the transition to capitalism in the Canadian context. The letters and journals written between 1763 and 1821 by HBC men, especially those championing the settlement, provide evidence in this regard. Flushed with disdain, they often described nearby Indigenous populations – principally the Maškēkowak, Nēhiyawok, Saulteaux, Assiniboine, and Métis – as “troublesome.”<sup>10</sup> These records reveal how the enduring autonomy of Indigenous producers – exercised in various ways, including customs, consumption, and productivity – frustrated the officers’ appetite for control,<sup>11</sup> and they emphasize that, although exploitation was a conspicuous feature of the commercial fur trade leading up to and including the Red River Colony, the processes of dispossession that such exploitation entailed were complicated and contradictory.

However much the fortunes of the fur trade companies were tied to Indigenous peoples’ productivity, and by extension however much Indigenous peoples’ labour fuelled capitalist accumulation, theirs was a labour that perplexed capitalist minds: “The Indian quite lacked any sense of the need to work for the morrow or to grow in riches.”<sup>12</sup> Such depictions can suffer from a two-pronged, racist essentialism.<sup>13</sup> Either Indigenous peoples were inherently “ungovernable,” exhibiting a slavish submission to base impulses<sup>14</sup> in a manner irreconcilable with European values,<sup>15</sup> or they were economic actors in the embryonic stages of their education in capitalist relations and as such could be forgiven if not all of their decisions seemed to be rational.<sup>16</sup>

The former was a more widely held opinion in the decades up to and after settlement of the Red River Colony in 1812, a judgment that made it easier to overcome ethical obstacles to the exploitation of Indigenous peoples. Their perceived subhumanity incited campaigns to “civilize” them, even lending a thin veneer of benevolence to dispossession. The latter take is more recent, owing its popularity to the re-emergence of neoclassical economics. Although it recognizes the economic agency of Indigenous peoples – a basic consideration uncommon well into the 1960s and 1970s<sup>17</sup> – it still assigns to them a foundational immaturity using the rational actor “model” of *homo economicus* as the standard.<sup>18</sup> Both perspectives reappear under different guises throughout this book.

Each time advocates of both perspectives fail to grasp that reactions to the relative autonomy of Indigenous producers were a key driver of events within and surrounding the Red River Colony. Standard narratives have this misapprehension in common, relying instead on an amalgam of economic exigencies and aristocratic altruism to explain what propelled the transformations at the colony.<sup>19</sup> Because I foreground the relative autonomy of Indigenous producers in this critical re-evaluation, I can offer a historical study that challenges conventional accounts of this settlement.

I demonstrate how the relative autonomy of Indigenous producers in part drove historical transformations, and I explore the “transformative potential of Indigenous knowledge.”<sup>20</sup> This principle informs specific modifications that I undertake to devise a Marxist framework more appropriate for the study of settler colonialism,<sup>21</sup> the objective being an incisive commentary on the particulars of the transition to capitalism in the context and era in question.

### Modified Marxism

When it comes to historical studies of colonialism, Linda Tuhiwai Smith explains that “*coming to know the past* has been part of the critical pedagogy of decolonization. To hold alternative histories is to hold alternative knowledges. The pedagogical implication of this access to alternative knowledges is that they can form the basis of alternative ways of doing things.”<sup>22</sup> I take this to heart in how I approach the material.

The search for easily digestible narratives can lead to flawed framing; exemplary in this regard is the idea that human progress is linear and develops in stages. The opposite of this is a “necessarily unstable position,”<sup>23</sup> one that emphasizes the uneven and combined dimensions of change with an eye on the contradictory forces that propel transformation. Dialectical materialism lends itself well to the study of history as constant motion,<sup>24</sup> although Indigenous histories, knowledges, and practices oblige amendments to the framework.

The dynamic quality of dialectical methodology stems from thinking oppositionally and fluidly. To explain this, Friedrich Engels writes about rest as both the opposite of motion and an expression of motion in a relative state: since rest contains the possibility of motion, they are conditional on each other and can only be understood relationally rather than as absolutes. Dialectically speaking, rest contains the possibility of its anthesis, and the same is true for motion.<sup>25</sup> That there is no such thing as “absolute rest” is more than an illustrative device that he uses to explain dialectical thought; it is also the substantive starting point for how Engels understands materialism and, by extension, history. He famously states that “matter without motion is just as inconceivable as motion without matter,”<sup>26</sup> implying that change is incessant and a condition of matter.

To study “historical science,” therefore, is to examine material that is “constantly changing.”<sup>27</sup> The aim of such an analysis is not to begin with a concept and then contort historical material to conform to that concept; it is to begin with “objective reality which is given us in sensation,”<sup>28</sup> and to grow knowledge through dialectical analysis, moving between the abstract and the concrete.<sup>29</sup>

When applied, dialectical materialism allows change and continuity to bear shared explanatory weight by emphasizing the metamorphic relation between ideas and practices.<sup>30</sup> Idealism takes the mind as its source of knowledge, whereas materialism takes the material world as its source of knowledge;<sup>31</sup> dialectical materialism takes the material world that is always changing as its source, meaning that the knowledge that corresponds to the source is always partial and qualified.<sup>32</sup> To comprehend the interrelation among the material world, our knowledge of it, and our knowledge of our place within it is to grasp the history of social change, and this is the “highest task of humanity,” to which dialectical materialist analysis aspires.<sup>33</sup> Attentiveness to change, as a methodology, involves identifying instances of unification, fragmentation, and rupture,<sup>34</sup> as well as patterns or continuities across different times and spaces.<sup>35</sup> No “rigid” formulas exist that dictate the scope, pace, or nature of social transformation – nothing can replace dialectical materialist-informed, historically specific analysis in the quest to understand the social.<sup>36</sup>

This approach is fitting when trying to make sense of the social relations integral to settler colonial histories of dispossession, but it is not enough on its own. Especially cognizant of the pitfalls of past attempts to bring a Marxist-informed framework to the study of settler colonialism,<sup>37</sup> I strive to stretch my dialectical materialist approach and to rethink prominent Marxist tenets with the help of what Vanessa Watts terms “Place-Thought”: “It is not that Indigenous peoples do not theorize, but that these complex theories are not distinct from place.”<sup>38</sup> At the core of Place-Thought and dialectical materialism is a shared drive to make sense of how human beings act on and think about the world, which in both approaches compels the interrogation of the relation between the abstract and the concrete. This drive and this mode of interrogation are evident in what follows. As I plot the conceptual nodes of this book – dispossession and social relations; violence, labour, and land; and finally law, economy, and geopolitics – I show how and why I modify aspects of my approach.

### **Dispossession and Social Relations**

Dispossession is made up of an array of dynamic ideas and practices specific to different times and places; it is incomplete and ongoing, as well as combined and contradictory. An approach that reveals the extent to which fluidity existed alongside rupture is therefore exceptionally useful when it comes to assessing

the capitalist exploitation of non-capitalist realms.<sup>39</sup> Rosa Luxemburg's *The Accumulation of Capital* touches on the dialectical dimensions of the drive to accumulate and the social effects of dispossession: "The accumulation of capital is a kind of metabolism between capitalist economy and those pre-capitalist methods of production without which it cannot go on and which, in this light, it corrodes and assimilates."<sup>40</sup> With the expansion of capitalism, antecedent social relations are not eradicated and replaced, but "a kind of metabolism" occurs when two modes of production enter into a fragile synthesis.

Luxemburg here is positioning herself in response to Marx on the topic of the origins of capitalism, which he discusses at the end of the first volume of *Capital*. Original accumulation, controversially translated as "primitive accumulation,"<sup>41</sup> implies that there is a moment in the midst of the emergence of capitalism when something akin to primary capital – be it usury or commercial in origin – was reinvested into the productive process and fuelled the insatiable appetite for profit through plunder. Marx contends that this is the "prehistory of capital," a violent stage of original accumulation that was the springboard for the growth of capitalism.<sup>42</sup> Colonial dispossession was a means of achieving this precipitous original capital, which in turn served as one of the conditions that led to the emergence of the "manufacturing period"<sup>43</sup> in Europe – the prelude to full-scale industrial production.<sup>44</sup>

Debates about original accumulation continue today,<sup>45</sup> with many still trying to square the general idea with specific historical practices.<sup>46</sup> Although the idea of original accumulation as a violent moment might be a logical touchstone for a study of settler colonialism, I see it as misleading. Instead of understanding colonies solely as peripheral sites wrought by extraction for accumulation, a dialectical materialist approach underscores the value of analyzing the discrete histories of colonial sites themselves. In this sense, the history of the Red River Colony is not simply dictated by its status as a source for British capital; it is a site with its own complex social relations undergoing its own transition to capitalism. By focusing on the transformations within and surrounding the settler colony itself, I show how its own transition to capitalism intersects with multiple transitions to capitalism on a global scale.

For this purpose, I turn to other aspects of Marx's works, such as his views on labour compulsion in the transition to capitalism, in order to assess the settler colony as a transitional site in its own right. Marx explains that, in the transition to capitalism, "direct extra-economic force" as a standard means of compulsion fades away with the rise of the "silent compulsion of economic relations" and the proletarianization of workers, after which such force reappears "only in exceptional cases."<sup>47</sup> In the highly debated context of English feudalism,<sup>48</sup> for example, extra-economic means of exploitation included rent imposed

by landlords on tenant farmers<sup>49</sup> or, more aptly, the “personal labour relationships” in the form of paternalistic contracts binding servants to the Hudson’s Bay Company.<sup>50</sup> To illustrate this divide further, Marx compares the enchained slaves of ancient Rome in the pre-capitalist context to the “invisible threads” of the wage labourer in the capitalist context.<sup>51</sup> The premise underlying this distinction offers a vital statement on the transition to capitalism. In the capitalist mode of production, the extra-economic force of pre-capitalism slides into the background to become an instrument of conflict resolution or more generally a formal system of order, while market dependence becomes that which disciplines “free” wage labourers in day-to-day life.<sup>52</sup>

The essential takeaway is that the “form of compulsion” matters: how labour compulsion or (inversely) autonomy is understood is crucial to differentiating the capitalist mode of production from other modes and clarifying how capitalism itself advances.<sup>53</sup> I take this as a guiding principle in my assessment of the Red River Colony – but not without some adjustments.

Between change and continuity is the mediating principle of reciprocity. As a principle common to a host of customary practices, reciprocity was both a target for the purposes of exploitation and an abiding source of autonomy. As I detail in the first chapter, the terms of exchange between Indigenous producers and company traders appeared to synthesize in a manner that upheld the social relations that centred the principle of reciprocity; however, because the exchanges were skewed in the company’s favour and attendant social obligations were routinely negated by the company, the principle was distorted in a way that obscured the manifestly exploitative facets of the exchanges. Kahente Horn-Miller contends that such processes of distortion are intrinsic to colonialism.<sup>54</sup> This is reminiscent of mystification in the Marxist sense, which suggests that the actual social relation between the worker and the capitalist is mystified by “the relation of exchange”: “The relation of exchange between capitalist and worker ... is alien to the content of the transaction itself, and merely mystifies it.”<sup>55</sup> Both mystification and distortion underscore the importance of interrogating the relation between form and content, which on this occasion reveals a contradiction between the social relations that centre reciprocity and the practices of exploitation. By using the term “distortion” rather than “mystification” throughout, I modify the Marxist lens to better grasp the particulars of these colonial realities.

Transformation associated with these relations of exchange also entailed the “social differentiation” of Indigenous producers.<sup>56</sup> This was manifest in various ways: certain Indigenous individuals (e.g., trade captains) or groups (e.g., military allies) were given special standing in the trade with company officers, which likely introduced a distinct means of differentiation within and between

Indigenous societies. Howard Adams speaks to another aspect of this process: “As long as Indians were isolated as a special group, they were easily exploited as trappers; isolation or segregation of native people was therefore essential for the fur industry.”<sup>57</sup> Meanwhile, Indigenous individuals in general were rarely hired as labourers on contract, which led to the racial divide between their legal and economic standing and the status of company servants, free Canadians, and eventually settlers.<sup>58</sup> Sites of exchange were much more than formal occasions for commercial activity; they were sites of contest, where distortion and differentiation were manufactured with the relative autonomy of Indigenous producers as the linchpin. Even as some adapted with new practices, many Indigenous peoples resisted the destruction of their societies and support systems. These transformations occurred in the face of a gradual, multifaceted settler colonial imposition rooted neither in some developmental destiny nor in an ingrained psychological yearning among the colonized.

### **Violence, Labour, and Land**

The validity of the stagist orthodoxy of the transition to capitalism necessitates the over-identification of pre-capitalism with the extra-economic, which in turn highlights four misleading assumptions. The first reflects biases related to economic rationality and advances the racist and presentist insinuation that Indigenous peoples did not have an economically attuned mindset prior to the commercial incursion of the fur trade. The second arises from the first and maintains that, in the shift from pre-capitalism to capitalism, land was stripped of its social or extra-economic qualities and became “absolute private property” in a purely economic sense.<sup>59</sup> The third is that the framework of the transition to capitalism remains valid as long as one centres the changes that underpin the proletarianization of settlers, which supports ignoring the particular transformations that occur with respect to Indigenous peoples’ labour. And the fourth is that the over-identification implicitly alloys pre-capitalism with violence and capitalism with the retreat of violence.

The lure of “normative developmentalism”<sup>60</sup> is overwhelming, and the narrative is simplified: pre-capitalism is driven by violent extra-economic force up to the dominance of the capitalist mode of production, at which point economic forces of production have their own disciplinary power and extra-economic force is an option of last resort. However, when accounting for actual social relations in specific historical contexts, this vulgarization raises a new line of inquiry, particularly around what is meant by and what becomes of “force.”

My emphasis on Indigenous peoples’ labour purposefully upsets the assumed symbiosis between pre-capitalism and violence and lays the groundwork to

challenge the other three assumptions. I start by questioning the dichotomy that follows when pre-capitalist relations are couched in terms of extra-economic force, preferring instead Mahmood Mamdani's observation that "the distinction between market relations and direct compulsion is not quite that between force and its absence."<sup>61</sup> As is the case for Mamdani in his study of Uganda and South Africa, my inquiry strains the accuracy of this dichotomy. My findings suggest that direct, violent extra-economic force was not the primary means of labour compulsion; rather, the exploitative relations that constituted the fur trade and the founding of the Red River Colony were awash with customary practices and social obligations intrinsic to production. To be sure, it was a violent, vengeful era, replete with beating, murder, arson, kidnapping, and confinement. However, given the reality of Indigenous producers' relative autonomy, it is not possible to conclude that the day-to-day relations of exchange and the conditions of production endemic to the fur trade at that time and place relied on direct, violent extra-economic force as a norm. Early relations of exchange were exploitative yet were precursory to the increasingly direct violence that became the norm later, hinting that extra-economic force does not fade into the background in the manner implied by the standard thesis on the transition to capitalism.<sup>62</sup>

My objective in this book is to contest two rival ideas: that the transition to capitalism and settler colonialism alike necessarily entailed a shift from violent chaos to peaceful order, and that the relative lack of violence as the direct, primary means of compulsion in exchanges with Indigenous producers implied equanimity or complicity. To challenge both ideas, I focus on specific practices to see what, why, and how transformations were really occurring. At the centre of these transformations I find a tension between exploitation and autonomy. Violent coercion targeting this autonomy was not predominant for many reasons, including Indigenous peoples' resistance, the nature of fur trade production, and the strategic alliances that emerged in times of jurisdictional conflict. Consequently, measures of relatively "gentle compulsion" were essential to these exploitative practices and at the core of "the most peculiar combinations" of modes of production in the settler colonial context.<sup>63</sup>

To grasp these peculiarities, I avoid conceptions of land or property that privilege "white possessive logics"<sup>64</sup> and focus on processes of dispossession "rooted in the nation's prehistory."<sup>65</sup> Efforts to make sense of such changes without this focus on Indigenous peoples' labour grant explanatory preponderance to the white possessive form, which can have the unintended effect of lionizing "settler nation-building myths" and restricting our ability to see the inner workings of dispossession.<sup>66</sup> My approach therefore challenges the perpetuation of the idea that dispossession began with the takeover of Indigenous

peoples' lands.<sup>67</sup> Such a view treads too closely to an ahistorical assessment of settler colonial relations by inadvertently, if only partially, supporting the simplistic version of Marx's "primitive accumulation thesis,"<sup>68</sup> which elevates the takeover of lands as the precipitously violent moment of the birth of capitalism. This abets the erasure of Indigenous peoples from the longer history of the transition to capitalism. Stripped of agency and their labour rendered invisible, Indigenous peoples become "if unwittingly ... a *thing* to be profitably surmounted"<sup>69</sup> – like land, humans become objectified collateral in the march toward industrialization.<sup>70</sup> Such an analysis violates the Place-Thought framework by ignoring social relations and upholding the Eurocentrism implied in the notion of original accumulation.<sup>71</sup>

With a focus on the means of labour compulsion in the context of a specific time and place during the commercial fur trade, I show that because Indigenous peoples' labour remained beyond the direct control of the companies, transformations associated with the settlement at Red River were informed largely by reactions to Indigenous producers' relative autonomy. This also demonstrates that passivity is not a condition of exploitation. Indigenous producers exercised agency in the course of exploitative practices;<sup>72</sup> adaptation and autonomy assume agency, but these acts do nothing to "absolve" the colonizer.<sup>73</sup> To resist the "insidious tendency to turn Native agency into colonialist alibi,"<sup>74</sup> I keep the power disparity of the settler colonial relationship in mind when speaking to the relative autonomy of Indigenous producers. That this differential is not immediately evident in many histories of the Red River Colony is indicative of the value of my approach. The goal is not to "explain away" this differentiation by fetishizing the "imperatives of accumulation and competition" but to excavate its social, political, and legal dimensions to better comprehend its legacy in the present day.<sup>75</sup>

All of this compels another modification to how I approach this instance of the transition to capitalism: I do not adhere to a notion of land as private property, adopting instead a notion of the social relations of land. By "the social relations of land," I have in mind specific practices related to land that are the constitutive bases for predominant social relations among certain Indigenous societies, which I detail in the first chapter. Conceptually, this approach to land represents a loose reworking of Robert Brenner's notion of "social relations of property and force," which he sees as the foundation of "the structure of exploitation."<sup>76</sup> Brenner contends that relations of property are not determined by the exploitative drives of the capitalist class, arguing instead that it is necessary to dissect the political dimensions at the core of class conflict to comprehend economic transformation.<sup>77</sup> I agree with this intuition, with two caveats. First, when Brenner discusses "social relations," he reverts to economic explanations

in a way that undermines his thesis. Second, “extra-economic controls” and the like appear to be designated as relics of non-capitalist societies,<sup>78</sup> which risks reinforcing the over-identification of the pre-capitalist era with the extra-economic and endorsing the four misleading assumptions already discussed.

When capitalism is typified by the shift from extra-economic force to “purely ‘economic’ coercion”<sup>79</sup> and by the emergence of “absolute private property”<sup>80</sup> in general, this suggests a “temporal and conceptual cleavage” between the violence and chaos of pre-capitalism and the totalizing but muted compulsion of capitalism as such.<sup>81</sup> Analysis of the social relations of land compels a reckoning with what is at stake when one assumes the emergence of “absolute private property” and the predominance of “purely ‘economic’ coercion,” which stimulates a serious rethink of the configuration of capitalism as a mode of production in the settler colonial context.

How certain Indigenous producers’ autonomy was variably exercised or circumscribed in the course of commercial exchanges is key to understanding the evolution of “free” labour in the region and era.<sup>82</sup> I assert that the emergence of the “free and equal”<sup>83</sup> settler as an independent producer evolves in conjunction with changes to certain social relations of land practised by Indigenous peoples, and as such an account of Indigenous peoples’ labour is central to comprehending early capitalism at Red River.<sup>84</sup> On the one hand, the misapprehension of these early relations of exploitation as equal and equanimous has a veiling effect, which is how “we” can come to be celebrated as “a country of adventurers”; on the other hand, by ignoring the particulars of Indigenous peoples’ labour and the exploitation thereof, it becomes difficult to see how these relations set the groundwork for more regularized, overtly violent, and genocidal facets of this settler colonial relation that arose after the formal establishment of the Canadian settler state.<sup>85</sup> Proper verification of this hypothesis requires extending this analysis well past 1821; since doing so is beyond the scope of this work, all that I offer here are potential entry points to build upon later. The immediate objective is to foreground social relations of land and, in doing so, to show how the transition to capitalism at the Red River Colony challenges the over-identification of pre-capitalism with direct violence as the primary means of compulsion. By examining the economic and legal terms of labour compulsion related to Indigenous producers, I can support this objective.

### **Legal and Economic Transformation in a Geopolitical Context**

Fidelity to the sources consulted prevents me from providing a simple account of the Red River Colony. This more exacting approach arises from an attempt to keep two historical realities in view: hugely disruptive forces of dispossession are intrinsic to settler colonialism,<sup>86</sup> yet “most of the time ... Aboriginal people

lived their own lives and were not always responding and reacting to external (and negative) forces.”<sup>87</sup> My focus on the particulars of this tension germane to the Red River Colony brings to light three important findings: first, relative autonomy was intimately connected to Indigenous peoples’ social relations of land; second, changes to these social relations of land had legal, economic, and geopolitical dimensions; and third, these transformations occurred in an uneven and combined manner.

In pre-capitalism, a slave was a specific legal subjectivity upon whom a proprietor exacted extreme measures of force in the course of labour compulsion; other gradations of subjectivity underpinned the legal status of serfs, servants, and soldiers, as well as women and children. It is therefore evident that legal relations are integral to labour compulsion, and as such law is part of the panoply of force in the extra-economic context. However, by alloying labour compulsion and force in pre-capitalism, the capitalist mode of production appears to be relatively free from forceful means of compulsion. The legal relations that constitute labour compulsion as force are seemingly defused, rendered extra in relation to economic factors and treated as relics of the pre-capitalist era.<sup>88</sup> These two consequences reflect the tradition of confusion in Marxist-informed thought about law’s relation to the economic realm, commonly evoked by notions of law as “artificial means,” “superstructural,”<sup>89</sup> or a “fetter”<sup>90</sup> or “limitation”<sup>91</sup> on economic production. A corresponding relegation of law is assumed by the transition to capitalism thesis in which labour compulsion shifts from the extra-economic to market discipline. Intrinsic to this economic stagism is legal stagism: namely, a presumed transition from lawless violence to lawful non-violence. Two intriguing questions arise from this intersection of narratives: How is it that pre-capitalism can be presented as lawless yet defined by extra-economic force? And precisely how do legal relations factor into the transition to capitalism?

Here I follow a pathway of critique cleared by Luxemburg a century ago. She not only insisted that “political power and economic factors go hand in hand” but also understood that the process involved in the expansion of the capitalist mode of production “belongs to the spheres of political power and criminal law no less than with economics.”<sup>92</sup> Legal considerations are key to how Luxemburg made sense of the historical changes that accompanied capitalist accumulation, which makes one question the validity of treating legal relations as extrinsic to economic change. I address aspects of this in other works, penning the basis for “an uneven and combined development theory of law,”<sup>93</sup> which grew out of prior efforts to comprehend the flexibility of law in the settler colonial context.<sup>94</sup> The main continuity extending to this book is the shared objective to retrieve law from its banishment to the periphery of Marxist-informed thought and to

do so in a way that resists simply shifting to a position of legal primacy by assigning law a singular role, form, or function in relation to economic change.

It is an over-simplification of the history of capitalism to deem legal relations as exercising a fettering effect on the commercial exchange,<sup>95</sup> nor are legal relations a type of extra-economic force in the sense that it has an overtly coercive function or emanates principally from a non-economic realm.<sup>96</sup> Neither “fetter” nor “extra-economic force” suffices because, although the former is a hindrance and the latter is a catalyst in relation to the economic conditions, both terms connote something that is an extrinsic reactant – an accessory to the machinations of history. Once placed in an intrinsic relation to the economic realm, the legal facets can begin to be seen as transforming in a similarly uneven and combined fashion – sometimes as catalyst, sometimes as fetter. Practices intrinsic to social relations of land illustrate this most clearly: customary, as well as economic, such practices were at once sources of autonomy and bases for exploitation. It is this variability that underpins why the processes of dispossession are fragmented yet unified, as well as inconspicuous and enduring.

This perspective, by extension, does not comply with a notion of state law in the formal sense. My stance is like that held by advocates of legal pluralism such as Lauren Benton and Richard Ross, who include codes and customs within the purview of legality in a manner that resists the over-identification of law with the nation-state.<sup>97</sup> Although controversial insofar as it tests the conventions of what one typically understands to be “law,”<sup>98</sup> this adjustment is necessary since it pertains to the pre-1821 era and the contested jurisdictions in question. Plainly, adhering to a rigid notion of “state law” when discussing the range of legal relations at play would be erroneous, mainly because it risks excluding customary law and elevating a type of law not predominant at that time or place.

Studies abound that detail the canonically derived customs that for some made dispossession intellectually agreeable and morally conscionable.<sup>99</sup> In critical legal history and international law, these studies include compulsory references to *ius gentium*, *ius naturale*, and *terra nullius*, each derived from (or, in the last case, misattributed to)<sup>100</sup> ancient Roman customs. Over the centuries, depending on the source and objective of the imperial campaigns of the age, these customary concepts were wielded with varying degrees of fidelity to theology; this was done to naturalize the fusion between Christianity and civilization<sup>101</sup> and to mitigate the dissonance between divinely inspired right and commercial imperative.<sup>102</sup> The salience of customary law in the international sphere dispels upfront the notion of “custom as a mordant stasis” and supports the late Peter Fitzpatrick’s point about custom as a “formative force.”<sup>103</sup> I take this a step further by deploying the terms “law” and “legal” in a manner akin to Val Napoleon’s usages: “Customary law is not an easily codified set of rules

for what to do and not do ... Rather, customary law inheres in each Aboriginal cultural system as a whole, forming legal orders that enable large groups of people to live together and to manage themselves accordingly.”<sup>104</sup> This supple notion of legality includes the many customary social and political rules engendered by a range of societies and facilitates an understanding of legal relations as simultaneously formative and destructive, central and peripheral, formal and informal, fettering and catalyzing.

Accordingly, various spheres of law are discussed that span the imperfect and often misleading categories of public and private law: criminal, constitutional, international, and commercial, to name the most prevalent. Civil disputes, common law principles, natural law doctrine, and positivist tenets are all given consideration at various points, with narratives (i.e., stories and ballads), agreements, customs, statutes, royal charters, proclamations, treaties, and case law all having their time at centre stage. What for some might be a frustrating medley of legal practices, sources, and concepts is, for the purposes of this study, the best means of capturing the multitude of practices related to social relations of land and in turn demonstrating the pervasiveness and complexity of legal considerations as they relate to early capitalism in this settler colonial context.

A corollary of this undertaking involves challenging the abiding notions of stagist developmentalism that likewise reign in the field of legal history, variations of which thematize the seemingly fated movement out of arbitrariness and chaos and into formalism and order.<sup>105</sup> By holding the abstract and the concrete in tension, the contradictions and continuities that shape the processes of dispossession become evident. In an essay from 1985, the late Alan Hunt explains the value of such an approach, warning against simply taking legal concepts and testing them against “reality,” a practice that reifies ideas by overlooking their generative connections to specific times and places.<sup>106</sup> Instead, Hunt insists “that the ideological analysis of law must be understood as operating at a number of different levels, and that these different levels are both conceptual and empirical.”<sup>107</sup> This approach is on display throughout this book in the connections that I draw between local practices and geopolitical events and in the balanced assessment of abstract principles and concrete practices.<sup>108</sup>

Although I do not dwell on the philosophical particulars of this framing beyond this introduction, it resonates explicitly in the title of each chapter. I bookend the time frame roughly from the end of the Seven Years’ War in 1763 to the merger of the Hudson’s Bay Company and the North West Company in 1821, although the bulk of the book focuses on the years 1810 to 1816. These years were marked by rapid and significant transformations, and in tending closely to these years I can focus on what Lisa Ford refers to as the “everyday” or “daily struggles.”<sup>109</sup> Such attentiveness reveals that, within a

wider view, sites of legal pluralism might appear to be fraught and contentious, but everyday practices prove the flexibility and durability of social norms and expectations.<sup>110</sup>

## Overview

Throughout the era in question, legal matters were intrinsic to economic change insofar as the variability of legal relations underpinned the fragmented but unified facets of dispossession. In staking such a claim, I situate this work amid ongoing and overlapping debates in prairie history, Indigenous studies, fur trade studies, critical legal history, capitalism studies, and settler colonial studies. In terms of the overall framework, I devote the bulk of the book to the historical agents and their practices, and in the course of those discussions I examine the relation to thinkers and their ideas.<sup>111</sup> Ultimately, as I tend to the particulars of dispossession-related commercial rivalry and colonial settlement (namely, exploitation, distortion, and differentiation), I show how it all connects to the relative autonomy of Indigenous producers. The title of each chapter evokes the transformative tensions that animate this historical study and keeps in check the tendency to provide a stagist account of dispossession and the Red River Colony.

In [Chapter 1](#), “Reciprocity and Dispossession: Processes of Transformation,” while explaining what I mean by “social relations of land,” I introduce specific Indigenous societies whose histories are most entwined with the Red River Colony – the Nēhiyawok, *Saulteaux*, and *Métis* – and include a discussion of the principle of reciprocity and the practice of gift-giving. I then provide an account of the truck economy, which proved to be a useful conduit for mercantile expropriation and control deployed across the British colonies and no less in what became Canada. A brief legal, economic, and geopolitical history of the Hudson’s Bay Company shows the relevance of the truck economy as the company’s primary tactic for exploitation in the quest for profits. I end the chapter with an account of how the principle of reciprocity combined with the practices of dispossession associated with trucking, and I show the important role that the relative autonomy of Indigenous producers played leading up to the juncture between the eighteenth and nineteenth centuries.

As I note in [Chapter 2](#), “Monopoly and Competition: Contests over Indigenous Peoples’ Labour and Land,” a decade after the end of the Seven Years’ War in 1763 there was a new wave of competition that threatened the exclusive privileges of the Hudson’s Bay Company. Rival Montreal-based fur traders from the North West Company (NWC) benefited from transportation and trade links to the south, an arrangement that became less dependable in the era following the US Revolutionary War. In response, the company made a move into the

northwest and fortified its claim, while the HBC directors championed a shift of business inland, away from the bayside. I show that the relative autonomy of Indigenous producers was at the heart of the legal, economic, and geopolitical disputes in this era. New trade restrictions, commercial consolidations, and international borders amounted to a contest over Indigenous peoples' labour and land as profit margins narrowed.

In [Chapter 3](#), "Honour and Duplicity: Debts of Rivals, Dreams of an Aristocrat," I show how debt collection became critical as the rival companies incurred losses, which placed Indigenous traders and producers in the crosshairs by the end of the eighteenth century. In the early 1800s, meanwhile, Lord Selkirk became a majority shareholder of the Hudson's Bay Company and was awarded a sizable grant of land from the company to establish a settler colony at Red River. I posit that, if understood as an economic decision alone, we risk treating the company's turn to settler colonialism as an inevitable by-product of increased competition and as a break from its past practices. Rather, this settler colonial initiative reflected the geopolitics of the era and built upon past exploitative measures. What becomes entrenched is the duplicity at the core of the established practices of distortion; as lofty principles clashed with the realities of colonial dispossession, attempts to extend the reach of formal law into "Indian Territories" chafed against the relative autonomy of Indigenous producers, setting in place the basis for legal and economic segregation.

In [Chapter 4](#), "Servitude and Independence: The Settler Colonial 'Experiment' Begins," I indicate that, with HBC officials attempting to exercise their monopoly charter privileges through a settler colonial endeavour, processes of dispossession became selectively alloyed with more formally legalistic claims. After all, for the company's servants to become settlers proper, they needed to be in possession of land, which assumed the successful dispossession of Indigenous peoples; the relative autonomy of these two groups therefore moved in opposite directions. Yet attempts to formalize legal administration could not hide the reality that the system relied on pecuniary and sometimes corporal punishment, nor could it be reconciled with the fact that the North West Company refused to submit to the settler colony's jurisdictional authority. I claim that, from the official granting of the land (1811) to the second winter of the settlement (1813), the destitution of the servant-settlers and the lack of effective authority led to increased dependence on Indigenous peoples' labour. This situation contrasted with the original purpose of the settler colony itself: that is, to control the territory and its people and to become self-sufficient producers of food and goods for the Hudson's Bay Company. For an "experiment" meant to bolster the company's position, the setbacks were severe, opening the door for even more drastic measures meant to curtail the relative autonomy of Indigenous producers.

By 1814, as I indicate in [Chapter 5](#), “Menace and Ally: Proclamation as Provocation,” the procurement of provisions (especially the local staple, pemmican) became the spark for a series of clashes, culminating with the Pemmican Proclamation issued by Governor of the Red River Colony Miles Macdonell. I detail how extra-economic coercion was both the result of and resulted in a host of transformations to social relations wrought by the established pattern of dispossession. It was in response to some of these changes that the partners of the North West Company proceeded to exert their own legal prerogative, demonstrating the extent to which legal matters and economic interests were inextricably entwined. Yet, while both sides acted to execute arrest warrants and detain prisoners, each claiming to have royal prerogative on its side, the relative autonomy of the Métis was at the centre of this new series of disputes.

In [Chapter 6](#), “Consciousness and Ignorance: New Nation, Old Grievances,” I show how struggles for control ramped up, with each side making military appointments and attempting to secure allies among members of local Indigenous societies. After two years of this posturing, a violent clash occurred in 1816 that resulted in the deaths of twenty-one men on the HBC side. I assess how measures of social differentiation – especially those that attempted to undermine the relative autonomy of the Métis – were intrinsic to the transformations that shaped this conflict and how practices of distortion were extended in the aftermath with the signing of a land use agreement in 1817 between local Indigenous leaders and Selkirk.

Finally, in the [Conclusion](#), “Continuity and Change,” I bring the dominant themes and theories together as I examine the events that occurred from 1818 to the merger of the two companies in 1821. I end the book by revisiting the anecdotes raised at the beginning and speaking to the troublesome legacy that resulted from these continuities and changes. This recap helps to explain the value of such a historical perspective and allows me to emphasize the primary ways that this book advances interdisciplinary scholarship in a range of fields.

The thread that connects each chapter in this account of the Red River Colony is the relative autonomy of Indigenous producers, at every turn a driver of economic activity and legal transformation alike. It is this reality that challenges staid concepts and narratives, compelling a different way of understanding early capitalism in general and the Canadian settler colonial context in particular.

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