By Force of Expectation: Colonization, Public Lands, and the Property Relation

Alyosha Goldstein

ABSTRACT

This Essay argues that federal land policy as a form of colonial administration has been constitutive for the logic of expectation as property in what is now the United States. From the state land cessions negotiated on behalf of the Articles of Confederation to the preemption acts (1830–1841) to the homestead acts (1862–1916) to present-day demands for land transfer, the acquisition and disposal of the so-called public domain have been central to westward colonization, the consolidation of the nation-state, and the promise of land ownership as the ostensible foundation of individual liberty. These dynamics are evident in contemporary conflicts over public lands and arguments for the transfer of public lands to either state or private ownership. Two armed confrontations—one in Nevada in 2014 and another in Oregon in 2016—illustrate this conflict. Initiated by the Bundy family and supported by various militia groups, these incidents were staged as challenges to federal ownership of public lands and the legitimacy of environmental regulation. At the same time, the groups espoused the sanctity of white rancher claims to occupy and use land without federal oversight. Approaching the Bundy occupations as flashpoints that illuminate competing interpretations and claims to land within the history of westward colonization, this Essay seeks to demonstrate the ways in which expectation emerges from particular economies of dispossession of indigenous peoples that have historically worked through and across the division of public and private property.

AUTHOR

Alyosha Goldstein is an Associate Professor of American Studies at the University of New Mexico. He is the author of Poverty in Common: The Politics of Community Action during the American Century (Duke University Press, 2012), the editor of Formations of United States Colonialism (Duke University Press, 2014), and the co-editor (with Jodi A. Byrd, Jodi Melamed, and Chandan Reddy) of “Economies of Dispossession: Indigeneity, Race, Capitalism,” a special issue of Social Text (forthcoming May 2018), (with Juliana Hu Pegues and Manu Vimalassery) of “On Colonial Unknowing,” a special issue of Theory & Event (2016) and (with Alex Lubin) of “Settler Colonialism,” a special issue of South Atlantic Quarterly (2008).
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INTRODUCTION

A number of highly contentious debates and sensationalized events have again focused attention on land held in the public domain by the United States. A series of not-guilty verdicts, mistrials, and dismissed charges for participants in the armed confrontations over public land use led by the Bundy family in Nevada and Oregon further emboldened white nationalist vigilantism and reactionary populist demands. Secretary of the Interior Ryan Zinke’s public lands tour and efforts to downsize national monuments such as Bears Ears during the summer of 2017 herald expanded and accelerated access for private oil, gas, mining, and logging industries.1 Legislative initiatives such as Utah’s Transfer of Public Lands Act of 2012, with the support of the infamous free market policy-broker the American Legislative Exchange Council (ALEC), demand transfer of public land title from federal to state control.2 Each of these examples stage distinct and, in certain respects, competing expectations for possessive claims on public land. Each, as well, conveys significant struggles over the meaning and purpose of the public domain in relation to conceptions of property.

This Essay argues that federal land policy as a form of colonial administration has been constitutive for the logic of expectation as property in what is now the United States. From the state land cessions negotiated on behalf of the Articles of Confederation to the preemption acts (1830–1841) to the homestead acts (1862–1916) to present-day demands for land transfer, the acquisition and disposal of the so-called public domain have been central to westward colonization, the consolidation of the nation-state, and the promise of land ownership as the ostensible foundation of individual liberty. During the late eighteenth and nineteenth century this process was explicitly orchestrated through the various killing, subjugation, dispossession, and displacement of indigenous peoples, as well as the negotiated compromise of slavery’s territorial extension, the racialized terms of the Treaty of Guadalupe Hidalgo, and the rescinded promise of land

2. The Utah state legislator and founder of the American Lands Council Ken Ivory, who sponsored the Transfer of Public Lands Act, UTAH CODE ANN. §§ 63L-6-101 to 63L-6-105 (2015), has worked closely with American Legislative Exchange Council (ALEC) to advocate for land transfer policy. ALEC wrote and promoted model legislation in 2013 that closely resembled the Utah act and upon which measures introduced in Alaska, Arizona, Colorado, New Mexico, Oregon, Utah, Washington, and Wyoming were based. See Nick Lawton, Utah’s Transfer of Public Lands Act: Demanding a Gift of Federal Lands, 16 VT. J. ENVTL. L. 1, 3–4 (2014).
redistribution for formerly enslaved African Americans during Reconstruction.\(^3\) Since the twentieth century, the settler colonial imperatives and racialized geographies underwriting the public domain have been largely absent from mainstream debate, even as this erasure continues to be challenged by indigenous peoples and other disenfranchised people of color. Although not necessarily or always speaking in explicitly racial terms, white nationalists in the U.S. West, ranging from libertarian to avowedly white supremacist, became increasingly vocal on issues of land use during the 1960s and 1970s in response to what they perceived to be the tyrannical expansion of federal programs, environmental regulation, civil rights, and the influence of social justice movements. Presently, the accelerated extraction of natural resources and large-scale land acquisitions by private firms centers the question of federal land use by private industry for neoliberal profit margins reliant on either privatization of public goods or massive public subsidy in an age of manufactured scarcity and environmental catastrophe.

In what follows, I begin with a summary of some of the historical events that illustrate how expectation as property is shaped and advanced by colonialism and the possessive investment in whiteness. I also argue that during the present historical conjuncture in the United States expectation as property operates through a disavowal of these conditions of possibility and as a willful ignorance on the part of those for whom such conditions establish the grounds of expectation and the capacity for the ownership of prospective value.\(^4\) Thus, even while expectation as property is broadly normative; in actuality, not everyone can claim expectation in the same way or with the same presumed entitlement.\(^5\)

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4. On willful ignorance and disavowal in the colonial present as a means of rendering illegible the historical and ongoing relationship among racialization, settler colonialism, and imperialism, see Manu Vimalassery, Juliana Hu Pegues & Alyosha Goldstein, On Colonial Unknowing, 19 THEORY & EVENT, no. 4, 2016, at 1.

5. On the racial and imperial constitution of property, see STEPHEN M. BEST, THE FUGITIVE’S PROPERTIES: LAW AND THE POETICS OF POSSESSION (2004); IYKO DAY, ALIEN CAPITAL: ASIAN RACIALIZATION AND THE LOGIC OF SETTLER COLONIAL CAPITALISM (2016); ANDREW FITZMAURICE, SOVEREIGNTY, PROPERTY AND EMPIRE, 1500–2000 (2014);
Expectation as property is not only overdetermined by differential racialization and dispossession, but acquires capacity through specific presumptions of entitlement and certainty produced in law. In *Principles of the Civil Code*, Jeremy Bentham famously argued that law provides the means whereby established expectation is “the relation that constitutes property.” According to Bentham: “Property is nothing but a basis of expectation; the expectation of deriving certain advantages from a thing which we are said to possess, in consequence of the relation in which we stand towards it.” In contrast to Locke’s conception of property based on possession, improvement, and proper use, Bentham argues: “there is no such thing as natural property, . . . it is entirely the work of law.” In the settler colonial context of North America, both Locke’s conception of rights to possession through improvement and use and Bentham’s emphasis on the constitutive relation between law and property, although in certain respects incongruous, continue to shape dominant understandings of property. As Eva Mackey explains: “In addition to the epistemological work of ideology, significant structural and material efforts (guns, law, and policies) have also gone into creating expectations of ontological certainty in property and privilege for settlers, expectations that have come to be seen as settled entitlements that must be defended.” Ongoing indigenous peoples’ relation to land and belonging, Mishuana Goeman contends, defy the logics of expectation as a “linear process of ownership, a type of ownership that changes (whether through treaties, deeds, or sales) as points on a single line that only moves forward in time, accumulated as it proceeds.” Yet, settler property rights are nevertheless manifest in “[t]he legal affirmation of whiteness and white privilege” that, Cheryl Harris argues, “allowed expectations

7. **Id.** at 111; see also Carol M. Rose, *Possession as the Origin of Property*, 52 U. CHI. L. REV. 73 (1985).
that originated in injustice to be naturalized and legitimated. The relative economic, political, and social advantages dispensed to whites under systematic white supremacy in the United States were reinforced through patterns of oppression of Blacks and Native Americans.”

These dynamics are evident in contemporary conflicts over public lands and arguments for the transfer of public lands to either state or private ownership. Two armed confrontations—one in Nevada in 2014 and another in Oregon in 2016—illustrate this conflict. Initiated by the Bundy family and supported by various militia groups, these incidents were staged as challenges to federal ownership of public lands and the legitimacy of environmental regulation. At the same time, the groups espoused the sanctity of white rancher claims to occupy and use land without federal oversight. Approaching the Bundy occupations as flashpoints that illuminate competing interpretations and claims to land within the history of westward colonization, I aim to demonstrate the ways in which expectation emerges from particular economies of dispossession that have historically worked through and across the division of public and private property.

I. ESTABLISHING SETTLER EXPECTATION

Over the course of the long nineteenth century, land policy was increasingly deployed as a means of encouraging western settlement, while also being symptomatic of the tensions among federal administration, private speculators, and extra-legal settler encroachment. As is often noted in scholarship on the public domain—but infrequently emphasized in discussions of the United States more generally—almost one-third of all land in the United States is administered by the federal government. This land is disproportionately concentrated in the western states, with federal acreage totaling nearly 80 percent of Nevada, 63

11. Harris, supra note 5, at 1777.
percent of Utah, and 53 percent of Oregon. Considered a revenue source for federal war debt during the early national era, public land policy operated initially to survey, secure, and dispose collateral in the service of national solvency in accordance with the Land Ordinance of 1785. Enormous giveaways and preferential lease arrangements for railroad corporations and extractive industries accompanied the aftermath of the Civil War. The Taylor Grazing Act of 1934 inaugurated a new era in federal management of public lands by instituting grazing fees for use of the public domain and effectively ending homesteading. In 1976, the Federal Land Policy and Management Act mandated multiple-use standards—including environmental protections aligned with the 1969 National Environmental Policy Act—that continue to govern Bureau of Land Management oversight. It was in the context of increased federal management and conservationist legislation that ranchers such as the Bundys increasingly cast themselves as victims of government overreach, as the true embodiment of the American people oppressed by governmental tyranny. Moreover, as has been the case in other settler uprisings in the west, the Bundys displayed no interest whatsoever in the actual and still-present Native peoples whose land they occupied as anything other than a historical metaphor for contemporary white injury. As Ryan Bundy remarked during the 2016 occupation of the Malheur National Wildlife Refuge in Oregon, the militia “recognize that the Native Americans had the claim to the land . . . but they lost that claim. . . . There are things to learn from cultures of the past, but the current culture is the most important.”

In fact, a variety of claims to land are made in the name of “the public” and “the people” as a collective interest in opposition to the federal government, the extractive industries, or the supposedly special interests of Native American tribes. Here, generalized claims to representing “the public” and “the people” obscure the particular and often antagonistic positions that galvanize such claims, as well as casting tribes as a single interest group that fraudulently make claims in the name of sovereignty and treaty rights. The spectrum of debate on public lands today tends to naturalize the white nationalism espoused by the Bundys—even when ostensibly criticizing the occupations as extremist or without merit—by recourse to conceptions of the national public and natural resources as national commons. The notion of the commons itself is a logic of apparent universal access and public good that is used to justify indigenous dispossession, depicting the particular and historical belonging of Native peoples as an overly self-interested obstacle to the greater good of the commons.

At the same time, recourse to an exceptionalist discourse that casts public lands as “the common birthright of all Americans” has become a frequent rejoinder to either plans for the large-scale transfer of federal lands to states and private industry. For instance, Utah Congressman Jason Chaffetz’s proposed Disposal of Excess Federal Lands Act in January 2017 was abruptly withdrawn after criticism from groups such as Backcountry Hunters and Anglers proclaimed: “It seems the politicians on Capitol Hill have forgotten to whom the land actually belongs. You, me and every other citizen of this country.” The substance of the


20. On land reserved by the federal government in the name of the public good or conservation that served to police the terms of access and inclusion and to dispossess Native peoples, see KARL JACOBY, CRIMES AGAINST NATURE: SQUATTERS, POACHERS, THIEVES, AND THE HIDDEN HISTORY OF AMERICAN CONSERVATION (2001); LARRY NESPER, THE WALLEYE WAR: THE STRUGGLE FOR OJIBWE SPEARFISHING AND TREATY RIGHTS (2002); and MARK DAVID SPENCE, DISPOSSESSING THE WILDERNESS: INDIAN REMOVAL AND THE MAKING OF THE NATIONAL PARKS (1999). Such public spaces were also historically racially exclusionary and segregated spaces. See, e.g., WILLIAM O’BRIEN, LANDSCAPES OF EXCLUSION: STATE PARKS AND JIM CROW IN THE AMERICAN SOUTH (2016).

bill echoed both Utah’s 2012 Transfer of Public Lands Act (which demanded that the U.S. Congress convey federal public lands to the state) and the 2016 Republican Party campaign platform (which likewise called for the devolution of public lands to states), even as it remained out of step with public statements by Donald Trump and Montana representative Ryan Zinke, then Trump’s likely nominee on his way to becoming the Secretary of the Interior, who sought to maintain federal control while increasing deregulation to allow for expanded access for private industry. Yet both proponents of the populist “to whom the land actually belongs” and legislators espouse a defensive nationalism and incontrovertible possession contingent upon the presumed comprehensive dispossession of indigenous peoples.

The pattern of settler trespass and land claims over and against indigenous peoples in excess of imperial or state sanction led to the British colonial government’s Proclamation of 1763. Although the proclamation ultimately served as a justification for the U.S. War of Independence because of its supposedly unjust limitation on territorial expansion by the colonies, it also provided a model for the subsequent U.S. federal government’s authority over constituent states and settlers. During the early national period when the federal government administered public lands primarily as a source of revenue, legal and military action sought to curb and control widespread settler trespass and unlawful habitation. In the wake of the Louisiana Purchase, Congress authorized the army to forcibly eject squatters. The 1807 Unlawful Intrusions Act increased criminal sanctions and penalties for settling or occupying public lands without legal claim, but ultimately did little to limit the expectations and incursions of settlers west of the Mississippi River. These expectations and settler claims were first given legal endorsement following the War of 1812 when Congress conferred partial preemption rights to squatters in Louisiana and the Illinois and Missouri Territories. The right of preemption—the preferential right granted to squatters to purchase the lands they occupied prior to public sale at a minimum price per acre—essentially authorized settler illegality and theft as a means of further consolidating colonization. Legislative debates over the regulation of settler trespass intensified throughout the 1820s, eventually resulting in a series of expansive preemption


acts between 1830 and 1841. In 1862, Congress passed the first of the Homestead Acts, which gave federal land to settlers for farming as a means to encourage westward migration over and against the sovereign territorial claims of indigenous peoples. It similarly encouraged the western settlement of European immigrants as a palliative means of economic mobility intended to defuse full blown class war among the settler population in the east. At the same time, the lackluster and minimally implemented Southern Homestead Act of 1866—intended to support landownership by formerly enslaved African Americans—makes clear the unevenly racialized and white nationalist terms of settlement.

II. THE WHITE REPUBLIC OF CLIVEN BUNDY

The historical imaginary expressed in the Bundy occupations is predicated on claiming to defend the true legacy of the American Revolution, the principles of the U.S. Constitution, and the heritage of conquest in the U.S. West. The “Sagebrush Rebellion” of the 1970s restaged the possessive expectations of settlers and western ranchers manifest in reaction to Progressive-era conservationist legislation during the 1890s, including the Forest Reserve Act of 1891 and the Forest Service Organic Administration Act of 1897, which allowed the federal agency to designate areas to be reserved and protected from development. Statements by the Bundys on the illegitimacy of federal authority deliberately align them with this reactionary moment, as well as with historical lineage of white supremacist Posse Comitatus during the 1970s and 1980s, the militia and “county supremacist” movements of the 1990s, and the more recent “sovereign citizen” movement. Distinct in many ways, each of these movements nonetheless claimed to defend private property against federal tyranny.


For the Bundys and other Western ranchers, these three themes—the American Revolution, the U.S. Constitution, and the so-called frontier—converge most saliently on the issue of land held in the public domain. Ignoring not only the ongoing and genocidal history of indigenous displacement, but also the historical consolidation of cattle baron monopolies through their brutal reign of terror and class war against impoverished homesteaders, the Bundy narrative highlights claims of rancher oppression and dispossession. Similar claims were reignited in opposition to the environmental movement in the 1960s and 1970s and legislation such as the National Environmental Policy Act of 1969, which encouraged federal agencies such as the Bureau of Land Management and the National Forest Service to manage natural resources for purposes other than grazing, mining, and logging.

The county supremacy, wise use, and white nationalist movements share the idea that the U.S. Constitution does not allow federal ownership of public lands within the borders of a state. They argue that federal lands should have been relinquished to the states upon their admission to the Union under the so-called “equal footing doctrine.” Originating with the state land cessions negotiated on behalf of the Articles of Confederation as a means of securing the political unification of the states, and further articulated in the expansionist terms of the 1787 Northwest Ordinance, the equal footing doctrine requires that new states be admitted to the Union as political equals of the existing states. Although all of the continental western states had clauses in their admissions acts disclaiming any right to unappropriated public lands within their borders, these groups contend that such clauses are unconstitutional under the equal footing doctrine.

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30. See supra note 27 for citations on these movements. Also see Robert L. Glicksman, Fear and Loathing on the Federal Lands, 45 U. KAN. L. REV 647 (1997).
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doctrine, and therefore invalid. As empirically spurious as such assertions are, they link claims to public land, such as those made by the Bundys, to state’s rights agendas and the terms of continental colonization negotiated among settlers, states, and the federal government.

In April 2014, Cliven Bundy’s confrontation with the Bureau of Land Management in the aptly named Bunkerville, Nevada—an unincorporated town founded by Mormons in 1877 and 82 miles northeast of Las Vegas—gained widespread news coverage. Since 1989, Bundy had accumulated more than $1.2 million in unpaid grazing fees for use of public lands. When in 2014, as a response to Bundy’s refusal to pay these fees, the BLM began confiscating Bundy’s cattle, he issued a call to militia across the country to come to his ranch and take up arms against the federal government. Although the Bundy family only purchased their ranch land in 1948 and did not begin grazing cattle until 1954, Bundy insisted on his ancestral and preemption-derived rights: “My forefathers . . . have been up and down the Virgin Valley here since 1877. All these rights I claim have been created through pre-emptive rights and beneficial use of the forage and the water and the access and range improvements.” At no point has Bundy substantively addressed the Moapa Band of Paiutes, whose homeland was appropriated as the public domain to which he claimed to have rights by virtue of ancestry, preemption, and American citizenship. Nor did Bundy’s advocates make the comparison between the federal government’s treatment of the Nevada rancher and its considerably more severe, violent, and illegal actions toward the nearby Western Shoshone and the Dann sisters.

31. See generally Paul Conable, Comment, Equal Footing, County Supremacy, and the Western Public Lands, 26 ENVTL. L. 1263 (1996).


Although Bundy had little to say regarding the Southern Paiute he did have thoughts to share on the place of African Americans in the United States. “I want to tell you one . . . thing I know about the Negro,” he said. Referring to a public-housing project in North Las Vegas, he decried “government subsidy” as leading to immoral abortion and crime. He concluded with a nostalgic gloss on slavery by remarking that he’d “often wondered, are they better off as slaves, picking cotton and having a family life and doing things, or are they better off under government subsidy?”35 Indeed, he contended that African Americans taking government assistance were less free than slaves. Las Vegas as a site of escalating racialized struggle over housing and displacement was of little concern for Bundy. Likewise, his criticism of federal land policy omitted any mention of how the 1998 Southern Nevada Land Management Act opened up federal lands for rapid development, and paved the way for the real estate boom in the Las Vegas Valley. During the 1990s, Nevada had the fastest growing population in the country and was subsequently among the state’s most impacted by the 2008 foreclosure crisis.36

Especially relevant for the frame of expectation as property, Cliven Bundy’s racial imaginary and racialization of the state articulate familiar reactionary tropes in response to the gains of the civil rights movement and grudging expansion of the semi-welfare state during the 1960s. These have historically accompanied the assertion of states’ rights and the burgeoning white hostility to federal authority—manifest in struggles such as those against taxation and school integration—and advanced the further devolution and downsizing of government. Likewise, the reactionary 1970s “taxpayer revolt” and successive antiwelfare campaigns disputed what they characterized as the inordinate tax burden placed on them by the state.37 More recently the link between states’ rights claims and efforts to dismantle civil rights legislation such as the Voting Rights Act has been evident in

such conservative jurisprudence as the U.S. Supreme Court’s 2013 decision in *Shelby County v. Holder*.

Acknowledging the ways in such hostility to federal authority is articulated in terms of declarations of patriotism and claims to represent fundamental constitutionally based American values suggests the importance of understanding how antiwelfare discourse evokes American exceptionalist conceptions of the nation. Underwritten by Lockean notions of property and proper possession, as well as the “doctrine of discovery,” the settler construct of the independent and rugged individualist pioneer that has long served as foundational to the mythology of white nationalism remains predicated upon not only indigenous dispossession and its disavowal, but on the attributions of dependency and devaluation to racialized others more broadly. This is where the white republic of Cliven Bundy is an aspiration to a racially specific national belonging that evokes its own vision of common inheritance and birthright. Bundy’s white republic is at once exclusive, possessory, and an expansive claim to be and to defend America that denies its own dependence on lands and labor taken by attributing reprehensible dependency to those who have been dispossessed and racialized as socially expendable.

### III. A CERTAIN PUBLIC

The case of Gold Butte is useful to briefly consider in this regard. Gold Butte is land formation with numerous petroglyphs, historical artifacts, and sacred sites that is part of the traditional territory of the Moapa Band of Paiutes to the south of Bunkerville and on which Bundy had been grazing his cattle. In the wake of Mormon-led colonization efforts in the region that began during the mid-nineteenth century and through which settlers seized the most arable Southern Paiute land, the federal government established the Moapa River Indian Reservation in 1873. Initially 2.5 million acres—including much of present-day Moapa, Logandale, Overton, Virgin Valley, and the Gold Butte area—the reservation was reduced to a mere 1,000 acres two years later to make way for mining industry interests. A claim filed with the Indian Claims Commission by the Moapa Paiute in 1951 provided limited compensation for lands taken and

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legislation in 1980 returned 70,000 acres to the tribe. Legislation introduced in 2014 that would have further reinstated land to the tribe failed in committee, but provoked criticism from various settler factions. Real estate developers in the area complained that this would be a “negative economic legacy to the state of Nevada in perpetuity,” and a spokesperson for the organization Partners in Conservation expressed concerns about lack access for non-tribal members and “families that have traditional, historic, and cultural ties to that area . . . . We have lost a lot in the past years with all the various restrictions on federal lands.” In addition to such acquisitive hostilities, the Moapa and the Las Vegas Paiute have also fought against the toxic consequences of military test sites and extractive energy projects throughout the region, such as the Yucca Mountain Repository for nuclear waste and the Reid Gardner coal plant.

Facing resistance to regaining stolen lands, the Moapa worked with the environmentalist group Friends of Gold Butte and Sierra Club, and successfully lobbied outgoing President Obama to establish the Gold Butte National Monument. Former tribal council member Vernon Lee observed: “We want to protect the lands, we want to protect the animals and we want our sacred sites protected . . . . Right now, the best thing we can think of is to go on the side of this creation of a monument.” This protection required the Moapa to strategically partner with environmentalists so as to advocate on behalf of the public interest and lobby for a national monument to be established under the Antiquities Act for a nation other than itself and antiquities that would symbolically be conserved as an inheritance for the people of the United States generally. This general public is always already a particular settler public—itself composed of specific antagonisms and divisions—that strives to secure national certainty and capacity through indigenous dispossession.

It is instructive to compare Lee’s statement with Nevada Senator Harry Reid, who championed the initiative to set aside Gold Butte as a national monument.

40. See KNACK, supra note 34, at 117–22.
Reid declared: “Threats to our public lands are threats to our economy, our environment, and our culture. When we preserve our lands, we preserve America.”

The force of colonial dispossession and disavowal as settler common sense obscures the gap between the strategic pragmatism of “right now, the best thing we can think of” espoused by Lee—a pragmatism I take to be ultimately in the service of tribal sovereignty—and the national purpose invoked by Reid, that “we preserve America.” Where Lee speaks to the limited options for asserting Moapa relations to place and Moapa authority in relation to lands taken under colonization, Reid’s remarks suggest the ways in which the past and futurity of the United States are at stake in preserving a uniquely American heritage and landscape.

To ignore the racial and colonial constitution of the property relation threatens not only to perpetuate, but also to intensify the ways in which property itself as a historical and material relation is predicated upon racial and colonial dispossession. Nor, is it possible to simply substitute a supposedly colorblind ethic—such as ending de jure racist property exclusions or redlining in real estate markets—that renders the property relation more equitable. Colonization and the differential devaluation of racialized peoples remain constitutive. This is not to say that property is exclusively a manifestation of these historical relations of power, but it is to suggest that it remains in significant ways enmeshed with and disposed by these relations. In prevailing conceptions of possession and property, as Eva Mackey points out, “jurisprudence has legally entrenched and attempted to materialize the fantasy of certainty and stability for settlers”—precisely the certainty and stability upon which expectation depends.

Taking seriously the notion that property is a social relation requires looking at the specificity of that relation as it is continuously remade in the broader social circumstances in which it is situated and social struggles of which it is part. This perpetual need for its remaking and reiteration, in effect, conveys in part how the property relation as a colonial relation remains uncertain, unstable, and open to contestation.

The genealogy of white supremacy in the United States is made in shifting material relations of colonial and racial dispossession. Both white supremacy and what Mark Rifkin calls “settler common sense” are used to mediate inequalities among white people over and against indigenous peoples, people of color, and migrants. The Bundy claims provide an example of these ideologies, which assert a
particular conception of collective belonging and nationalist imaginary. This is a settler nation that gains a semblance of coherence over and against indigenous and racialized others. To challenge this claim by asserting a more inclusive national public and the celebration of national commons may provide a seemingly effective counter-discourse, but it does so only by further inscribing settler prerogative and naturalizing colonial and racialized dispossession. Putatively antigovernment white supremacy in the United States conjoins colonial and racial dispossession in its attacks on the U.S. state. Rather than simply being anti-statist, such maneuvers are attempts to capture and redeploy state power in particular ways, while at the same time categorically denying the historical co-constitution of colonial and racial dispossession and how this remains crucial in the current conjuncture. These are the ideational and material sources of expectation as property.

Characterizing settlement as operating as a form of embodied “common sense” suggests that the normalized legalities and geographies of settler policy—its displacement, containment, and erasure of Indigenous landedness and implementation and routinization of modes of nonnative dwelling—function largely as backdrop, as the unacknowledged condition of possibility for textual representations in which other issues occupy the foreground.

MARK RIFKIN, SETTLER COMMON SENSE: QUEERNESS AND EVERYDAY COLONIALISM IN THE AMERICAN RENAISSANCE 16 (2014). I am using Rifkin’s term to broadly describe the “common sense” erasures and disavowals of settler social formation and ways of knowing.