

## chapter 1

# Introduction: Property, Autonomy, Territory, and Globalization

Scott Prudham and William  
D. Coleman

THIS VOLUME EXAMINES THE complex relationship between property, globalization, and autonomy. The contributors explore how the development of particular property regimes has reinforced, constituted, and disrupted dynamics of globalization, as we have come to understand them, and how autonomies of various kinds have been expressed, enhanced, and hindered through property relations. These issues, in turn, reflect a common belief among the editors and authors that property is central to understanding globalization as we define it, particularly in linking the past with the present. We take as a point of departure that property regimes are particularly (though by no means only) central to understanding the nexus of globalization, autonomy, and the political economy of international capitalism.

This book contributes to expanding research in globalization studies by looking at the growing importance of international and global law, on the one hand, and place-based resistance to the effects of such legal developments, on the other. The volume focuses on property regimes at crisis points and uses these crises as key holes for examining globalizing processes and their interactions with autonomies. Property regimes at crisis points are sites of friction, conflict, and resistance in which global capitalism and international authority supported by global law are engaged by local actors through a politics of place. Some scholars of globalization such as Anthony Giddens (1990) and Manuel Castells (1999) have been criticized for overemphasizing the importance of space, while failing to seriously consider the possibility of place as a site of resistance and a source of

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alternative globalizations. For example, Castells distinguishes between spaces of flows and spaces of places and seems to leave little room for agency in the latter. Giddens (1990) sees globalizing processes as those that involve the “radicalization of modernity” and its implantation everywhere on the planet. He draws on an extensive discussion of time and space but offers virtually no theoretical treatment of place.

This book joins others in challenging these lines of argument and points to examples of place-based politics that engage with capital, defend both alternative modernities and alternatives to modernity, and resist global and national constitutions of property. The book therefore builds on an earlier one in this series, *Renegotiating Community*, which draws place into discussions of communities and change in a global era (Brydon and Coleman 2008). Crises in property regimes highlight how a politics of place can challenge existing globalizing processes, build new bases for autonomy, and articulate alternative ways of living.

Arturo Escobar (2001, 140) defines place as “the experience of a particular location with some measure of groundedness (however unstable), sense of boundaries (however permeable), and connection to everyday life.” The politics of place is an “emergent form of politics” that “asserts a logic of difference and possibility that builds on the multiplicity of actions at the level of everyday life” (Escobar 2008, 67). In this respect, places are sites of dynamic cultures, ecologies, and economies and not simply nodes in global capitalism. They are important sources of culture, identity, and autonomy. Despite the deterritorialization and disembedding from place associated with globalization, there remains an “embodiment and emplacement to human life that cannot be denied” (ibid., 7).

When we formulated the agenda for the Globalization and Autonomy project, we realized that we could not study any kind of representative sample of place-based politics. Given our expertise, we concentrated, in particular, on cultural minorities and indigenous peoples. The case studies in this book reflect this focus by emphasizing crises in property regimes involving indigenous peoples. This volume therefore links to another in the series, *Indigenous Peoples and Autonomy: Insights for a Global Age*, which examines the absences and emergences of indigenous peoples and their struggles for autonomy (Blaser et al. 2010). Property regime crises provide an additional window on changing identities, including those of indigenous peoples, which Castells (2003) has explored at length in his book *The Power of Identity*. Writing of responses by indigenous peoples and Afro-Colombians on the Pacific Coast, Escobar (2008, 217) defines identity as a

“complex form of self-understanding improvised from the cultural resources at hand in a historical background.” The cracks in modernity revealed by crises over property have opened new possibilities for indigenous peoples to reaffirm identity and change the form of that identity as a particular re-articulation of differences, including the addition of a global indigenous identity in some instances (Niezen 2003). Indigenous identities are often built on conceptions of rights to land or territory, which means that the imposition of new property regimes raises deep challenges to established ways of living.

In summary, this book contributes to a broader understanding of globalization by focusing on changes in autonomy aspired to or acted upon by people in places where the property regime is in crisis. It thus emphasizes the continuing importance of place in struggles against newly globalized capitalism. It sketches out some key changes in global law that support capitalism and continuing enclosures of both land and intellectual creations arising from the knowledge, culture, and symbols and healing practices of indigenous and traditional peoples. It demonstrates that both space and place are central to understanding globalization and that viewing globalization as the radicalization of modernity, as a second modernity, or as high modernity overlooks the resistance to such a future by many peoples around the world.

### **Globalization**

In 2000 and 2001, when the program of research for the Globalization and Autonomy project was being drawn up in an application for financial support from the Social Sciences and Humanities Research Council of Canada, participants came face to face with the question, what is globalization? At the outset, the answers varied. As the project proceeded, team members, including the contributors to this book, developed certain commonalities in their understanding of the term. They understood the word *global* as a reference to scale and to phenomena that are somehow transplanetary, to use Jan Aart Scholte's (2005) phrase. They also understood that the spread of transplanetary phenomena is not confined to the economic realm (as is often assumed in popular discourse) but includes political, cultural, military, legal, and non-human aspects as well. They recognized that the growth of transplanetary relationships was uneven, that their density and speed of growth was more pronounced in wealthier countries than in poorer ones and articulated spatially in different ways within all countries.

In 2000, most participants also believed that there was nothing inevitable about globalizing processes. That has not changed. If anything, doubts about claims to inevitability or uni-directionality in transplanetary integration have been renewed by the financial and economic crises of 2008 and 2009. Global historians, including some who have contributed to another volume in this series, *Empires and Autonomy*, note the growth and retraction of transplanetary phenomena over several centuries. A simple glance over the past 150 years suggests, for instance, that these phenomena became more pronounced between 1870 and 1914 but then receded considerably until the early 1980s (Streeter, Weaver, and Coleman 2009).

Most of the authors in this book and the participants in the project more generally entered into these discussions because they had questions about the character and implications of transplanetary connections in the period following the Second World War, particularly since the late 1970s. Most recognize that these connections have accelerated in number, intensity, and extensity. There are varying explanations for this apparent acceleration. At the heart of most explanations is the dynamic transformation of capitalism, propelled in substantial measure by the rapid growth of international financial markets and financial integration. The explosion of international finance and the financialization of capitalism (Arrighi 1994) have shaped the global order in ways not seen before (Castells 1999). Capitalism is global, Castells argues, in that, for the first time in history, it shapes social relationships around the whole planet. Through the use of information and communications technologies, capital “works globally as a unit in real time; and it is realized, invested, and accumulated mainly in the sphere of circulation, that is, as finance capital” (ibid., 471).

The particularly global form of contemporary capitalism is linked in complex ways with innovations in information and communications technologies that have permitted transplanetary connections to become supra-territorial. These connections are less bound by physical location or nation-state boundaries than at any time since the collapse of the highly integrated international economic order in 1914. Indeed, technology has likely made connections less restricted by the traditional territorial powers of states than ever before. Latham and Sassen (2005, 2) amplify this point when they write: “What has tended to operate or be nested at local scales can now move to global scales, and global relations and domains can now, in turn, more easily become directly articulated with thick local settings. In both types of dynamics, the rescaling can bypass the administrative and

institutional apparatus of the national level, still the most developed scalar condition. As a result of the growing presence and use of these [information and communications] technologies, an increasing range of social relations and domains have become de facto transboundary.” These technologies have permitted more connections to become planet-wide, and these global connections have intruded into the daily lives of more people than ever before (taking into account the caveats about inequalities in distribution noted above). The project came together around a set of questions that focused on the relationships among these globalizing processes and the ways in which these processes have reflected, reinforced, and constrained the autonomy of individuals and collectivities.

### **Autonomy**

In the Globalization and Autonomy project, researchers work with the concepts of both individual and collective autonomy. Specifically, we see these concepts as emerging in tandem with modernity and with particular practices informed by ideas of individualism. Writing over a century ago, Georg Simmel (1971, 219) argued that the oppressiveness of medieval institutions gave rise to the idea of the pure freedom of the individual based on “natural” equality. This eighteenth-century idea of individualism, he added, was complemented by another version of individuality in the nineteenth century — that of the particular and irreplaceable person. These ideas have been translated into notions of autonomy that emphasize that people have “a right to choose for themselves their own pattern of life, to decide in conscience what convictions to espouse, to determine the shape of their lives in a whole host of ways that their ancestors could not control” (Taylor 1991, 2).

Yet Western ideals of individualism have taken different forms in different societies, both within and outside the West. Consequently, the performance of autonomy now varies from one place to another. *Autonomy*, as we define it, refers to the situations of individual persons or communities and to their capacity to shape the conditions under which they live (Held 1995). In part, their capacity to shape those conditions depends on the kinds of conditions in which they find themselves. As Anthony Kwame Appiah (2005, 30) notes: “To have autonomy, we must have acceptable choices.” The concept thus can have a communal connotation that suggests self-government or self-determination when it is associated with collective bodies — nation-states, minority groups within states, place-based

communities, indigenous peoples, social movements, and religious groups being common examples.

Scholars have critically examined these notions of autonomy. Feminists have argued that unrestrained individual autonomy reflects the dominance of social structures that favour the self-reliant male. They also note the powerful association between this conception of individual autonomy and neoliberal thinking in capitalist social formations (Code 2000). Some believe we should adopt the concept of relational autonomy. In this formulation, autonomy emerges out of the social relationships among persons. Relational autonomy is a central focus of the volume in this series that addresses the research problematic of the project through the experiences and thoughts of indigenous peoples (Blaser et al. 2010). It also underlies several chapters in this volume (see Mollett; Preston; Mackey; and Habib). Scholars in the humanities stress that autonomy is not only a practice, it also exists as a value, often cast as a universal. As Marilyn Friedman (2003, 189) notes, “The ideal of autonomy is a debatable requirement for a good human life.” She finds that some groups explicitly reject this value while others implicitly value collective autonomy and refuse to recognize the need for personal autonomy.

In the volume *Unsettled Legitimacy* in this series, we examine the relationship between individual autonomy and collective autonomy in democratic theory (Bernstein and Coleman 2009). Theorists postulate that when decisions arise from the exercise of collective autonomy by individuals who themselves possess individual autonomy, they are highly likely to be accepted and, thus, legitimate. The condition that all members of a given political community must have an equal right to participate in decision making anchors the exercise of collective autonomy. How they exercise that right will vary from person to person as each exercises her or his individual autonomy.

Habermas (1996, 122) suggests that collective autonomy and individual autonomy can be seen as co-original: together, they form the basis of democracy and, thus, of the legitimacy of authoritative decisions by the state. He writes that the “idea of self-legislation *by citizens*, that is, requires that those subject to law as its addressees can at the same time understand themselves as authors of law” (ibid., 120). This idea is also consistent in certain respects with Foucault’s concept of governmentality as complex administrative rule in which political subjects are actively enrolled in their own governance, in part through a cultural politics of legitimacy (Foucault 1991; Li 2007). Yet co-originality also rests on assumptions that may be

called into question by globalization. Decisions affecting the lives of individuals are generally located in a geographically limited legal territory, where there is socially delimited community, where citizenship rights are shared more or less equally by all members of that community, and where there are clear jurisdictional boundaries. And behind this reasoning lies the assumption that the given polity makes the primary decisions for that community. These conditions are often not met in a world characterized by the wide social and political disparities of uneven development.

This volume is particularly concerned with the role of property at the nexus of globalization and autonomy. As is indicated below, notions of individual autonomy are associated with particular social constructions and institutionalizations of property and property regimes. At the same time, the exercise of collective autonomy, particularly by “modern” nation-states, often serves to protect and to reconstruct these same property regimes in times of crisis, thereby affecting individuals’ autonomy in both positive and negative ways. Although cast as universal ideas, these notions of autonomy generate considerable friction (Tsing 2005) when they are introduced into societies, particularly indigenous ones, with cultures that have histories of colonialism and resistance to Euro-American domination.

### What Is Property?

The immense scholarship on property spans multiple academic disciplines and stretches back far in time. It cannot be reviewed here. But some general comments regarding the approach to property reflected in this volume are warranted. The contributors to this volume accept the commonly held position that although property is often seen as a thing or object unto itself, the concept more correctly refers to a set of social relationships among people and how these relationships govern the relative allocation of rights, responsibilities, and access to particular things. Specifically, John Weaver defines a right to property as “a relationship between a person and other persons respecting access to material resources” (Weaver 2003, 49) (to which we might also add symbolic resources, for example, copyrights).

As C.B. Macpherson (1978) argues, a reification of historical property arrangements — specifically, increasingly comprehensive rights governing the disposal of land in emerging capitalist market economies — has given rise to increasingly common-sense (but problematic) notions. The first of these is the mistaken impression that *property* refers strictly to things and that property is itself a thing rather than a social relation. Second, he notes

the common equation of the term *property* with what Robert Gordon (1996) calls individual absolute dominion, that is, individualistic and highly separable absolute or monopoly (unrestricted and unconstrained) freehold rights over ownership and disposal, including exchange (on this slippage, see also Blomley 2005). Following the likes of Macpherson and Gordon, as well as critical sociological perspectives on property more generally, the essays in this volume approach property as *relational* sets of rights distributed among individuals and groups in ways that make existing property regimes and claims specific, limited and, frequently, shared.<sup>1</sup> Moreover, we view the assertion of property claims by individuals or groups as being central to notions of autonomy.

Observations concerning the overlapping or shared character of property rights to particular elements of the landscape, or what Vandergeest and Peluso (2001) in the context of forest access regimes call species rights, are commonplace in much of the literature dealing with non-Western and non-capitalist contexts.<sup>2</sup> One finds, for instance, in studies of agrarian and peasant societies and in the broad literature on political ecology widespread recognition of typically complex and overlapping rights to particular land parcels, including separate rights to specific crops and/or trees on the same parcel (e.g., Peluso 1992, 1995; Schroeder 1993; Tsing 2005). Moreover, these rights are often tied to and help define social identities, including gender, race, age, and class or caste (see Mackey; Mollett; and Preston, this volume). By contrast, more individuated and exclusive rights, including not only monopoly territorial rights to land ownership but also patent rights that prescribe exclusive rights to inventions, are associated with capitalist social relations and tied closely to the formation of more and more inter-regional and global relations of market exchange. There are certainly good reasons to note such general tendencies. Indeed, dynamics of capitalist commodification and market formation tend towards more exclusive forms of enclosure that enable less restricted disposition and sale.

Nevertheless, an important insight from the literature is that property in many settings remains relational, specific in certain respects, and also bounded or limited. This situation is particularly apparent when we move from abstract generalizations about property to more fine-grained engagements with the specific forms of existing property rights and regimes. Even in full-blown capitalist market economies, the extreme form of Gordon's (1996) characterization of individual absolute dominion is exceedingly rare and the stuff (as Gordon is at pains to argue) of ideological reification. For instance, when we look closely at the suite of restrictions

that place important constraints on rights to land and home ownership even in ostensibly free market economies, we gain a sense of how rare such pure forms are (Blomley 2004). Discrete or partial rights are also typical in many commercial resource extraction or harvesting settings, including, perhaps most evidently, instances involving lands (or waters) that remain in important respects under state control. Securing access rights to ground water, for instance, is typically a complicated affair, and water for irrigation is often subject to complex entitlements that may not be transferable. Commercial harvesting rights to federal (public) lands in the national forest system of the United States are also an example. Here, access rights for timber extraction even for the largest of multinationals are almost exclusively characterized by one-time-only private logging or gathering rights and no enduring claims to the land per se. In short, property regimes vary immensely, but they are seldom, if ever, simple or absolute. The contributors to this volume generally reflect this observation by attending to the relational specificity of particular property regimes in both their formal and informal guises.

We also emphasize that property regimes are social institutions, made in the crucible of human action, culture, and power relations. They are not pre-given or universal. This emphasis is true even though for several centuries the thrust of development in law in many jurisdictions around the world has been towards tighter definitions of formal rights and the introduction of measures meant to ease the transfer of rights. Our historicist view contrasts in this respect with much classical liberal scholarship on property. This scholarship is epitomized by the paradigmatic writings of John Locke (1952 [1690]), which construct property in terms of universal or natural rights independent of particular historical or geographical contexts. In this tradition, a pervasive naturalism represents particular social orderings as pre-given or teleological outcomes of human social development. For Thomas Malthus (Malthus and Gilbert 1993 [1798]), for example, benevolence would eventually and inevitably give way to greed as a higher form of human development and, with it, collective property would give way to more private, exclusive forms:

It appears that a society constituted according to the most beautiful form that imagination can conceive, with benevolence for its moving principle, instead of self-love, and with every evil disposition in all its members corrected by reason and not force, would, from the inevitable laws of nature, and not from any original depravity of man,

in a very short period degenerate into a society constructed upon a plan not essentially different from that which prevails in every known state at present; I mean, a society divided into a class of proprietors, and a class of labourers, and with self-love the main-spring of the great machine. (Ibid., 64–65, emphasis added)

This kind of thinking is no mere relic. A similar tack, for example, is evident in Garret Hardin's (1968) famous endorsement of privatization or coercive state intervention in the name of natural resource and land conservation. Following his better known and more familiar argument based on incentives and common-pool decision making, Hardin proceeds in the latter part of his essay to dismiss benevolent behaviour as a solution because, he argues, selfish genes in humans eventually win out (in an evolutionary sense) anyway.<sup>3</sup> In short, for Hardin, social policies aimed at individuation and privatization of land would only follow the so-called natural order of things.

A tight coupling of commerce, capitalism, and property relations in this genealogy is certainly no accident. Indeed, for Jeremy Bentham, as much for Locke, freedom (i.e., political autonomy) is defined in substantial measure by rights to property.<sup>4</sup> The institutionalization of this ideal helped to underpin a particularly British-led wave of global economic integration during the nineteenth century (Polanyi 1944). The notion of freedom as a set of rights governing the acquisition and disposition of material property is also deeply ingrained in US ideals of political emancipation. Moreover, this ethos has been strengthened more recently by neoliberal discourses and projects that reassert political freedom as the absence of collective or social (usually state-based) constraints on individual rights to the disposition (including market exchange) of material property (Jessop 2002; Harvey 2005; Andreasson 2006).

In this volume, we do not engage critically with this ethos per se, although some of the contributors do take up this project directly. Rather, the volume reflects our collective recognition of the importance of property rights (particularly, though by no means only, individual, exclusive forms of property rights) to liberal and neoliberal notions of freedom. We are especially interested in how such notions of freedom and their expressions via property regimes articulate capitalism with governance and political rationality (Brown 2006). These articulations are pivotal to defining and coming to terms with US-led globalization, an issue addressed in several chapters in *Empires and Autonomy*, another volume in this series

(Streeter, Weaver, and Coleman 2009). Our perspective emphasizes this period as a thoroughly *social* production characterized and punctuated by specific historical geographies, a perspective we bring to bear on the formation of significant regimes of property and their relationships to globalizing tendencies.

We also approach property as a set of rights that are at once both formal and informal. By *formal rights* we mean those that are codified in some fashion or socially understood as binding. In general terms, the expansion of global connections under colonial and postcolonial power relations has involved a transition from less to more formal property regimes (Benton 2002; Weaver 2003). Certainly, the territorialization of formal administrative regimes governing property represented a singular front in the more widespread introduction of the rule of law under European-led colonialism, one that has been largely continued in many postcolonial contexts and strengthened by neoliberal reforms. In many instances, as Vandergeest and Peluso (2001) discuss in the specific context of Southeast Asia, this shift constituted, and in significant measure produced, the colonial state. Similarly, the international integration and harmonization of formal property norms is a key front in the US-led post-Bretton Woods era of globalization, energized in no small measure by the wave of privatization introduced when the World Bank and International Monetary Fund brokered structural adjustment programs. By no means do we see this broad shift from informal to formal rights as a process innocent of coercion, violence, and active dispossession. Indeed, the instantiation of the rule of law is necessarily propelled by uneven power relations, not least the coercive power of states to create and enforce property rights.

At the same time, we recognize that the institutionalization of formal property law, although propelled by uneven power relations, cannot be conceptualized entirely as a break from the past: it is frequently an incomplete project. For example, an increasing formalism in property regimes has often involved (selective) codification of pre-existing informal rights and customs (Thompson 1975; Peluso 1995). In such instances, formalization does not so much extinguish or replace informal property norms as rework them into hybrids of new and old. Moreover, even in a world of ostensibly formal and clear property rights, norms of formal and informal property circulate in everyday discourse and practise in complex and sometimes contradictory ways. Seemingly clear boundaries of private and public spaces become blurred (Blomley 2004). This collection recognizes the complex character of actually existing property regimes, even as the

contributors attempt to track the broader institutionalization of international property norms pivotal to the delineation of contending autonomies in a globalizing world. Capturing some of the resulting friction between the universal and the specific, the abstract and the concrete, the formal and the informal is one of our goals.

### **Why Property?**

Property regimes help to define, reflect, and reinforce the character and trajectory of competing autonomies and thus comprise a key lens through which to view the relationship between these autonomies and globalizing tendencies. These processes are most obvious in the ways in which material and semiotic norms of property are geographically diffused as universals in the forging of global connections as individuals, corporations, and the states supporting them extend and deepen their geographic reach. The result is not uniformity but rather a proliferation of institutional, discursive, cultural, and material “frontiers” in the power-laden crucible of making and remaking property relations. And in this remaking, universals are actively reshaped, taking particular hybrid forms (Canclini 2005). Tsing (2005, 3) uses the term *friction* to characterize the “awkward, uneven, unstable, and creative qualities of interconnection across difference” that result. Each encounter takes on its own particular form as the grip of the universal meets the ways of being, knowing, and living in a particular place. The friction that comes with the introduction of universals into a frontier means the outcome is not the same from one place to another. All parts of the world do not end up looking the same or having identical laws. More generally, the globalization of modernity itself, of which property rights are a part, differs from place to place (Dirlik 2007). The “encounters across difference” involved are messy and surprising (Tsing 2005, 4), even if certain tendencies are evident (including, importantly, more and more formalism and individuation in property regimes). And, as most of the chapters in this volume show, these encounters are often protracted and violent, understandings are unstable, and law can be turned on its head as global connections take new forms. Tsing (*ibid.*, 9) concludes that the resulting “actually existing universalisms are hybrid, transient, and involved in constant reformulation through dialogue.”

These encounters provide fundamental dynamics that shape geographically uneven development in and through globalization. Property norms

are thus not only one of the ways in which the extensive logic of globalization is expressed and the dynamics of autonomy are played out but also one of the mechanisms through which disparate places and peoples commingle with one another. Attempts to standardize international intellectual property regulation under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organization represent a recent example of these dynamics, and they are discussed in this volume by A. Claire Cutler and Daniel Gorman. Though different in significant ways from overt imperialism, these globalizing tendencies nevertheless share in common with colonialism the territorialization of power relations and governance. By *territorialization*, we mean the spatial expression of power relations in general and the more specific expression of property rights and their administration in the delineation of particular spaces. Not all property claims are claims to land or parcels of space, but the territorializing dynamic of property regimes in a globalizing world includes the expanding geographic scope of property regimes to be sure, whether the specific things administered by these regimes are spatially explicit or not. We are also interested, following Vandergeest and Peluso (1995), in the notion of territorialization as the filling out or deepening development of administrative power within prescribed geographic boundaries. One of the merits of this perspective, particularly vis-à-vis globalization, is that it links the spatial dynamics of what goes on *between* states with what goes on *within* states.

We also view the delineation and administration of property rights as forms of governmentality (see, e.g., Vandergeest and Peluso 2001). In the broadest terms, *governmentality* refers to particular forms of power relations and political rationalities involved in administering the well-being of populations within a particular territorial setting. It refers to a way of governing relations among “men and things” within a modern, complex administrative setting and, typically, but by no means only, in reference to the institutional and discursive apparatus of the liberal nation-state (Foucault 1991; Braun 2000; Li 2007). Governmentality is a conceptualization of political rationality and power that operates through consent (in contrast with more coercive forms of the exercise of sovereignty) and features more diffuse technologies of governance. Through governmentality, populations actively enrol in their own governance by virtue of a cultural politics of consent whose logic and rationale in significant measure decentres and depoliticizes sovereignty via the creation of regimes of ostensibly objective

truth, proper conduct, and correct orderings. According to Watts (2003, 10, emphasis added), “modern governmentality is rendered distinctive by the specific forms in which the population and the economy were administered” and by “how sovereignty comes to be *articulated through* the populations and the processes that constitute them.” Through these processes, the development of the administrative apparatus is thickened geographically via its expression through relations among “men” and “things” within territorial boundaries (Braun 2000).

Although *governmentality* is Foucault’s term, a rich literature interpreting, debating, and extending its meaning has emerged, cutting across academic disciplines and attempting to understand the interplay of state power, political economy, rational administration, and forms of political subjectivities (individual and collective). Property and modern forms of property are a central concern here, not least because of the location of many property regimes at the interface of governance and territorial administration on the one hand and commerce on the other. Of particular concern to this volume is the two-fold process by which property regimes lead to the geographic extension of social relations and institutions and to geographic integration via the articulation of disparate places under more or less common (though by no means homogeneous) modes of governance.

Although never static and certainly not linear in their development over time, property regimes direct our attention to the ways in which issues of access to and control over assets and resources of various kinds, by individuals and communities, are structured by formal and informal norms. The differential allocation of property is both a (partial) cause and a consequence of globalizing tendencies and, at the same time, it is constitutive of autonomy. Property is an important lens through which to study the articulation of contending autonomies (as relational capacities) in a globalizing world. After all, property regimes in significant ways delineate, institutionalize, legitimate, and (often but not always) territorialize autonomy. They prescribe — formally and otherwise — the rights and obligations individuals or groups have in relation to others, as mediated through the various things (including geographical spaces and cultural creations) to which property rights apply.

Property regimes are also crucial because they represent key sites of struggle, knowledge production, and identity formation. They often track the exercise of hegemonic power. In this respect, property regimes are always more than rights to assets: they are constitutive of the production of subjectivities — individual and collective — among rights holders (Ribot

and Peluso 2003; Tsing 2005; Redcliff 2006; Vasudevan, McFarlane, and Jeffrey 2008). In short, property helps make us who we are in a globalizing world increasingly articulated through the exercise of power relations among states, international institutions, and capitalist firms.

### **Globalist Moments: Our Approach**

Any study attempting to connect property with globalization and autonomy will likely invite the criticism that struggles over property rights vary significantly in form, depending on the socio-cultural and political context in which these struggles take place. As many studies of property have shown, encounters at the frontiers of contending property regimes are singular, often violent, and usually protracted (see Weaver 2003). Our goal is not so much to add to these studies. Rather, our objective is to use property as a lens through which to gain some understanding of the complex dynamic between globalization and autonomy, the overall goal of the Globalization and Autonomy series. Although we focus, in particular, on contemporary globalization, we note that earlier periods of intensifying global connections have influenced how struggles for self-determination and individual and collective autonomy take place.

We emphasize the ways in which property regimes have been shaped by defining moments or ruptures, significant breaks or punctuation points from which a history of the globalizing present becomes more discernable. We call these ruptures globalist moments. These moments represent interwoven material and semiotic ruptures in space and time from which it becomes possible to discern trajectories. This volume is premised on the idea that significant moments in the making of enduring property regimes are critical in the demarcation of coherent periods (*longues durées*) of global integration, disintegration, and hegemony (Braudel 1980; Arrighi 1994).

With this focus in mind, the contributors selected a particular struggle over property regimes to provide a window on the globalization-autonomy dynamic. We hoped that these moments would reveal the dialectic between globalization and autonomy and the friction that results. Again, turning to Tsing (2005, 6), “Friction makes global connection powerful and effective. Meanwhile, without even trying, friction gets in the way of the smooth operation of global power. Difference can disrupt, causing everyday malfunctions as well as unexpected cataclysms. Friction refuses the lie that global power operates as a well-oiled machine. Furthermore, difference sometimes inspires insurrection. Friction can be the fly in the elephant’s

nose.” And yet, despite these frictions, patterns emerge, and the contributors seek to lay them bare.

The identification and strict delineation of such moments is always subjective, not to mention methodologically and epistemologically fraught. We do not pretend to suggest otherwise. Nevertheless, we feel there is sufficient reason to focus on important junctures — on frontier encounters between past and present, present and future, and here and there, on periods when one set of property norms and customs collides with another, creating new or extended norms, conventions, and institutions. Examples include the infamous *Diamond v. Chakrabarty* decision of the US Supreme Court in 1980, a precedent-setting case that extended patent rights to living organisms. This moment illuminates our approach in several respects. Certainly, in the eyes of many scholars and activists, the case marked a radical break from an institutional and discursive past, from a period when life was considered outside the scope of invention and, thus, conventional patents. Subsequent US-led efforts to export the intellectual property regime to genes and genetically modified organisms have been successful in substantial measure, though they have certainly met with resistance (see McAfee 2003; Prudham 2007; and Gorman and Coleman and Reed, this volume ), building in important ways on *Diamond v. Chakrabarty*.

Nonetheless, this particular moment cannot be understood strictly in isolation. There were important precursors in US plant patent legislation and critical developments in the political economy of biotechnologies more generally (Kloppenborg 2004). Moreover, subsequent developments and decisions in the realm of US patent law during the 1980s have also proved important in consolidating the trajectory (Kevles 1998). One must also consider the longer term discursive and epistemic historical trajectory by which life has come to be seen increasingly in terms of discrete and separable bits of information or code (Kay 2000). And at the broadest level, the *Diamond v. Chakrabarty* decision must be understood in relation to a more long-standing US patent doctrine regarding the delineation of rights for sole inventors and entrepreneurs that dates to the late eighteenth century, together with more than 125 years of international relations mediated through patent treaties since the 1883 Paris Convention for the Protection of Industrial Property. In short, this example strongly supports arguments in favour of decentering a strictly event-focused gaze.

What this collection does, in part, is use significant events in the development and consolidation of property regimes to invoke *exactly* these kinds of debates. This court case can serve as both a narrative and analytical

device to focus attention on a set of influences that converged in the moment and on subsequent developments that have defined a trajectory in the regulation of property claims over life forms. One could perhaps choose instead the period between 1980 and 1987, punctuated by the US Patent Office decision to allow the oncomouse patent, as a sort of extended moment. The point is to draw attention to important political, economic, discursive, and institutional tendencies in property regimes that are crystallized in key moments and to the ways in which these moments act as foundations for shaping and constraining the dynamics of globalizing tendencies and autonomies in their wake.

### **Enclosures: From Bretton Woods to the Neoliberal Washington Consensus**

In the volume, we focus on a period that dates from the middle of the twentieth century, when the United States emerged as the world's greatest geopolitical power, and extends through the Washington Consensus era of neoliberal international political and economic integration.<sup>5</sup> The rise of the United States was characterized by important, albeit complex and sometimes highly contradictory, shifts in the expression of geopolitical power relationships and their territorialization. During the period, many former colonized societies also found that “independence” did not entirely mean the end of coloniality (Mignolo 2000, 2005). In areas of knowledge and culture, the world had not yet decentred; the power to enunciate remained largely with the West (Santos 2005, 2007). Accordingly, this shift ushered in a distinctly postcolonial era of enclosures tightly interwoven with reworked modes of geographical knowledge and representation.

What can be said about this most recent era of enclosures? This volume's case studies offer a rich substantive and theoretical diversity that in no way seeks to diminish or oversimplify. We can, however, offer some general observations on property, power relations, autonomy, and spatiality in a globalizing world. It is clear, for instance, that enclosures, as forms of what Marx called primitive accumulation, should by no means be understood exclusively as features of the pre-history of capitalism. Making this exact point, David Harvey discusses and extends Marx's conceptualization of primitive accumulation, arguing that his recasting of Marx's concept as accumulation by dispossession is a necessary and ongoing expression of the expansionary and crisis-prone tendencies of capital accumulation (Harvey 2003, 2007).<sup>6</sup> As the Retort Collective (2006, 194, emphasis added) puts it, “Capitalism ... is rooted in the continual *disembedding* of basic elements of

the [human] species' life-world from the extraordinary matrix of social relations which had been the [prior] central creation of humanity's long history." Without question, we recognize that the dynamics of enclosures are central to contemporary globalization in that globalization is understood (in part) as the extension of capitalist social relations of production and exchange.<sup>7</sup>

In this context, there are several reasons for tightly coupling enclosures and capital accumulation. Most important to us in this volume, property rights and the efficiency of exchange and commerce are linked, particularly (but not only) when the delineation of exclusive property rights tends towards individual freehold that approximates individual absolute dominion. This is one of the few things upon which critics and champions of liberalized trading regimes and privatization schemes can agree. Commodity circulation requires alienating discrete things from their social and ecological context (Castree 2003). Processes of alienation are, we stress, not only material but also semiotic in both cause and consequence.<sup>8</sup> The alienation or dissociation of people and things facilitates commodification (as the proliferation of commodities), which is propelled by the expanding geographic scope of capitalist social relations (including relations of commodity exchange). In addition, it encourages the deepening of capitalism as more and more discrete entities are produced and exchanged as commodities (Bonefeld 2001; Lysandrou 2005). This is certainly not to say that a crude and functional economism should prevail in explanations of the complex social processes involved in delineating exclusive and enforceable property rights (for recent discussions, see Bakker 2005; Prudham 2007) or the dynamics of enclosure. It is to say, however, that commodification and the delineation of clear, enforceable, and exclusive property rights are closely linked. A world of increasingly far-flung and integrated commodity production and exchange thereby operates through structures that reflect and reinforce power relations and shape the allocation of benefits.

Yet recognizing the interwoven history of enclosure and commerce and commodity circulation is only the first step towards acknowledging the complexity of the issue. Even a relatively narrow focus on the relationship between exchangeable rights in the form of individual absolute dominion (to use Gordon's phrase) and commodity production and exchange reveals a deeply contradictory tension between what might be called movement and fixity. That is, although clearly delineated and exclusive property regimes facilitate fluid movement via exchange, they are also one of the primary institutional means that fix social relations among people. As a

result, access to specific things and territory becomes fixed in ways that can hinder circulation and exchange. This is one of the contradictory tensions that shape what Harvey calls the development of spatio-temporal fixes in capitalist social formations (see Harvey 1982, 1989, 2001a; Schoenberger 2004; Jessop 2006). It is a dynamic that Scott Prudham explores in this volume in his chapter on the emergence of modern forest tenure and regulation in British Columbia. But a debate about the tension between fixing exclusive rights and enabling exchange and use has also long characterized mainstream and critical discussions about patent rights, particularly the issue of how all-encompassing and enduring they should be as monopoly rights to inventors (see, e.g., Gilbert and Newberry 1982; Eisenberg 1992; Carolan 2009). This debate has flared up in recent years in the context of arguments for or against strong patent rights over pharmaceuticals and germplasm and in discussions about how these decisions will shape the dynamics of social justice and technology transfer in poorer countries (Pogge 2005). In this volume, Daniel Gorman and William Coleman and Austina Reed discuss these themes in the more general realm of intellectual property regulation. These dynamics remind us that strong, exclusive property rights can both enable and impede globalization (as a form of integration). They can also enhance or compromise autonomy and a politics of place, depending on the context and the particular configuration of power and interests involved.

It is also important to note in the context of a discussion about the relationship between enclosure, alienation, and exchange that not all forms of enclosure take the form of individual freehold title. Rather, exclusive property regimes can and do develop in the guise of collective and communal enclosures, typically referred to as common property or common pool resource arrangements. A rich and substantial literature documents the important role of communal property regimes in human history and in many different cultures, including in the contemporary period (Ostrom 1990; Feeny et al. 1990). An important thrust of this literature is to differentiate communal from open access regimes, particularly given debates about the shortcomings of the latter when it comes to reconciling usage rights with responsibilities for stewardship (Ciriacy-Wantrup and Bishop 1975).<sup>9</sup> And as scholars of common property regimes have repeatedly emphasized, examples abound in which collective rights and institutions have successfully addressed such tensions in order to balance exploitation with conservation of communally governed resources (Cox 1985; Berkes et al. 1989; Ostrom et al. 1999; Agrawal 2001).

Recognition of the important role and defining features of common property regimes is an important counter to the rush to secure individual freehold rights as a singular alternative to problems posed by externalities and improper incentives (Ostrom 1990). But this recognition does not obviate so much as complicate the connection between enclosure and exchange. That is, commodity circulation and exchange are facilitated by the clear delineation of property rights, whether individual freehold or collective, in so much as clarity and social sanction (including enforceability) of exclusive property regimes reduces social frictions that might otherwise inhibit transfer of ownership.

That being the case, many actually existing common property regimes explicitly restrict or strictly delineate rights of exchange, thus excluding those outside the community in which title is vested. For example, many contemporary community resource tenure regimes allow for commodity production and exchange from resource extraction but prohibit or restrict alienation of the underlying rights to land. Similar restrictions are a noted feature of many traditional or indigenous property regimes (Berkes et al. 1998; Berkes and IUCNR 1999). This only reinforces the importance of focusing on actually existing property regimes and enclosures to interrogate connections between autonomy, globalization, and property, even when globalization is understood more narrowly as the development of far-flung relations of commodity circulation.

When we think about the connections between force, on the one hand, and freedom and autonomy, on the other, the complexities and nuances of property relations likewise become apparent. Harvey's conceptualization of the contemporary dynamics of accumulation by dispossession explicitly develops these dynamics as contending geopolitical logics of power. On the one hand, there is overt territorial domination, associated most closely with the era of colonialism, but by no means absent from the contemporary world and the Pax Americana. On the other hand, there is the more familiar and celebrated face of geopolitical liberalism, in which access to far-flung spaces is sought through negotiated integration of financial and commodity markets (Harvey 2003). The ebb and flow of these geopolitical strategies, backed up by a global network of military bases, is a central dynamic of US-led hegemony (see also Glassman 2005) and, thus, of postwar globalization. Throughout the Bretton Woods era, each expansion of markets is present as a US-led strategy of international engagement. International relations under US geopolitical hegemony, when framed against a global network of some seven hundred military bases in over ninety countries

(Johnson 2004), are bound to an underlying logic of coercive enforcement. And the periodic assertion of more direct forms of territorial domination (including post-9/11 invasions, however justified), particularly when petroleum resources are present, serves as a reminder that property as a set of enforceable claims stands at the uneasy and contradictory intersection of the invisible hand and the iron fist (Watts 1994). In short, enforceable, exclusive property claims, though packaged as vehicles of freedom, are inextricably bound up with violence, real or implied (Blomley 2003).

Acknowledging the centrality of violence to enclosures and the administration of exclusive forms of property, whether individual or communal, is not the same as arguing that formal exclusive property regimes are merely a technology of elite rule. Indeed, to situate property regimes in relation to governmentality, we must understand power and hegemony in ways that take consent seriously, particularly when property regimes appear and are maintained via political rationalities of social inclusion (however conceptualized). In his classic study of the transformation of rights to land in Hanoverian England, *Whigs and Hunters*, E.P. Thompson (1975) makes this argument to devastating effect vis-à-vis the rise of the rule of law (including in the administration of property claims). Thompson argues that English enclosures, which entailed a shift from informal customary and manorial land rights to freehold and formal rights, were indeed much less credible and universal as forms of emancipation than their Whig and subsequent liberal defenders would argue. For Thompson (and others, it must be said), political and material assets were allocated via enclosure in profoundly unequal ways and often by naked coercion. However, Thompson also argues that the emergence of formal means of defining and defending property rights, as part of a wider move to the rule of law in England, was not as some believed a step towards dispossessing the peasantry. Instead, that peasants could (and did) mobilize these new rules to defend their own rights of access suggests that the rule of law developed at least in part as a logic of social inclusion. Thompson asks, if the ruling class was all powerful, why would it require such a ruse (i.e., the rule of law)? The question can be applied equally well to conceptualizations of power, violence, governmentality, and property in complex societies (see also Hall 1988).

Thompson's question provides an important insight into the discursive and ideological lure of exclusive, individuated, and increasingly freehold forms of property, one that arguably goes to the heart of the logic of American hegemony. It speaks directly to the political rationality that binds together coercion and consent when it comes to accumulation by

dispossession. Such accumulation, defined by Harvey, involves the familiar liberal “promise” of freedom, defined as the right to freehold possessions and their universal defence by the modern state. From this perspective, although unquestionably exclusive, property in the form of Gordon’s “absolute individual dominion” is also, somewhat paradoxically, a site of inclusion and social cohesion in liberal capitalist societies.

This conclusion points, in turn, to an additional dimension of property, namely, that property regimes are always simultaneously material and semiotic. Property rights are, in important respects, constituted by the material *and* semiotic properties of the things to which property rights refer. Consider, for instance, complex debates about the limits of access rights to fugitive resources such as commercial fisheries and the ways in which the rights themselves are shaped by the material properties of the resource (McEvoy 1986). At the same time, in the age of biotechnology, in debates about the delineation of property rights to genes and genetically modified organisms, the meaning of life itself (e.g., is life merely the sum of its parts, analogous to a machine, or something else?) has been repeatedly invoked, even by Supreme Court judges to defend arguments about life patents (whether strictly prohibited, limited to gene constructs alone, or extended to whole organisms). In this context, the politics of making life into a commodity are tied inseparably to a politics of meaning vis-à-vis life (Prudham 2007). Moreover, if the alienation of discrete things to which exclusive property rights apply is caught up in an ontology of object and subject, then debates about property rights will inevitably become embroiled in such difficult binaries as nature and culture, human and non-human, us and them (Star and Griesemer 1989; Latour 1993, 1999). In short, property relations are also relations of meaning.

In related fashion, the delineation and legitimation of property regimes relies on what may be called moral economies of use (or non-use). That is, property rights are almost always accompanied by discourses of rights (in the ethical sense of the term, e.g., right versus wrong) and notions of correct practices that have their own genealogies. As MacPherson (1978) notes, some sort of moral narrative of legitimacy *always* circulates with enclosures (see also Prudham, this volume) that are in any way exclusive.<sup>10</sup> For Locke, for instance, the narrative of agronomic improvement serves as a powerful legitimating device to justify the displacement of some social claims to land in favour of others. Purely at face value, this argument is about efficiency, the idea being that enclosed land will be more productive land, that enclosure will be in the social interest (assuming, of course, that

society more generally benefits from increased output). But Locke also bases his idea of efficient land use on distinctly English agronomic practices that make “improvement” legible. As a consequence, his argument renders land subject to Aboriginal and other “unfamiliar” regimes of practices in the colonies or future colonies empty (*terra nullius*) and wasted, and thus open to (colonial) enclosure. Implicit, then, is a social and racialized ordering based (rather remarkably) on prevailing cultivation regimes in England.

Doctrines of improvement act as powerful narratives that underpin land policy and the politics of privatization in all manner of contexts and in ways that supposedly depoliticize the practice of politics and administration. And, as in Locke, improvement doctrines in diverse contemporary settings carry utopian projects of emancipation based on increasing material prosperity and “development.” Such discourses are always accompanied by affects and assumptions that help to constitute particular kinds of cultural and political subjects. When these discourses and practices are deployed in former colonial settings in ways that draw on and at the same time rework salvation and improvement narratives (see, e.g., Mollett’s chapter in this volume), they lend contemporary development-as-globalization a decidedly Orientalist and postcolonial flavour (Gregory 2004; Li 2007). Our central point is that considerable cultural work is tied to the delineation and enclosure of property regimes; therefore, we have one more reason to interrogate the nexus of globalization and autonomy through the lens of property.

### The Volume

The chapters are grouped roughly in temporal order based upon the globalist moment chosen by the author. The book opens with a chapter by A. Claire Cutler that provides background on the historical development of international law, commodification, autonomy, and property. The chapter offers a legal context for most of the chapters that follow, particularly those relating to indigenous peoples. Cutler argues that, notwithstanding the growing diversity of claims to identity and subjectivity under international law, there is a singular logic to the globalization of international law in the commodity form that tends to flatten out differences, integrating disparate places and peoples. The globalization of international law is an important element of a new imperialism that is knitting the world together into a network of governance arrangements that are disciplining

peoples and things through a neoliberal economic logic and a neoconservative politico-strategic logic. Cutler's first globalist moment is the articulation of state sovereignty and the analytical foundations of international law through solidification of the doctrine and practice of international legal personality. The doctrine of international legal personality took shape in the nineteenth century, establishing the ontology of international law and the foundational distinction between subjects and objects of the law and recognizing states as the original subjects of the international legal order.

Cutler's second defining moment occurred in the mid-1990s, when contemporary systems of rule were being delocalized and deterritorialized. During this period, international law took on a transnational dimension that was "both extensive (it broadened its substantive and geographic scopes) and intensive (it deepened its discipline under the new constitutionalism)." The intensive reach of instruments such as TRIPS and the General Agreement on Trade in Services (GATS) into local politico-legal orders has created new forms of enclosure by privatizing and commodifying more dimensions of existence. The statist focus of the analytical foundations of international law remains doctrinally intact, but non-state challenges to the primacy of states are emanating from aspiring identities, including (of particular relevance to this volume) indigenous peoples and transnational corporations. These aspirants for sovereignty often compete for recognition and for access to the benefits that flow from legal subjectivity. Cutler argues that these aspirations are giving rise to tensions between the goal of further globalizing a universalizing and homogenizing international law and commitments to enhancing the local autonomy of states and peoples.

Like Cutler, Susan Preston adopts a historical approach to consider the role of colonial resource exploitation companies in the renegotiation of traditional meanings and the emergence of new ways of thinking about land. Preston demonstrates that an interest in converting the physical elements of the Cree life world into extractable capital drove the colonial fur trade from the seventeenth century. Over time, these extractions increased in intensity, culminating in mining and logging in the twentieth century, especially hydroelectric developments since the 1970s, Preston's globalist moment. She proposes that, during the postwar era, a concept of land as property emerged alongside variations of traditional Cree understandings in response to — at least partly — these impositions and their associated policies. The coexistence over time of Cree understandings and Western notions of property and development, a form of improvement, reflects the

Crees' attempt to guard autonomy in the face of different waves of globalization. Preston explores a relational notion of autonomy and considers it at multiple scales across time, from the individual to the hunting group and from the extended family to the political entity of the First Nation. She considers the relevance of autonomy and how that relevance can change as a result of struggles to resist the loss or desecration of traditional lands. Accordingly, autonomy at the cultural level, over much of the past half-century, has meant the right to choose how to live and how to shape a field of acceptable choices.

Scott Prudham's chapter explores a globalist moment when the precursors of contemporary property rights governing private, exclusive access to public forests in British Columbia were established. Specifically, he examines the adoption of private forest tenures and sustained yield regulation in British Columbia during the 1940s and 1950s, the time of the first two provincial royal commissions on forestry. Prudham shows that the Sloan Commissions opted for the creation of secure, private, excludable, and ultimately transferable private — and increasingly corporate — rights to so-called public forests. In doing so, he suggests, the commissions justified their recommendations by emphasizing the exchange value of forests. This emphasis on exchange value was legitimized further by developing a doctrine of forest improvement built around the *Normalbaum* (normal forest). Both of these emphases foreshadowed a new corporate globalization anchored in transnational corporations. The enclosures that resulted overwhelmed alternative, more collective, property regimes that might have provided more autonomy to workers and to indigenous peoples seeking to adapt traditional ways of living.

Sharlene Mollett's chapter questions a long-established communal property regime in Honduras by examining another globalist moment — the establishment of UNESCO's Man and the Biosphere Programme in 1980. By designating the biosphere as a United Nations world heritage site, the program created openings for more global connections to enter the region. Mollett argues that such reserves rely on a set of globalized norms that transform their situations into mainstream acts of conservation or common-sense understandings over time. Critics of global environmentalism argue that hegemonic norms transform the natural resources of poorer countries into a global commons, both discursively and materially. The "environment" becomes a significant site upon which a myriad of contests take place, many of them involving non-indigenous challenges to

indigenous lands and resources. Mollett demonstrates that, in Honduras, decisions about the environment made at the global level put into question the Miskito people's long-term struggle for recognition of communal property rights, which were indigenous to the designated area of the biosphere. The goals of the Miskito were not only undermined, their very territories were also opened up by the state to incursions by *colonos* in search of natural resources, further threatening the Miskito's struggle for collective. Here again, the state drew on global environmental norms, specifically the idea of sustainable development, to thwart the claims of the Miskito.

As the struggle over resources and lands outlined by Preston and Mollett played out, the issue of enclosing life forms was increasingly being debated. Daniel Gorman's chapter highlights the significance of the moment when an American scientist, Ananda Chakrabarty, invented a genetically engineered microorganism that could break down crude oil and sought to patent the life form. Gorman demonstrates the globalist nature of this moment by reviewing the global regulation of intellectual property. He traces the emergence of the various institutions in this regulatory system and describes how international cooperation began to develop in the nineteenth century. He follows this review with an examination of the emergence of two key international institutions: the Patent Cooperation Treaty and the World Intellectual Property Organization. He then factors into the analysis TRIPS, which was part of the 1994 agreement setting up the World Trade Organization. Gorman concludes that the potential ownership of human beings, the quintessential question of autonomy, is now on the horizon.

The globalist moment examined in Eva Mackey's chapter occurred in 1998 and 2002, respectively, when two Aboriginal communities, the Cayuga in New York State and the Caldwell First Nation in southern Ontario, won land claim awards and sought to use these funds to purchase land to secure their collective autonomy. She shows how these indigenous communities' attempts to buy land in conventional real estate markets ran into stout and bitter resistance from non-indigenous citizens in Canada and the United States who lived adjacent to these communities. Although these conflicts were acted out, sometimes violently, at local and national levels, Mackey argues that they were deeply embedded in global processes. These communities' material conditions of possibility, based as they were on earlier moments of global colonial power relations, were and are legitimated and enabled by global, supposedly universal, property ideologies. This

argument is developed at length by Cutler in her chapter. Mackey concludes on a hopeful note by introducing the concept of relational autonomy as a new way to think about land that incorporates the understandings of the Cayuga Indian Nation.

Will Coleman and Austina Reed focus on the 2001 adoption of the International Treaty on Plant Genetic Resources for Food and Agriculture. This particular global moment brought the concept of farmers' rights formally into international law. These rights are aimed at protecting collective intellectual property associated with traditional farming practices: the planting and saving of seeds to improve yields, strengthen welcome characteristics of plants, and eliminate other characteristics deemed less useful, if not harmful, by farmers. The treaty therefore puts into play a concept that challenges some of the aspects of enclosure in other global treaties, particularly TRIPS. The chapter examines the tension between farmers' rights and the international intellectual property regime and assesses the potential of the concept of farmer rights for securing the collective intellectual property of traditional and indigenous farmers. Coleman and Reed draw on a case study of the implementation of farmers' rights in India to demonstrate both the obstacles and the possibilities available to states on these issues.

Anna Greenspan's moment occurred when she stepped out of her apartment in contemporary Shanghai and surveyed the many small shops selling pirated DVDs. She argues that any attempt to enclose intellectual creations like the ones at issue in TRIPS and in international intellectual property regulation more generally cannot fully succeed. She questions those who view globalization as the movement towards a kind of world order. Globalizing processes, she suggests, have always been hybrid ones. A legal world of regulation has always, perhaps necessarily, coexisted with a shadowy world of copying, stealing, and improving on what has been taken. She argues that a history of property rights should show such hybridity as an essential characteristic of globalization. Hybridity in the future will result when the owners of property rights and their agents settle for some returns and claim social capital as benefactors. Perhaps this process of negotiation is already occurring.

A coda in music is a passage of more or less independent character that is introduced after the completion of the essential parts of a movement to form a more definite and satisfactory conclusion. Jasmin Habib's chapter performs this function in our volume. Titled "Property Rites," the chapter

Scott Prudham and William D. Coleman

examines the appeal to the right to autonomy through property in its collective — that is, cultural or communitarian — form. Habib locates this appeal through an exploration of the poetry of dispossessed Palestinians. She examines the degree to which theories of and about globalization too quickly embrace the logic of the failure to modernize, focused as they are on economic processes. She suggests that such accounts cannot fully appreciate or account for land-based resistance that is neither productivist nor anti-capitalist. By doing so, she puts the foregoing chapters into a broader, more complicated context that highlights the deep emotions that lie behind many of the kinds of conflicts discussed in this book.