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**Possessing the Pacific: Land, Settlers, and Indigenous People from Australia to Alaska.** By Stuart Banner. Cambridge, MA: Harvard University Press, 2007. 400 pages. \$35.00 cloth.

In this book Stuart Banner explores how colonial land policy and law developed in Australia, New Zealand, the United States (Hawaii, California, Oregon, Washington, and Alaska), British Columbia, Fiji, and Tonga in the eighteenth and nineteenth centuries. Banner argues that the varied strategies adopted by the British Colonial Office and the United States to appropriate Indigenous peoples' lands rested on a number of assumptions and were developed in response to local contexts. He argues that three central factors shaped policy development: the form of Indigenous political organization, the existence and spread of white settlement, and whether or not Indigenous people had developed agriculture.

Hawaii and Tonga were kingdoms, and both the king of Hawaii and the king of Tonga developed strategies to retain ownership of their lands. In Hawaii, the king agreed to change the existing land-tenure system into a fee-simple system for a number of reasons including the pressure to make more land available for white settlers. The king felt that annexation was inevitable, and he wished to separate government lands from his private lands and allow the commoners ownership of some land as individuals. The king understood that appropriation of other Indigenous peoples' lands by colonial governments usually resulted in Indigenous people's former property rights being recognized. He believed that changing the land-tenure system to reflect a British model would mean that Indigenous Hawaiians would be in a more secure position to retain their land. This proved to be true for the Hawaiian nobility and the Indigenous commoners who were granted land prior to the (unlawful) annexation by the United States. However, the king's private lands were treated as the land of the previous sovereign, and as such they were appropriated on behalf of the new sovereign, the United States. In Tonga, where there were fewer white settlers, the Tongan king and his government inscribed in their constitution that all land was inalienable and could not be sold to foreigners. This remains the case today.

Fiji and New Zealand represented different forms of political organization based on small tribes who owned land and were engaged in selling their land to early white settlers prior to colonization by the British. In New Zealand small groups of white settlers negotiated the purchase of land from Maori chiefs, but after the British exercised sovereignty in 1840 through the Treaty of Waitangi the new colonial government began buying land to sell. However, the complexity of Maori property rights, which constituted multiple use rights within different geographical locations, created problems for purchasers. The colonial government established a Land Claims Commission to decide on the validity of past sales to settlers stipulating that in the future no land could be purchased directly from the Maori. Instead the government became the sole purchaser of land between 1840 and 1865 and made a profit on sales to settlers. However, by the mid-1850s the Maori became aware that the government was purchasing land for nominal fees and then selling it to settlers for

larger sums of money, and they organized politically and refused to sell any more land to the government. To advance its own interests the government decided to reform Maori land tenure, which eventuated in the Native Land Court being established in 1865 and transferring the power of selling land from chiefs to individual Maori. This resulted in conflict within Maori tribes whereby individuals could force the sale of land through factionalism. It also had another impact: the costs of representation before the court was borne by the Maori, which resulted in many successful claimants losing their land because of the debt incurred while waiting for hearings to be completed. Many Maori were indebted for food and accommodation as the hearings were not held near their respective lands, and they had to sell off land in order to pay their debt. This saw the transfer of Maori lands to their creditors. Banner argues that the Native Lands Act facilitated the expansion of British ownership of land.

Banner argues that in Fiji the purchase of land took place between Fijian chiefs and white settlers, and in some cases Fijian chiefs sold land without the consent of their people, which was against Fijian laws and customs. As occurred elsewhere within the Pacific, land was being sold well below its value. As no central government existed, the British consul took responsibility for validating purchases and maintaining a registry of land sales. However, as the number of white settlers and their investments increased, there was pressure for the establishment of a colonial government. Britain established a Confederation of Chiefs under the leadership of Cakobau, who endorsed a constitution in 1867 that gave settlers the right to purchase land from chiefs. The Confederation of Chiefs was unsuccessful, and Britain finally annexed Fiji in 1874 through a deed of cession that changed the nature of the land-tenure system. Land already alienated remained in the hands of Europeans, land that was used or occupied by a chief or tribe was to remain as their land, but all other land was invested in the British Crown. As the first colonial governor, Arthur Gordon introduced an ordinance preventing the land owned by Fijians from being alienated. This ordinance was made permanent in 1880, and after receiving instructions from the colonial office he set up a lands commission to determine the legitimacy of European ownership of Fijian land. The commission found that under the Fijian land-tenure system all land was inalienable but that land sold to Europeans, which was deemed to be legal, remained alienated land. Gordon further implemented a policy that reduced the amount of Crown land, which meant that the Fijians owned the vast majority of unalienated land in Fiji. The new land-tenure system reduced white-settler investment and emigration.

In contrast, elsewhere in the Pacific, where there was no evidence of Indigenous agriculture or large-scale political organization, the land was either formally deemed *terra nullius* or the British colonial office and the US Congress developed policy whereby *terra nullius* operated by default. The colonial office supported the policy of *terra nullius* in Australia and British Colombia disavowing the property rights of the Indigenous people. In California, Oregon, Washington, and Alaska the US Congress and the Department of Interior supported *terra nullius* operating in practice. Banner

argues that the assumption of *terra nullius* usually went hand in hand with a perception of Indigenous people as being primitive and uncivilized. The different ways that the policy was implemented had to do with whether there was any acknowledgment of Indigenous property rights by prior nations, as in the case of Russia in Alaska and Mexico in California, or whether white settlers had already inhabited lands; the size of settlement; and Indigenous resistance and the kind of economic development that was taking place.

One important aspect of this book is the way in which it shows how property law developed in the Pacific by serving political and economic interests of white colonizing nations. What the book testifies to is how the archives provide more detail about Indigenous land tenure in which agriculture existed but little about the system of Indigenous land tenure amongst nonagriculturalist tribes, which confirms Banner's thesis about *terra nullius*. White possessors would only recognize systems that accorded with their own ideas about what constituted possession, and even then they utilized law and policy to reduce Indigenous land ownership. White possession continues to function discursively within the law circumscribing the sovereignty claims of Indigenous people in the twenty-first century. *Possessing the Pacific* speaks to the possessive nature of the colonial enterprise and makes an important contribution to the colonial history of property law in the Pacific where it should be compulsory reading in property-law subjects.

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**The Seminole Freedmen: A History.** By Kevin Mulroy. Norman: University of Oklahoma Press, 2007. 446 pages. \$36.95 cloth.

In 2002 Americans saw how history, race, and a multimillion-dollar settlement split the Seminole Nation of Oklahoma between Seminoles and the African American freedmen who had long been a part of the nation. Popularly known as "Black Seminoles," these descendants of slaves, who had escaped to the protection of the Seminoles, claimed that they should receive some of the \$56 million that the federal government was paying for Florida lands that the Seminoles lost before most of the nation was removed to Indian Territory (later Oklahoma). Freedmen and their supporters contended that they had fought alongside Seminoles in wars against the United States, intermarried with Seminoles, and at the very least had been included as members of the nation in the nation's 1866 treaty with the United States. Seminoles countered that their rights as a sovereign nation entitled them to limit their membership to individuals who could trace descent from Seminole Indians. Citing legal considerations, the US Supreme Court sided with the Seminoles when it upheld the nation's right to define its membership as it saw fit.

Regarding the historical evidence, Kevin Mulroy offers a somewhat different verdict that is meticulous, unequivocal, and, in light of the recent legal disputes, bound to be controversial. Contrary to the assertions of most