Mapping Sovereignty: Background and Research Guide

by Audrey Keller and Ted Leonhardt
# Mapping Sovereignty

## Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Introduction</strong></td>
<td>3</td>
</tr>
<tr>
<td><strong>Part I. – Background</strong></td>
<td></td>
</tr>
<tr>
<td>Types of Colonies</td>
<td></td>
</tr>
<tr>
<td>Corporate Colonies</td>
<td>4</td>
</tr>
<tr>
<td>Proprietary Colonies</td>
<td>5</td>
</tr>
<tr>
<td>Crown Colonies</td>
<td>6</td>
</tr>
<tr>
<td>Overlaps and Visualization</td>
<td>8</td>
</tr>
<tr>
<td>Conceptions of Property and Modes of Claiming Possession</td>
<td>9</td>
</tr>
<tr>
<td>English Mode of Claiming Possession: Establishing Civilization and Habitation</td>
<td>11</td>
</tr>
<tr>
<td>English Conception of Property: Terra Nullius, a Means to Claim Possession</td>
<td>12</td>
</tr>
<tr>
<td>Native American Conceptions of Property</td>
<td>13</td>
</tr>
<tr>
<td>Modes of Possession: Other European Powers</td>
<td>17</td>
</tr>
<tr>
<td><strong>Part II – Issues that Charters Address</strong></td>
<td></td>
</tr>
<tr>
<td>Borders</td>
<td>26</td>
</tr>
<tr>
<td>The English Tradition of Boundary Construction at the Local Level</td>
<td>27</td>
</tr>
<tr>
<td>Problems of Distance and Imagination</td>
<td>28</td>
</tr>
<tr>
<td>Sovereignty in Smaller Space: Vectors and Enclaves</td>
<td>30</td>
</tr>
<tr>
<td>Conclusion – Confusion and Colonial Borders</td>
<td>32</td>
</tr>
<tr>
<td>Maps</td>
<td>33</td>
</tr>
<tr>
<td>Section</td>
<td>Page</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td><strong>Layers of British Law and Government</strong></td>
<td>35</td>
</tr>
<tr>
<td>Ruling People and their Movements</td>
<td>35</td>
</tr>
<tr>
<td>Land and the Law</td>
<td>36</td>
</tr>
<tr>
<td>The Granting of Jurisdiction and Self-Governance</td>
<td>37</td>
</tr>
<tr>
<td>Colonial Legal Institutions</td>
<td>38</td>
</tr>
<tr>
<td>Assemblies</td>
<td>39</td>
</tr>
<tr>
<td>Local Governments in the Colonies</td>
<td>40</td>
</tr>
<tr>
<td>Governors</td>
<td>42</td>
</tr>
<tr>
<td>The Organization and Role of Proprietors and Companies in England</td>
<td>43</td>
</tr>
<tr>
<td>The Crown and Privy Council</td>
<td>45</td>
</tr>
<tr>
<td>Colonial Courts</td>
<td>47</td>
</tr>
<tr>
<td>Regional Variation of Socio-Legal Structures in the Colonies</td>
<td>50</td>
</tr>
<tr>
<td>Conclusion – Layers of Law</td>
<td>52</td>
</tr>
<tr>
<td><strong>Hybridity</strong></td>
<td>53</td>
</tr>
<tr>
<td>Political-Legal Hybridity</td>
<td>53</td>
</tr>
<tr>
<td>Temporal Hybridity</td>
<td>54</td>
</tr>
<tr>
<td>Cultural Hybridity</td>
<td>56</td>
</tr>
<tr>
<td>Conclusion</td>
<td>57</td>
</tr>
<tr>
<td>Mapping Hybridity</td>
<td>58</td>
</tr>
<tr>
<td><strong>Part III – Digitalizing Sovereignty</strong></td>
<td>59</td>
</tr>
<tr>
<td>Ways to Visualize Layers of Sovereignty</td>
<td>59</td>
</tr>
<tr>
<td>Heat Maps and Indefinite Borders</td>
<td>59</td>
</tr>
<tr>
<td>Social Networks and Population Modeling</td>
<td>59</td>
</tr>
</tbody>
</table>
Timelines 60

Neatline and GIS 60

How to Use a Database 61

Other Sources on Sovereignty 63

Glossary 65

Bibliography 66

Appendix – 70
**Introduction**

An individual arriving in a British colony in the early modern period would have encountered a landscape with a rich mix of cultures and geographies. Whether visiting the Atlantic Coast, the Caribbean, the Mediterranean, or even the Indian Subcontinent, our fictional traveler would have needed to navigate nascent physical settlements and developing governmental and legal structures, with all the problems that new societies created. Certainly, features of these colonies would have been familiar, yet the extension of sovereignty over new areas would have prompted basic questions about what it means to rule and be ruled.

The experience of the fictional traveler is not unlike our own arrival on the metaphorical shore of the study of sovereignty. We encounter a plethora of charters and other sources that contain both familiar and alien elements. We begin to ask questions. What constitutes sovereignty? How did the British define it in the different locales of their empire? What social and legal norms underpinned notions of sovereignty? How did those ideas evolve over time?

Those are the types of questions we are aiming to answer through our examination of colonial charters. In his book *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580-1865*, Christopher Tomlins identifies four “essential configurations of colonizing:” physical, economic, political, and civic.¹ This research guide offers a framework and background for understanding each of those elements in colonial charters, and considers how we can conceptualize and visualize sovereignty based on them. While it may not map every inlet and outcrop of the charters

---

themselves, it ought to give researchers something of a compass as we move inland to understand this subject.

**Types of Colonies**

At first glance, the concept of colonization is fairly straightforward. People from the “civilized” western world go to some “barbaric” or “uninhabited” place, and begin living there in the name of their homeland. In reality, however, British colonization systems in the 16th, 17th, and 18th centuries were varied and complex. The British were colonizing lands extremely far away and these colonies would be composed primarily of emigrants, whereas earlier British foreign holdings, such as Ireland, had already been densely populated when Britain took control. In the new colonial era, there were Crown colonies, proprietary colonies, and colonies run by corporations. Each type of colony was structured differently in terms of legal systems and authoritative hierarchies. No matter which type, all of the colonies were “a body politic authorized by the crown, with jurisdiction over a well-defined body of territory and its own distinctive institutions, laws, customs, and, eventually, history and identity.” The justification for the establishment of these colonies will be discussed later in the section entitled “Conceptions of Property and Modes of Claiming Possession.”

**Corporate Colonies**

---


3 Ibid, 10.
Corporate colonies, the first model for English settlement, were run by companies holding a charter issued by the Crown. Because these colonies were commercially oriented, the monarchy granted lands to private companies in order to minimize its own costs.

In the case of the East India Company, its investors began petitioning the Crown for a charter in 1599. Colonies would also help England to relieve overpopulation and open new overseas trade markets. Two examples of colonial corporations were the Virginia Company, which was run by a pair of English joint-stock companies for the purpose of settling both Virginia and New England, and the Massachusetts Bay Company. These companies were essentially founding a colony as a financial investment, with the goal of making a profit for investors and increasing the wealth and power of England. These profits were to be achieved through “the development of a commerce in sophisticated commodities.” Corporate colonies were largely autonomous and self-governing, so long as they remained within the bounds of the laws and traditions of England.

Legal systems and power structures in corporate colonies varied. As an example, the Massachusetts Bay Colony had an elected, rather than appointed governor. However, the approved electorate was limited to Puritans, creating systematic religious intolerance and sectarianism in the colony, and eventually causing the expulsion of...

---

5 Greene, 11.
8 Greene, 9.
dissenters Roger Williams, Anne Hutchinson, and John Wheelwright.\textsuperscript{11} There is a deeper discussion of law and governance in the colonies in the section entitled “Layers of British Law and Government”. Because of the failure of the London, Bristol, and Virginia companies, by the end of the 1620s the corporate model had ceased to be used for establishing new American colonies.\textsuperscript{12}

\textit{Proprietary Colonies}

Proprietary colonies, which were the second model for English settlement in the Americas, most closely resembled the setup of feudal lordships in England. There would typically be either one supreme landowner or an incorporated board of proprietors who remained subjects of Britain but had a great deal of authority over their land, including the powers to make sub-grants, create plantations, and appoint governors.\textsuperscript{13} James I’s 1620 Charter of New England also granted the following to the proprietors making up the Plymouth Council for New England:

\begin{quote}
full and absolute Power and Authority to correct, punish, pardon, governe, and rule all such the Subjects of Us, our Heires and Successors, as shall from time to time adventure themselves in any Voyage thither, or that shall aft any Time hereafter inhabit in the Precincts or Territories of the said Collony as aforesaid, according to such Laws, Orders, Ordinances, Directions, and Instructions as by
\end{quote}

\textsuperscript{11} Ibid, 72.
\textsuperscript{13} Tomlins, \textit{Freedom Bound}, 167.
the said Councill aforesaid shall be established…agreeable to the Laws, Statutes, Government, and Policie of this Realme of England.\(^\text{14}\)

In other words, the proprietors could govern the colonists on their land according to their own laws, so long as those laws were agreeable with the laws of the Crown. Much of the land belonging to the Plymouth Council would eventually be given away to the Massachusetts Bay Company in 1628. Similarly, Charles II used his royal power to “Give, Grant, and Confirme all of the said Countrey, with certaine Privileges and Jurisdictions, requisite for the good Government and Safetie of the said Countrey and Colonie, to (William Penn) and his Heires forever,” in the 1681 Charter for the Province of Pennsylvania.\(^\text{15}\) William Penn, the proprietors of New England, and other proprietors like them possessed “quasi-sovereign status to their colonizing ventures.”\(^\text{16}\)

The proprietary model was specifically based on the Palatinate of Durham, which was an area on the northern border of England controlled by the Bishop of Durham.\(^\text{17}\) There, the Bishop at any given time had a great deal of freedom and autonomy of power in order to defend the frontier, or the unstable Scottish border, which was far removed from the seat of the Monarchy in London. This was a good model to use in the New World because it was “designed for remote and contested regions,” and it, “allowed local authorities to exercise effective regional sovereignty.”\(^\text{18}\) Proprietary colonies were

---


\(^\text{17}\) Tomlins, *Freedom Bound*, 170.

\(^\text{18}\) Ibid, 171.
typically run under a charter agreement between the landowner or group of proprietors and the monarch.

_Crown Colonies_

Crown colonies are sometimes called royal colonies because they were under the direct rule of the monarch. By the time of the American Revolution, most North American colonies were Crown colonies. The conversion began with the Restoration of Charles II in 1660, but continued sporadically as the English state expanded and colonization became explicitly, “an enterprise of the state and an expression of nation,” in the late seventeenth century. In terms of the legal system and authoritative structure, the monarch would appoint a governor to the colony, who would then serve as the highest local authority. Beyond the existence of a governor, the legal systems varied, often echoing their previous forms, due to the Crown’s inconsistent policy as colonies were converted. For example, a colony could be set up with a representative council, consisting of legislative chambers and either crown-appointed or locally elected councilmen; a nominated council, which had entirely Crown-appointed members; or simply could be ruled directly by a governor. Depending on how any given colony was set up, local colonists had varying degrees of say in their government. One example of an early Crown colony in America was New Jersey, which was originally granted to the Duke of York. As a Crown colony, New Jersey was run by a governor, council, and officers that the Duke of York appointed without election. The British colonies were not intended to be democratic, a point that can be easily forgotten when studying early

---

19 Tomlins, _Freedom Bound_, 183.
20 Bilder, “English Settlement and Local Governance,” 79.
America and the birth of our modern representative democracy. In fact, the Lords of Trade, a Privy Council committee established in 1675 that was responsible for overseeing the colonies, specifically tried to make royal governors less dependent on democratic assemblies.  

Non-American Crown colonies included Jamaica, Barbados, and the Leeward Islands, which had previously been a proprietary colony.

*Overlaps and Visualization*

These categories serve as basic divisions in the types of colonies that existed, however the categorizations were not always clear. For example, while Virginia originated as a corporate colony, it eventually became a crown colony in 1625 when Charles I issued a proclamation reading, “That the government of the Colony of Virginia shall immediately depend upon ourselves, and not be committed to any Company or Corporation…” In other words, from that point forward Virginia would answer directly to the king, who would provide, “one uniforme Course of Government.” Similarly, the Colony of New Jersey, which is cited above as a Crown colony, became a proprietary colony in 1664 when James, Duke of York, sold it to John Lord Berkeley and Sir George Carteret. However, for the most part, proprietary and corporate colonies, including Massachusetts Bay and Bermuda, were converted into Crown colonies over the course of time. The Plymouth Council also surrendered its charter to the Crown in 1635, at which

---

21 Greene, 13-14.
22 Ibid, 14.
24 “A Proclamation for the settling the Plantation of Virginia” (London: 1625), as cited in Greene, 12.
26 Greene, 14-15.
point their lands came, “under us to his Majesty’s laws and ordinances there to be established and put in execution by such his Majesty’s lieutenants or governors.”

These types of overlaps, which occurred in other colonies as well, could be represented visually by assigning each type of colony a color on a map and then overlapping colors as needed and changing them over time by linking the map to a timeline. The following image is a sample of what this type of visualization might look like.

![Map of Early Indian Tribes, Culture Areas, & Linguistic Stocks](www.teacheroz.com - 1664 × 2000 - Search by image)

**Conceptions of Property and Modes of Claiming Possession**

During the time of the initial English colonial expansion into the Americas, conceptions of what justified property ownership and, as a result, modes of “rightfully” claiming possession of colonies, varied between both colonizers and indigenous

---

populations, and between different European states. So what did the English believe gave them *Dominium*, or the right to possess land,\(^ {28}\) and how was this manifested in their legal charters? Also, how did English beliefs differ from the modes of possession exercised by the Native Americans and the other European states establishing colonies?

*English Mode of Claiming Possession: Establishing Civilization and Habitation*

For Richard Hakluyt the elder, the establishment of cities was essential to the success of a colony and, as a result, the possession of colonial land.\(^ {29}\) This same belief can also be seen in Sir Thomas More’s highly influential philosophic novel *Utopia*, which describes an idealistic fictional civilization by the same name. In the book, Utopia is established by creating cities, which in turn create the infrastructure for the government and farming of the surrounding land. City-building as a means for colonization was not only a theory, but also an English practice. The establishment of a city modeled after those in England served as a symbol that civilization and all-important Englishness had been established in the barbaric and unused wilderness.\(^ {30}\) Of course, the initial colonial populations were small, but it was the blueprint of the English lifestyle that was important, not the size. Towns and cities in England were an important part of the system of governance based on the ancient feudal system. By modeling themselves on the Old


\(^{29}\) Tomlins, *Freedom Bound*, 140.

\(^{30}\) Ibid, 140.
World, colonizers gave, “a clear and unmistakable sign of an intent to remain – perhaps for a millennium.”

The existence of these cities allowed colonizers to inhabit a new territory, and served as a sort of “home base” of civilization that would then allow colonizers to plant and establish possession of further lands. The Puritan leaders of New England, William Bradford and John Winthrop, both stated that their respective colonies, Plymouth and Massachusetts Bay, began with the building of houses. In accounts of English colonization, this was the typical beginning because, quite practically, people had to have a place to live before they could plant the land. In other words, cities were the first step of colonization, which in turn allowed for England’s “relentless expansion” in North America.

Building houses and cities was not only practical, but also one of they ways in which the English constructed their legal right to occupy the New World. Evidence of this is shown in James I’s 1606 charter to the Virginia Company. “Habitation”, the charter mandates, “will thus deduce a colony in untamed lands not now actually possessed.” Thus, the legal basis for colonization here rested on an English societal conception of how to go about establishing a permanent claim.

*English Conception of Property: Terra Nullius, a Means to Claim Possession*

32 Ibid, 16.
33 Ibid, 17.
35 Seed, 18.
Perhaps the most important and unique form of reasoning the English used to justify land claims, was that land was free for the taking if it was unoccupied and/or unimproved, an idea that became popular in the early 17th century as the Virginia Company began to colonize in North America.\(^3^7\) In theory, this concept was based on the Latin term *terra nullius*, which denoted vacant land. However, there was a fundamental difference between the original Roman use of this term and the English colonial application of it.

For the Romans, just because land was not visibly improved, did not mean that it could not still be owned. According to Byzantine Emperor Justinian, who collected Roman law in his *Institutes* and *Digest*, so long as land was physically inhabited in some way, it was possessed.\(^3^8\) In other words, land belonged simply to the first captor or taker.\(^3^9\) The early 16th century Spanish theologian Francesco de Vitoria took this to mean that the Native Americans had a valid claim to their land because they resided there before Europeans “discovered” it.\(^4^0\) However for the English in the seventeenth century, the definition of *Terra nullius*, or vacant land, became not only about habitation of the land, but also about use of it.\(^4^1\) Habitation and use, or improvement, do not necessarily go hand in hand, and the English believed both were necessary to signify ownership. Exploitation of nature was a symbol of humanity; the first group of people to establish this humanity was therefore the first taker of the land.\(^4^2\) According to the words of John Donne, as preached in a sermon before the Virginia Company in 1622:

---

\(^{37}\) Tomlins, *Freedom Bound*, 144.  
\(^{40}\) Ibid, 6-7.  
\(^{41}\) Tomlins, *Freedom Bound*, 144.  
\(^{42}\) Fitzmaurice, 8.
In the law of nature and nations, a land never inhabited, by any, or utterly derelicted and immemorially abandoned by the former inhabitants becomes theirs that will possess it. So also is it, if the inhabitants do not in some measure fill the land, so as the land may bring forth her increase for the use of man: for as a man does not become proprietary of the sea, because he hath two or three boats, fishing in it, so neither does a man become lord of a main continent, because he hath two or three cottages in the skirts thereof…The whole world, all mankind must take care, that all places be improved, as far as may be, to the best advantage of mankind in general.43

He continues that this natural law of improvement makes English plantation lawful, and that charters and grants may legally rely upon this.44 John Locke seconded this view in his essay “On Property”, saying that God gave the world to man in order that it be used to his best advantage, so “As much land as a man tills, plants, improves, cultivates, and can use the product of, so much is his property.”45 In other words, it could not possibly be unlawful for the English to occupy and improve, or cultivate, land that, while perhaps previously inhabited, was vacant by default of being unused. “Inhabited land could still be vacant land.”46 Vacant land could be defined as land that was, “inhabited in such a way that no sovereignty and very little property had been established: that is, it was inhabited sparsely with a low level of exploitation of natural resources.”47 Once this vacant land was “improved” by the English, the land was theirs for the keeping.

44 Ibid.
46 Tomlins, Freedom Bound, 144.
47 Fitzmaurice, 4.
Justinian’s Roman law also decreed that once a person loses physical possession of any land, “he has no standard real action to claim it.”48 This is why English colonists and colonies are also referred to as planters and plantations; they were, quite literally, planting crops and gardens on the land in order to establish their right to it, according to Patricia Seed.49 Along with habitation, the tenet of plantation is the second English rule of rightful claim that James I stated in the 1606 Virginia charter as the basis for deducing a legal colony.50

An important nuance of the English conception of plantation-based ownership is that “improvement” was not only based upon using the land, but also upon the establishment of individual, rather than collective, ownership.51 The enclosure movement of the fourteenth and fifteenth centuries had engrained in English society the belief that in order for land to be properly possessed, it should be privately owned.52 Thus, in order for the English to feel that they had properly, legally, and indisputably established themselves on what they deemed vacant land, that land had to be improved through both use and customary privatization.53 This is evidenced in “On Property”, in which Locke continually refers to rightful property as private.54 However, a town “commons” was typical in the English model, but although these lands were collectively owned, they could still be considered the private property of the company. Of course, since the basis of English colonization according to Roman law revolved around physical presence and physical planting, ownership had to be physically symbolized as well. This was done by

48 Justinian, Institutes, as cited in Macmillan, 109.
49 Seed, 18.
51 Seed, 19.
52 Ibid, 20.
54 Locke, 196.
building fences. In order for land to be justly owned, it had to be improved by means of both planting and fence building.\textsuperscript{55}

The distinction between Roman and English concepts of \textit{terra nullius} is important because the English elaboration allowed early English colonizers to stay technically within the bounds of Roman law, which was internationally accepted in Europe. It was very important that their claims could not be challenged by other European powers, who were physically powerful enough to oust the English if need be.\textsuperscript{56}

\textit{Native American Conception of Property}

At the time of English colonization in the Americas, Europeans often characterized Native Americans as barbaric, offering a minor justification in the English narrative for taking their land. To war against barbarians and take their land was, of course, honorable, according to both Alberico Gentili and the much-revered Sir Thomas More.\textsuperscript{57} More’s \textit{Utopia}, which was published in 1516 before the time of English colonization in the New World, tells the story of a perfect society that was established by conquering lands inhabited by “rude and wilde people,” and then reproducing its own image on the conquered peoples “unoccupied ground.”\textsuperscript{58} This set a precedent for how the English should go about spreading their own society, and the Native Americans were considered barbarians worth conquering.

\textsuperscript{55} Seed, 20.
\textsuperscript{57} Tomlins, \textit{Freedom Bound}, 135.
This image of Native Americans was promoted in some of the important writing of this era, perhaps further spreading the feeling that these people deserved to be warred against. Alberico Gentili said that the native inhabitants of the New World, “should be reckoned in the number of beasts.” Similarly, William Bradford, one of the leaders of the Plymouth Plantation, wrote, “these savage barbarians,” in a, “hidious and desolate wilderness,” “…were readier to fill their sids full of arrows than otherwise.”

Englishman and writer Robert Gray referred to the Native Americans as, “wild beasts” that “range and wander up and downe the Countrey, without any law or government, being led only by their owne lusts and sensualitie.” Even the Spanish theologian Francesco de Vitoria, who supported the claims of Native Americans, referred to them as “the barbarians.” However, the English did not simply wage an all out war against these supposed brutes in order to establish colonies. They preferred, instead, to use legal routes.

The conception of *terra nullius* explained in the previous section was extremely important in allowing the English to legally justify their claims to themselves, other European powers, and the Native Americans themselves. Robert Gray wrote in 1609:

There is no intendment to take away from (the Native Americans) by force that rightfull inheritaunce which they haue in that Countrey, for they are willing to entertaine vs, and haue offered to yeelde into our hands on reasonable conditions,

---

60 Bradford’s History “Of Plimoth Plantation.” From the Original Manuscript (Boston, 1898), 94-6, as cited in Tomlins, *Freedom Bound*, 154.
more lande then we shall bee able this long time to plant and manure…So that wee goe to liue peaceablie among them, and not to supplant them.  

He is saying here that the English are not being unjust in settling the New World because the Native Americans have been more than happy to let them have plenty of land there. However:

Some affirme, and it is likely to be true, that these Sauages have no particular proprietis in any part or parcell of that Countrey, but only a general residencie there…there is not meum Ortuum amongst them: so that if the whole lande should bee taken from them, there is not a man that can complaine of any particular wrong done vnto him.

In other words, regardless of their willingness to yield the land, the Native Americans, or savages, only resided on it anyway. They do not possess the land by way of improvement through plantation, nor do they allocate land ownership to individuals (*meum Ortuum*), so no one of them can feel wronged by its loss anyway. The English claimed they were not trying to take anything that rightfully belonged to the Native Americans, but they also truly believed that nothing rightfully belonged to them. By failing to exploit the land and add something more than nature provided, the Native Americans had failed to establish their humanity and private right, and thus made way for the English to be the first legal takers of America. This sentiment was felt by a number of other English intellectuals, including John Donne, William Crashaw, and William Strachey. Locke believed that

---


64 Ibid.

65 Fitzmaurice, 8; Locke, 196.

whenever a person put labor into something, he established possession of it.\textsuperscript{67} So when a Native American killed a deer, for example, he claimed possession of that deer but not the land on which the deer resided. However, at that time, “the chief matter of property,” was not “the fruits of the earth, and the beasts that subsist on it, but the earth itself.”\textsuperscript{68} The Native Americans had not put labor into the earth itself, that “wild woods and uncultivated waste of America.”\textsuperscript{69} 

According to Puritan colonial leaders John Winthrop and John Cotton, the only land the English believed they had to purchase, rather than just takewas what little land the Native Americans were visibly putting to use.\textsuperscript{70} In his response to Roger Williams’ charge concerning lands belonging to the Native Americans, Cotton calls for a “reasonable Purchase.” Of course it was the English who were defining the term “reasonable”. For example, according to William Crashaw, the English would pay some physical gift, and then “out of our humanitie and conscience, we will giue them more, namely such things …(that are) infinitely more excellent then all wee take from them: and that is 1. Civilitie for their bodies 2. Christianitie for their soules.”\textsuperscript{71} There was no consideration for whether or not the Native Americans desired this type of “payment”. These justifications for both the seizure and purchase of land in America paved a neat path for the English to both establish colonies and stay within the bounds of Roman law.

Though England’s tremendous physical power played a huge role in its ability to establish American colonies on lands inhabited by natives, in retrospect, the firm English

\textsuperscript{67} Locke, 196. 
\textsuperscript{68} Ibid, 198-199. 
\textsuperscript{69} Ibid, 204. 
\textsuperscript{70} Ibid, 149-150. 
\textsuperscript{71} William Crashaw, “A Sermon Preached in London before the right honorable Lord LaWarre, Lord Gouernour and Captaine Generall of Virginea, and others of his Maisties Counsell for that Kingdome, and the rest of the Adventurers in that plantation. February 21, 1609” (London: 1610).
legal belief that uncultivated land was free and open for colonization made it inherently impossible for the Native Americans to maintain use of the land they traditionally inhabited. The Native Americans saw habitation, rather than cultivation, as plenty of justification to remain in a place. They did not conceive of individual “ownership” like the Europeans, so this was as much possession as they felt they needed.72 Because this Native American conception of what gave a person the right to use and inhabit land was understandably different from that of the English, a nation of people whose origins were an entire ocean away, and because they initially had no chance to become familiar with English and European conceptions of what constituted property ownership prior to colonization, the Native Americans thus had no chance to meet its legal requirements before the English had established themselves.

However, there was one small hitch in English legal beliefs that might have actually given the Native Americans some legal authority over the possession of their land. According to Justinian’s Roman law, “claims to territory were the sovereign act of an ‘imperial’ prince, a person who held potestas.”73 The Native Americans did have sovereigns in the form of chieftains, potentially giving them jurisdictional rights that the English would be forced to recognize, since this power structure was somewhat comparable to “civilized” European monarchies.74 Unfortunately for the Native Americans though, in the few instances where the English did acknowledge indigenous sovereigns, they determined that those chieftains’ jurisdictional power was only over their own indigenous people, excluding the territory those people inhabited.75 This is

72 Gray, image 11.
73 Justinian, Digest, as cited in Macmillan, 107.
74 Tomlins, Freedom Bound, 154.
75 Ibid, 155.
because the inhabited territory was still uncultivated, making it impossible for the Native Americans to have the right to govern over it because doing so would violate what John Donne earlier described as “natural” law. Although the Native Americans probably could not have beat the Europeans in a long-term physical battle anyway, on a conceptual, and ultimately “legal” level, not only the English but also other Europeans had already declared that the land Native Americans had inhabited for centuries was not theirs before they even had a chance to adapt their conceptions of property. This is simply because the Native Americans did not possess it “correctly” according to the European tradition of Roman law.

Modes of Possession: Other European Powers

The major English campaign to explore and colonize the New World began quite late compared to those of Spain and other European powers, which began as early as the fifteenth century. As a result, the English modes of claiming possession detailed above are quite different from those established earlier. It is important to understand these differences, because English modes of possession were meant not only to justify claiming land from indigenous people, but also to justify claiming land previously claimed by the other European powers to those powers themselves. The language of possession was meant to be understood across the European empires, and the English mode of claiming possession caused a shift in international conceptions of *dominium*, law, and power.  

Prior to English colonization, Spain had laid claim to the New World according to the rules laid out in the Papal Bull issued by Pope Alexander VI in 1493. In effect, this

---

76 Benton, 56.
meant that Spain claimed possession by means of exploratory missions and conquest of natives, though the Spanish did not continually occupy or colonize the majority of this territory once it was claimed. In addition, the 1494 Treaty of Tordesillas, also the work of Pope Alexander VI, had divided all of the New World, granting half to Portugal and half to Spain and exclusively giving them any lands discovered within their respective realms.77 This is where the English were able to use their conception of *terra nullius* to their advantage come their own golden age of colonization in the late sixteenth century. Contrary to the Pope’s grants to any lands discovered by the Spanish and Portuguese, the English argued that, “a mere discovery, coupled with an intention to eventually occupy,” was not sufficient justification for legal possession.78 Rather, the law of *terra nullius* was such that actual occupation and improvement were necessary if the land was to be considered possessed. These actions gave new claims a “significance of permanence” that was absent from earlier European claims that existed only in law.79 Again, this argument was acceptable throughout the European community because *terra nullius* was a Roman legal concept. According to John Dee, Spain had established “mental possession” of vast swathes of land before the English ever got there by discovering it and nominally claiming it. However, because they left much of this land unimproved for eighty-five years, and thus abandoned, the Spanish were breaching Roman, or natural, law if they continued to claim possession.80 Alberico Gentili, as well as many other English legalists including Richard Hakluyt, George Peckham, and William Strachey, further supported

---

79 Seed, 18, 31.
the English mode of claiming possession by saying that the Spanish did, of course, have legal authority over those few parts of the New World they actually occupied, but that England had the right to settle wherever an earlier mental claim, but no physical occupation, existed.\(^{81}\) England legally affirmed that the Crown’s viewpoint on occupation superseded earlier Spanish claims in James I’s 1606 Charter of Virginia, in which he granted the right to claim lands “not now actually possessed,” with possession of course being defined by *terra nullius*.\(^{82}\) The same tactic was used in England’s Bermuda patent of 1615. The Spanish had long possessed Bermuda mentally, but because the land was vacant, the English legally granted a patent to it.\(^{83}\) The Spanish and Portuguese continued to acknowledge the line of demarcation laid out in the Treaty of Tordesillas as a divisor between parts of the world in which each could make a claim, but by that point the English firmly established themselves in the New World as well.\(^{84}\)

England used this theory of possession along with the word “now” in the Virginia charter to undermine not only Spanish claims, but also potential French claims in the New World. Three years prior to James I’s charter, in 1603, the French had established mental possession of the area that is now Virginia and New England by issuing a letters patent based upon the earlier discoveries of French explorer Jacques Cartier. However, the French had not yet established permanent occupation in these areas, but were planning on doing so in the near future, at which point they would have a rightful claim to the land under both the old and the new modes of possession. England used the word “now” in the Virginia charter to sneak in and establish physical possession before the

---

\(^{81}\) Ibid.
\(^{82}\) “The First Charter of Virginia “, as cited in Macmillan, 110.
\(^{83}\) Macmillan, 110.
\(^{84}\) Bourne, 121-122.
French, because legally the land was not presently improved, so it was not French yet.\textsuperscript{85} This effectively eliminated any French claim to this territory.

England continued to affirm and amplify its legal right to land in the New World by way of physical settlement and improvement in the Newfoundland Company patent of 1610 as well as in the New England patent of 1620. In both these, James I used deliberate wording to reference the law of nature, reinforcing the argument that the mental component of possession was insufficient.\textsuperscript{86} Ultimately, the English conception of property and mode of claiming possession through physical presence won out against the older mode of claiming mental possession and the other European powers, allowing the English to establish colonies that remained and flourished.

\textbf{Issues that Charters Address}

\textbf{Borders}

The confident voices of many charters make spatial sovereignty seem certain. Charters succinctly grant land by drawing lines along certain latitudes or from one point on the map to another. For instance, the 1674 grant to the proprietors of what would become New Jersey designated the following:

all that tract of land adjacent to New England, and lying and being to the westward of Long Island and Manhitas Island, and bounded on the east part by the main sea, and part by Hudson's river, and extends southward as far as a certain creek called Barnegatt, being about the middle, between Sandy Point and Cape May, and bounded on the west in a strait line from the said creek called Barnegat, to a certain Creek in Delaware river, next adjoining to and below a certain creek in Delaware river called Renkokus Kill, and from thence up the said Delaware river to the northermost branch thereof, which is forty-one degrees and forty minutes of latitude; and on the north, crosseth over thence in a strait line to Hudson's river, in forty-one degrees of latitude.\textsuperscript{87}

\begin{flushright}
85 Macmillan, 110.
86 Ibid, 110-111.
87 “His Royal Highness’s Grant to the Lords Proprietors, Sir George Carteret,” (July 29, 1674), Yale Law School, Lillian Goldman Law Library, The Avalon Project,
\end{flushright}
Grants like this proved problematic. To begin with, the various astronomical methods for calculating latitude in the period were inexact. Moreover, the locations of points presented problems. Where exactly was Barnegat Creek located and where on the creek would the border be measured from? Would the line be measured from the tip or middle of Sandy Point? How straight would the dividing line actually be?

A close analysis of the texts of charters raises such concerns. For modern readers, colonial sovereignty appears increasingly uncertain. New and conflicting charters further complicated the demarcation of borders. Inexact geography, especially with regard to western boundaries, made the construction of lines difficult. Early-modern ideas about sovereignty did not always lend themselves to firm borders and control of swaths of territory. Boundaries can best be understood then as overlapping and in flux during the colonial period.

*The English Tradition of Boundary Construction at the Local Level*

English legal culture placed a greater premium on the demarcation of boundaries of private property than other European nations’ laws did. From before 1000 A.D., English landowners marked their property with stakes, stones, hedges. Landowners engaged in “perambulations,” the practice of marking territory by walking boundary lines. As the enclosure movement progressed in the period roughly contemporary with

http://avalon.law.yale.edu/17th_century/nj04.asp.


the earliest colonial charters, such claims became even more sacrosanct. As Patricia Seed has posited, the English carried their emphasis on surveying and marking property boundaries at the local level to the colonies, and fences became critical to the claiming of new lands for the English crown.  

For instance, the first settlers to arrive in the newly-granted proprietary colony of Maryland held a religious service and reading of the charter in front of an English flag and cross. This traditional emphasis on land in legal culture shaped the detailed claims in charters.

Problems of Distance and Imagination

The delineation of sovereignty in colonial charters did not match the realities of border creation on the ground. In promoting new settlements, proprietors and settlers relied on a variety of accounts and maps of travel in the colonies. According to Vicki Hsueh, “new colonial ventures were themselves imagined and apprehended as creations of print materials.” The filtration of information about geography through layers of print media, personal accounts, and imaginations meant that colonial realities did not always match those dreamt up by ambitious proprietors. Certainty of purpose in founding a colony did not guarantee precise geography. Even place names were problematic; the 1676 Quinpartite Deed of Revision for present-day New Jersey refers to Long Island by both its modern name and the Indian name “Matowacks.”

Western boundaries, or the lack thereof, most clearly demonstrated the uncertainty of cartographers and authors of charters. King Charles II’s 1663 Charter for

90 Seed, 19-25.
91 Hsueh, 41.
92 Ibid, 12.
Carolina granted lands as far west as the “South Seas,” meaning the Pacific Ocean. The distance to the Pacific and their extent remained ill-defined, and charters for Georgia and the Carolinas continued to claim land as far west as the South Seas through the 1730s. Even as settlement expanded westward, the competing nature of early claims on western boundaries that had been made amidst geographic uncertainty ensured conflict. Ministers in Parliament foresaw the combustible nature of the issue, especially with regard to its effect on Native Americans. The limits Westminster placed on settlement west of the Appalachians after the Seven Years’ War became one of the major grievances of the American revolutionaries.

Most troublesome of all were legal battles between different patentees. Since charters for new colonies carved pieces of land out of old grants (Virginia originally comprised, in effect, the whole eastern seaboard), borders remained problematic and frequently had to be redefined in still more charters. In present-day New Hampshire, the descendants of the proprietor John Mason continually conflicted with the Crown and the Massachusetts Bay Colony over the borders and government of that land. The Quinpartite Deed of Revision was typical in redistributing lands to proprietors with a variety of earlier claims. In Barbados, proprietors became concerned about losing their patents. Continual jostling over boundaries both within and between colonies continued

---

95 “An Act for establishing an agreement with seven of the Lords Proprietors of Carolina, for the surrender of their title and interest in that province to his Majesty,” 1729, in The Statutes At Large Of South Carolina 10 vols (Columbia: 1836), The Making of Modern Law, http://gale.lawlib.uchicago.edu/18th_century/ga01.asp.
up to the American Revolution. Charters even affect border disputes between states today.

_Sovereignty in Small and Uneven Spaces: Vectors and Enclaves_

Today, we tend to think of sovereign nation-states as needing relatively large, well-defined swaths of land. Such an insistence on contiguous sovereignty over space would have been unfamiliar to early-modern explorers and authors of charters. Enclaves of sovereignty were not unique to empires; the Vatican, San Marino, British claims on the French coast, and free ports like Danzig and Hamburg all stood as important enclaves with unique rules for trade and governance. Some of those enclaves even remain in existence in some form today. Lauren Benton emphasizes that “political geographies...were uneven, disaggregated, and oddly shaped” in these early maritime empires. “Corridors of control” connected “enclaves such as missions, trading posts, towns, and garrisons.” Oceans themselves served as corridors, leading states to make claims that led to the creation of proto-international law.97

In the British Empire, the “factories” in India represented the most marked instance of enclaves. European settlements were tiny coastal subsections of the vast subcontinent. The ill-fated English colony in Tangier showed the dangers of enclaves in unfriendly places. The ultimate authority for its governance rested in Crown rule by a council in England.98 England had received both Tangier and Bombay as part of the dowry from King Charles II’s marriage to the Portuguese Princess Catherine de Braganza. Interestingly, Bombay prospered as a British colony after control of it was

---

97 Lauren Benton, _A Search for Sovereignty: Law and Geography in European Empires, 1400-1900_ (Cambridge: Cambridge University Press, 2010), 2, 110.
given by the crown to the East India Company in 1667. Throughout the seventeenth century, the East India Company acquired and lost a number of other small outposts, such as Pulo Run. Enclaves highlighted the reach of maritime commercial empires, yet their small size exposed empires as primarily commercial entities that lacked inland territorial “depth” in the early-modern period.

Other geographic anomalies presented concerns about sovereignty. Islands appeared to be naturally consolidated for simple control, but their isolation often led them to buck control by the empire once sovereignty was delegated. For instance, Jamaica’s assembly issued a “Bill of Privileges” in 1677. A century later, the island’s local government sided with the constitutional arguments of the American rebels. Likewise, mountainous regions were often considered to be dangerous borderlands not worth conquering. They often remained undefined sites of struggle until an empire decided to seek a more definitive border.

Europeans also asserted sovereignty in vectors deep into the New World by navigating rivers. This marked an application of European norms, which often saw cities situated on rivers and estuaries, even as American rivers often proved inhospitable. Traveling up rivers allowed explorers to quickly claim the lands surrounding them. European explorers brought their legal forms to the New World and often proved quick to

101 Ibid, 164.
103 Benton, 224-225.
104 Ibid, 41-42.
exercise them. Explorers accused rivals with treason and, in doing so, inadvertently buttressed sovereigns’ legal authority. After all, to charge that an individual had betrayed the sovereign while in the New World implied that those lands were under the authority of the crown to begin with.\textsuperscript{105} Riverine exploration also demonstrated that sovereignty could also be linear, rather than more broadly spatial. This linearity and reliance on rivers reflected the reality that early colonizers sought control of trade, not necessarily territorial sovereignty.\textsuperscript{106} The extension of these vectors of sovereignty into poorly-mapped continents complicated colonial land claims by creating competition between explorers from different imperial powers.

\textit{Conclusion – Confusion and Colonial Borders}

Competing claims in the early-modern colonial period meant that borders were often poorly-defined and overlapping. Practical problems of mapping and marking borders made such conflicts inevitable, even deep into the eighteenth century. In the early-modern period, other alternate forms of sovereignty meant that borders could be less than concrete. While proprietors and nations might argue and even fight over boundaries, the existence of enclaves and vectors of sovereignty shows that conceptions of borders and control in the period were more flexible and hybrid. Entering that period mentality in order to map borders in flux represents one of the major challenges of this project.

\textbf{Maps}

\textsuperscript{105} Ibid, 56-57, 60.
\textsuperscript{106} Ibid, 44.
In the thirteenth century, cartographic revolution took place concerning portolan charts, and from that point map-making innovation continued. By the nineteenth century, surveying was being used to map colonial territories. Maps of the nineteenth and early twentieth centuries used iconic pink shading to indicate British imperial possessions. This solid shading failed to show the imperfect and varied nature of sovereignty in the British Empire. Not only were maps expressions of power, but also military tools. Mapmakers were often either explorers or in the company of explorers such as Captain James Cook, who travelled with a retinue of astronomers, naturalists, landscape painters, and servants.

Map of the British colonies in North America, 1763 to 1775. Scan from *Historical Atlas* by William R. Shepherd, New York, Henry Holt and Company, 1923; the map is unchanged from the 1911 original version.

---


The British Empire in the late seventeenth century. [http://www.blackapollopress.com/coffee/chapt06.html](http://www.blackapollopress.com/coffee/chapt06.html).
**Layers of British Law and Government**

“Law, in short, colonized early America,” Christopher Tomlins maintains. Legal structures both backed colonial charters and comprised them. It is no coincidence that the elder Richard Hakluyt was a trained lawyer, as were a majority of the councilors in court who wrote letters patents. Laws governed everything from the transportation of individuals to new lands to their settlement in them. Law was a process, not a rule. Lauren Benton argues that contemporaries contrasted the laws of Europe with the supposed lawlessness of the colonies. Governance took time to implement and evolve. Tomlins envisions law as a “bridge” between those two conditions. While laws created conditions for governance, they were not imposed unilaterally through charters. Governance through laws was rarely simply. Legal pluralism, the overlapping of different laws and diverse legal traditions is the central concept to understanding the layers of sovereignty epitomized by colonial charters.

**Ruling People and their Movements**

The functioning of the physical and legal bridge to the colonies depended upon the mobility of populations. However, laws dating from the Middle Ages limited most citizens’ mobility and empowered the king to order people to remain in his dominions. Elizabethan Poor Laws that emphasized parish governance would appear to reinforce such concepts of limited mobility. In accord with these ancient doctrines, early

---

110 Ibid, 318; Macmillan, 86.
111 Benton, 32.
112 Tomlins, Freedom Bound, 69.
113 Tomlins, Freedom Bound, 71-72, 76.
charters like the 1606 patent for Virginia and the 1620 charter for the Council of New England explicitly granted companies the right to recruit and transport settlers. Though express mention of transport of becomes less frequent in later charters, the issue resurfaced in the 1732 Georgia Charter after jurists in England had reaffirmed crown prerogative to regulate movement.\textsuperscript{114} Since successful colonization depended first on manning, according to the elder Hakluyt, the legality of immigration was central to the colonization effort.\textsuperscript{115}

\textit{Land and the Law}

English law was unique in its emphasis on land.\textsuperscript{116} Often, people were secondary to property. According to Benton, law linked land with status under a sovereign.\textsuperscript{117} The influential political theorist James Harrington articulated connection of authority with land and extrapolated from it to propose that the creation of an empire (\textit{imperium}) could arise from domestic sovereignty (\textit{dominium}).\textsuperscript{118} The history of the Tudor period reinforced that norm. King Henry VIII’s dissolution of the monasteries gave new magnates and the crown an interest in the sanctity of land holdings, while the enclosure movement made small farmers more conscious of the power law had over their livelihoods.\textsuperscript{119}

\textsuperscript{114} Ibid, 74.  
\textsuperscript{115} Tomlins, \textit{Freedom Bound}, 134  
\textsuperscript{116} Ibid, 133.  
\textsuperscript{117} Benton, 30.  
\textsuperscript{119} David Thomas Konig, “Regionalism in Early American Law,” in \textit{The Cambridge History of Law in America}, Michael Grossberg and Christopher Tomlins, eds., 144-177, (Cambridge: Cambridge University Press, 2008), 158.
Yet English jurisprudence was not the only “law of the land.” Notably, English settlers often applied Roman law when claiming new lands.\textsuperscript{120} Proprietors and colonists imported notions of law and the organization of property, particularly regarding the size of grants, from the regions of England where they originated. This resulted in different colonies and regions acquiring separate cultures of law, property, and social status.\textsuperscript{121} The disparate social organizations and governments that emerged in New England, the Delaware Valley, and the Chesapeake had their roots in plural legal cultures.\textsuperscript{122} The sections on “Modes of Claiming Possession” and “Hybridity” further elaborate on what Vicki Hseuh calls the “polyvocality” of law.\textsuperscript{123}

\textit{The Granting of Jurisdiction and Self-Governance}

The nature of charters largely determined the legislative and judicial structures in colonies. Proprietary charters in particular gave magnates great authority in setting up the basic systems of governance. Charters became a means “to project elaborately detailed English designs onto the mainland that appropriated American territory to an English epistemology.”\textsuperscript{124} The detailed schemes for representation in assemblies based on counties that appear in some charters demonstrate this top-down approach. Similarly, proprietors often had broad authority to constitute courts. These colonial bodies generally had a level of legal leeway, provided that laws and rulings were not “repugnant” to the laws of England.\textsuperscript{125}

\textsuperscript{120} Tomlins, \textit{Freedom Bound}, 188.
\textsuperscript{121} Tomlins, “Legal Cartography of Colonization,” 349.
\textsuperscript{122} Ibid, 355.
\textsuperscript{123} Hseuh, 10.
\textsuperscript{124} Tomlins, \textit{Freedom Bound}, 157.
\textsuperscript{125} Macmillan, 96.
Despite the designs of proprietors and government officials, popular sentiment in the colonies influenced law and governance. Even the “plebeian strata” that dominated the colonial population could affect it by supporting legal cultures from their home regions in England.\textsuperscript{126} Petitions for both self-rule and crown intervention, such as those arising from the unorganized lands of what would become New Hampshire in the mid-seventeenth century, speak to popular influence.\textsuperscript{127} Later iterations of charters and acts by proprietors often acknowledge popular sentiment. The result was a tension between particularistic law and governance in the colonies and a metropolitan desire to impose universal norms.\textsuperscript{128} Projects from the ill-fated Dominion of New England under King James II down through the Coercive Acts in the lead-up to the American Revolution showcased that common theme.

\textit{Colonial Legal Institutions}

Government over vast distances and territories required delegation. Letters patent and charters became the legal means of formalizing grants of authority.\textsuperscript{129} The macro-level governing institutions were the governor, assembly, and the Crown, which was embodied by the Privy Council.\textsuperscript{130} Courts represented a source of complication and controversy; each of the three bodies could act as a court and jostled for control over separately constituted judicial bodies.\textsuperscript{131} Yet proprietors often continued to play a role in the governance of their colonies. Sometimes, proprietors clashed with their representatives in the colonies, such as when the Governor of Maryland and the Maryland

\begin{footnotesize}
\textsuperscript{126} Tomlins, “Legal Cartography of Colonization,” 352-353.
\textsuperscript{128} Benton, 9.
\textsuperscript{129} Bilder, “English Settlement and Local Governance,” 64-65.
\textsuperscript{130} Ibid, 103.
\textsuperscript{131} Ibid, 65.
\end{footnotesize}
Assembly refused to adopt Lord Baltimore’s laws in 1637. In an age of slow communication, the importance of local government cannot be underestimated. The multipolar nature of governance exacerbated conflicts between the metropole, which sought greater control, and governing bodies in the colonies.

Assemblies

Assemblies became the primary means by which colonists asserted their own interests. Groups of citizens had met to make laws in English boroughs. Borough councils were generally oligarchical, but they were recognized in borough charters beginning around 1440. Assemblies became more ubiquitous in the colonies than in England after the first colonial assembly met in Virginia in 1619. The 1632 charter for Maryland gave settlers a right to form an assembly, and most charters explicitly granted the same by the last quarter of the seventeenth century. Paradoxically, repeated royal attempts to rein in assemblies strengthened them through recognition. Assemblies usually became bicameral, with a lower house of local representatives and an upper house comprised of the governor’s council, though Pennsylvania had a strong tradition of unicameral legislation.

The precise powers of assemblies varied based generally on the type of grant. From the Crown’s perspective, corporate colonies like Connecticut had frustratingly few limits on their assemblies. Meanwhile, proprietors generally exercised some form of veto power over legislation, especially in the early years of their grants. Clauses in charters

132 Hsueh, 46.
133 *British Borough Charters 1307 – 1600*, Martin Weinbaum, ed. (Cambridge: Cambridge University Press, 1943), xxvi-xxvii.
134 Bilder, 68, 77-78, 87-88.
barring laws “repugnant” to those of England offered the chief limitation on colonial assemblies.\textsuperscript{135}

Local Governments in the Colonies

The structure of settlement in colonies largely dictated local governance. Charters, such as the various iterations for New Jersey, often named counties to structure governance. New England had well-organized towns. Therefore, governance centered on its famous “town meetings.”\textsuperscript{136} Despite their notoriety, the importance of town meetings in New England must not be overestimated; in 1639, for example, the citizens of Dedham, MA voted to do away with town meetings in favor of an elected seven man council.\textsuperscript{137} Corporations comprised of elites governed New York and Philadelphia, though Philadelphia’s corporation was generally held in check by the colonial government.\textsuperscript{138} Similarly, freeman inhabitants of townships in New York elected trustees who handled most local governance, along with other local officials like constables and surveyors. New Jersey also elected a board of commissioners who served under the governor, which reciprocally granted towns a measure of autonomy in selecting minor local officials. Pennsylvania mixed appointed and elected officials at the county and township levels, with familiar English positions like justice of the peace and sheriff.\textsuperscript{139}

Virginia became typical of the more decentralized southern colonies. At the colony level, a governor, general court, and general assembly ruled. In the counties, JPs,

\textsuperscript{135} Ibid.
\textsuperscript{137} Kenneth A. Lockridge, \textit{A New England Town The First Hundred Years: Dedham, Massachusetts, 1636-1736} (New York: W.W. Norton, 1985), 38.
\textsuperscript{139} Janiskee, 48, 54-58.
sheriffs, clerks, coroners, land surveyors, and tobacco inspectors carried out local governance. Counties were then divided into parishes, headed by elected vestrymen who selected a warden and administered local and religious matters, including some tax collection. Constables and surveyors governed the smallest local unit, the precinct.\textsuperscript{140} South Carolina represented the most extreme version of the Virginia mode of governance. Charles Town was the administrative and economic hub of the otherwise sparsely-settled colony. In the words of Richard Waterhouse, it functioned with “many of the characteristics of a city-state.” Notably, South Carolina lacked the town meetings of the northern colonies, but it even wanted the county courts that were crucial to Virginia governance.\textsuperscript{141}

\textit{Governors}

The office of governor in colonies arose out of the corporate form, but came to exist in proprietary and royal colonies. Governors served as figureheads of authority. Early corporate colonies elected their governors, but over time they came to be appointed by proprietors or the Crown in most colonies. Rhode Island and Connecticut, which remained corporate colonies, continued to elect their own governors, despite periodic efforts to rein in those colonies’ governments which effectively ended with royal recognition of the status quo in 1714.\textsuperscript{142}

\textsuperscript{140} Ibid, 66.
Conflicts over the governorship and other aspects of governance were especially complicated in Pennsylvania. There, the proprietor became a third party enmeshed in the conflicts between colonists and Crown. The Quakers’ refusal to fight French colonists in the 1690s led the monarchs William and Mary to grant the governorship to Benjamin Fletcher, who held the same authority in New York, in 1692. However, within two years Penn successfully lobbied for a return to proprietary structures of governance.  

Early colonial governors were instrumental in the founding of colonies and had broad authorities over public affairs, even including the ability to declare martial law. They often represented the goals of the Crown, although governors of corporate colonies sometimes found themselves in conflict with Westminster. Through time, governors’ legislative authority shifted from a positive role to veto authority. Nonetheless, governors often served a judicial role.

Lieutenant governors and a council generally joined the governor in carrying out his work. Officials variously called “magistrates,” “assistants,” and “councilors” emulated the role of English Privy Councilors. They often served as the upper legislative house or alongside the governor in comprising the highest court. Governors and councils frequently found themselves in conflict with assemblies, because those more popular bodies generally controlled funding. The Crown’s backing of governors, especially after the formation of the Lords of Trade committee of the Privy Council, further antagonized assemblies and colonists.

---

144 Bilder, “English Settlement and Local Governance,” 83-86.
145 Ibid.
146 Greene, 13-14.
In proprietary colonies, proprietors continued to play a role in governance through the executive branch despite often remaining in England. The forms by which they did this varied. Lord Calvert recognized the Maryland colonists’ right to make laws in an assembly, but he continued to influence the law in his proprietorship through agents and instructions. Early in the colony’s history, he issued laws only to have the colonists protest against and revise them. William Penn appointed deputy governors. He also issued laws and revised his colony’s constitution over twenty times. The Fundamental Constitutions of Carolina offered a complex organizational pattern for the involvement of the eight proprietors in governance. A number of the proprietors of the Carolina colony held investments in other colonial proprietorships, and they looked to organize governance to their advantage. They allocated one fifth of the land to themselves and endowed themselves with major executive offices such as treasurer, chancellor, and chief justice. The proprietors continued to issue temporary laws when they postponed the implementation of the Fundamental Constitutions due to slow settlement in their grant.

The organization of the Virginia Company’s officials in London evolved over time. From 1606, a royal council oversaw the activities of investors in the company. However, in 1618 the royal council forfeited its powers. The investors themselves formed a new governing council, but other investors could veto the actions of that council at shareholder meetings. The crown seized control of the Virginia Company and colony in

---

147 Hsueh, 46-54.
148 Illick, 55.
149 Hsueh, 96.
150 Ibid, 55-65.
1624, but during that six year period, the London-based investors of the company made all legislation and appointed all officials for the colony. 151

More than century later, Georgia was similarly administered and organized primarily from England. King George II established a board of trustees for the corporation. In turn, that board appointed a common council, the members of which also resided in England. The common council chose local officials for day-to-day governance in Georgia. 152

During the mid-seventeenth century, a Court of Directors formed the leadership body of the East India Company. Proprietors, shareholders owning £500 of stock, elected the twenty-four directors. To serve, a director needed to own £2000 worth of shares. The directors themselves then elected a chairman and deputy chairman. The growth of the company gave rise to new offices, such as the Examiner’s Office, which provided oversight by reviewing correspondence between England and India. 153 When those offices were deemed not to provide enough oversight, Parliament passed a series of laws that brought the regulation of the East India Company’s activities under Parliament’s purview. The 1773 Regulating Act created the position of Governor-General and a Supreme Court for the company’s territories. A Board of Control, overseeing both the company’s domestic and foreign activities, came into being with the India Bill of 1784. 154

The Crown and Privy Council

154 Stern, 209.
Early colonial charters barely acknowledged an explicit role for the Crown and Privy Council, though they exercised authority based on colonists’ petitions and the implementation of the Navigation Acts. However, the Privy Council gained more power in 1676 with the creation of the permanent twenty-one member “Committee for Trade and Plantations,” generally known as the “Lords of Trade.” Around 1700 the Lords of Trade began to hear colonial court cases and review colonial laws. The corporate colonies of Connecticut and Rhode Island appeared to hold legal immunity to judicial review by the Privy Council, but often capitulated to Crown demands anyway.\(^\text{155}\)

According to Mary Sarah Bilder, appeals to the Privy Council often centered on questions of “repugnancy,” the idea that laws ought not to conflict with those of England, and “divergence,” the allowance that local conditions sometimes necessitated deviations that did not unnecessarily oppose English custom.\(^\text{156}\) In particular, the Navigation Acts and equity cases led to the majority of appeals. The process of appealing to the Privy Council often allowed for enforcement of unpopular laws that local courts and juries in the colonies might counteract. Like the modern day U.S. Supreme Court, the Privy Council generally elected to hear only cases that could impact the imperial constitution and clarify its ambiguities.\(^\text{157}\) The Privy Council also held jurisdiction in colonial boundary disputes, such as the clashes between the Rhode Island Pawtuxet proprietors that continued from 1638 through the middle decades of that century.\(^\text{158}\)

The same desire to clarify the imperial constitution led the Crown to demand printed copies of colonial laws beginning in the 1650s. At first, the Crown even

\(^{155}\) Bilder, “English Settlement and Local Governance,” 88-90; Greene, 13.


\(^{157}\) Ibid, 128-133.

attempted to legislate for the colonies directly. Bilder cites the failure of the Dominion of New England in the 1680s as requiring the Crown to accept that colonial assemblies would make laws, even as Parliament theoretically remained the superior legislature for the entire empire. Gradually, the Crown succeeded in coercing royal and proprietary colonies to submit their laws to Westminster. Technically, Connecticut and Rhode Island remained exempt, though fear of reprisals (losing the charter) led Rhode Island, for instance, to generally comply voluntarily. Even then, Rhode Islanders remained recalcitrant; the assembly developed a variety of methods for withholding laws from review.  

Colonial Courts

At the lowest levels, the judicial system of the colonies resembled its English counterpart. In various colonies, courts operated at the county, town, and even manor levels. As in England, prominent landlords often held police and judicial authority as justices of the peace. The governor and council generally served as a higher court, though the assemblies served as the highest appeals courts in corporate colonies during the early colonial period. The Crown created new judicial authority for the Privy Council and constituted new Superior Courts of Judicature in the colonies in the 1680s to render decisions more favorable to Crown principles. However, the great power that juries held in colonial legal procedure meant that it was often difficult for the distant Crown to circumvent local prejudices.

---

159 Bilder, “English Settlement and Local Governance,” 54-63.
160 Ibid, 91.
161 Konig, 159.
162 Bilder, 91-93.
Later structures that mixed colonial and Crown judicial authority meant that many higher level cases hinged on the agreement of colonial laws with those of England.

Blackstone summarized the situation:

For it is held, that if an uninhabited country be discovered and planted by English subjects, all the English laws are immediately there in force. For as the law is the birthright of every subject, so wherever they go they carry their laws with them. But in conquered or ceded countries, that have already laws of their own, the king may indeed alter and change those laws; but, till he does actually change them, the antient laws of the country remain, unles such as are against the law of God, as in the case of an infidel country.163

Disputes emerged over what sorts of lands the colonies constituted.164 Ambiguities about colonial lands and citizenship remained despite major court rulings, like Sir Edward Coke’s in Calvin’s Case (1608). The application of common law remained controversial. One doctrine held that laws passed in England following the founding of a colony did not naturally apply.165 A settlement emerged whereby Parliament did not generally expand its new laws to explicitly encompass the colonies and rarely passed laws affecting colonial domestic affairs.166 Parliament’s restraint and the activity of the Crown through the Privy Council meant that colonists usually clashed with the Crown, rather than Parliament, until the vast expansion of legislation that targeted the colonies in the 1760s.167

Vice admiralty courts in the colonies became particularly contentious. They operated on a body of maritime law, separate from the common law, which developed in the English High Court of Admiralty. Local courts in the colonies operated on that legal

163 Blackstone, 104-105.
164 Bilder, 97-98
166 Ibid, 96-98.
167 Greene, 83.
basis even before the creation of separate colonial vice admiralty courts. In England, exchequer courts had jurisdiction over many maritime, mercantile matters. However, Parliament decided against creating such courts in the colonies. First, they were costly to operate. Second, the exchequer courts would not have solved the fundamental issue that local colonial juries would not rule against profitable, popular smugglers who violated the Navigation Acts. In turn, the Act of 1696 allowed vice admiralty courts to rule on such matters without a jury.

In India, the 1663 letters patent of the East India Company granted its governor and council judicial authority. King Charles II called for the creation of courts of judicature in a later 1683 charter. King George I issued new letters patent in 1726 that called for Mayor’s Courts in Bombay, Fort William, and Madras. Local Courts of Record came into being at that same time. In 1753, King George II created Government Courts of Appeal in those same cities and Courts of Requests through yet another new charter. However, British India did not have a Supreme Court until the passage of the Regulating Act in 1773.

The judiciary in India mixed participation and laws of natives and Englishmen. Natives partook in local courts and caste councils in East India Company territories, often serving on juries. The English adapted their own institutions to the unique conditions of India. In the last decade of the seventeenth century, Madras was incorporated as a city.

---


171 Ibid, 209.
The corporation clashed with company councils, but its Mayor’s Court became an important institution in administering a mix of English and local law. It was replicated elsewhere in India. 172

Regional Variation of Socio-Legal Structures in the Colonies

Laws varied locally between the colonies, but they can be generally divided into three regional groups with similar legal and social frameworks: New England, the Mid-Atlantic, and the Chesapeake and South. According to David Thomas Konig,”The Chesapeake and New England were the first two great cultural hearths of early America, and they forged regionally dominant legal regimes.” According to this traditional view, the earliest colonies in those respective regions, Virginia and Massachusetts, offered models for the other settlements that followed. The Middle Colonies, with their more diverse European populations and central location, naturally held to a middle route between the legal templates of their northern and southern neighbors. 173

In the Chesapeake and the South, government generally occurred at the county level because large plantations were very spread out. A more stratified society emerged on the model of south and west England, where many settlers originated. Plantations came to resemble manors and laborers worked under highly-powerful planters, who also served as justices of the peace. 174 Due to higher mortality rates, courts in the South and Chesapeake granted relatively generous property rights to widows and women, but were quite strict with regards to divorce. In general, the southern colonies offered chances for

172 Stern, 92, 94-95.
173 Konig, 161.
greater economic gains through agriculture at the cost of a more stratified society, which came to include chattel slavery. The legal culture reflected those realities.\textsuperscript{175}

More people held land in Puritan Massachusetts.\textsuperscript{176} Governance focused on towns where people settled more densely than in the South. Local government emphasized participation.\textsuperscript{177} Puritan religious values shaped laws and, seemingly paradoxically, gave married women few property rights but allowed them to obtain divorces relatively easily. Laws covering issues from debts to inheritance developed along more communitarian lines than in the southern colonies.\textsuperscript{178}

The Dutch, Swedes, and other Europeans had variously settled the lands that eventually comprised the “mid-Atlantic” colonies of New York, New Jersey, and Pennsylvania. Legal norms reflected the diversity of the region. In Pennsylvania, Swedish settlers had created courts in 1643, and the Dutch followed suit in 1655.\textsuperscript{179} Pragmatically, lax Dutch laws on usury and debts offered English traders chances for greater growth.\textsuperscript{180} The Crown let them remain after gaining control of the area in 1664, in accord with Blackstone’s theory that laws made prior to English control applied unless action was taken to negate them.\textsuperscript{181} Many of the English colonists who moved to the region had emigrated from manors in north and northwest England. However, Quaker religious values emphasized community involvement and prized participation and greater egalitarianism.\textsuperscript{182} William Penn’s implementation of Quaker legal views resulted in a unique group of lawyers, centered around Philadelphia, who were often willing to

\textsuperscript{175} Konig, 170-174.
\textsuperscript{176} Ibid, 169.
\textsuperscript{177} Tomlins, “Legal Cartography of Colonization,” 356-357.
\textsuperscript{178} Konig, 172-174.
\textsuperscript{179} Illick, 70.
\textsuperscript{180} Ibid, 162-163.
\textsuperscript{181} Blackstone, 105.
\textsuperscript{182} Tomlins, “Legal Cartography of Colonization,” 359-361.
challenge government.\textsuperscript{183} Quaker views did not quash other religious sects; Anglicans, Presbyterians, and other continually clashed with Quakers, and each other, in the colonial period.\textsuperscript{184}

However, the separation of colonies by region depends largely on their form, dictated by charters. Though Massachusetts and New Hampshire became royal colonies, some of the distinct features of New England governance can likely be traced to Connecticut and Rhode Island’s retention of corporate charters through the colonial period. Studying charters allows us to move past purely regional explanations to better explain the causes of varying socio-economic and governmental conditions.

\textit{Conclusion – Layers of Law}

Legal pluralism, based on charters, set the stage for the sovereignty debates of the eighteenth century. Governance in the first British Empire was so pluralistic, in fact, that Jack P. Greene identifies three separate constitutions within it: British, colonial, and imperial.\textsuperscript{185} The clash between the three that resulted in the American Revolution highlights the importance of colonial charters for legal history in both Britain and America.

\textbf{Hybridity}

Colonial charters often appear to speak with one distinct, confident voice. They carve up vast swaths of territory with a singleness of purpose that implies a similarly simple background. However, charters and the people that produced them were products

\footnotesize{\textsuperscript{183} Konig, 164.\textsuperscript{184} Illick, 67-68.\textsuperscript{185} Ibid, 67-68.}
of a variety of influences. “Government practices are contingent and embedded in particular contexts, and institutional labels and meanings change over time,” Mary Sarah Bilder maintains. Like a chorus, many voices comprised colonial charters.

Unpacking the polyvocal influences in colonial charters requires separating texts into their components. In her book *Hybrid Constitutions: Challenging Legacies of Law, Privilege, and Culture in Colonial America*, Vicki Hsueh identifies three primary types of hybridity: political-legal, temporal, and cultural. Each can offer us a lens through which to view and understand charters.

**Political-Legal Hybridity**

Supposedly solid conceptions of law and governance in colonial charters rested upon constantly shifting socio-legal conditions in England. The unwritten constitution of England, so often the object of reverence after 1688, was in fact a collection of different documents that originated over a period of hundreds of years. Statute law could conflict with common law within England, and the mandate that colonial laws not be “repugnant” to English laws further complicated matters. Hsueh stresses that “the English constitution was polyvocal.” In turn, colonial charters bore that polyvocality.

Political dynamics, both within England and the colonies and between the two poles, remained in a state of constant flux. The absence of proprietors meant that provisions of charters were not always enforced. The variety of influences that shaped the monarchy and Parliament meant that government was not unipolar. Middlemen between

---

186 Bilder, “English Settlement and Local Governance,” 64.
187 Hsueh, 9.
188 Hsueh, 9-10.
government, proprietors, and colonists further clouded governance.\textsuperscript{189} Finally, we cannot forget that the bulk of the charters in the eighteenth century originated amidst, at best, a contentious political climate in Britain.\textsuperscript{190} The English Civil Wars and execution of King Charles I shook the legal foundations of the growing empire, while Oliver Cromwell’s protectorate saw expansion in the Caribbean. Meanwhile, the restoration of Charles II initiated a period of new proprietary grants. King James II, himself a major proprietor of the colonies, attempted to organize the northeastern colonies along absolutist lines in the short-lived Dominion of New England under Edmund Andros. Finally, the Glorious Revolution of 1688 raised questions about the extent of parliamentary sovereignty in the colonies.

\textit{Temporal Hybridity}

Hsueh notes that colonial charters were “neither fully ancient nor wholly modern.” Influences were as diverse as contemporary political philosophy and feudal land grants.\textsuperscript{191} Though the period in which these charters were granted is often termed “early modern,” the influences on proprietary charters were distinctly anachronistic. Sir Walter Raleigh’s charter for a colony in Virginia and other early examples were granted \textit{ut de manore}, a more generous, less fee-laden form of grant to medieval knights. Later proprietary charters gave magnates the broad authority exercised by the Bishop of the palatine of Durham.\textsuperscript{192} Oddly, proprietors acquired such powers even as these legal forms

\begin{footnotes}
\footnote{\textsuperscript{189} Ibid, 10-11.}
\footnote{\textsuperscript{190} Konig, 145.}
\footnote{\textsuperscript{191} Hsueh, 11.}
\footnote{\textsuperscript{192} Macmillan, 90, 97.}
\end{footnotes}
became unpopular in England.\textsuperscript{193} Charters and laws continued to be read aloud in public, as they would have been in earlier times.\textsuperscript{194} Yet John Locke’s authorship of the *Fundamental Constitutions of Carolina* speaks to the influence of more modern humanism on the charters, which Hsueh notes. New print media enabled enterprising colonizers to conceptualize and publicize their spaces in ways that mixed the real with the imagined.\textsuperscript{195}

All told, the charters were amalgamations of legal and cultural influences that developed in different time periods. Analyzing the presence of both modern and anachronistic forms can help us consider how the authors of the charters employed such legal and cultural devices pragmatically to determine sovereignty and ultimate governmental authority.

\textit{Cultural Hybridity}

Of course, different cultures interacted on the ground in the new English colonies. According to James Tully, “Cultural diversity is a tangled labyrinth of intertwining cultural differences and similarities, not a panopticon of fixed, independent and incommensurable worldviews.”\textsuperscript{196} Famously, William Penn publicized his colony to recruit settlers from the German Palatinate. British settlers themselves were a diverse lot. Though we tend to characterize them as largely homogenous today, colonists in the period would have noted religious differences and divisions between English, Welsh, Scottish, and Irish settlers. Hsueh argues that settlers navigated these differences through

\textsuperscript{193} Tomlins “Legal Cartography of Colonization,” 341.
\textsuperscript{194} Bilder, “English Settlement and Local Governance,” 101; Hsueh, 13-14.
\textsuperscript{195} Ibid, 12.
three primary means: “discretion...adaptation...negotiation.” Although she owns that these methods were “primarily cultural in nature,” she asserts that they “also extended to political and legal considerations.”

Evidence backs her argument. For instance, elements of the Dutch patroon system for manorial land grants, laws, and commercial practices remained largely in place even after the lands were rechartered by the English. Similarly, colonists mixed legal institutions and conventions from a variety of regions of England. Such examples of the inter-mixing of different local English views support Tully’s theory that cultures can be internally multiplicitous. New charters reflected evolving conditions and needs in the colonies.

The process of cultural intermixing even extended to Native Americans. Cultures in one locale are reliant on one another for the definition of one another. Hsueh asserts that ways in which charters acknowledged the presence of indigenous peoples implicitly allowed native views of land and law to influence the colonies. More expressly, the negotiation of treaties with tribes saw settlers consider and negotiate with different conceptions of sovereignty. Those demands coupled with metropolitan and colonial norms in the development of a uniquely hybrid colonial culture.

Conclusion

---

197 Hsueh, 14.
198 Konig, 162-163, 176.
200 Tully, 13.
201 Ibid.
202 Hsueh, 16-17.
The concept of hybridity offers a foundation for comprehending colonial charters as complex documents. Concepts from different political-legal theories, temporal periods, and diverse cultures influenced the charters. Accordingly, they affected governance in the colonies, just as the colonies themselves affected the charters over time. Charters did not impose a unitary vision because their origins were disparate. Though the hybrid view can complicate the process of understanding the charters and even, perhaps, make generalizations difficult, hybridity represents an important tool for achieving a nuanced understanding of the charters and larger notions of sovereignty.

*Mapping Hybridity*
So far, this research guide has detailed conceptions of sovereignty and modes of exercising it, particularly with regard to English colonial expansion and English charters. This section is meant to lay out some of the different ways these concepts can be visualized and turned into maps.

**Heat Maps and Indefinite Borders**

One of the important things to understand about colonization is that, regardless of whether or not definite nominal borders existed for a colony, sovereignty was not generally uniform within those borders. Two ways to express this fact visually are by using heat maps or by layering definite and indefinite borders. A heat map is designed to show a gradation of color, which is useful because a locus of power can be represented.
by a solid color in a heat map, with power disseminating outward as the color fades. A faded color might also represent a place where nominal, but not actual, sovereignty was exercised. Similarly, you could use a faded color or a non-solid line to represent an undefined border, along with solid lines to show those borders that either legally or actually existed.

*Social Networks and Population Modeling*

Social networks, particularly those between powerful individuals, as well as population centers and movements are very strong indicators of where true sovereignty exists. These two things can be expressed visually in the form of a web. An example of this would be the maps that airlines use to show flights they offer. In the same way that airlines use the lines in these maps to show plane movement, and convergences of lines to show airports, this same type of map can be used to show population movement and centers or ties between people in different geographic locations. Images and links for social network mapping can be seen in the above Social Networks section.

*Timelines*

Though this may seem obvious, timelines are a critical component of creating a dialogue about sovereignty because they can show how the manifestations of sovereignty changed over time in a given place. Timelines can be digitally linked to maps, which is useful for allowing the viewer to see how the forms and layers of sovereignty shown a map develop and change as time goes on, creating a more complete dialogue than a map.
showing just one moment in time would. Below is the link for a timeline of British colonial charters.


**Neatline and GIS**

There are a number of softwares that exist for putting visualizations and images onto maps, however two of the most useful are Neatline and GIS. Neatline’s two main benefits are that it is very user friendly and that it allows the user to insert visualizations that may not be exact manually, rather than through a database that wants perfect coordinates and data points. GIS is useful because it can be done through the cloud and because it is more sophisticated than Neatline. GIS allows for a more nuanced examination of sovereignty by having layers of visualizations that can be added and removed as needed. Both softwares can be useful in varying degrees depending on the nature of the project being created.


**Sample Neatline Projects:** [http://neatline.org/neatline-in-action/](http://neatline.org/neatline-in-action/)

**How to Use a Database**

Most digital mapping softwares require the information appearing on the map to first be put into a database. In the database there should be very specific categories, such

59
as “date”, “title”, “location”, “issued by”, “issued to”, “actual text”, “researcher’s interpretation of the text”, and “geography”. When entering data, it is very important that every entry in each category is consistent. For example, all dates should appear as “mm/dd/yyyy”, and never as “month day, year”. Consistency and thoroughness will make the process of creating a visualization both faster and easier.

When interpreting a text, the researcher should aim to be inclusive of as much information as possible, rather than exclusive. The greater the number of items in the database, the more comprehensive the resulting interactive digital map will be. Ideally, an uninformed person who will eventually be able to access your digital map should be able to learn as much as possible about the topic, which is achieved by including as much of the original content as possible in the database. Google documents makes it easy to have just one database of information, no matter the number of researchers. A submission form allows for more consistent inputs and is very user-friendly. Below are some database and form sample images that can serve as a model.

![Database Sample Image](image1.png)

![Form Sample Image](image2.png)

Completed cells in the database
When researching questions of sovereignty, colonial charters are a great starting place for learning about how a given state sought to exercise power. However, there are a number of other sources that can show either manifestations of or the absence of sovereign power. Some of these include legal cases, demographic and settlement records, other types of Crown grants, travelogues, treatises, maps, local government documents
such as council minutes, and events such as rebellions. Together, these sources can offer a more complete understanding of how colonization really happened.

**Glossary** – key terms for sovereignty and contemporary phrases and meanings from charters.

* These are sample entries – we will be expanding this section as we work on the project and hope to crowd source the glossary to the whole study group

**Charter**- Technically a formal grant of privileges in perpetuity, written in Latin. More commonly used as a “generic term to refer to the Crown’s grants for mainland settlements.”203

**Letters Patent**- A more informal grant of privileges. Most colonial American “charters” issued before 1660 were actually letters patent.204

**Palatinate**- A feudal term for lands held by a person who was nominally a subject of the Crown, but essentially held complete sovereignty over his grant (see Proprietary Colonies).

**Ut De Manore**- a generous, less fee-laden form of grant given to medieval knights (see Temporal Hybridity).

---

203 Bilder, 66.
204 Ibid, 66.
-Bibliography

Primary Sources:


Secondary Sources:


Appendix – Sample Dissection of a Charter

Grant of the Province of New Hampshire to John Wollaston, Esq. 1635

This Indenture made ye Eighteenth day of April in ye Eleventh year of ye raigne of our Sovreign Lord Charles by ye Grace of God King of England Scotland France & Ireland Defender of the faith & Between ye Councill established at Plymouth in ye County of Devon for ye planting ruling ordering & governing of New England in America of ye one part & John Wollaston Citizen & GoldSmith of London of ye other part witnessteth Whereas our late Sovraine Lord King James of blessed memory by his highness Letters patents under ye great Seale of England bearing date at Westminster ye third day of November in ye Eight year of his highness Raigne over ye Realme of England for ye consideracon in ye sd letters patents expressed hath absolutely given granted & confirmed unto ye sd Councill & their Successors for ever All ye land of New England in America lying & being in breadth from forty degrees of Northerly latitude from ye Equinoctial line to forty eight degrees of ye sd Northerly Latitude inclusively & in length of & within all ye breadth aforesaid from Sea to Sea together alsoe with all ye firme lands soyles grounds havens, ports, rivers waters fishings mines mineralks as well Royall mines of Gold & Silver as other mines & mineralks litigious Stones quarries & all & singular other Comodities Jurisdiccons Royalties privileges franchises & preheminences both within ye sd tract of land upon ye maine & alsoe within ye Islands adjoyning as by ye sd letters patients amongst divers other things therein contained more at large it doth & may appeare Now this Indenture further witnessteth yt ye sd Councill in performance of an agreemt between them made & enacted ye third day of February last past before ye date of these pints & also for diverse other good causes & consideracons thereunto especially moving have demised granted &
Grants to proprietors often noted that lands would pass to their heirs, however this could become a source of controversy.

Note that this grant occurs in present day New Hampshire, but the charter refers to it as Maine. Even in New England names and geography remained disputed.

More geographic designations of grants. Note that the grant extends five leagues off the coast.

Typical vague place naming.

Again, grants included productive things on the land, such as giving a new name to the lands.

Granting rights to use forests and other resources on lands.

Again, designating and naming lands. John Mason was another proprietor of lands in Maine and New Hampshire.
grant & to farme left unto ye sd John Wollaston his executors & assignee together with all
ye sd lands & Islands and premises all ye soyles grounds havens ports rivers wafters
fishings mines & mineralis as well Royall mines of Gold & Silver as other mines
minerals precious Stones quarreys & all & Singular other Commodities Jurisdiction,
royaltys priviledges franchises & preheminences both within ye sd tracts of land upon
ye Maine & alsoe within ye Sd Islands or any of ye sd demised premises and together
alsoe with all rents reserved upon ye premises or ye any part or parcell thereof perquisits
& profits of Courts Deedlands waives & strifes goods of felons & fugitives escheats &
all other casual profits wt soever arising or wed may hereafter arise out of ye so
Demised premises or out of any part or parcell thereof Savein excepting & reserveing only
out of this p'nte demised or granted ye fifth part of all ye Gold & Silver are due to his
Mate his heires & Successors & in & by ye so Recited letters patents recovered To have
hold & enjoy all & singular ye sd lands Islands & all other the so demised premises we
there & every of their appurtenances unto ye sd John Wollaston his executors & assignees
from ye day of ye date herof unto ye full end & terme of three Thousand Years from
thence forth next & imediately ensuing & fully to be compleate & ended without
impeachment of any maner of west & also with full Power to doe & comitt of maner of
west either in ye selling felling or cutting of any timber trees woods & underwoods or in
ye new opening of any mines of Gold or Silver or any other Mines wt soever & also with
full power licence & authority to sell fell cutt downe carey & dispose of to his & their
owne proper use & behoofe att his & their free will & pleasure all & singular ye so
woods & underwoods & trees & alsoe to digge & carry a way or other wise dispose of all
or any ye soyle mines precious Stones, & quarreys & to convert & imploy or other wise
enjoy ye same as fully freely & in as large ample beneficiall manner to all intents & purposes as they ye sd Counciill or any of them by vertue of ye sd recitied letters patients may might or ought to have hold & enjoy ye same Yeelding & paying thencefore yeardy dureing ye sd terme one peeper Conie to be lawfully demanded In witness whereof to ye one part of this p'n'te Indenture remaining in ye hands of ye sd John Wollaston they ye sd Counciill have fixed their Com'c'on scale to ye other part of this plate Indenture remaining in ye hands of ye sd Counciill ye sr John Wollaston hath sett his hand & scale dated ye day & yeare first above written Annoque Dom' 1635.