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BOOK REVIEW

*Settler Sovereignty – Jurisdiction and Indigenous People
in America and Australia, 1788-1836*

By Lisa Ford.

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**LISA FORD, SETTLER SOVEREIGNTY – JURISDICTION AND
INDIGENOUS PEOPLE IN AMERICA AND AUSTRALIA, 1788-1836**

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This new book develops a brilliant idea. It examines the legal and societal relationships between settlers in Georgia in North America and New South Wales in Australia.

Georgia was, of course, named after the Hanoverian kings, the third of whom drove the American settlers into revolution against the British Crown. But for that revolution, the British would have just kept on sending their convicts to the American plantations. Suddenly, they had to find a new repository. Captain Cook's discoveries led eventually to the convict settlement at Sydney Cove.

Lisa Ford traces the way in which, at roughly the same time, the settlers and courts in the two outlying provinces of Anglophonia came to cope with the presence around them of "first peoples" who were not all that thrilled by the advent of their respective versions of British 'civilisation'.

There were numerous problems in the then received English legal doctrine for asserting jurisdiction over native peoples, at least where

they were not conquered or had submitted to the protection of the Crown by signing a treaty.

Whereas various treaties were signed with the Cherokee and Creek Indian tribes in Georgia (as later at Waitangi with the Maori chiefs of New Zealand), no such treaties were signed by the Crown with the Australian Aboriginals. And therein lies a tale.

At first, in Australia, it was generally hoped that the descriptions by Joseph Banks, Cook's companion in exploration, would be proved correct. That the Australian natives would be few, passive and untroubling. This was certainly not the experience in the American settlements where the Indian tribes, like the Maori in New Zealand, from the start, gave the settlers a very hard time.

At first, in Australia, the early governors, notably King, refused to impose local jurisdiction on the natives. This was so even in fraught circumstances where they killed settlers. But eventually, both in Georgia and in New South Wales, more resolute leaders began to spell out the claim to territorial jurisdiction that accompanied the expansion of settler dominion.

The book is interesting because it is richly illustrated with contemporaneous case reports which have a freshness and relevance to contemporary controversies. The Georgian settlement was not only older by 50 years than that established in Sydney. It was different because of the greater population of the indigenous peoples; the influx of slaves whom the settlers imported to work their plantations; the more developed and understandable societies of the native Americans; and

the negotiation of treaties by the emerging federal authorities that followed the American War of Independence.

Gradually in both territories, with growing settler populations came a common assertion of legal jurisdiction. Where the flag was hoisted and settler boundaries pressed forward, the 'civilising mission' of settler law was applied in the defence of settler lives and property.

As Lisa Ford points out, although the distances between the two territories examined could hardly have been greater (and the means of transport there slow and chancy), many of the leaders of the New South Wales colony had experienced similar problems of jurisdiction over indigenous peoples in North America, the Caribbean and at the Cape. They sought to derive lessons from each other. But in Australia, there was the abiding flaw: the belief that the land was subject to no competing legal system (*terra nullius*). This was a belief that endured until the High Court of Australia exploded it in the *Mabo* decision of 1992.

Lisa Ford has written a compelling story of the clash of civilisations on different continents but with many common themes. She sees both of the societies she studies as extensions of the imperial momentum in the last and greatest of the European empires as it settlers flocked to new continents to make better lives for themselves and their children. As they did so, officials and courts struggled with attempts to impose law and order on the indigenes. But in the end, it was the power that grew out of gun barrels that enforced the settlers' laws and pushed the indigenous peoples into reserves and deprivation.

We can only understand the stage reached in the law on this subject today by historical perspectives such as this. This is a worthwhile book evidencing intensive research. But also a good read.
