



Lex Capitalocenae

Cheap Nature and the Emergence of Legal Naturalism

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Abstract

Lex Capitalocenae addresses a lacuna in the Transition Debate by reconstructing the origins of international law in the formation of the capitalist world-ecology in the long sixteenth century (c. 1450–1650). In doing so, this paper bridges a rift in Marxist legal scholarship between the commodity form theorists who emphasize the importance of doctrine and the social property form theorists who stress the determinative role of legal practices. Unacknowledged in this exchange is Wallerstein’s historical-geographic account of the transition and its development by Moore into a political Marxism on a world-scale. Through this perspective, I empirically narrate the centrality of legal transformations surrounding property, territoriality, and Naturalism. The formation of capitalism as a world-ecology, as a way of organizing human and extra-human life, cannot be understood without accounting for the emergence of its legal infrastructure and its dualistic source code—Civilization and Nature—amidst the long sixteenth century. It was only through the failure of the Spanish imperial project that concepts of property, territoriality, and Natural law were revolutionized to create the juridical basis for the capitalist world-ecology and its political structure of nation-states. This geohistorical reconstruction of law, life, and the rise of capitalism allows us to better grasp contemporary debates over planetary law in the climate crisis.

Keywords: World-Ecology, Transition Debate, International Law, Natural Law, Civilizing Project



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During the golden age of American hegemony (c. 1945–1970) the political questions of socialist transition, the nature of imperialism, and the radical critique of capitalism were intimately tied to the Transition Debate (see Dobb [1946] 1963; Sweezy and Dobb 1950; Brenner 1976, 1985; Hilton 1976; Wallerstein 1974, 1992; Aston and Philpin 1987). This debate centered capitalism as not merely an abstract system of political economy, but as a historical system that emerged in a definite space-time and developed through crises, cycles, and class struggles. Over the last few decades, with the retrenchment of world socialism and Fukuyama’s proclamation of the “End of History” (1992), the Transition Debate fell out of favor. In its place arose a non-debate over the “Anthropocene” and its cognates amongst everyone from critical academics to climate scientists to NGOs like the World Economic Forum (Crutzen 2002; Steffen, Crutzen, and McNeill 2007; Rockström et al. 2009; Lewis and Maslin 2015; Angus 2016; Yusoff 2018; Grove 2019; Wolford 2021). This non-debate has led to calls for speculative transnational political and legal proposals to reign in humanity (Burdon 2014, 2020, 2023; Kotzé 2019; Kotzé and Kim 2019, 2022; Birrell and Matthews 2020; Gellers 2021; Kim 2022; Kotzé et al. 2022). The problem with this Anthropocene literature lies in its abstraction from the world-historical dynamics of capital, class, and empire. Their refusal to deal with the history of the climate crisis and capitalism’s environment-making dynamics has led them to repackage the instruments of ruling class control—from property relations to bourgeois Naturalism—as the foundation for their climate politics.

To avoid such an error, it is necessary to renew the Transition Debate. The Capitalocene critique and world-ecology conversation has already begun such a task (see Antonacci 2021; Moore 2021a). Moore’s world-historical reading of capitalism in the web of life is also a political Marxism on a world-scale. In this perspective, appropriation—that is, politically mediated forms of accumulation—play a central role in the creation of surplus profits and thus the reproduction of ruling class power (see O’Connor 1998; Parenti 2016; Moore 2018, 2023b). While the Capitalocene literature has placed strong emphasis on the role of science and state power in this process in producing abstract social natures, it has left largely unexplored the centrality of law to the formation of the capitalist world-ecology. This gap is not unique to the world-ecology perspective but rather is endemic to the Transition Debate as a whole.

I address this lacuna through an empirical intervention into the Transition Debate. Taking Moore’s intervention as a starting point, I show how the formation of the capitalist world-ecology was an emergent process instigated by the western European ruling class to maintain their power after the end of western serfdom amidst the climate-class conjuncture of the long fourteenth century. Through this process capitalism’s legal infrastructure and dualistic source code—Civilization and Nature—emerged across the long sixteenth century. Concepts of property, territoriality, and Natural law were revolutionized by the Spanish and Dutch intelligentsia to create the juridical basis for the capitalist world-ecology and its political structure of nation-states. This turning point was a climate-class conjuncture: the Habsburgs’ failure to establish an *imperium*, the bankruptcy of the Spanish and French Crowns, the genocide of indigenous peoples, and the subsequent onset of the Little Ice Age created an impasse for Spain’s strategy of colonial plunder. The productivist fix to this crisis required a reinvention of Natural law to provide a solid juridical

foundation for the capitalist world-ecology. As a result, the fragmented and personal jurisdictional structure characteristic of Europe in the fourteenth century was transformed into a system of territorially sovereign nation-states in which inter-state relations rested on ideological claims about Natural law, backed by coercive state power. Historical Capitalism is thus the *Lex Capitalocenae*—the epoch of capitalist jurisprudence.

The Transition Debate in the Web of Life

The Transition Debate peaked in the 1970s amidst an exchange between Robert Brenner, the progenitor of social property form analysis and Immanuel Wallerstein, the forebearer of world-systems analysis. Brenner (1976) kicked off the debate with a polemic against the demographic and commercialization models of economic historiography. Against these models of external causation, he argued that the transition arose from an internal cause: the class struggle over social property relations. For Brenner (1976), capitalism was differentiated from other modes of production by the commodification and market-dependence of labor, enabling him to comparatively assess the development of capitalism across national units. He (1976) found that, by the seventeenth century, this condition was met in the English countryside but failed to obtain in France or Poland—which were, respectively, absolutist and feudal.¹ By juxtaposing their developmental trajectories, he (1976) could observe the effect of divergent social property relations. He (1976) found that England’s unique centralized state-structure enabled politically driven enclosures throughout the sixteenth century. These enclosures altered the social property relations that mediated the struggle over rent between landlords and tenant farmers. Overtime this led to wide-spread dispossession and the market compulsion to commodify labor. Illustrated by Brenner’s (1976) account is the lack of a necessary or teleological character to capitalist development, contra the commercialists. Instead, the fourteenth century crisis of European feudalism had opened a set of contingent possibilities that were constrained, in each instance, by class struggles over social property relations. The transition to capitalism was thus nothing more than a historical accident.

Wallerstein (1974a, 1992) offered a very different account. While he shared Brenner’s (1976) class struggle and agrarian transition theses, he argued, contra Brenner, that the Transition occurred at a distinct scale: the world-system, not the nation-state.² For Wallerstein, the nation-

¹ It is disputed whether capitalism began in England or the Netherlands. Initially, Brenner (1976) adopts an Anglocentric thesis. Wood ([1999] 2002) adopted this position, dismissing Dutch capitalism as impure and too commercial (see Ch. 4). Brenner (2001) later revised his position, arguing that the Dutch economy in the early modern period had capitalist social property relations.

² World-systems are totalities defined by the existence of a “single division of labor and multiple cultural systems” (Wallerstein 1974b: 390). They can take two forms world-economies or world-empires. World-economies are characterized by a heterogeneous political structure, linked economically. They tend to be unstable leading either to their disintegration or transformation into a world-empire through conquest. World-empires, by contrast, are characterized by a single political structure which administers its internal economic operations in a redistributive and tributary manner.

state is not a unit of analysis, but a unit of observation (see Denmark and Thomas 1988; Moore 2003c, 2021a). The nation-state was not a totality that could encompass the entire process of transition because this process cut across state-boundaries. The existence of the Westphalian interstate system itself was a product of the transition. To explain the transition thus required an explication of the geopolitical dynamic within which the interstate system arose. For Wallerstein (1974a), it emerged from the failure of the Habsburgs and Valois to establish an *imperium*, enabling a balance of power that permitted the development of strong states with national economies and a stable transnational division of labor.

As should be evident, the primary difference between Brenner and Wallerstein is not, as the Brennerites allege,³ over the primacy of production or circulation, but rather methodological. They differ in the geographic scale of their analysis and their modes of exposition. The Brennerites are formalists. They begin with a theoretical model and then narrate history through that model. Wallerstein, by contrast, began with the historical process and utilized it to construct a political sociology of capitalist transition. In other words, the Brennerites start with the premise that England is a capitalist nation-state in the sixteenth century and then turn to England's internal history whereas Wallerstein started with historical processes and showed how they resulted in the development of commodified labor in England. These processes cut across the political jurisdictions that the Brennerites take as premises because they are processes occurring at the level of the world-system. The shift in unit of analysis is thus necessary to make sense of the transition.

While Wallerstein offers a greater methodological scope, his picture omits legal transformation. Despite this, Marxist legal scholars have not engaged with world-systems analysis. The commodity form theory of law, for instance, has immense synergy with Wallerstein's account of uneven state formation (see Pashukanis 1980, [1924] 2001; von Arx 1997; Miéville 2006, 2008; Dimick 2021). By examining the history of international law and geopolitical competition Miéville (2006), for instance, demonstrated that the nation-state is capitalism's unique juridical unit which imbeds imperialism in inter-state relations through the "juridical equality of sovereignty" (Miéville 2006: 270). However, by ignoring Wallerstein's historical account in favor of the Nazi jurist Carl Schmitt,⁴ Miéville (2006) overemphasizes doctrinal changes while ignoring class relations, the transnational division of labor, and capitalism's socioecological dynamics. The result is a circulationist and formalist argument—that the full maturation of the commodity form must precede the development of the capitalist legal form—which abstracts from the geopolitical class projects central to the capitalist world-ecology's formation.

³ Brenner (1977), for instance, charged Wallerstein with being a "neo-Smithian" for considering the world-market and its division of labor to be factors. Teschke (2003) argued that Wallerstein erred because of his conceptual and historical references to the French historian Fernand Braudel. Wood ([1999] 2002) makes a similarly claim backed only by a single reference to all three volumes of the *Modern World System*. While the production and circulation camps may have been descriptively accurate in the Dobb-Sweezy debate, it does not, as we have seen, hold for the Brenner-Wallerstein debate. Their commonalities are sufficient to differentiate Wallerstein's account from Braudel's and thus cast doubt on the "neo-Smithian" label.

⁴ Miéville both directly relies upon the work of Carl Schmitt (1987, 1996, [1950] 2003) and indirectly through Wilhelm Grewe's ([1984] 2000) history of international law which heavily cites Schmitt.

Pal (2020), a social property form theorist, has also taken a crack at the legal basis of the transition, but has similarly failed to engage with Wallerstein. Pal (2020) comparatively analyzes the social property relations of the Dutch, English, French, and Spanish empires. To avoid treating capitalism as immanent to feudalism she (2020) conceives of mercantilism as a transitional period of contingent class conflicts. Central to these conflicts was jurisdictional accumulation, defined as “the accumulation of rights, functions, and titles” (Pal 2020: 19).⁵ While Pal’s (2020) account provides an upshot over the commodity form approach by approaching mercantilism as a “geographical strategy” (Teschke 2003: 204) of political accumulation as opposed to a “qualitative change in the logic of world order” (Teschke 2003: 210); Pal’s (2020) approach suffers from its formalism and methodological scope. By refusing to engage with Wallerstein, Pal (2020) not only retraces Brenner’s mistaken unit of analysis, but also adopts a one-sided view of the proletarian relation as a wage-laborer, excluding slaves and coerced-cash crop laborers from her analysis (see Wallerstein 1974b). Engagement with Wallerstein’s account of the transnational division of labor and uneven state formation is thus necessary to draw out the relations between European empires.

The omission of Wallerstein from both camps has also led to an undeveloped account of capitalism’s crisis tendencies and turning points. For Miéville this is because of a lack of engagement with political-economic dynamics. For Pal this is a result of the national methodological unit which prevents the failure of Spanish imperialism from being connected to the rise of the Dutch, English, and French as core states.

Arrighi ([1994] 2010) offers some corrective insights. Building upon Wallerstein, he argues that successive hegemonic states have restructured the world-system amidst crises to restore competition. Organizational revolutions attempt to resolve the contradiction between interstate competition and capitalist accumulation. On the one hand, drawn out interstate competition risks undermining the profitability of nationally based capitalist enterprises. On the other hand, interstate cooperation risks undermining the competitive position of transnational capitalist firms. This opposition between territorialist and capitalist modes of rule—between the accumulation of capital as a mechanism of territorial acquisition (TMT’) and the acquisition of territory as a means to accumulate capital (MTM’)—drives the world-system into recurrent crises. Its resolution pivots on novel alliances between territorialist rulers and capitalist financiers who rewrite the world-system’s rules of reproduction. Importantly, however, these successive organizational revolutions are not a linear or teleological development but rather involve supersessions and regressions. A succeeding hegemonic state may discard certain ossified strategies and structures that characterized the world-scale rule of the preceding hegemonic state, but it may also maintain them or even revive something long discarded. Engagement with a world-system perspective is thus necessary to understand legal transformation in its *longue durée* because it allows us to situate legal transformations at an international level in terms of systemic crises and in doing so connect the transformations as they are observed across the interstate system.

⁵ This concept builds upon Teschke’s (2003: 209) account of mercantilism as the “private ownership and accumulation of state-sponsored titles to wealth for the mutual benefit of king and privileged traders and manufacturers.”

As we have seen, engagement with Wallerstein’s historical and geographic materialism is necessary to connect the insights of both camps. However, a synthesis of the three requires a new methodological vantage point: the world-ecology perspective (Moore 2003c, 2003a, 2015). This framework takes modernity to be an organic whole consisting of structures of knowledge; relations of power, re/production, and wealth; and patterns of environment-making (Moore 2015).⁶ Its capacity to provide a novel synthesis pivots on its rejection of Cartesian dualism, in favor of a dialectical and materialist approach that takes capitalism to be “rich totality of many determinations” (Marx 1973: 100) including class struggle, capital accumulation, and environment-making (see also Marx and Engels [1932] 2010; Ollman 2003; Harvey 2004).

Through an analysis of legal Naturalism, world-ecology can push the Transition Debate beyond the impasse of infrastructure and superstructure, represented respectively by the social property form and commodity form camps. Legal Naturalism posits a duality in legal systems: there are both positive laws—sovereign commandments backed by organized state violence—and Natural laws—axiological systems which determine the validating norms that govern social relations (Blomley 2003; Táíwò 2015). Positive laws derive their legitimacy from external validating norms such as God, Reason, or Nature (Tigar and Levy [1977] 2000). Where a sole focus on positive law reifies the law as a static structure, and a sole focus on Natural law abstracts axioms into transhistorical concepts, the world-ecology perspective reconciles this duality by drawing out their double-internality.

World-ecology thus sees capitalism as a “structure of class power” (Moore 2024) that organizes webs of life around capital accumulation by deploying “force as a permanent weapon” (Luxemburg [1913] 2003: 351) and controlling the “means of mental production” (Marx and Engels [1932] 2010: 64). In this conception, law is a *socio-ecological infrastructure*—a material force that reorganizes webs of life to facilitate capital accumulation. Positive laws are thus shaped and made possible by ideological claims about Nature produced by the intelligentsia of ruling classes. They are specific class projects. Qualitative transformations in Natural law are a product of crises and turning points within the medium-term cycles and long-term trends of the capitalist world-ecology. The successive reinvention of Natural law makes possible new positive laws, operationalized through coercive state-violence, to reorganize webs of life and rewrite capitalism’s rules of reproduction.

World-ecology contains a novel conceptual architecture to enable such an account of law. First, world-ecology provides a materialist account of ideology through the concept of *ruling abstractions*: the ideological software and practical guide that ruling classes deploy through law, violence, and cultural power to reorganize webs of life (Moore 2021b, 2022c). Synthesizing Marx and Engels’ ([1932] 2010: 59) “ruling ideas” and Sohn-Rethel’s ([1970] 2021) “real abstraction,” *ruling abstractions* describe material forces that make possible new class projects (Moore 2023d).

⁶ World-ecology has opened a plethora of research areas, including financialized accumulation (Ortiz 2020, 2023), military revolutions (Antonacci 2021), desalination (O’Neill 2020), and the tributary ecologies of the High Middle Ages (Ídiman 2022a, 2022b).

Through this lens the ideological history of legal thought can be connected to concrete legal projects.

Second, world-ecology maintains positivism's focus on extra-economic state force through the concepts of *accumulation by appropriation*, *abstract social nature*, and *geopower* (Parenti 2016; Moore 2018). Appropriation describes the extra-economic mobilization of uncaptialized work/energy through material and symbolic moments of primitive accumulation (Moore 2015). On the one hand, capital turns to states to deploy "force as a permanent weapon" (Luxemburg [1913] 2003: 351) to open commodity frontiers and thus allow for the renewed and expanded flow of Cheap Nature within the commodity system (Moore 2015). On the other hand, capital uses geopower to create surplus profits by making "territory and the biosphere accessible, legible, knowable, and utilizable" (Parenti 2016: 117) in ways conducive to capital accumulation. By producing an abstract social nature, the appropriation of unpaid (extra-)human work can be optimized just as capitalization optimizes abstract social labor to intensify the exploitation of paid work (Moore 2018). World-ecology can therefore offer an account of how ruling classes deploy coercive state-power through positive laws to appropriate uncaptialized work/energy and remake legal relations.

Third, world-ecology enables law to be approached as a *historical process*. If the history of capitalism is "a history of revolutionizing nature" (Moore 2015: 112), then it can only do so, as we have seen, by reinventing the abstraction "Nature" and restructuring legal relations in accordance with it. This history can be grasped through the concepts of *historical nature*: the form that human and extra-human relations take at specific conjunctures. While there is a historical nature endemic to capitalism as a whole—the "praxis of external nature" (Moore 2015: 112)—there are also successive historical natures "coproduced through the law of value" (Moore 2015: 116). These successive historical natures describe the durable governance patterns, class structures, organizational forms, and technological innovations secured by successive world-hegemonies to sustain and propel world accumulation (Moore 2015). As these regimes exhausted the metabolic conditions of their reproduction, they opened the door for new capitalist and territorialist organizations to revolutionize scientific practices, legal structures, and cultural norms for "reproducing capital, power, and nature" (Moore 2015: 113). Accordingly, world-ecology enables legal transformation to be grasped in capitalism *longue durée* by connecting these turning points to crises and cycles that punctuate historical capitalism.

World-ecology thus offers a novel approach to the study of historical legal transformations; one that resolves the lacuna at the heart of the Transition Debate. In the following sections I will empirically demonstrate this methodological approach by narrating the formation of the capitalist world-ecology through its legal moments. I will illustrate how the fourteenth century crisis of European feudalism was politically resolved by the Iberian ruling classes through the novel application of existing legal forms; how this gave rise to a social and ecological crisis through the exhaustion of Iberian imperialism's rules of reproduction; and thus compelled a productivist turn involving novel ideologies surrounding Natural law which laid the groundwork for the emergence of capitalist social relations in imperial centers.

The Juridical Grounds of Conquest in the “First” Sixteenth Century (c. 1450–1550)

The formation of the capitalist world-ecology was an emergent process that brought together disparate politico-geographic arenas. İdیمان (2022a, 2022b) argues it arose from the fusion of two smaller tributary world-ecologies which spanned the High Medieval World. In the fourteenth century, the Mediterranean world-ecology was dissolved, fracturing Spain and Italy from Anatolia and Egypt. Its western half was fused with the North Sea world-ecology which encompassed France, Scandinavia, the Low Countries, the British Isles, the Rhineland, and eastern Europe. To this I add a third geographic arena: the Americas. The Columbian Invasion incorporated the Mesoamerican and Andean tributary world-ecologies—centered, respectively, on the Aztec and Incan world-empires—into the emerging capitalist world-ecology (von der Heydt-Coca 1999; Smith 2001).⁷ The result was a novel “geosocial entity”—the Americas—which offered room to experiment with varied mechanisms of labor control, geocultural domination, and the formal hierarchy of the inter-state system (Wallerstein and Quijano 1992). The conquest also laid the groundwork for a juridical crisis that would signal the end of the medieval *ius gentium* in favor of an interstate system grounded in Natural law.

In the long fourteenth century (c. 1300–1450), a crisis engulfed the High Medieval World that drove Spain and Portugal toward overseas expansion. This crisis was a “socio-physical conjuncture” (Wallerstein 1974a: 35) combining climatic downturn and epidemic disease with a generalized class war. Social property relations limited the seigneur’s ability to weather the crisis. The geopolitical arena was fragmented into “quasi-sovereign mini-states,” embroiled in “inter-lordly competition” (Teschke 2003: 86–87). The “military landowning aristocracy” (Hilton 1976: 30) dominated the peasantry through a “personal nexus” of “oath-bound” relations that confined them to the manor (Tigar and Levy [1977] 2000: 36). The “prime mover” of this class structure was the “struggle over rent” (Hilton 1976: 115). Customary rights protected peasants from displacement, limiting rent increases and compelling them to *produce* “rather than *sell* to survive” (Moore 2003b: 106, emphasis added; see also Tigar and Levy [1977] 2000; Thompson [1991] 1993). This planted the seed of a general crisis because the seigneur’s insulation from the production process undermined investment in agricultural productivity growth (Wallerstein 1974a; Moore 2003b). When the Medieval Climate Anomaly ended crop yields in Europe collapsed, triggering widespread famine, and epidemic disease (Dobb [1946] 1963; Braudel 1981; Fagan 1999).⁸ Depopulation suppressed seigneurial revenues and decimated their class power (Moore

⁷ von der Heydt-Coca (1999) and Smith (2001) discuss these regions as world-systems. I have chosen to describe them as “tributary world-ecologies” because the world-ecology perspective understands world-systems to be socio-ecological entities (Moore 2003a; İdیمان 2022a). The term tributary reflects that their class structure was premised on surplus extraction from subordinate populations in the form of a “tribute” (Amin 1976).

⁸ From 900–1275 C.E. there was decreased volcanic activity, an increased solar maximum, and “the strengthening of thermohaline circulation” which drew “equatorial heat up into the North Atlantic” (Brooke 2014: 358–59); dramatically warming northwest Europe. This created favorable weather conditions for agriculture in Europe, enabling economic and population growth (Utterström 1955). While the climatic shift in this period was favorable to the North Atlantic, it also caused “a monsoon surge in Asia, and severe droughts in parts of the equatorial tropics” (Brooke 2014: 359).

2003b). While the eastern seigneurs had the strength to re-establish serfdom (Anderson 1974; Brenner 1976), the western seigneurs were overtaken by peasant revolts that ended serfdom in western Europe (Hilton 1973; Anderson 1974). To reassert their class power the seigneurs needed to enlarge the “economic pie” by expanding the land area and population they could exploit (Wallerstein 1974a). An external spatial fix was necessary but would only be possible if the interests of the seigneurs, territorial states, and city-state bankers could be aligned.

The fourteenth century crisis created such an interest convergence. The crisis pushed the seigneurs to reduce their dependence on labor. As returns diminished on labor-intensive cereal production, they turned to more profitable land-extensive pasturage. By 1450, for instance, Castile’s wool-producing sheep population nearly doubled from 1.5 to 2.7 million (Mielants 2000). This shift reoriented the seigneurs to the emerging world-market by producing an increasingly specialized division of labor. As pasturage degraded the land, overseas expansion became necessary to maintain its profitability. Expansion, while reasserting seigneurial class power vis-à-vis the peasantry, forced them into “uneasy compromise” with the states, leading to the consolidation of political power (Moore 2003b). The states emerged from the crisis in fiscal ruin (Wallerstein 1974a). They sought territorial acquisition to expand their tax base. England tried to conquer France, Castile tried to conquer Portugal, and the Italian city-states tried to conquer each other. Without peasant tax revenues, the states lacked the necessary capital to do so. Instead, they turned to property confiscation, venality, coin debasement, and above all: bankers (Wallerstein 1974a). The bankers were happy to foot the bill because the crisis contracted commercial profits. When surplus capital can no longer be profitably invested, war-making becomes increasingly lucrative. This intensified inter-capitalist competition—most poignantly between the Genoese and Venetians—as the bankers attached themselves to states in hopes of market and territorial acquisition both as an end in itself and as a means toward the appropriation of state assets and revenues (Arrighi [1994] 2010). By 1450, conflict reached an impasse. The bigger states failed to conquer the smaller ones and became debt-strapped in the process. The Venetians established a monopoly on eastern Mediterranean trade, prompting the Genoese aristocrats to withdraw from commerce and the Genoese bankers to seek out new “protection-producing” partners (Arrighi [1994] 2010). They found new territorialist backers in the Castilian and Portuguese crowns in exchange for funding their exploratory ventures and subsequent conquests.⁹

Unable to win the class war at home, the Iberian kingdoms turned their gaze to the great frontier on the Atlantic horizon, to wage the “class struggle by other means” (Moore 2021a: 751; see also Webb 1954). They sought fortunes which would strengthen their class power vis-à-vis the peasantry. These fortunes pivoted on commodity frontiers—most importantly sugar and silver—stretching from the Baltic to Brazil. Commodity frontiers are politically determined zones—good

⁹ The consolidation of the eastern Mediterranean under Ottoman rule cut the Italian city-states from the lucrative spice trade. This not only dug into commercial profits but also created shortages that drove up the prices of gold and silver. The Italian merchants needed to find an alternative route that provided direct access to Asia and the spice trade. The Iberian peninsula’s location at the cross-roads of the Mediterranean and Atlantic made Portugal and Castile the optimal place to launch such exploratory ventures (Haynes 1992).

business environments so to speak—created through “geocultural and geopolitical process[es]” (Moore 2021a:746). These frontiers were strategies for accumulating capital through appropriation. They demonstrate a “mode of conquest” that “combined premodern strategies of Holy War and armed trade with a novel emphasis” on Cheap Labor (Moore 2021a: 751). This mode of conquest is subtended by two modes of acquisition: jurisdictional accumulation and accumulation by possession. The former involved the accumulation of “jurisdictional titles, functions, and rights” (Pal 2020: 237). The latter involved demonstrating the *fact* of uninterrupted possession and good faith acquisition by the claimant (Benton 2011). Titles were most useful to assert ownership when possession did not apply—namely, to dispossess indigenous peoples. Possession, on the other hand, was used to assert ownership during inter-imperialist struggles since it did not consider the merits of acquisition (Benton 2011). By oscillating between these two modes, the Iberian states could license acquisition and secured them from competitors.

By the time the Americas were “discovered,” and the decision was made to seize it, the Iberian states had already amassed the legal tools to justify their conquests within the medieval *ius gentium*. Between 1450 and 1500, the Portuguese kings obtained Papal Bulls that would become useful in their ensuing conquests. These Bulls repackaged the canonical doctrines deployed during the Crusades. In 1455, Pope Nicholas V issued the Bull *Romanus pontifex* ([1455] 1917), granting the Portuguese kings the right to “use” all non-Christian people and places for his “profit” through conquest and enslavement. This bull extended the medieval geopolitical strategy of lordly competition over public rights to appropriate large swaths of uncaptialized (extra-)human life. It also signaled papal supremacy in inter-state affairs by treating the Pope as supreme lawmaker, governing the distribution of rights, titles, and functions (Miéville 2006; Teschke 2003). Second, the Just War doctrine provided the moral-theological rationalization for the conquest. A just war needed, above all, a just cause (*iusta causa*). The marking of non-Christian land as “missionary territory” provided one since within the Just War doctrine, warfare conducted outside Christian territory had no limits (Schmitt [1950] 2003). This redirected conflict outward toward expansion (Teschke 2003). At this stage, the axis of moral and juridical difference is first and foremost religious: non-Christians could be killed and expropriated without redress. What made the bull *Romanus pontifex* novel was its focus on Cheap Labor. By granting the right to “reduce their persons to perpetual slavery,” the Pope provided the Portuguese king with the necessary title to appropriate a large swath of unpaid work: both the products of enslaved labor and unpaid reproductive work necessary to reproduce the enslaved workforce.

To demonstrate possession, the Portuguese conducted symbolic acts to assert their sovereignty claimed under the Bull *Romanus Pontifex*. They built trading posts and forts along the African coast, erected vertical stone markers—*Padrões*—along estuaries and rivers, conducted mass, and raised Crown banners (Benton 2011). These acts were sometimes contested. Vasco de Gama, for instance, established a *Padrão* on the southeastern African coast that was demolished within a day by locals (Velho and Sá 1898). Contestation pushed the Portuguese to demonstrate their possession with greater emphasis such as staging trials and execution. An especially effective display of possession were plantation complexes (Masefield 1967; Curtin 1990). The Alfonsine

Code (1446) encouraged such agricultural production by providing land grants for demonstrating land cultivation (Benton 2011). By 1490, the Atlantic Island of Madeira had become the center of sugar cultivation by surpassing the Mediterranean Islands of Sicily and Cyprus.¹⁰ Central to its boom was not only Portuguese settlers, Genoese and Flemish capital, and the Canarian (and later African) slaves who carved irrigation channels down mountainsides and performed the “grueling labor of planting and cutting cane” (Moore 2009), but also the principle of possession which safeguarded ownership through improvement.

A unique logic was taking shape on Madeira. The Portuguese combined a novel means of labor control (modern slavery) with a novel means of land management (monoculture). They simplified land and labor—prefiguring the techniques of scientific management later perfected in Taylorism and Fordism (Braverman [1974] 1998)—and alienated the direct producers from the land—prefiguring the coercive proletarianization that would soon remake the world-ecology (Thompson [1991] 1993; Moore 2021a). Once the plantation complex formed, it reproduced its alienating relations across the world-ecology by “stimulating cash-crop production abroad” (Moore 2003b: 130). Deforestation and the exhaustion of labor and soil drove the sugar frontier from Madeira to São Tomé and then Brazil (Moore 2009, 2021a). Along with it went monoculture, enslavement, and improvement-based possession.

As Portugal and Castile expanded into the Atlantic, they deployed their newly found concept of simplified land, or rather abstract space, to divide the world amongst themselves. Between 1470 and 1500, the Castilian and Portuguese Crowns established their jurisdictional boundaries through treaty negotiations and Papal Bulls. In 1479, they signed a treaty of “perpetual peace” (de Toledo [1479] 1917), forbidding the Spanish monarchs and their successors from disturbing Portugal in its “trade, lands, and barter” in Guinea, the Azores, Madeira, and Cape Verde, as well as any other islands from the Canary Islands to Guinea; and ceding the Canary Islands to Spanish crown. The agreement thus both recognized Portugal’s exclusive territorial and commercial rights under the previous Bulls and provided the Spanish Crown with a launch pad for their exploration and conquest. In 1492, Christopher Columbus’s arrival in the Americas under the patronage of the Spanish monarchs extended the territorial division of the world. A series of Papal Bulls vested the Spanish sovereigns with the duty to Christianize, conquer, and exploit non-Christians ([1493] 1917a, [1493] 1917c, [1493] 1917b). They also extended the privileges of the *Romanus pontifex* to the Spanish Crown. Finally, the Treaty of Tordesillas ([1494] 1917) established a global demarcation line—a *raya*—from the Arctic to Antarctic poles and located west of the Azores and Cape Verde that split the world between a zone of Spanish dominion to the west and Portuguese dominion to the east. This signaled the end of papal authority because it strengthened the sovereign right to act unilaterally by granting full titles of ownership to their hemispheres (Benton 2011). The advent of exclusive territorial jurisdiction was thus underway.

¹⁰ Mediterranean sugar plantations declined because of the rise of the Ottoman empire. Between Turkish pirates and the conquests of Constantinople (1453), Caffa (1475), Syria (1516), and Egypt (1517), the Italian city-states were cut off from Black Sea slave markets and could not protect their plantations on eastern Mediterranean Islands. The Atlantic islands provided both a safe haven and a new labor frontier (Braudel 1984).

Following Columbus's arrival, Spanish imperialism turned on transplanting the Crown's authority to the Americas to establish possession. Deeds of possession were drafted in the presence of notaries and other bureaucratic functionaries to claim the Caribbean islands (Todorov [1982] 1992). Later, jurisdictional institutions were created to incorporate the indigenous peoples into the Spanish empire (Pal 2020). Between 1504 and 1519, the governor of Hispaniola, Nicolás de Ovando, developed the *encomienda* system. "The encomiendas," Bentancor (2017: 41) explains, "were titles granted by the Crown to conquistadors through which the latter were allowed to extract tribute and labor" from the indigenous peoples. Originally a system of land-grants deployed during the *Reconquista* (c. 718–1492), after 1492 it was repurposed in the Americas as a system of labor-grants (Parry [1966] 1990; see also Patel and Moore 2017). The *encomienda* imposed a legal relation on the indigenous peoples. In most cases, the *encomendero* was entitled to land, laborers, and personal servants; and obligated to protect his subjects and land (Parry [1966] 1990). In other cases, the conquistadors contested the authority local Aztec or Incan rulers and appropriated their tributes and services (Parry [1966] 1990; Pal 2020). In either case, the authority of the Crown was transplanted onto the indigenous subjects and enforced through force of arms.

The *encomienda* system spread across the continent under the *requerimiento* ([1510] 2006), a nine-paragraph document, read aloud in Spanish, informing the indigenous peoples of their choices: submit to the Pope and the Spanish crown, or else they will wage war against them, enslave them, steal their goods, and destroy their lands with complete impunity.¹¹ The *requerimiento* was a proclamation of the Spanish crown which authorized Hispanic rule over and exploitation of labor and land, while providing the conquistadors with immense discretion to take action against the indigenous peoples (Dickason 1989; Pal 2020). It was both a legal document, drafted by the Council of Castile, and a ceremony of possession. Its dual form is testament to the importance of jurisdictional claims in the ritual of conquest. The ceremonial reading of *requerimiento* not only preceded "the appropriation of land by *conquistadores*" (Pal 2020: 240), but was accompanied by notaries, as well as missionaries and chaplains, to ensure that the due legal process was legitimately followed, in the eyes of both Man and God (Schwarzenberger 1962). It provided legal impunity for the conquistador's atrocities by presenting it as a just war. They read refusal as a rejection of their jurisdiction which provided a "just cause" to enslave and convert

¹¹ There were some indigenous peoples who carved out exceptions from the *encomienda*, particularly their local allies. The Tlaxcalans, for instance, obtained privileges and royal mandates to evict Spanish settlers from their land. They did so by manipulating shifts in political culture to devise effective legal rhetoric and strategies. They emphasized their loyal service and consensual submission during the conquest. They later appealed to the Crowns obligation to provide good governance. And, as the exploitation and suffering of the indigenous peoples intensified, they appealed to the elite's obligation to "protect and provide for the vulnerable members of society—called *miserables*" (Baber 2011: 41). The conquest was thus not a one-sided affair but involved protracted resistance both against and within the jurisdiction of Spanish imperial law.

them. Despite this, the conquest was no *fait accompli*. It was a protracted process involving immense resistance from the indigenous peoples.¹²

As the *encomienda* spread across the continent it brought “an order to die by work” (Patel and Moore 2017: 93). The indigenous Caribbean population was quickly wiped out and, by 1550, the populations of New Spain (Mexico), Brazil, and Peru were halved (Simpson and Cook 1948; Jara 1965; Furtado 1970; Wallerstein 1974a; Reséndez 2016). An estimated 56 million people died by 1600 (Koch et al. 2019). Concerns about the *Conquista* mounted to such an extent that Charles V, the Spanish and Holy Roman Emperor, halted colonial operations in the spring of 1551 (Patel and Moore 2017:94). A moral-theological debate ensued to determine the fate of the indigenous people and reinvent the “software” of Spanish imperialism, at once both ideological and juridical. I will address the specifics of this debate later, but for now it’s enough to say that the Habsburg imperial project was in crisis.

The Failure of Empire and the Crystallization of the Westphalian Inter-State System in the “Second” Sixteenth Century (c. 1550–1648)

The crisis of the 1550s was a world-ecological crisis of the Iberian organization of (extra-)human life. They did so through a “pillage/conquest economy” premised on the appropriation of land and labor (Moore 2003c). While appropriation provided windfall profits, it could only do so up to a point because it exhausted its conditions of reproduction. The *encomienda’s* slaving-induced genocides not only created a labor crisis but also ushered in a climatic crisis because it led to a wide-spread reduction in land use across the Americas. Abandoned land was subject to second succession, leading to increased carbon stocks, a dramatic decline of atmospheric carbon, and, eventually, the coldest part of the Little Ice Age (Koch et al. 2019).

This climatic crisis could not have come at a worse time for the European ruling classes. Inter-imperialist competition had turned the sixteenth century into a period of constant warfare and ushered in a financial crisis (Moore 2021a). The Hapsburgs and the Valois sought to consolidate

¹² The conquistador Hernan Cortés spent two years trying to capture the Aztec capital of Tenochtitlan, during which his entourage committed a massacre and was expelled from the city. They were forced to retreat to Tlaxcala, a city-state hostile to the Aztecs, where they gained indigenous allies (Brinkerhoff 2016). It was only because of these allies—200,000 in total, consisting mostly of Tlaxcalans (Hassig 1994)—that the Spaniards were able to eventually surround, siege, and capture Tenochtitlan. This did not, however, topple the empire because the Spaniards had minimal influence outside the city. They struggled with guerilla insurrections in the countryside for centuries to come (Brinkerhoff 2016). The conquest of the Incan empire was even more challenging, spanning several decades and multiple Incan emperors. In 1529, the Spanish Crown granted Francisco Pizarro the governorship of Peru, providing the jurisdiction to conquer the Incan empire. After years of military skirmishes, he instigated the conquest with the massacre of Cajamarca, where the Incan emperor was ambushed. The Spaniards gathered allies from amongst the ethnic minorities of the Incan empire to help them take the capital city, Cuzco. For the next decades successive Incan emperors waged a struggle for self-determination struggle (Mantilla 2022). In both cases, the Spaniards imposed the *encomienda* through force as sanctioned by the *requerimiento*.

the emerging world-economy into an *imperium*. (Wallerstein 1974a). Between 1516 and 1557 the two empires were locked in near constant warfare. Inter-imperialist struggle drove a revolution in warfare. Venality and plunder allowed both empires to establish professional standing armies, consisting of mercenary soldiers and profit-seeking “military entrepreneurs” (Wallerstein 1974a: 139–40). They turned to the city-states and bankers to fund their conquests. In this respect, the Habsburg had the Valois beat. Charles V not only controlled three of the four primary Italian city-states, but also the merchant-banking house of Fuggers (Wallerstein 1974a). Inter-capitalist competition in the silver trade between the Genoese and Fuggers drove the Fuggers to shift their operations to high finance and double-down on war-financing (Braudel 1984; Arrighi [1994] 2010). Between the social crisis of the Great Peasant War (1525) and bloated military expenditures, “either the empire had to go bankrupt or the capitalist forces” (Wallerstein 1974a: 177). The former turned out to be less resilient. Charles V abdicated in 1556, dividing his realm in the process. His brother, Ferdinand I, inherited the Imperial titles. His son, Philip II, inherited the Dutch and Spanish titles along with the immense debt. By 1557, both the Spanish and French states declared bankruptcy and with it the struggle for an *imperium* had come to an end.

Peace between the Spanish and French was solidified by the Treaty of Cateau-Cambrésis (1559). This treaty marked a symbolic turning point in the development of the world-ecology. It created a new balance of power within Europe that permitted the consolidation of nation-states (Wallerstein 1974a). It also codified a spatial reorganization of international relations: the replacement of *raya* with lines of amity. The Spanish defended their exclusive monopoly on western navigation granted by the Papal bulls. The French argued the seas were common and could not be exclusively controlled. The outcome was that the Americas were omitted from the treaty all together. In a “secret clause,” Davenport and Paullin (1917: 220–21) explain, they verbally agreed that

... west of the prime meridian and south of the Tropic of Cancer might should make right, and violence done by either party to the other should not be regarded in contravention of treaties. Beyond these “lines of amity” treaties should lose their force.¹³

In other words, there would be two zones: one corresponding to European Civilization marked by “treaties, peace, and friendship” (Schmitt [1950] 2003: 94) and the other representing the State of Nature marked by the freedom of land for appropriation and freedom of seas for discovery and navigation.¹⁴ As we shall later see, an emerging Naturalist ideology was emerging that spatially

¹³ While Cateau-Cambrésis was the first of such treaties, there were also the 1598 agreement between France and Spain in Vervins and between 1604 treaty between England and Spain in London (Miéville 2006)

¹⁴ That the areas “beyond the line” represented the State of Nature for the European ruling classes is illustrated by three examples. There is first, Pascal (1623–1662) who remarked that a “meridian decides the truth” in reference to the location-based disregard among Christian princes for the distinction between justice (civil modes of existence) and injustice (lawless states of Nature). There is second, Hobbes’ (1558–1679) *homo homini lupus* (man is a world to man) which describes the way “man confronts other men as a wild animal” when in the State of Nature which

demarcated Civilization and Nature. These emerging ruling abstractions were deployed to contain inter-state conflict in Europe while authorizing colonial plunder abroad.

With any pretense of establishing a European *imperium* dispelled, imperial centers began to favor a “trans-Atlantic productivist turn” (Moore 2021a: 752). They morphed their imperialist claims into commodity frontiers. The plunder/conquest economy that characterized the “first” sixteenth century could no longer sustain the emerging capitalist world-ecology. As we have seen, the genocide of indigenous peoples ushered in the Little Ice Age. In doing so, it undermined the stability of European agriculture (Lewis and Maslin 2015). This was the beginning of the “long cold seventeenth century,” punctuated by economic turbulence, endemic revolt, and endless war. A climate fix was necessary. Such a fix required an unprecedented revolution in environment-making that mobilized the production-centered political exchange between bankers, empires, and commodity producers in the Americas to revolution landscapes and the relations of “re/production, rule, and class formation” (Moore 2021a: 753). Novel strategies of proletarianization and a new operating logic for world accumulation emerged. Where there was once plunder, there was now productivity and plunder joined by a dynamic of cheapening: capitalists appropriated and devalued webs of life to minimize costs, and in doing so maximized productivity.

The silver commodity frontier illustrates this best. During the 1570s, the reforms of Peruvian Governor Francisco de Toledo overhauled the operations of the Peruvian silver frontier. Mercury amalgamation replaced smelting, the indigenous peoples were resettled in *reducciones*, and the *mita*, “a system of rotating forced labor drafts”, was introduced (Moore 2003c: 336; see also Moore 2010). Amalgamation made silver profitable to extract from lower-grade ores, while the *mita* and *reducciones* provided the massive, fungible labor supply needed. As we shall unpack later, the productive turn in silver mining after 1550 pivoted on an ideology of metaphysical instrumentalism that subordinated brutal mining mechanisms to the transcendent end of capital accumulation. This led to rapid deforestation, accelerated settlements, financialized expansion of trade, and greater commodification of land and labor (Cross 1983; Moore 2003c). Furthermore, the influx of bullion sustained high prices and lowered interest rates. By flooding the emerging world-economy with cheap money, European capitalists could fund agricultural rationalization and create a wage lag. Together these developments enabled windfall profits across England and France and fueled the buildup of fixed capital (Hamilton 1929; Brown and Hopkins 1959; Wallerstein 1974a).¹⁵ This inflation provided a means of expanded capital accumulation and a mechanism to unevenly distribute the profits throughout the world-ecology, concentrating wealth in the emerging core and depriving the periphery and semi-periphery of capital (Wallerstein 1974a).

Additionally, as silver bullion was used to fund capitalist activity, a worldwide division of labor took shape; one involving different “forms of labor control” and “patterns of stratification”

Hobbes locates “in the New World”. Finally, there is Locke’s (1632–1704) remark that “in the beginning, all the world was America” which describes the world as the State of Nature before the creation of civilization, law, and order (Schmitt [1950] 2003: 95–97).

¹⁵ The bullion often made its way beyond the bounds of the Atlantic world-ecology to India and China (Palat 2015).

which created “different political consequences for the ‘states’” (Wallerstein 1974a: 84). Slaves on plantations and in mines, serfs on large timber and grain estates, tenant farmers on cash-crop operations, and wage laborers in agricultural production made up 90–95 percent of the world-economy’s population; while a small ruling class, immediate personnel, and an emerging class of “yeomen” farmers made up the rest (Wallerstein 1974a: 86). The ethnic and geographic distribution of this division of labor corresponded to those best suited—from the perspective of capital—for the different types of production. Bullion consolidated this trans-Atlantic division of labor, creating a “system of international debt peonage” (Wallerstein 1974a: 121–22) that subordinated landlords in the periphery, particularly eastern Europe, to the world market while incentivizing their participation (see also Moore 2003b). For the first-time, a world-ecology was reorganized around the expanded accumulation of capital.

While it might seem obvious that Spain would be the primary beneficiary of this shift, in fact the Dutch gained most. Spain failed to erect the necessary state-machinery, financial security, and industry to profit from the world-ecology’s creation (Wallerstein 1974a). The Dutch, by contrast, were in an optimal position to consolidate the world-ecology. They were located at the gateway between the Atlantic/Mediterranean and Baltic trade at a time without a significant rival. Control of the Baltic trade enriched the Dutch merchants. They invested their surplus capital in land and agriculture transforming them into to a rentier class at the same time they were “constituting themselves into a sovereign state” (Arrighi [1994] 2010: 138). Fearing the empire would threaten their interests, the Dutch revolted against Spanish dominion (c. 1568–1648). Between tax evasion, piracy, and privateering, the Dutch drained Spain’s coffers while strengthening their cause. They obtained protection from territorialist organizations: formally, the House of Orange for whom they provided liquidity, connections, and business knowledge; and informally the English state for whom they gave “special consideration in trade and finance” (Arrighi [1994] 2010: 138). From this process of state-class formation emerged the United Provinces: a loose confederation that permitted a high degree of economic integration and gave the Dutch bourgeoisie the maneuvering room to maximize their interests (Wallerstein 1974a).

Amsterdam soon became a center of world-trade, shipbuilding, and finance. In 1602, the Dutch created the world’s first permanently in session stock-exchange, offering greater fluidity, volume, and speculative freedom than any preceding stock markets. This enabled them to charter large-scale joint-stock companies with the Dutch government, most notably the *Vereenigde Oostindische Compagnie* (VOC). These enterprises were empowered with state- and war-making capabilities that allowed them to exercise exclusive trade and sovereign rights overseas (Arrighi [1994] 2010). The Dutch regime of accumulation “internalized protection costs” (Arrighi [1994] 2010: 148), allowing them to be self-sufficient and lower costs which increased their competitive edge and profit margins. The Dutch positioned themselves as the universal intermediary of the world-ecology, pursuing a policy of free trade that redirected bullion flows and encouraged new credit mechanisms (Wallerstein 1974a). This positioned the Dutch in stark opposition to amity lines and *rayas* because they rejected exclusive navigational monopolies, whether in or outside the sphere of Civilized European public law.

As the Dutch grew in strength, Habsburgs' refusal to acknowledge the "*politico-juristic equality*" (Miéville 2006: 182) of the other European empires became increasingly untenable, culminating in the Thirty Years War (1618-1648). By the Treaty of Münster (1648) Spain conceded the right of "navigation and traffic in the East and West Indies" to the Netherlands (Grewe [1984] 2000: 160). Furthermore, with the Treaty of Westphalia (1648) the Western European states formalized a single world-wide political system, underpinned by international law and a balance of power between states (Gross 1948). The juridical inequality of the emergent interstate system had formally come to an end. This pushed the Dutch's territorialist competitors—France and England—to bypass Dutch "universal intermediation" by consolidating themselves through "national-economy making" (Arrighi [1994] 2010). The failure of the Spanish imperial project thus enabled the Dutch to stabilize the world-ecology on the foundation of an inter-state system that facilitated the development of England and France as strong core-states. Where there was once a line demarcating Civilization from Nature, there were now Civilized states competing with one another as equals. No higher authority could regulate their interactions through positive law. There was only Natural law, or so the intelligentsia surmised.

The Critique of Imperial Reason: From Divine to Natural Law as the Juridical Basis of Imperialism

Historiography on legal Naturalism often begins with the European Enlightenment (c. 1685–1815). Its primary protagonists are the intelligentsia of the core capitalist states whose break with the absolutist-religious social order is framed as an internal product of European development. Graeber and Wengrow (2021) have challenged this Eurocentric narrative, arguing that legal Naturalism arose in reaction to an "indigenous critique." Their account however centers the core capitalist states—France, England, and the Netherlands—and their exchanges with North American indigenous peoples. Their account starts after over a century of contact between the Central and South American indigenous peoples and the Iberian empires. I contend that the origins of legal Naturalism can rather be found in the juridical crisis created by the Iberian conquest of the Americas that prompted the Spanish, and later Dutch, intelligentsia to revolutionize their ideas about Nature and their consequences for the social order. In doing so they provided an operating framework for the world-ecology which was later taken up by the English and French.

John Locke (1632–1704) is the archetypical English Natural law theorist. His theory of property ownership broke with the dominant explanations rooted Hobbesian violence, right of conquest, and divine right (Thompson [1991] 1993). Instead, he grounded property in improvement: the mixture of your—or hired—labor with Nature (see Locke [1689] 2015).¹⁶ For Locke, improvement was about value-creation and the common good. Subsistence agriculture was nothing more than waste, providing the legal rationale for the parliamentary enclosures that brought

¹⁶ That labor came to mean "improvement" is a product of eighteenth-century legal decisions (Thompson [1991] 1993)

about “the extinction of common and customary rights” (Wood [1999] 2002: 108) on which subsistence depended.

Some argue that capitalist property relations were later exported to the rest of the world through English imperialism which justified appropriation under the guise of improving the wasteful land use of indigenous peoples—that is, their lack of capitalist agriculture (Thompson [1991] 1993; Wood [1999] 2002).

An examination of the legal debates over the *Conquista* shows this to be less than the whole truth. These debates called into question divine right and right of conquest nearly two centuries before the Enlightenment. While Locke may express a fully developed conception of capitalist private property it is because his account is the product of, not model for, a world-historical process. This process began with the Jurist Francisco de Vitoria (1483–1546), the founder of the Salamanca School of scholastic philosophy. From the 1520s to 1550s, the Salamanca School provided moral and theological counsel to the Spanish Crown (Adorno 2007). This made them well positioned to try to influence imperial policy. Vitoria used this position to challenge the imperial and papal basis of the medieval *ius gentium*. He favored an alternative doctrine—based on Roman legal sources—that declared Nature to be the source of law concerning discovered territories and the High Seas (Benton and Straumann 2010).¹⁷ The Roman *ius gentium* developed as a “tool” of “rich and powerful merchants” (Tigar and Levy [1977] 2000: 33), emphasizing universal legal principles independent from civil jurisdictions. These principles elevated freedom of commerce above all else. This laid the groundwork for the development of a metaphysically instrumental ideology that subordinated the technical means of empire—imperialism—to transcendent ends—capital accumulation (Bentancor 2017: 30).

The arc from Vitoria to Locke began with the polemical lecture series *De Indis* (Vitoria [1539] 1991). Appalled by the acts of the conquistadors Cortés and Pizarro, Vitoria examined the legitimacy of the *Conquista*. For the *Conquista* to be just, it would need an *iusa causa* which required a relevant and legitimate title. His first consideration was whether the indigenous peoples “possessed true dominion” (Vitoria [1539] 1991: 251, italics in original).¹⁸ If they did then the American lands were not an unowned thing (*res nullius*) that could be appropriated legally under the *ius gentium* through occupation (*occupatio*). Instead, the Spaniards had the burden to prove ownership (*dominium*) through *usucapio*: uninterrupted and good faith possession (Benton and Straumann 2010). Since the indigenous peoples factually possessed the land for a much greater period and the Spaniards had obtained the land by force, neither condition obtained. They could thus not legitimately claim the right of discovery—as they often alleged. Spain’s claim to dominion

¹⁷ Imperial actors interpreted Roman ideas differently and understood them imperfectly. One cannot arrive at an explanation of their actions by looking only to the prescriptions of Roman law. My concern here is with how the Spanish—and later Dutch—intelligentsia made use of these sources in a novel way to create the specifically *bourgeois* Naturalism endemic to our times.

¹⁸ To establish this Vitoria examined four conditions under which dominion could be denied: sin, heresy, madness, and youth. He shows neither of these conditions to be sufficient or necessarily applicable (see Vitoria [1539] 1991, 239–51).

through imperial and papal titles were also “irrelevant and illegitimate” (Vitoria [1539] 1991: 252) because their emphasis on a Christian theocratic frame presupposed their authority and contravened the only possible ground of civil power, dominion, and a just war: the laws of Nature derived from human reason. Because the indigenous people were not subject to Spanish jurisdiction, it was untenable that the positive laws of the Pope or Emperor held any weight for them (Mantilla 2022). The juridical basis of the *Conquista* was, therefore, in doubt.

If the empire was to remain secure in its legitimacy, it would need a much stronger foundation. Toward this end, Vitoria ([1539] 1991: 277) developed seven “legitimate and relevant titles” that the Crown could ground the conquest in—the most important being the right to travel and trade. These titles derived their legitimacy from Nature—specifically, “the principle of the natural subordination of material means to the transcendent ends” (Bentancor 2017: 48). By interpellating travel and trade as parts of human Nature, Vitoria positioned them as inalienable, universal rights that could not be justly constricted. Since these rights were universal, they had a formal reciprocity to them. This was a double-edged sword: on the same ground that it secured the autonomy of indigenous people from conquest based on their essential humanity, it authorized dispossession “*if they threaten the Spaniards’ right to trade and search for profit and surplus*” (Bentancor 2017: 54, emphasis added; see also Anaya 2004). Vitoria’s philosophical move dislodged the just war doctrine from its foundation in canon law and found it a new footing in Natural law.

Vitoria’s ([1539] 1991) conclusion rests on two arguments: first, there is a Natural right of commodity exchange between formally equal private parties. Since the Indigenous peoples possessed an abundance of material wealth (gold and silver) and lacked European commodities, they ought to exchange them—presupposing the international division of labor. Second, that property derives from first appropriation. Since the gold and silver had not yet been extracted, it was *res nullius*. By mining the precious metals, the Spaniards became their first possessors. If the indigenous peoples were to restrict either of these rights in any way, they would be violating the Spaniards’ Natural rights and working against the common good as determined by the “consensus of the majority of the international community” (Bentancor 2017: 52) that benefited from the circulation and exploitation of their resources. Vitoria’s polemic thus highlights an important insight of the commodity form theorists. While the right to travel or commerce was formally reciprocal, it was materially unilateral. As Miéville (2006:176, italics in original) explains, “the contradiction between equality of juristic right and disparity of political power is not only intrinsic to international law” but “is the very fact by which international law is made binding as *law*.” The indigenous peoples shared the same Natural rights to travel to Spain, engage in commerce, and appropriate their resources; but without force, they could not enforce their rights as such. To paraphrase Marx ([1894] 1990: 344): in the antinomy of Natural rights, force decides.

Vitoria was ultimately ignored by Charles V, but the Valladolid debates (1550–1551) between the theologian Ginés de Sepúlveda (1490–1573) and the clergyman Bartolomé de Las Casas (1484–1566), reprised and radicalized his views (Bentancor 2017). Both agreed that there existed a Natural order where some humans were superior to others. The controversy turned on where the indigenous peoples were in this hierarchy and what obligations the Christian conquerors had to

them (Patel and Moore 2017). Sepúlveda sought to overturn the New Laws of the Indies (1542), arguing that the indigenous peoples were Natural slaves who should be forcibly subjugated by the Spaniards. Adopting Aristotle's principle of the "domination of perfection over imperfection" (quoted in Todorov [1982] 1992: 152), Sepúlveda ([1550] 1954) argued that the Spaniards had a duty to civilize the Indigenous peoples so they could ascend the hierarchy of Being (see also Bentancor 2017:102). Generations of forced labor, Sepúlveda ([1550] 1954) surmised, would help the indigenous peoples escape their place in Nature.

Las Casas ([1552] 1974) did not reject the Natural hierarchy per se but rather argued that Sepúlveda ([1550] 1954) misunderstood the Indigenous people's place in it. Through an immanent critique he ([1552] 1974) showed that Sepúlveda ([1550] 1954) misapplied Aristotle's typology of barbarians.¹⁹ Only those who lacked the knowledge of "how to live in a civilized and human way" were "slaves by nature" (de Las Casas [1552] 1974: 38). The problem, however, was that—as Vitoria ([1539] 1991) has already shown—the indigenous peoples possessed political prudence prior to the conquest. While they were not so uncivilized that they could be made slaves, Las Casas ([1552] 1974) still believed that Spaniards had a duty to further civilize the indigenous peoples, albeit through Christianization (see Todorov [1982] 1992; Caraccioli 2021). Whether through enslavement or conversion, the civilizing project would commence.

The Valladolid debate was at an impasse. While they concluded that the indigenous peoples were not Natural slaves, the legitimacy of the conquest and question of restitution remained unresolved. In the 1570s the Jesuit missionary José de Acosta (1540–1600) broke the impasse. Aware of the indigenous people's plight from his tours around Peru, Acosta was no stranger to the empire's violent origins. Accepting it as indefensible, he sought to sidestep the question of restitution by inverting the locus of imperial legitimacy: it was not the empire's *origin* that matter, but its *intentions* and *pursuits*—which he argued were oriented toward the *common good* (Bentancor 2017). Its continued existence was necessary to avoid the chaos and disorder that might arise from the dissolution of colonial institutions. Such a conservative position Naturalized the empire by situating it as a mechanism of homeostatic regulation; one necessary to stabilize and preserve the status quo.

Acosta's move transformed the principle of Natural subordination outlined by Vitoria and Sepúlveda into the *means* for the *ends* of colonial rule. The conquest was an investment that the Spaniards were obligated to ensure a return on. He saw the indigenous people as disobedient beasts of burden:

tighten the reins and bit on the donkey's jaw, burden him with a proper load, use the whip if necessary, and if he should buck, don't lose your temper or abandon

¹⁹ According to Las Casas ([1552] 1974: 28–29), there are four types: first, those who are "cruel, inhuman, wild, and merciless" and act against human reason; second, those who do not possess written language and thus are "uncultured and ignorant" (Las Casas [1552] 1974: 30); third, those who do not have "rulers, laws, and institutions" nor "engage in civilized commerce" (Las Casas [1552] 1974: 32); and finally, all non-Christians (Las Casas [1552] 1974).

him. Punish him with moderation; rein him in little by little until he is accustomed to obedience. (Acosta quoted in Bentancor 2017: 158–59)

This comparison demonstrates his continuity with Sepúlveda's and Las Casas' Natural order. By comparing the indigenous peoples to a mule, he was placing them lower on the hierarchy of Being, enabling to derive claims about the obligations of the Spaniards to the indigenous. Now that the indigenous peoples were under their rule, they obligated to civil them.

The *mita* and the *reducciones* were the technical means to fulfill this unconditional end. His justification for their use facilitated the metaphysical subordination of the web of life to capital accumulation. For Acosta, money, in the form of metals, sustains the hierarchy of Being because it has “quasi-living, transcendent quality” that enables it to “measure and *order* everything else” (Bentancor 2017: 197). The social relations that sustain the empire disappear behind the transcendent end of capital's self-valorization. Amidst this process a disjunction arises between the use-value and exchange-value of the metal. It is both imperfect matter—an instrumental means for the ends of empire—and the measure of value itself—“the quasi-living source of power that sustains the material networks of production, circulation and credit” (Bentancor 2017: 201). Because silver bound together the world-economy, its production was a common good that rationalized the subordination of (extra-)human life by the empire.

While Nature and the *ius gentium* were revolutionized by the Spanish intelligentsia, it was the Dutch who consolidated these ideological innovations into a novel software for imperialism. The Salamanca School's provisional separation of Civilization and Nature was transformed into a hard-and-fast distinction and cemented as the organizing principle for the world-ecology (Patel and Moore 2017). The first to express this emerging bourgeois Naturalism was the French philosopher and Mathematician René Descartes (1596–1650). In 1641, he derived the first laws of capitalist ecology while living in the Dutch Republic. First, he separated “thinking things” (*res cogitans*) from “extended things” (*res extensa*) as discrete substances (Descartes [1641] 2013: 78–90). Second, he declared that European civilization must become “the masters and possessors of nature” (Descartes 1985: 142–43). For the era's ruling class, Nature was the realm of extended things, including not only plants, animals, and landscapes but also most of Humanity, especially women and people of color (Plumwood 2002; Wynter 2003). Descartes' second law was gendered and racialized at every turn. Prometheanism—the domination of Man over Nature—became the foundation of modern racism and sexism. It seized upon biological difference as a mode of *Naturalized* domination to orient Civilizing Projects around the drive for profitability (Moore 2022b). Nature was thus not merely a thing, but a strategy of cheapening life. These two laws cohered into a novel management philosophy, transforming the Salamanca school's principle of Natural subordination into a gendered and racialized law of Cheap Nature.

The Cartesian revolution signaled the emergence of a “vast but weak regime of abstract social nature” (Moore 2015: 207). This involved new cartographies and temporalities as well as novel forms of property-making and surveying (Blomley 2003). As we have seen, the initial Atlantic expansion involved new conceptions of space—as seen in Renaissance perspective—that broke from the medieval “hierarchy of values” (Mumford 1934: 20). The Cartesian revolution

transformed this new conception of space into a mode of reason. Divine teleology and medieval holism were soon replaced with cartographic perspective and mathematical abstraction, enshrining a “spectator’s view of the world...that rendered the emerging surfaces of modernity visible and measurable and the viewer bodiless and placeless” (Patel and Moore 2017: 55). These *technics* became pivotal for Dutch world-hegemony. After 1585, the world’s leading mapmakers concentrated in the northern Netherlands. By 1619, the flow of geographic knowledge was coordinated through the VOC’s internal mapmaking office (Zandvliet 1987). The Cartesian revolution turned abstract space into a *technic* of conquest.

The new cartographic practices transformed property relations. Driven by capitalist agriculture, polderization, and water-control, a cadastral revolution swept the Netherlands (Kain and Baigent 1992). Cartesian surveying practices were instrumental for England’s subsequent era of enclosures and proletarianization (Patel and Moore 2017). The old model of territorial power, premised on overlapping and personalized jurisdiction—the personal nexus of homage and fealty—gave way to an abstract legal relation of ownership between *person* and *thing* (Tigar and Levy [1977] 2000). For the Dutch intelligentsia of the era—the Jurist Hugo Grotius (1583–1645) most of all—property came to have a new meaning: exclusive dominion (Thompson [1991] 1993). The English later seized upon this idea of exclusive ownership to enclose the commons, impose competitive rents, and coerce the peasantry into selling their lands. A class of landless peasants emerged, coerced by legal prohibitions on vagabondage to “sell their labor to survive” (Patel and Moore 2017: 59–60). Proletarianization was necessarily partial. To ensure that the exploitation of wage-labor was profitable, social reproduction costs had to be cheapened. The most effective means to do so was the domestication of women: “the Savages of Europe” (Federici 2004: 100). Women were recast as Man’s *Natural* property whose *Natural* role in the sexual division of labor was to perform socially necessary unpaid reproductive work (Patel and Moore 2017).²⁰ Their care labor would provide a steady-stream of wage-laborers. Through the Cartesian revolution new exclusive and gendered property relations emerged, uniquely conducive to endless accumulation.

The Cartesian revolution clarified the *ius gentium* into a formal framework for the operation of international relations. As we have seen, after Cateau-Cambrésis, international law developed along amity lines, demarcating Civilized European public law from the State of Nature. This enabled Spain to keep its naval monopoly while preserving the European balance of power. By 1648, the Thirty Years War had upended this order. With the development of exclusive private property relations, the Iberian kingdoms’ monopolistic claims under the Papal Bulls *Inter Caetera* (1494) lost their force. The sovereign states emerged as the absolute owners of their national and colonial territory. Lacking a higher political authority, the European states faced the international legal order as formally equal subjects whose interactions rested only on Natural law. The international legal order had become, in the eyes of the European Intelligentsia, an anarchic State of Nature (Miéville 2006).

²⁰ This was secured through legal means. Women were deprived a litany of rights including the “right to conduct economic activities alone” (Federici 2004: 100).

As the states became abstract legal entities, jurists deduced their Natural rights (Anaya 2004). Grotius ([1609] 2004) deployed this line of thought in his polemic against the Portuguese monopoly on Indian ocean Trade: *Mare Liberum*. He attacked the *raya* and amity lines on the grounds that the seas were beyond territorial control. His call for “freedom of the seas” was not simply a call for *laissez-faire* trade, but rather a defense of the Dutch’s right to violently plunder Portuguese holdings to assert their Natural right to trade (Dumbauld 1969). It is this “purposeful confusion of private and public law” that justified the application of “the *res nullius* doctrine to territories and waters” (Benton and Straumann 2010: 29) beyond civil jurisdictions. This transposition allowed later international law scholars—like the Prussian lawyer Emer de Vattel ([1758] 1844)—to systemize the *ius gentium* into a science of rights distribution between subjects and states as well as between states. By combining Grotius’ ([1609] 2004) insight into the Natural rights of states with Lockean improvement, the nation-state was overrepresented as the only mode of human association. In doing so, a line could be drawn between the individual rights of Indigenous peoples and their collective right to self-determination and non-intervention by other states into their territories (Anaya 2004). Since Indigenous peoples did not organize themselves into nation-states and improve the land through capitalist agriculture, the European intelligentsia surmised that they must be in the State of Nature and in need of Civilization.

We thus arrive at the end of the long sixteenth century. With any pretense of an *imperium* shattered, the political administration and division of the world-ecology fell upon the states themselves. Without imperial or divine law to govern their interactions, the states turned to Natural law, reinvented in this period to enshrine the subordination of “women, nature, and colonies” (Mies 1986). The Natural law of this epoch was, from its inception, mercantile in character. From Vitoria’s rights to travel and trade to Grotius’ freedom of the seas, international law emerged as the “private” law of the bourgeoisie, using their requisite states to secure the re/production of capital through political appropriation. This process began not with Locke and the English state, but with Vitoria and the Spanish empire. It was only through the Salamanca School and Cartesian revolution that the Civilizing Project was crystallized, providing the *modus operandi* for not only the consolidation of the nation-state form vis-à-vis the subjugation of indigenous peoples, but also the transformation of social property relations which reached its apogee in the English countryside. It is on this basis that force came to decide the antinomy of Natural rights.

From Natural Law to the Laws of Cheap Nature

Lex Capitalocenae foregrounds the centrality of legal transformation to the development of capitalism. Weaving together a geohistorical reading of law in its positive and axiological dimensions, we have seen how legal Naturalism enabled the rise of capitalism through the creation of new *ruling abstractions* (Man and Nature) and extra-economic modalities of accumulation: *accumulation by appropriation*. The world-ecology approach allowed an analysis of the ideological dimensions of law as something more than a superstructure; it is equally a socio-ecological infrastructure of world-accumulation—a material force for the reorganization of webs

of life. By controlling the “means of mental production” (Marx and Engels [1932] 2010: 64) and coercive state apparatuses, ruling classes turned legal Naturalism into a praxis for the appropriation of Cheap Nature and the accumulation of surplus-value. Ideology, the “software” of empire and capitalist production (Moore 2023a), enabled the reinvention of normative social relations (Natural law), the enshrinement of that ideology into (positive) laws, and their enforcement through violence.

In this light, world-ecology’s distinction between capitalist *projects* and the “messy and contingent” (Moore 2015: 44) *historical process* is crucial. Natural law did not materialize from the ether. It arose through the Dutch and Spanish *intelligentsias*—Wallerstein’s (1983) “cadres,” the forerunners of today’s professional managerial class. These class projects to develop new ruling ideas—and instrumental techniques of power and profit—facilitated the transition to capitalism and allowed new modern empires to survive and flourish across the crises of the long sixteenth century (Moore 2018). These crises were caused by the exhaustion of plunder as an accumulation strategy, imperial and divine law as a juridical foundation, and the *imperium* as a political form. The world-ecology paradigm allows us to better interpret the emergence of legal Naturalism not as transcendent *Laws of Nature*, but as early capitalism’s geocultural and geoscientific expression of the class struggle in the web of life.

Lex Capitalocenae’s geohistorical argument thus challenges the ubiquity of bourgeois Naturalism in contemporary discussions of law. Earth System Law (Kotzé 2019), Anthropocene Law (Burdon 2023), and the Rights of Nature movement (Stone 1972) all abstract from the world-historical dynamics of class, capital, and empire in favor of the Eternal Conflict of Man and Nature (Moore 2022a, 2023c). Bourgeois Naturalism, aggregates humanity as an abstract collective enterprise dominating Nature: Humanity or Man in the uppercase. In the process, it mystifies the concrete historical actors. Even when environmental law scholars acknowledge that capitalism or empire drives the crisis (Auz 2023), the flight from history persists. In such accounts, Capitalism becomes a theoretical construct rather than an evolving totality of historical relations (Wallerstein 1983). Their approach to *Lex Capitalocenae* focuses on making legal fixes rather than understanding the historical interpenetration of law, class power, and capital accumulation. Such Earth fetishizations lead directly to Anthropocene anti-politics (Swyngedouw 2011; Moore 2021b). These violent abstractions build consensus for “apolitical” (Moore 2021b) planetary management and “stewardship” (Kotzé and Kim 2022) to “secure the effective domination over, and supply of, Cheap Natures” (Moore 2023b: 18). This issue ceases to be the class struggle in the web of life. Rather it becomes a technocratic affair to maintain the subjugation of planetary life.

While bourgeois Naturalism has served as a practical guide for fixing capitalist crises, those fixes have depended upon plentiful frontiers of Cheap Nature. As the climate crisis intensifies, the geographical conditions for capitalism’s survival are being exhausted. Those frontiers no longer exist as they did for the five centuries or so before 1970. Previous scrambles for Cheap Nature—expressed through inter-imperialist warfare—have reorganized the balance of power around a new hegemon controlling the flow of Cheap Nature. The coming inter-imperialist conflicts—between the Washington-Davos and China-Russia axes—at the end of Cheap Nature may spell the demise

of the Westphalian inter-state system and the capitalist model of accumulation (Moore 2023b). As the old conditions of Cheap Nature cease to exist, the old patterns of hegemony will disappear with it—including, potentially, Naturalism as the juridical basis of imperialism. The dominant axes are pursuing a tributary-imperial path forward, premised on geopolitical accumulation and planetary managerialism. We may thus see a return of imperial law as the world-ecology is subsumed under the political control of an *imperium* because international law is only binding as law so long as it is backed by coercive force. However, the future may not be so bleak. As with every previous climate-class conjuncture, ours will be an era of tumultuous revolt. The frontiers of Cheap Nature needed to quell the planetary proletariat have been used up. There are thus epochal possibilities on the horizon: an *imperium* for the predatory classes or the socialist liberation in the web of life.

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