General Bibliography

The items in this bibliography provide an introduction to or an overview of the general subject of justification. Each chapter has its own focused bibliography as well.

Archive of Early American Images, John Carter Brown Library, Brown University.
<https://www.brown.edu/Facilities/John_Carter_Brown_Library/pages/ea_hmpg.html>.

An important resource for images to support the study of any element of early American literature, but it is important to remember that images functioned as tools for justification every bit as much as texts.

Banner, Stuart. *How the Indians Lost Their Land: Law and Power on the Frontier*. Cambridge: Belknap-Harvard UP, 2005.

Banner investigates the complex power relationship between the American Indians and non-Indians (whites, colonists, Europeans) governing the transfer of land and property in the seventeenth through twentieth centuries. He maintains that varying interpretations and enforcements of Anglo-American law constructed this power dynamic, complicating the relationship between "conquest" and "contract." Banner claims that although Anglo-American laws theoretically worked to "protect" the Indians' rights, in practice non-Indians used these laws according to their best interests. Banner posits this divergence occurred gradually, identifying the seventeenth century transfers to be more Indian-friendly than the later "transactions" near the end of the nineteenth century. (EDV)

Fitzmaurice, Andrew. *Humanism and America: An Intellectual History of English Colonisation, 1500-1625*. Cambridge: Cambridge UP, 2003.

Humanism -- "the revival of the Greek and Roman disciplines of grammar, rhetoric, history, moral philosophy and poetry" -- dominated colonizing projects from the time of More through the fall of the Virginia Company. The English "produced more literature promoting colonisation in this period than any other European country." Profit and possession are the traditionally cited motives for expansion, but cautions against greed and the promotion of civic values -- trademarks of humanism -- are equally present. Chapters on the Tudor and Jacobean periods, rhetoric, law and history, and the Machiavellian argument (contrasting Shakespeare and John Smith). (EJG)

***"The Gigantic Question" in Washington Irving's History of New York*. Ed. Edward J. Gallagher. 1999. Department of English, Lehigh University. 25 March 2005.**
<https://www.lehigh.edu/~ejg1/irving/irvingintropg.htm>.

A forerunner of this current project. In the early days of digital projects, a teacher and his four-student class of English majors did an online edition of chapter V of the first edition (1809) of Irving's book (see entry below) in Lehigh Library Special Collections, annotated it,

compared it to subsequent editions, and contributed essays about it. See the teacher's **assignment** for details.

Green, L.C., and Olive P. Dickason. *The Law of Nations and the New World*. Alberta: U of Alberta P, 1989.

Affirmation of aboriginal rights in Canada's new constitution provides the context for exploring "the ideology of European colonial expansion into the New World [and] describing and evaluating the legal, theological and philosophical justifications of the colonizers and their sponsors" (vii). Green deals with the legal arguments, asking whether European acts were "lawful according to the rules of international law in force during the age of discovery" (viii). Dickason examines the theological and philosophical arguments, contending that while natural or divine law did not sanction colonization, scholars had little trouble defending colonization. (EJG)

Hanke, Lewis. *All Mankind Is One: A Study of the Disputation between Bartolomé de Las Casas and Juan Ginés de Sepúlveda in 1550 on the Intellectual and Religious Capacity of the American Indians*. DeKalb: Northern Illinois UP, 1974.

This study traces the skirmishings among Spanish scholars during the first half of the 16th century regarding the humanity and intelligence of the Native American, culminating in the 1550 Las Casas/Sepúlveda debate at Valladolid. Among the hotly contested issues were alleged accounts of Indian barbarity, idolatry, and sins against natural law. The climate that produced the debate, the debate itself, and its aftermath are analyzed in terms of Spanish policy, treatment, and conversion of New World natives. The debate concerns Sepúlveda's justification of war against and enslavement of natives vs. Las Casas's arguments for their peaceful conversion and education. (AMD)

Irving, Washington. *A History of New York*. New York, 1809.

In Book I, Chapter V, Irving's narrator, Diedrich Knickerbocker, asks, "What right had the first discoverers of America to land, and take possession of a country, without asking the consent of its inhabitants, or yielding them an adequate compensation for their territory?" The answer to this "gigantic question" involves a biting delineation of the rights of discovery, civilization, cultivation, extermination, and authority -- culminating in an invasion of our world by "lunatics" (moon people), who advance such rights against us. See "The Gigantic Question" web site above. (EJG)

Jennings, Francis. *The Invasion of America: Indians, Colonialism, and the Cant of Conquest*. New York: W.W. Norton & Co., 1975.

Jennings presents the actual history of the interactions between Europeans and American Indians in the colonial United States. Historians have treated American society as a transplantation of Europeans into a new continent; for the Indians, it was the period of invasion of America. The term “settlement of America” was actually a re-settlement or a reoccupation of a land laid waste by disease and demoralization by the Europeans. After summarizing the current information available about the Atlantic Coast Indians, Jennings concentrates on the New England area as a case study. The result is a radical revision of Puritan history, both as they lived it and wrote it, in relation to the aboriginal population. (EWH)

Jones, Howard Mumford. "The Colonial Impulse: An Analysis of the 'Promotion' Literature of Colonization." *Proceedings of the American*

***Philosophical Society* 90.2 (1946): 131-61.**

Jones looks at the several reasons given in “promotional literature” -- the English discourses used to promote and justify colonization, literature aimed at inspiring people to colonize America -- why colonization is good: it is a virtuous thing to do (the English see themselves as the Romans), it is necessary in order to keep Spain in line, England is overpopulated, it is a good way to put the unemployed to work, it is a way to reform criminals or prevent idle people from becoming criminals, and several others. Especially significant is the “moral sanction”: the English are chosen by God and must go forth, multiply, and convert others to Christianity. Jones points out inconsistencies in both the promotional literature and the moral sanctions and looks at the ways the English attempted to reconcile (or simply ignored) these differences. (EAW)

Juricek, John Thomas. "English Claims in North America to 1660: A Study in Legal and Constitutional History." Diss. U of Chicago, 1970.

This dissertation seeks to "clarify the nature of the territorial claims advanced by Europeans, particularly the English, during the Age of Discovery," rather than make any moral or legal judgments on such claims (1-2). Juricek analyzes legal documents that support the conflicting claims to North America, asking three basic questions of each source: what is being claimed, what legal arguments were used to justify these claims, and who or what was the legal beneficiary of these claims (2). The dissertation begins with Iberian claims to North America under papal grants but focuses most heavily on Britain. (KML)

Mackenthun, Gesa. *Metaphors of Dispossession: American Beginnings and the Translation of Empire, 1492-1637*. Norman: U of Oklahoma P, 1997.

Mackenthun analyzes and deconstructs the accuracy, validity, motivation, and acceptance of narratives and metaphors in English colonization texts from 1492 to 1637 with an eye toward the influence and continuity of early discovery and settlement myths. The figures studied include Hakluyt, Harriot, Ralegh, and Smith, and the topics include the legends of Madoc, America as New Eden, the romantic myth of white gods returning to Mexico, the shift from royal to commerical and religious audiences, Native American savagery and property rights, superfluous fauna, the Roanoke massacre, and depopulating New England natives. This book will help anyone interested in the adaptation and retention of myths as justification and motivation and the intentional and accidental misrepresentation of Native Americans and pre-colonized America. (RWA)

Mancall, Peter C., ed. *Envisioning America*: *English Plans for the Colonization of North America, 1580-1640*. Boston: Bedford Books of St. Martin’s Press, 1995.

Mancall’s textbook brings together promotional literature, charters, and other personal narratives connected to the origins of English America by such authors as Hakluyt, Peckham, Gilbert, Harriot, Ralegh, Percy, Winthrop, Smith, and Wood. His main argument challenges notions that the English only wanted glory and gold from their attempts to colonize the New World – many who were risking their lives by traveling overseas were doing so to avoid a hostile political, religious, and social climate in England. The impulse to

create a new Eden must be understood as pleas to a government not interested in overseas settlement. (MAC)

Muldoon, James. *The Americas in the Spanish World Order: The Justification for Conquest in the Seventeenth Century*. Philadelphia: U of Pennsylvania P, 1994.

This analysis of the work of Juan de Solórzano Pereira (1575-1654), specifically of his *De Indiarum Jure*, examines 17th century Spanish justification of the conquest of the New World. A defender of Catholicism and of Spanish political policy, Solórzano Pereira rejects all titles to New World dominium apart from the authority of the papal grants. As a response to the *Mare Liberum* (*The Freedom of the Seas*) of Hugo Grotius, Solórzano Pereira's work aims to justify the conquest on moral as well as economic grounds. Muldoon's analysis extends the relevance of this work to current issues concerning the rights and moral obligations of developed states to impose universal standards of behavior on developing nations. (AMD)

---, ed. *The Expansion of Europe: The First Phase*. Philadelphia: U of Pennsylvania P, 1977.

Muldoon examines the process by which Europeans invaded and swallowed up neighboring communities and non-believers. He provides copies and abridgements of original letters and documents written by kings and popes in regard to the exploration and conversion of foreign lands. The Europeans were very sophisticated in their expansion westward and eastward. Instead of always making outward war on the "other," they slowly moved into the lands via trade and gradually took over local governments. Because this former process took such a long time, the European governments (especially the English, Spanish, and French) found it to equal the price of quickly but brutally warring other nations for land, and such intentions are found within the individual entries. With the backing of the Church, especially after the 12th century onward, European nations were able to convince uneasy onlookers that their movements were just, and these theories were then used and applied in the conquest of the new world. The biggest advantage of all was the ultimate marriage of the papacy and the throne. (MJM)

Pagden, Anthony. *Lords of All the World: Ideologies of Empire in Spain, Britain, and France c. 1500 — c. 1800*. New Haven: Yale UP, 1995.

While concentrating primarily upon the legal and philosophical premises for the “first imperialistic phase” of European colonization of America (2), this book reaches back to principles of ancient Roman “imperium” to explain the relationship the United States holds today with the rest of the world. The empire-building mechanism, which necessarily entails conquest, finds its origins in “Imperium Romanum” (11), later co-opted by “Imperium Christianum” (24), and existing today in the ideology of democracy. All three applications proceed with a zealous insistence of exclusive privilege. While Roman emperors conducted territorial expansions on the premise of offering citizens the “perfect community” and the Catholic Church, on the primacy of its gospels and papal authority, the United States’ ambition for universal democracy “relies for its civilizing machinery upon an exalted vision of commerce” (199-200). (PME)

Parker, John. *Books to Build an Empire: A Bibliographical History of English Overseas Interests to 1620*. Amsterdam: Thieme-Nijmegen,

1965.

Outlines and describes books from English presses from 1481 through 1620. In addition to listing and explaining texts about the growth and development of English interest in colonization, Parker also points to different varieties of discourse. Proposals, sermons and letters by Richard Eden, and others outline the binary discourse of empire. Includes a well-developed bibliography and secondary source list. (CMH)

Porter, H.C. *The Inconstant Savage: England and the North American Indian 1500-1660*. London: Duckworth, 1979.

Porter analyzes English reaction to the discovery, exploitation of, and interaction with New World natives -- quoting, summarizing, and contextualizing dozens of contemporary English texts. For example, “the Savage” in Shakespeare’s *The Tempest* and More’s *Utopia* is discussed as indicative of current English thought on Natives. The mere existence of New World inhabitants is, in the English mind, made an extension of Old Testament folklore. Other chapter titles include “John Florio and Montaigne’s ‘Bon Sauvage’,” “Las Casas in English,” “The Lure of Nurumbega,” and “Humphrey Gilbert and the Newfound Lands.” The latter half of the book is dedicated exclusively to English reaction to Indians in Virginia. This book is useful to anyone interested in sixteenth- and seventeenth-century English thought on the New World, English treatment of Native Americans, and England’s sense of entitlement to its “discovered” lands on North America. (RWA)

Quinn, David, ed. *New American World: A Documentary History of North America to 1612*. 5 vols. New York: Hector Bye, 1979.

"The" place to start when looking for primary material, this five-volume series contains a large number of original documents related to the exploration and colonization of the New World. The documents include firsthand narrative accounts, letters, charters, judicial papers, and more. Volume one covers Aristotle’s proof that the Earth is round, medieval and Muslim theory on the state of the planet, and the first explorations. Volume two focuses on the major Spanish searches in eastern North America, the Franco-Spanish clash in Florida, and the beginnings of Spanish Florida. Volume three goes into English plans for North America, the Roanoke voyages, and the New England ventures. Volume four looks at Newfoundland and the Northwest Passage searches. Volume five concludes with the extension of settlement in Florida, Virginia, and the Spanish Southwest. (EAW)

Seed, Patricia. *Ceremonies of Possession in Europe’s Conquest of the New World, 1492-1640*. New York: Cambridge UP, 1995.

Seed explores the various ceremonial practices used to initiate and later solidify explorers’ “right to rule” the land — and consequently its inhabitants — on which they landed. She aims to “render explicit the often unstated yet distinct embedded histories and locally significant systems of meaning behind the symbolic actions and statements creating overseas authority” (3-4). Seed explores daily life, language, and gestures, and what she calls a “shared legal code,” all of which constructed and furthered these new cultures of the New World. Seed traces the “anticeremonial English conceptions of possession,” contrasts those practices with more elaborate staging of possession by the French, and moves to a focus on the Spanish and its use of the “Requirement” — a specific text which was routinely read to natives. She explores Portuguese use of technology — specifically, astronomy

— to justify their conquest and acquisition and traces the Dutch conception of discovery in terms of “written description and maps” (14). Timely is Seed’s study, which aims to trace the legacy of conquest and possession via “mundane objects” that shed great light on these traditions of power and possession. (KRF)

Sweet, Timothy. "Economy, Ecology, and Utopia in Early Colonial Promotional Literature." *American Literature* 71.3 (1999): 399-427.

Sweet focuses on the “American environmental consciousness,” outlining how European settlers related to the new land in the New World. He argues that the American environment created a new mode of political economy, “one that theorized economics in terms of environmental capacity in a way that the then-dominant mode, agrarianism, had not yet done” (400). Sweet analyzes several examples of promotional literature by both the elder and younger Hakluyts, Sir George Peckham, and Christopher Carleill, connecting their literature to the new ways that early colonists understood their environment and their ecology. (MAC)

Tomlins, Christopher. "The Legal Cartography of Colonization, the Legal Polyphony of Settlement: English Intrusions on the American Mainland in the Seventeenth Century." *Law and Social Inquiry* 26.2 (Spring 2001):15-72.

Tomlins' essay focuses on the use of colonial charters as “projecting documents” that served to “produce English territory by legal documents that created jurisdictions in bounded spaces” and the later migration of colonists beyond these boundaries as the result of conflicting English legal views and cultures (16). Part I focuses on what Tomlins calls the “four constituent elements of early colonizing's discourse on ‘planting'-- Christianity, commerce, geography and law” and the various designs of English colonial projects (16). Part I also discusses the functions of English charters as “planning” documents that attempted to project the dimensions of an unknown territory. Part II examines the departures from the settlement designs of the charters and the resulting conflicts of interpretation between different legal cultures and subcultures of England that prompted migrations away from the chartered settlements. This essay provides the reader with a discussion of the legal documents of colonization and how the interpretations of these documents allowed for the appropriation of American land and caused the migration of colonists outside of the chartered territories. (EVW)

Vogel, Virgil J. *This Country Was Ours: A Documentary History of the American Indian*. New York: Harper and Row, 1972.

Vogel explores the colonization of the Americas, beginning with the Mayans, Incas, and Aztecs (including the myths surrounding these civilizations) and continues with Columbus’ discovery of the New World; Cabeza de Vaca’s interactions with the Texas Indians; the Virginia settlement in 1607; the Plymouth Colony in 1620; the plight of the American Indians in the seventeenth, eighteenth, and nineteenth centuries; their part in the Civil War; and their status in 1972. He also includes chapters on Indian customs and characteristics as well as their influence on frontier life (medicine, food, etc.). (EWH)

Washburn, Wilcomb E. “The Moral and Legal Justifications for Dispossessing the Indians.” *Seventeenth-Century America: Essays in Colonial History*. Ed. James Morton Smith. New York: Norton, 1972. 15-32.

Washburn points to the importance of conquering land — and justifying actions relevant to such conquest — as a way of asserting the rights and sovereignty of European powers and not upholding or even considering American Indians' rights. He explores the interrelation between the justice and injustice of such conquest beginning in 1109 with Henry I granting Gilbert de Clare "'all the land of Cardigan, if he could win it from the Welsh'" (16), up until 1846 when Congress passed the Indian Claims Commission Act "to give belated justice to the Indians" (29). Interwoven throughout his essay are key moments of justification, articulated via memoirs and primary documents that Washburn cites to demonstrate the Europeans' — specifically the English — superior and demeaning attitude towards the Indians. Washburn exposes the charges laid against the Indians by the English — charges that resulted in the English developing political, religious, and land power. Such power guided the English in their conquests and settlement of the New World — a world which seemingly rested on "natural injustice" (26). (KRF)

Williams, Robert A., Jr. *The American Indian in Western Legal Thought: The Discourses of Conquest*. New York: Oxford UP, 1990.

A member of the Lumbee Indian Tribe of North Carolina and a lawyer, Williams provides a definitive treatise on the legal discourse underpinning the justification of the dispossession of indigenous people. His thesis begins with the Roman Catholic church documents that sanctioned the Christian Crusades from 1096 to 1271 to wrest the Holy Lands from the Saracen infidels and ends with the colonial conquests in the New World in the Renaissance era of discovery. The basic premise evolving from his exhaustive research is the divine direction from God for Christians (entrusted by Christ to St. Peter and ultimately the Pope) to convert or annihilate non-Christians. Inherent in this directive is the right to seize the lands of indigenous people. He cites a number of documents as the basis for this mandate: e.g., the rights and duties of pagan nations under natural law in Pope Innocent IV's mid-thirteenth century proclamation employed by the Spanish colonization in the New World and further later Protestant tracts relating to Newfoundland, Roanoke, and Jamestown to establish the non-rights and non-status of American Indians in the sixteenth- and seventeenth-century settlement of the West. Finally, he elucidates the nineteenth century U.S. Supreme Court decisions regarding the rights (or non-rights) of American Indians. Clearly, the correlation of the will to empire is closely aligned under the rule of law, particularly in its application in the United States. (EWH)

***---. Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600-1800*. Oxford: Oxford UP, 1997.**

"Examines the response of the North American Indian peoples to the West's 'will to empire' over them." Conceived as a complementary work to *The American Indian in Western Legal Thought*. Details the growth, content, and motivation of treaties of "law and peace" forged by Native Americans with Europeans during the Discovery era. Chapters on treaties as texts, connections, stories, and constitutions. "The language of Encounter era Indian diplomacy sought to make it possible for different peoples to embrace the good news of peace that all of us are connected as one. . . . It did this through a variety of stories, metaphors, and other narrative devices that sought to imagine a world of human solidarity." (KBM)

Wright, Louis B., ed. *The Elizabethans' America: A Collection of Early Reports by Englishmen on the New World*. Cambridge: Harvard UP, 1965.

Anthology containing forty-two selections from 1578-1630: Hakluyt, Hawkins, Ingram, Hawks, Parkhurst, Gilbert, Hayes, Peckham, Drake, Barlow, Lane, Harriot, White, Brereton, Rosier, Chapman, Drayton, Percy, Smith, Newport, Wynne, Strachey, Jourdain, Hughes, Fletcher, Whitaker, Chamberlain, Hamor, Rolfe, Pory. (EJG)

Wunder, John R., ed. *Native Americans and the Law: Contemporary and Historical Perspectives on American Indian Rights, Freedoms, and Sovereignty*. 6 vols. New York: Garland, 1996.

This six- volume series features more than seventy scholarly essays from a broad range of Native and non-Native authors who explore the origins, elements, nature, and future of Indian law and the relationship of American Indians to law in the United States. In particular, the collection examines contentious and unresolved issues resultant from competing legal structures of state, federal, and tribal governments and the particular efforts of federal government “to make Native Americans fit within a federal legal framework” (viii). The first volume, which “covers the evolution of legal cultures among Native peoples from pre-1776 through . . . 1903” (viii), includes works from Robert A. Williams, Jr., Vine Deloria, Jr., and Joseph C. Burke, among others. Historical and legal developments examined in this volume include the application of medieval crusade discourse to conquest of the Americas and the impact of key Supreme Court decisions, such as the Cherokee cases (1831-32), Crow Dog’s Case (1883), and Lone Wolf v. Hitchcock (1903), on tribal sovereignty rights. (PME)

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