

Sofia Bianchi
Mancini,
Helen A. Gibson,
Dirk Schuck,
Markus Vinzent
(eds.)

*Relating to
Landed Property*



STRUCTURAL CHANGE
OF PROPERTY

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Relating to Landed Property

Structural Change of Property

Edited by Silke van Dyk, Tilman Reitz and Hartmut Rosa

Volume 4

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Series Introduction

Property is a largely under-examined institutional basis of the contemporary global, economic order. Yet property in the early twenty-first century is being challenged and politically contested in seemingly unprecedented ways. Property is being called into question not only because of the accelerated, global implementation of private property after the collapse of state socialism at the end of the twentieth century spurred an extreme increase in inequality, but also because established forms of property in various sectors prove to be dysfunctional with respect to such phenomena as environmental sustainability and even economic growth. The changing significance of what it means to own something such as an apartment, a forest, or stock options, has been set in motion. The meaning of ownership has been further called into question as a result of new technological developments, indefinitely transferable objects appear to be replacing scarce material goods, a process through which completely new questions related to intellectual property are being posed. Questions of what, if anything, lends itself to constituting or conceptualizing property abound: Works of art? Human organs? DNA sequences? Raw materials? Algorithms? Forests? Asteroids? What alternatives to private property are observable? What new property arrangements are being formed, and what alternatives to the property-wrought order of society are even thinkable?

The series at hand is a product of the German Research Foundation-sponsored Collaborative Research Centre TRR 294, "Structural Change of Property," based primarily at the Universities of Jena and Erfurt. This series is dedicated to the systematic, interdisciplinary study of the topics outlined above and features outstanding scholarly works on the past, present, and future of property.

Introduction

This collection of essays brings together contributions which all have in common that they deal with the issue of landed property.¹ The volume is the product of a series of three workshops which were held between 2021 and 2023. During these workshops, the authors engaged with each other's arguments and discussed their differing approaches to the issue of landed property. What the title *Relating to Landed Property* means to address is a specific focus on what might be called an often-neglected phenomenological dimension of the topic: What are political and epistemological preconditions for conceiving of land as someone's property? Historically, land has been the primary object of social property relations, and questions of landed property continue to be of immense significance today. One might even argue that the global ecological crisis brings the issue of landed property again to the forefront of politico-scientific, sociological, economic, and ecological discussions. The current collection of essays will not aim at giving a normative framework as to what kind of property claims to land might be legitimate and which are not.² Instead, what all contributions have in common is to ask how the issue of landed property has been discussed under different historical circumstances and from a wide range of perspectives, and how the notion of property in land has been conceptualized. In this regard, the contributions aim at making visible the prerequisites that historically allowed for property claims to land. Rather than making normative claims themselves, the authors of this volume tend to analyze historical

1 The editors of this volume would like to thank Lilith Poßner for her extraordinary support in copy editing. Many thanks as well to Malte Janzing for additional help.

2 The question of normative implications of ecological approaches to landed property, among other questions, is discussed by Wesche 2023.

understandings and practices of legitimization, thereby also foregrounding the strategies of the dispossessed in dealing with those property claims.

Regarding a natural object like land as something which can be possessed by a legal entity—be this an individual, a specific group, a corporation, or, in antiquity, even a deity—cannot be taken for granted. To perceive of land as property can only be regarded as self-explanatory within a specific social-ontological framework: Until today, Western liberal political theory usually takes it as a natural given that land can be rightfully owned by a lawful possessor. The following collection of texts have in common that they all, in different ways, question this assumption. Especially if an individual owner is understood to have a right of disposal regarding its landed property, this usually means excluding others from using it. For the sociologist Max Weber, this exclusion of others can be regarded as one of the main effects of property claims. This means that ‘property’ always refers to a social and economic conflict lying beneath it.

One group of contributions to this volume looks at the ancient beginnings of relating to land as property. Here, the question of central importance is how such property claims first came about. What religious, political, economic, and social circumstances are expressed through the public appearance of property claims? For example, how can it be understood that a fictitious entity like a deity ‘owns’ a sacred grove? What societal changes objectify themselves in early manifestations of a legal codification of property claims within the Roman empire? More specifically, to what extent does property, as a legal concept, emerge from an institutionalization of legal procedures regulating inheritance?

A second group of contributions focuses on how claiming land as one’s property served specific purposes in the history of the colonial expansion of Western societies. The prospect of becoming individual landowners formed a powerful reason for European peasants to migrate to the Americas. As their sedentary lifestyle gets juxtaposed against a supposedly nomadic one of Indigenous Americans, a paternalistic narrative unfolds in which the emergence of landed property comes to be regarded as the prime marker of civilizational ‘progress.’ This colonial narrative influenced debates about reparations for formerly enslaved people during and after the American Civil War. Several contributions in this volume ask how enslaved Americans related to the land they were forced to live on, aside from it being their oppressor’s property.

A last group of contributions deals with the more general question how the still hegemonic understanding of relating to land as private property is perpetuated today in abstract and philosophical ways. Here, a genealogical perspective on the history of law proves to be of the utmost importance. Can a critical reconstruction of pragmatist assessments of property as an institution show itself to be theoretically fruitful with regard to a phenomenologically informed understanding of landed property? How have Black and Indigenous communities related to land(ed property) in settler-colonial settings of total violence during and in the afterlife of slavery? These are some of the questions raised by the authors of the following essays. All contributions follow the guiding idea that how relating to land as property emerges and evolves needs explaining. Each of these contributions suggests that the well-worn path dependency of conceptualizing property in (post-)Enlightenment-derived terms is in need of serious revision, whether this revision foregrounds perspectives from antiquity, Indigenous knowledge, Black studies theory and methodology, or pragmatist perspectives.

In a recent working paper for the collaborative research centre *Structural Change of Property*, Carsten Herrmann-Pillath proposes a new conceptualization for a 'language of property'.³ This new 'language of property' might also be helpful for reassessing some of the issues raised in this volume. Without being able to go into any considerable detail here, Herrmann-Pillath distinguishes between three 'modes of appropriation': belonging, holding, and using. Those are juxtaposed with three different ideas of relating to an object as one's 'property': first, *ownership* as expressing a mode of belonging, second, *property* (in the narrow sense) as expressing a relation of economically holding an object, and third, *possession*, which refers to any dimension in which a specific object is made use of by its possessor.⁴

For example, Indigenous claims to land can then be categorized as expressions of 'ownership' because they express a mode of belonging to a specific land.⁵ Settler colonialism, on the other hand, can be seen as a movement which specifically made 'property' claims because it generally insisted on a Lockean line of argument to make the land profitable. As Herrmann-Pillath makes clear, any *individual* claim to land on the grounds of economic produc-

3 Herrmann-Pillath 2023. https://sfb294-eigentum.de/media/filer_public/69/79/6979a66b-0c07-4da8-9500-e778b510fb23/wp_04_fin.pdf

4 Cf. Herrmann-Pillath 2023, 25.

5 Cf. Herrmann-Pillath 2023, 9–12.

tivity might actually be a modern capitalist phenomena, as, like in medieval Europe, customary claims to land as a ‘commons’ usually entailed a dimension of belonging (of a specific people to a specific land).⁶

The categorical outlook of *Relating to Landed Property* might then still be too narrow. It might also need to encapsulate the dimensions of ‘belonging’ to land as ‘ownership’, and ‘possessing’ a land in the meaning of ‘using’ it for customary purposes. The two remaining subsections of this introduction will elaborate on two issues in more detail, which are repeatedly raised in this volume. The next subsection deals with question of divine property in antiquity, and the third and final one addresses the topic of enslavement (or, rather, the Colonial/Racial/Capital) in Western colonialism in more detail.

Divine Property in Antiquity⁷

From Roman legal intellectuals to modern scholars, the debate on divine property has primarily revolved around the legal terms *sacer* and *religiosus*, in that *sacer* denotes those *res sacrae* (e.g., sacred groves, sanctuaries, temples) that have been publicly consecrated according to ‘proper rites’, whereas *religiosus* indicates those *res religiosae* (e.g., tombs, burial grounds) that have instead been privately transferred to the deities.⁸ But what exactly is ‘divine property’? And what was ‘proper’ according to the Romans? *Sacer* and *religiosus*, like the *mos maiorum*, were part of the customary realm, meaning that there were no clear legal indications that systematically clarified what these concepts entailed. For this reason, it was up to individuals and to the situational agreement within a given community to determine what was ‘proper’ or ‘traditional’ according to the manner of the ancestors. The lack of legal regulations gave rise to a subjective perception of ownership

6 Cf. Herrmann-Pillath 2023, 22: “Feudal land law is only one example for the universal phenomenon that possession of land was never strictly individualized before the emergence of capitalist property.”

7 For Classical antiquity, and only in some specific cases for Late antiquity, the abbreviations of ancient authors and their works follow the fourth edition of the *Oxford Classical Dictionary*, edited by Hornblower–Spawforth–Eidinow 2012.

8 For antiquity, see, for instance, Gai. *Inst.* 2.2-3, 5–6, 9. For modern times, the scholarly debate is extensive, so we will only mention a few important scholars who have evaluated earlier ideas and advanced the ‘state of the art’, such as Ramon 2016/2017; Lanfranchi 2017; Santi 2004.

that pushed individuals from different classes or communities towards the regulation and deregulation, or the institutionalisation and privatisation, of what 'belonged to the gods'.

As early as Republican times, the attribution of land, time, and concepts to the gods played a crucial role in religious activities and provided an arena in which individuals experimented with ownership through a wide range of practices that differed in the way each individual envisioned it and the divine presence. The sacred was therefore intrinsic to such dynamics and tensions between individual perspectives and socially accepted habits, as they were central to the definition of which spaces, whether material or immaterial (e.g., festivities), 'belonged' to them and were therefore adequate for the communication with the divine. This scenario draws a horizon in which people could convince institutions or communities about the rightful or unrightful attribution of a piece of land to the divinity. The struggles behind the allocation of a sacred dimension to a place (or object) and what its limits were reveal how the notions that divine property, ownership, and possession bore were open to interpretation.

The potential of such a discussion is reflected in Cicero's speech *On his house/De domo sua*, where he recalls traditions and uses general concepts, the full implications of which were often disputed, to justify the disposal of land and goods. As a result, influential individuals could construct a well-argued speech, embedded in social structures, aimed to undo the transfer of a *res* to the divine. Hence, in the Republican period, we find authors like Varro, who champions a redefinition of Roman memory that attributes local cults to the first kings of Rome and consequently creates a new vision of what was traditional,⁹ or intellectuals like Cicero, who subjectively reinterpret what 'belonging to the gods' meant and what the correct consecration ritual of his house to Liberty should have been in order to recover it as his personal possession. Differing perceptions of divine ascendancy over landed property thus highlight the importance of situational perspectives and experiences in a society with well-established customary notions. However, these very notions did not always have closely structured definitions and limits, often colliding with one another, thus letting room for ambivalence, discussions, and practical interpretations.

What we see in Republican times is certainly not a peculiarity of the period since other sources, extrapolated from different historical contexts and

⁹ Spencer 2011.

genres, show similar mechanisms of transfer to and withdrawal from the divine realm that enable to further advance an understanding of the social reality behind the traditional legal terminology of divine property that late Roman texts try to explain and delimit. Individual perspectives and the definition of what is sacred are critical factors to describe social ideas on ownership and, above all, landed property, which can be justified through different religious procedures and the usage of specific terminologies. In each case, the context is a determining factor, while each source reveals a set of criteria influenced by its historical time and the literary dynamism that an author wants to impose on a narrative filled with religious polysemic vocabularies that have no clear limitations. However, the existence of different meanings and strategies to define divine property and its transfer goes far beyond the textual reality, since it is also materially attested. Such is the case of the rock sanctuary of Panóias in Portugal or the sanctuary of Mater Magna at Ostia, where individuals imposed their religious perspectives through a specific discourse, reflected in their dedications to the gods, which, as in the case of Panóias, could even lead to the establishment of a personal hierarchy among the deities worshipped and, as a consequence, to the introduction of new preeminent gods.¹⁰

The vision of and communication with the divine, as will be detailed in this volume, thus provides valuable insights into the construction of property, for it transcends the ordinary and forces delimitation of the conceptual boundaries between ideas that are used to configure the criteria of possession and ownership in a finite land system. The intersection between religion and property systems, together with its economic repercussions, has, therefore, numerous ramifications that help to understand the progressive configuration of property throughout antiquity. These include scenarios such as the cession of land to the gods or religious mediation in the inheritance of family estates. More generally even, this historic section of the volume leads to the very beginnings of conceptualizing land as property and the very notion of property itself.

Based on the aforementioned, useful tripartite differentiation of property by Herrmann-Pillath, ownership in the sense of belonging precedes those other two of *property* in the narrow sense of economically holding an object, and *possession* as making use of something by its possessor. While the antique minds seem to have granted ownership of land to the divines

10 For the sanctuary of Mater Magna at Ostia, see Cooley 2015.

assuming that this world, and particularly nature and landed property, are goods that belonged solely and properly to the divines and were lent for use to their creatures who, too, belonged to the transcendentals, the development of property practices in relating to land created work-around institutions and legal constructs. One of these practices, as we will see in this volume, is the *mancipatio*. Existing already in the times before in the Roman Law of the Twelve Tables from the fifth century BCE, the regulation of inheritance was modelled on the basis of it. While a *res mancipi*—namely land, just like enslaved people, cattle, and rights such as those of way, waterways, etc.—were not for sale or purchase, the *mancipatio* also made it possible to buy and sell, and through its model being adapted for the *testamentum per aes et libram* also to deviate such ‘goods’ from heirs. In the Jewish tradition, other workarounds existed, or older traditions were ignored.

For the further development of the notion of property from divine ownership through economic property to possession, individual possession in particular, with a growing understanding of the full right over what is being possessed, this volume traces the first re-conceptualizations of ownership towards property and possession within Christian traditions from the second to the fourth centuries. It was within Christian philosophical and economically powerful circles that a full notion of human ownership of land, hence of landed property, was created. This was based on the theological construct of heritage and testament: As the divine owner had endowed all that he owned to the saving Messiah, Christ, his Son, and as this Son had made the ‘sons of God’ his heirs, humans were no longer lent that which belonged to the divine, but as God’s heirs they were entitled to claim full ownership, property and possession of the land that was given to them. As a result, the Christian Emperor Justinian in the sixth century removed the older Roman workaround constructs and replaced them with the modern concepts of private legal procedures for selling and buying land. Land became a commodity, no longer only the basis for its owners belonging, but also ready to serve as transferable property and for individual’s possession. Still, as the discussions of this period show, voices insisted on restrictions and limitations of human ownership with regards to communal grounds, common goods, and the needs of the poor, but a door had been opened widely for more rigorous claims and a further commodification of land that developed over the medieval period and was grasped in modern times.

Enslavement (the Colonial/Racial/Capital)¹¹

One of the most important contributions of this volume is the way in which it addresses the significance of slavery to histories and theories of landed property. In coming together over the course of two years to discuss practices of *relating to land* in our various disciplines (religious studies, philosophy, history, legal studies, sociology, and Black studies), it became apparent that analyses of landed property tend to dismiss and discount both Indigenous and enslaved people's practices of relating to land. These analyses focus on Lockean theory, for example, without acknowledging John Locke's explicit dismissal of both enslaved people's humanity and Indigenous people's millennia of relating to land in the practice of agriculture.¹² Asking the question *How did historical actors relate to land?* presented a conundrum in disciplines that tend to discount the lived experience of relating to land(ed property) as an enslaved person. What happens to the history of *Mancipatio*, for example, when one of the alleged 'objects' of property upholding Anglo-European legal traditions is acknowledged as human, as in Lydia von der Werth's contribution in this volume? How does Lockean theory as propagated by Hector St. John de Crèvecoeur force into relief the violent contradiction of Western European 'locality' offering itself up as a liberatory, general theory of property while denying enslaved people's humanity, as Dirk Schuck elucidates in this volume? How does a history of relating to landed property highlight the limitations of Marxist thought for formerly enslaved Americans who, as William E. B. Du Bois argues, liberated themselves en masse via a 'general strike' known as the American Civil War, yet whose reparations claims, Packo writes in this volume, were systematically denied in favor of securing landed property for white Southern aristocrats?

Scholars in the field of Black studies have spent decades decrying Western theory's commitment to delegitimizing and discounting enslaved and Indigenous people's experiences of relating to landed property. Following Cedric J. Robinson's profound critique of Marxism in *Black Marxism: The Making of the Black Radical Tradition*, Fred Moten, for example, has explicated

11 This is a reference by Denise Ferreira da Silva to "the confluence of juridical, economic, symbolic and ethical histories that constitute the global present"; Afeworki Abay-Bango-Gibson-Thomas 2023; Ferreira da Silva 2022.

12 See M. J. Packo, Anna Möllers, Yann Schosser and Laura Bella Theis, Helen A. Gibson and Dirk Schuck's contributions to this volume. See also Judy 2020 and Burkhart 2019.

“the historical reality of commodities who spoke,” and “The commodity whose speech sounds embodies the critique of value, of private property, of the sign.”¹³ What did relating to land(ed property) mean for enslaved and Indigenous people in what Saidiya V. Hartman terms the *scene of subjection* and Ferreira da Silva refers to as the *scene of subjugation*?¹⁴ While Möllers’, Schosser’s and Theis’s contributions to this volume highlight ways in which Indigenous practices of relating to land fundamentally call into question what J. Kameron Carter terms Lockean “regulated separability,” Gibson argues, relatedly, that drawing sacred symbols in dirt and communing via what Ferreira da Silva terms “transformed *elementa*” proffers both an *otherwise* cosmology and infinite possibilities for relinquishing our collective commitment to upholding the *scene*.¹⁵ The final contribution in this volume, by Felicitas Sommer, situates the valuing of landed property in Germany as based in the family farm in a history of National Socialist inheritance, calling instead for new understandings of democratic land governance. Together, these contributions, forged in a spirit of profound collaboration, entail a collective commitment to rethinking *relating to land*.

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13 Robinson 2000; Moten 2003, 6, 12.

14 Hartman 1997; Ferreira da Silva 2022.

15 Carter 2023, 15; Ferreira da Silva 2022, 46; King–Navarro–Smith 2020.

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Sacred Groves and Gods' Landed Property: Contributions from Roman Imperial Literature

Sofia Bianchi Mancini

Abstract

In antiquity, the attribution of places to the gods played a crucial role in religious activities and constituted an arena where individuals experimented with ownership through a wide range of practices that differed in the way each individual envisioned landed property and divine presence. The intertwined understandings of both landed property and divine presence allow us to examine what constituted some of the foundations of people's religious experience: Is the god present? Does it belong to the god? Is it, therefore, accessible to humans? From this point of view, the present contribution reflects on the subjective perception of landed property as a pivotal axis of a historically grounded lived religion, using Roman sacred groves as a case study. Particularly in the intra-textual reality, but especially in the works of imperial poets, there are many instances that show individual applications of religious expressions and descriptions of procedures that frame the divine ownership of groves in specific ways. Context is a determining factor in each case, while at the same time, each author shows a set of linguistic preferences influenced by the literary dynamism he wants to impose on a narrative filled with religious polysemic vocabularies that have no clear limitations.

Keywords: Roman Empire, Deities, Natural Spaces, Sacred Groves, Divine Property, Imperial Poetry

Introduction

In Roman religion, natural spaces such as groves and forests were believed to be the potential landed property of the gods, either as places of worship or as places where communication with the divine was possible. In the absence of a precise and reliable definition of what we might otherwise call ‘sacred groves,’ many scholarly contributions in recent decades have attempted to understand and describe their nature in the extra-textual and intra-textual realities of Roman times. However, the study of ancient, sacred groves dates back to the nineteenth century, when according to John Scheid,¹ the German scholars Georg Friedrich Creuzer and Jacob Grimm began to theorize about the significance of nature in antiquity. Influenced by the Romantic intellectual movement that conceived of cliffs, valleys, and groves as spaces where divine forces resided and manifested themselves,² Creuzer and Grimm noted how ancient tribes worshipped either a particular tree or, more generally, the groves, because it was in these pure and uncontaminated spaces that people could feel the presence of the gods.

Scheid went on to note that twenty years after Creuzer and Grimm, the same reflection was taken up by Carl Bötticher, who, relying on Pliny’s *Natural History/Naturalis Historia* Book 12 and Seneca’s *Letter/Epistula* 41,³ claimed that the first dwellings of the gods were springs, caves, stones, and trees, whose cults were based on a divine force revealed in nature.⁴ Although Scheid’s digression into Romantic literature was intended to show how the German Romantics misunderstood what nature was for people in ancient times,⁵ he nevertheless tried to define *lucus*—a term known in Roman literature to designate a sacred grove—as a space that, in Filippo Coarelli’s words,

1 Scheid 1993, 16.

2 Locchi 2007, 84.

3 Scheid 1993, 16–17.

4 Plin. *HN*. 12.3-5; Sen. *Ep.* 41.1-5.

5 In fact, Scheid (1993, 17–18) used the same passages from Pliny and Seneca to argue against the identification of trees with gods and thus against a direct tree worship, since according to him, these religious ideas are absent in both authors.

had “an intrinsically sacred character,”⁶ and even stated that “les bois sacrés portent la marque du non-humain, du surhumain.”⁷

The influence German Romanticism had on the definition of sacred groves in antiquity is also evident in other studies on the topic. For example, in her book *Recherches sur l'expression du sacré dans la langue latine*, Huguette Fugier classified the section on the sacrality of the forest under the heading “Les Arbres” (“The Trees”),⁸ blending together references to *lucus*, *nemus* (“grove”/“wood”), and *silva* (“forest”) without making a distinction between the three terms. Two decades later, Richard Thomas applied the Romantic idea of nature in his article *Tree Violation and Ambivalence in Virgil*, in which he stated that “tree spirits are obviously hard to detect, and any tree is therefore potentially numinous, any tree felling potentially hazardous.”⁹ John Bodell, on the other hand, in his 1986 study on the *lex luci Lucerina* (CIL IX, 782), claimed that the Romans “regarded violations of sacred groves as religious crimes”,¹⁰ thus adopting a stance that, while differing in part from Thomas’s, generalizes the distinctive traits of *lucus* in the archaic law from Luceria and applies them to a broader category of sacred groves.

According to Bodell, these sacred natural spaces conformed to a general label, to which ideas about the inviolability of a land that belonged to the gods were added, without any distinction between the various Latin terms. This line of research, reflected in other studies,¹¹ emphasized the sacrality of the

6 Coarelli 1993, 46. This was either a private exchange of ideas between Scheid and Coarelli or a conversation they had on the occasion of the international colloquium on sacred groves held in Naples in 1989, the proceedings of which were published in 1993. It should also be noted that what Coarelli reported in his contribution, according to Ailsa Hunt (2016, 126), can be found in Scheid 1993, 19 and consequently quoted: “Les bois sacrés possèdent un caractère sacré intrinsèque. Certes, on peut envisager qu’un *nemus* soit consacré à une divinité [...] Mais le *lucus* seul possède cette qualité par lui-même, sans l’intervention de l’homme; il a en quelque sorte le statut sacré sans avoir été consacré par un magistrat du peuple romain.” (My trans.: “Sacred groves have an intrinsically sacred character. It is true that a *nemus* may be consecrated to a deity [...] But the *lucus* alone possesses this quality by itself, without the intervention of man; it has, as it were, a sacred status without having been consecrated by a magistrate of the Roman people.”). However, these words do not appear in Scheid 1993, 19, nor in the entire contribution or in any other publication in which he has addressed the same topic or has mentioned it in passing. As far as I can tell, a similar line of thought can only be found in Scheid 1990, 556.

7 Scheid 1993, 18 (my trans.: “sacred groves bear the mark of the non-human, the superhuman.”).

8 Fugier 1963, 81–82.

9 Thomas 1988, 263. See also Hunt 2016, 121; Carroll 2017a, 3.

10 Bodell 1986, 26.

11 Dyson 2001, 146; Augoustakis 2006, 634–638.

woods and the consequences of their violation—two interrelated ideas that, as we shall see, ancient sources apply exclusively to a *lucus*. However, Fugier, Bodel, and Thomas were aware of the attempts made by Roman intellectuals like Servius and Festus to distinguish the meaning and function of *lucus*, *nemus*, and *silva* from one another. Yet these explanations had little or no impact on their studies, which, regardless of whether the groves were called *luci*, *nemi*, or potentially *silvae*, still considered them to be one block that shared a sacred inviolability.

Coexisting with this scholarly trend was another stream of studies that instead tried to explain the differences in the Latin terminology for groves by departing from the direct definitions given by ancient Roman grammarians and other literary sources. For instance, in his commentary on Virgil's *Aeneid/Aeneis*, Servius writes: "There is a difference between *nemus*, *silva*, and *lucus*; in fact, a *lucus* is a multitude of trees with *religio*, a *nemus* is an ordered multitude of trees, a *silva* is one which is extended and uncultivated."¹² Servius's compartmentalizing of wooded spaces and his subsequent explanation can, in other words, be expressed as follows: *lucus* is the sacred grove, *nemus* is a grove harmoniously organized by human hand, and *silva* is a wild and uncultivated space far from the *urbs*.¹³ Servius's classification, which, as Jörg Rüpke has pointed out, seems "artificial,"¹⁴ and the lack of detailed information provided by other intellectuals,¹⁵ have led to the need to find alternative explanations by: cataloguing the archaeological evidence and literary references of groves located within sanctuaries;¹⁶ reconstructing and analyzing the etymology of the terms in relation to their ancient mentions, sometimes even through a direct comparison with the Greek words for "groves" and "forest" (i.e., ἄλλος, νέμος, and ὕλη).¹⁷ The different approaches and strategies adopted to solve the semantic problems of *lucus*, *nemus*, and *silva* have led to a cyclical debate that has not yet reached a consensus.

This chapter will contribute to the above-mentioned discussion by providing thorough analysis of two imperial authors: Ovid and Statius. As I will

12 Servius, *ad Aen.* 1.310: *Interest autem inter nemus et silvam et lucum; lucus enim ista arborum multitudo cum religione, nemus vero composita multitudo arborum, silva diffusa et inculta.*

13 Cf. Locchi 2007, 86.

14 Rüpke 2007, 275.

15 Paul. *ex Fest.* p. 119 Müll; Isid. *Etym.* 17.5-8; Calp. *Ecl.* 2.54-55.

16 Plin. *HN.* 16.235, 237; Varro, *Ling.* 5.49; 6.18; 7.6; Cato, *Orig.* 58 Peter; *Agr.* 139. For this approach see, for instance, Stara-Tedde 1995; Pasqualini 1975; Coarelli 1993; Van der Meer 2015.

17 Locchi 2007; Montepaone 1993; Malaspina 1995, 78–84; 2021, 29–31; Caroll 2017b, 153–154.

try to explain, these poets provide enough occurrences of *lucus*, *nemus*, and *silva* to identify patterns of semantic differentiations and their subtle roles in narrative discourse. This, in turn, will help understand how such spaces entailed various layers of ownership, which the poets manipulated by juxtaposing the different terms, thus playing with the limits of the concepts through human perception, ritual performance, and divine punishment.

Lucus, Nemus, and Silva: A New Proposal

A step towards a more nuanced understanding of *lucus*, *nemus*, and *silva* was taken in 2003–2004 by Ermanno Malaspina, who attempted to go beyond the standard historical references by developing a comparative analysis with other literary sources. On the basis of three passages selected from Virgil's *Eclogues/Eclogae*, Lucan's *On the civil war/Pharsalia* (= *De Bello Civili*), and Ovid's *Metamorphoses/Metamorphoses*,¹⁸ Malaspina showed that, up until the time of Virgil, the sacred grove *par excellence*—namely, a grove that functioned as a place where cultic performances took place—was strictly the *lucus*,¹⁹ a Latin term that generally denotes an unwooded area.²⁰ The *lucus* was then often contrasted with the *silva*, which, as Livy suggests,²¹ was sacred simply because it was a numinous space where, for example, the voice of a god could be heard. According to Virgil, Malaspina continues, the inner meaning and use of *lucus* and *silva*, supplemented by those of another term (i.e., *nemus*), underwent a change: On the one hand, *lucus* acquired the same notion as *silva*, albeit it was sometimes still used in its original sense.²² On the other hand, *silva*

18 Virg. *Ecl.* 8.85–69; Luc. 3.399–431; Ov. *Met.* 3.155–181.

19 Malaspina 2003–2004, 105.

20 The noun *lucus* etymologically derives from **loukos*, which bears the root **leuk-* (lit. “to be bright”), and it denotes a clearing within a grove or forest (i.e., *nemus* or *silva*). This meaning of *lucus* is confirmed, for instance, by Cato, *Agr.* 139 and Cato, *Orig.* 58 Peter, where we read: *Lucum Dianium in nemore Aricino Egerius Baebius Tusculanus dedicavit dictator Latinus* [...]; “Dictator Latinus Egerius Bebius Tusculanus dedicates the *lucus* of Diana in the grove of Aricia [...]”. On the etymology of *lucus*, see De Vaan 2008 s.v. *lucus*; Otto 2000, 3–4; Coarelli 1993, 47–48; Malaspina 1995, 89.

21 Livy 2.7.2: *silentio proximae noctis ex silva Arsiaingentem editam vocem; Silvani vocem eam creditam* [...]; “In the silence of the following night a loud voice was heard coming out of the Arsia forest, which was believed to be the voice of Silvanus [...]” (trans. Foster 1919). Cf. Malaspina 2003–2004, 105–106.

22 Malaspina 2003–2004, 107.

and *nemus* began to be employed together with the adjective *sacer* (“sacred”), suggesting that both natural spaces, as well as other ones such as *saltus*, could be equated with a *lucus*.²³ This development led Malaspina to conclude:

La perdita dell'opposizione *lucus-silva* potrebbe rientrare tra questi ed avrebbe comportato per i letterati anche il non piccolo vantaggio di una più ampia libertà nelle associazioni fonetiche, nelle enumerazioni e nella *variatio*.

Per quanto concerne invece le conseguenze di tali trasformazioni, quello del bosco appare connotato sempre di più come un campo semantico bivalente, ambiguo, *anceps* nella definizione del suo valore letterario, culturale ed antropologico, ancor prima che nella delimitazione e nella denotazione di ipo- o sinonimie. Una nebulosa semantica con dei limiti chiari a sufficienza verso l'esterno, ma senza una netta divisione dei compiti tra *lucus*, *nemus*, *silva* e *saltus* al suo interno. Prendendo a prestito la terminologia della linguistica, è come se fosse esistito un arcilessema ‘bosco’ con *lucus*, *nemus*, *silva*, *saltus* come allofoni, varianti combinatorie ed intercambiabili.²⁴

Beyond the passages selected by Malaspina, however, the literary tendency to use *lucus*, *nemus*, and *silva* with flexible and interchangeable notions can only be applied to a limited extent. Each term involves a semantic arrangement that cannot be completely transferred from one to the other,²⁵ thus creating an internal narrative logic that contrasts the differences that exist in a permanent or transitory state. In other words, depending on the context and condition of a given grove, *lucus* can be called *nemus*, and *nemus* or *silva* can be used to deceive the reader into thinking that what looks like a profane space is eventually the sacred and private land of a god or several divinities.²⁶ A

23 According to OLD s.v. *saltus*, in the singular the term means “a narrow passage through forest, mountainous country, etc., defile, pass,” while in the plural it denotes “a region of woodland interspersed with glades, passes, etc., usually in hilly or mountainous country.”

24 Malaspina 2003–2004, 113 (my trans.: “The loss of the *lucus-silva* opposition could be counted among them, which would also have brought intellectuals the not inconsiderable advantage of greater freedom in phonetic associations, enumerations and *variatio*. On the other hand, with regard to the consequences of these transformations, that of the grove seems to be increasingly connoted as a bivalent semantic field, ambiguous and *anceps* in the definition of its literary, cultural and anthropological value, even before the delimitation and denotation of hypo- or synonyms. A semantic nebula with outwardly, clear enough boundaries, but without a clear division of labor within it between *lucus*, *nemus*, *silva* and *saltus*. To borrow terminology from linguistics, it is as if there were a ‘forest’ archlexeme with *lucus*, *nemus*, *silva*, *saltus* as allophones, combinable and interchangeable variants.”).

25 Cf. Brown 1994, 12.

26 As Markus Vinzent notes in this volume, the lack of a clear-cut distinction between sacred and profane is also found in the Greek tradition.

literary mechanism of this kind is not only typical of Ovid, but also occurs frequently in Statius, whose textual composition presents a parallel poetic strategy that suggests that there was a broad basic understanding in the first century CE of what *lucus*, *nemus*, and *silva* meant. This idea can be illustrated by a survey and textual analysis of the instances in which these imperial authors employed the three Latin terms. Indeed, these instances' distribution in the texts shows that *lucus* tends to be *the* sacred space that belongs exclusively to the gods and the ritual sphere. *Nemus*, on the other hand, denotes a place that is either the permanent/temporary residence of a deity, at times even represented as an area that functions as a form of border of its inner sacred part, or is used in a metaphorical sense to represent a *lucus* in its defiled form. Finally, depending on the textual needs of the poets, *silva* can be portrayed either as a geographical reference, as a much larger sacred place than *lucus* and *nemus*, or as a forest in its rough, native condition, which in turn can lead to an allegorical representation of the uncivilized state of the *lucus* when it undergoes a notorious deforestation.

Sacred Groves in Ovid's *Metamorphoses* and *Fasti*

Starting with the author closest to Virgil, *lucus* is the least-used term for groves in Ovid, occurring twelve and eighteen times in the *Metamorphoses* and *On the Roman calendar/Fasti*, respectively. In direct contrast to *lucus* is *silva*, with ninety-one occurrences in the *Metamorphoses* and twenty-three in the *Fasti*, where it is mostly employed in the plural and rarely in the adjectivized form *silvester*.²⁷ Between *lucus* and *silva*, we find *nemus* thirty-one and seventeen times in the *Metamorphoses* and *Fasti*, respectively, in both cases excluding a few mentions where *nemus* appears adjectivized through the words *nemorosus* or *nemoralis*.²⁸ In all instances where *lucus*, *nemus*, and *silva* are used, their sacred dimension is not so much given by the rare insertion of the adjective *sacer*, which, as Malaspina has claimed, began to be juxtaposed with the terms after Virgil, but rather by a variety of contextual factors such as location, divine intervention, or invocation.

27 Ov. *Met.* 2.681; 13.47, 815; *Fast.* 2.279; 3.303.

28 Ov. *Met.* 3.157; 9.165; 10.687; 14.331, 822; *Fast.* 4.815; 6.59.

One of the most specific cases is the collocation of a grove in the Underworld, which is systematically called a *lucus* and denotes its location in a sacred land beyond the human world.²⁹ In the same context, Ovid provides another characterization, exclusive of a *lucus*, in which the grove is presented as a highly restricted place, surrounded by a *triplici muro* (“triple wall”), suggesting its extreme inaccessibility.³⁰ The restrictedness of a *lucus* is a characteristic that depends on the sacredness of the place, which, as we can see in lines 92–97 of Book 7 of the *Metamorphoses*, can be expressed in other ways:³¹

‘quid faciam, video: nec me ignorantia veri
decipiet, sed amor, servabere munere nostro,
servatus promissa dato!’ per sacra triformis
ille deae **lucoque** foret quod **numen** in illo perque
patrem soceri cernentem cuncta futuri eventu-
sque suos et tanta pericula iurat:

‘I see what I am doing; nor will the
ignorance of the truth deceive me,
but love itself. You will be saved by
my service; but when you have been
saved, give what you have promised!’
He swears by the sacred rites of
the threefold goddess, by whatever
divinity might be in that **sacred**
grove, by the all-seeing father of
his future father-in-law, by his own
successes and mighty perils:

In the present passage, Jason speaks to Medea and swears an oath on Diana Trivia, specifically on one of the goddess’s faces inhabiting the grove. Even though Jason does not know which facet dwells in the place, the *lucus* is presented as a numinous land belonging to the goddess, thus becoming a violable swearing element of the deity and her rites. What we have here, then, is a *lucus* whose sacred character derives from the oath, the ritual setting, and, most importantly, the presence of the goddess—all features that will return even in Statius. A divine presence implies a numinosity, which is interestingly identified as *sanctus* in Book 15 of the *Metamorphoses*, where we read: *cantusque feruntur / auditi sanctis et verba minantia lucis*.³² If we follow Macrobius’s definition of *sanctus* as a religious concept potentially related to *sacer* and carrying the notion of “untainted,”³³ the *lucus* described in Book 15

29 Ov. *Met.* 1.187–189.

30 Ov. *Fast.* 3.801. A similar depiction can be found in Ov. *Fast.* 3.431, where the *lucus*, this time in the Upperworld, is placed behind a high wall. Even in extra-textual reality, some *luci* are described as being surrounded by walls or clear demarcations. See, for instance, *CIL V*, 8970a; VI, 610; X, 292.

31 For Ovid’s *Metamorphoses* and *Fasti*, I propose my own translation, unless otherwise stated.

32 Ov. *Met.* 15.792–793: “and in the sacred groves songs and threatening words were heard.”

33 Macrobius, *Sat.* 5–6.

is a grove depicted in its ideal state, namely that of a land undisturbed by human hands and the property of a god or multiple gods. Ownership of a *lucus* is clearly stated elsewhere in the *Metamorphoses*, when Ovid expresses the idea of divine landed property through the verb *teneo* ("to hold"). For example, in lines 359–361 of Book II, we are told that Nereus and the Nereids "possess" (*tenent*) a *lucus* in which *templa* have been built.³⁴ These lines not only reiterate the idea of a *lucus* as pertaining to the divine realm, but also show how such a space could be concomitantly owned by multiple gods. A similar case occurs in the *Fasti*:

mille feras Phoebæ **silvis** venata redibat
 aut plus aut medium sole tenente diem.
 ut tetigit **lucum** (densa niger ilice **lucus**,
 in medio gelidæ fons erat altus aquæ),
 'hic' ait 'in **silva**, virgo Tegeæa, lavemur!';
 erubuit falso virginis illa sono.
 dixerat et nymphis: nymphae velamina ponunt;³⁵

After hunting a thousand wild beasts in the **forest**, Phoebæ was returning home, either at noon or shortly after. As she had reached the **sacred grove** (a dark **sacred grove** with a thick oak tree and a deep spring of cold water stood in the middle), 'Here,' she said, 'in the **forest**, Tegean virgin, let us bathe!'; she blushed at the false name of virgin. She spoke to the nymphs as well, and the nymphs put off their robes;

The present passage tells of Phoebæ's arrival at her sacred *lucus*, which is characterized by a thick oak tree and a *fons altus* with *gelidæ aquæ*. Once there, the goddess invites Calliope to bathe with her and the other co-inhabiting nymphs in what she calls a *silva*. The lexical contraposition of *lucus* with *silva* signals two different semantic areas: On the one hand, Phoebæ enters the sacred grove, while *silva* functions as a marker of the wider natural space (i.e., the forest) in which she has been hunting (line 163). On the other hand, while it was not necessary to emphasize the sacred dimension of her grove, she resorts to calling it *silva*, hence highlighting the geographical aspect of the *lucus*.³⁶ The alternation between *lucus* and *silva* may seem as if they were interchangeable terms. However, this flexibility is partly constrained by the

34 *templa mari subsunt nec marmore clara neque auro, / sed trabibus densis lucoque umbrosa vetusto: / Nereides Nereusque tenent [...]*; "temples stand near the sea, not resplendent with marble and gold, but with thick timbers, and shaded by an ancient sacred grove. The Nereids and Nereus hold the place [...]" It is worth noting that in 1916 Frank J. Miller proposed to translate *tenent* as "to be sacred".

35 *Ov. Fast.* 2.163-169.

36 Another example is encountered in *Ov. Met.* 5.385-392, where *silva* describes as the natural space, while *lucus* alludes to the area inside which Proserpina dwells.

contextual demands of the excerpt, which dictate the need for alternation even in other Ovidian passages.

When the term *silva* occurs in the plural alongside other natural elements, such as mountains or hilltops, it generally alludes to the basic meaning of “forest,” which does not necessarily imply numinous references.³⁷ In some cases, though, we find *silva*, either in the plural or singular, delimiting specific spaces that Ovid narratively associates with the divine.³⁸ This feature includes a sacred grove as an inner land surrounded by the forest, and the woodland can, in turn, constitute the border or threshold of the holy place. Exemplary in this regard is the following passage:

Monte fere medio est, **cingentibus** ultima **silvis**,
 purus ab arboribus, spectabilis undique, campus:
 hic **oculis** illum cernentem **sacra profanis**
 prima videt, prima est insano concita cursu,
 prima suum misso violavit Penthea thyrso
 mater [...]³⁹

Almost in the middle of the mountain, there is an open plain, free from trees, visible from every side, with **woods** surrounding the edges: here, his mother is the first to see him looking at the **sacred rites** with **profane eyes**, the first to rush madly on him, the first with hurled thyrsus to smite her son [...]⁴⁰

The narrative is based on Euripides's tragedy, *The Bacchantes/Bakchai* (Latin: *Bacchae*), where Pentheus, persuaded by Dionysus, enters Mount Cithaeron to spy on the Dionysiac rites. Ovid presents *silva* as the forest that both populates the hill and protects the inner area where Bacchus's followers celebrate the god. Although the poet does not use the word *lucus* to denote the sacred space, the phrase *purus ab arboribus campus* accurately describes the etymological meaning of what a *lucus* was: a clearing in the forest.⁴¹ Indeed, by stating *oculis sacra profanis*, *silva* acts as the liminal border between the sacred and the profane—a differentiation that Pentheus theoretically respects by standing outside the *lucus*, but which he ultimately violates by the very act of spying on the clearing. In doing so, he trespasses

37 For instance, in inscriptions we only find *silva* as a term that refers to a geographical area. In this regard, see *CIL* XI, 1147; II²/5, 1022 (= *CIL* II, 5439).

38 A similar use is found in *Tac. Ann.* 2.17, where the forest is the site of an omen with flying eagles entering it, and in 2.12, where *silva* is said to be sacred to Hercules during the battle of Arminius.

39 *Ov. Met.* 3.708-713.

40 Trans. Miller 1916, slightly adapted.

41 For the etymology, see above note no. 20.

and blurs the differences between the sacred grove and the profane forest. It follows, then, that the *silva* encompasses the *lucus*, even though they remain conceptually separate spaces.

There is, however, the possibility that *silva* could be the dwelling place of the gods, suggesting how they can move beyond the *lucus*. To this extent, Ovid gives several examples of how the forest is the natural environment of various divinities, such as the giant Cacus in the Aventine Forest, inside which he has a cave that functions as his house.⁴² Deities freely enter and exit these *silvae*, which figure as an extension of their natural domain, as is the case of the nymph Echo in Book 3 of the *Metamorphoses*.⁴³

Between *lucus* and *silva* is *nemus*, which, as I mentioned above, has several connotations. The first is the immediate surroundings of an area consecrated to a god. For example, in lines 74–75 of Book 7 of the *Metamorphoses*, we read:

Ibat ad antiquas Hecates Perseidos aras ,	She went to the ancient altars of
quas nemus umbrosum secretaque silva tegebat,	Hecate, the daughter of Perse, whose
	hidden forest covered the shady grove ,

The *nemus* surrounds the consecrated space of Hecate, the altars (*arae*), which in turn is hidden in the forest. These lines, which are not an isolated case, portray the *nemus* as a more precise space than the *silva* and the intermediate area between the sacred and the profane, which in the previous set of lines was constituted instead by the *silva*.⁴⁴ As an in-between space, the *ne-*

42 Ov. *Fast.* 1.548–562. Other instances can be found in Ov. *Met.* 1.692–694; 5.540–542; 6.451–453; 9.649–651; *Fast.* 5.115–116.

43 Ov. *Met.* 3.388–401: *et verbis favet ipsa suis egressaque silva / ibat, ut iniceret sperato brachia collo; / ille fugit fugiensque 'manus complexibus aufer!' / ante ait 'emoriar, quam sit tibi copia nostri'; / rettulit illa nihil nisi 'sit tibi copia nostri!' / spreta latet silvis pudibundaque frondibus ora / protegit et solis ex illo vivit in antris; [...] inde latet silvis nulloque in monte videtur, / omnibus auditur: sonus est, qui vivit in illa.*; “And she helps her own words, and coming out of the woods, she went to throw her arms around the desired neck. He flees and, fleeing, says ‘Take your hands off this embrace! May I die before I give you what is mine.’ She returned nothing except ‘What I give you is mine!’”. Spurned, she lurks in the woods, covering her shamed face with leaves, and lives from that time on in lonely caves. [...] Thenceforth, she lies hidden in the woods and is seen no more upon the mountain; but she is heard by everyone: it is the sound that lives in her.”

44 See also Ov. *Met.* 10.686–688, where we read: *templa, deum Matri quae quondam clarus Echion / fecerat ex voto, nemorosis abdita silvis, / transibant [...]*; “They were walking through the temples covered by the wooded forest, that illustrious Echion once built to the Mother in payment of a vow [...]” (trans. Miller 1916, slightly adapted). The adjective *nemorosus* functions as an intensifier of the proximity

mus does not have all the characteristics of a *lucus*, but it is part of its closest sphere of influence—an idea that is expounded in the following passage:

Vallis erat piceis et acuta densa cupressu,
nomine Gargaphie succinctae **sacra** Dianae,
cuius in extremo est **antrum nemorale**
recessu
arte laboratum nulla: [...]

[...]

ecce nepos Cadmi dilata parte laborum
per **nemus ignotum** non certis passibus
errans
pervenit in **lucum**: sic illum fata ferebant.
qui simul intravit rorantia fontibus antra,
sicut erant, nudaе viso sua pectora nymphae
percutere viro subitisque ululatus omne
inplere **nemus** circumfusaeque Dianam
corporibus texere suis;⁴⁵

There was a valley thick with pine and barbed
cypress, Gargaphie by name, the **sacred haunt**
of girded Diana, which in its furthest recess
is a **woody grotto**, produced by no art: [...]

[...]

Enter Cadmus's grandson, a part of his
toil postponed, and wandering through the
unfamiliar grove with unsure footsteps,
arrives in the **sacred grove**; fate carried him
that way. As soon as he entered the grotto
dripped with water, the nymphs, naked as
they were, beat their chests at the sight of the
man and filled the whole **grove** with sudden
cries. Then they crowded around Diana to
cover her with their bodies;

The reported excerpt is one of the clearest examples of the difference and contraposition between the terms *nemus* and *lucus* being fully manifested. The grove inhabited by Diana and the nymphs is first described as an *antrum nemorale*, which misleads Actaeon into thinking that it is a profane space through which he can walk. However, the woods are also described as *ignotum* and, as the narrative progresses, the reader comes to understand that these woods house a *lucus*. In the absence of a physical difference, Actaeon fails to see that the *nemus* constitutes the threshold of the sacred *lucus* and, unaware of the shift that the audience is able to perceive through the progression *nemus* > *lucus*, makes the mistake of entering the restricted area.⁴⁶ The fault of trespassing, albeit accidentally, a *lucus* rather than a *nemus* is what will cost the Theban hero his own life. This marks an important difference between the two numinous spaces, which allows the poet to play further with the terms *lucus* and *nemus* at the end of the passage. In fact, in line 180, we see how the *lucus* of Diana is transformed back into a *nemus*, having lost its

to the inner sacred area. The same emphatic divine nature of the forest also occurs in *Ov. Fast.* 1.512.

45 *Ov. Met.* 3.155–158, 174–181.

46 Cf. Malaspina 2003–2004, 110. According to Charles P. Segal (1969, 44), Actaeon's trespass has repercussions on Diana's chastity, for "to see the goddess nude is itself a kind of sexual violation."

untainted condition through the presence of Actaeon. Hence, we move from a scenario in which there is the succession *nemus* > *lucus* to one in which there is the shift *lucus* < *nemus*. A similar case of first progression and then demotion of a *lucus* occurs in the account of Erysichthon, where the grove of Ceres is *ferro temerasse* ("defiled with iron").⁴⁷

The contraposition *nemus* > *lucus* is only possible because of their shared divine connotation. In fact, *nemus* always seems to be in contact with the divine dimension of the grove, whether temporarily or permanently, to represent those woods that the gods, in certain situations, either establish as a residence with their very presence or momentarily populate. The former is well mirrored in the episode of Dione's flight from Typhon, where, as Ovid reports,⁴⁸ the goddess takes refuge in a *nemus* that was already the permanent dwelling place of the nymphs, while the latter is clearly reflected, for example, in the account of Liber's feast with the Naiads in another shared *nemus*.⁴⁹

Sacred Groves in Statius's *Thebaid*

What we have seen in Ovid can also be observed in Statius' *Thebaid/Thebais*, whose work employs the Latin terms *lucus*, *nemus*, and *silva* in a way that resembles their Ovidian conceptualization, while at the same time showing some preferences that in part distance Statius from Ovid. The correspondence between *lucus-silva* and *lucus-nemus* is essentially the same, although Statius prefers the word *nemus*, with fifty-two occurrences,⁵⁰ to describe groves and woodlands touched by the gods. Indeed, this seems to be the basic state of *nemus*, whose divine condition is more permanent than temporary.⁵¹ On the other hand, *lucus*, with only sixteen references, remains

47 Ov. *Met.* 8.741-744: *ille etiam Cereale nemus violasse securi / dicitur et lucos ferro temerasse vetustos. / stabat in his ingens amoso robore quercus, / una nemus; [...]*; "It is told that he even violated the grove of Ceres with an axe and defiled the ancient sacred grove with iron. There stood a mighty oak with aged strength, itself a grove; [...]"

48 Ov. *Fast.* 2.467-470.

49 Ov. *Fast.* 1.401-405.

50 This excludes the adjectives *nemorosus* and *nemoralis*, which are found in Stat. *Theb.* 2.79; 4.288; 5.182; 9.627.

51 See, for instance, Stat. *Theb.* 4.34-35, 284-291.

the main sacred place, although it is in constant danger of losing its sacred character. Nevertheless, as in Ovid, *lucus* remains the principal counterpoint to *silva*, which recurs thirty-nine times,⁵² or to *nemus*.

Proceeding in order, a good starting point for the analysis of the *lucus-silva* opposition is an important episode in Book 4, which we will now deconstruct to understand its application within Statian poetry and its parallels with Ovid's works. For in lines 520–524 and 536–548 we read respectively:⁵³

panditur Elysium chaos, et telluris opertae
dissilit umbra capax, **silvae**que et nigra patescunt
flumina: viventis Acheron eiecat harenas,
fumidus atra vadis Phlegethon incendia volvit,
et Styx discretis interflua manibus obstat.

The Elysian Underworld becomes visible and the capacious darkness of the hidden earth bursts apart. **Woods** and black rivers are revealed: the Acheron casts out bluish sands, smoky Phlegethon rolls black fires in its waters, and the Styx, flowing in between, bars separated ghosts.

'immo,' ait, 'o nostrae regimen viresque senectae,
ne vulgata mihi. quis enim remeabile saxum
fallentesque lacus Tityonque alimenta volucrum
et caligantem longis Ixiona gyris
nesciat? ipse etiam, melior cum sanguis, opertas
inspexi sedes, Hecate ducente, priusquam
obruit ora deus totamque in pectora lucem
detulit. Argolicas magis huc appelle precando
Thebanasque animas; alias avertere gressus
lacte quater sparsas **maesto**que excedere **luc**o,
nata, iube; tum qui vultus habitusque, quis ardor
sanguinis affusi, gens ultra superior adsit,
dic agedum nostramque mone per singula
noctem.'

'Indeed,' he said, 'O guide and strength of my old age, do not tell me well-known things. For who would not know of the ever-returning rock and the deceptive pools and Tityos, food of birds, and Ixion, dizzy from the long circuits? Indeed, I myself, when my blood was better, examined the hidden dwellings, with Hecate as my guide, before the god overwhelmed my face and transferred all the light into my mind. Rather bring the Argive and Theban ghosts here by imploring them. Order the other ghosts, daughter, after sprinkling them four times with milk, to turn their steps away and depart the **gloomy sacred grove**. Then come, tell me the countenance and bearing, what ardor for the split blood, which of the two peoples attends more proudly, advise my darkness point by point.'

52 This number of occurrences does not include the adjective *silvester*, which is only found in Stat. *Theb.* 9.720; 10.512.

53 For all of Statius's passages, I follow the translation provided by David R. Shackleton Bailey (2004), albeit with either minor or major adjustments.

The two reported sets of lines are part of a much longer passage that begins at line 345 and ends at line 645. The central topic is the performance of a necromantic ritual, which takes place in Thebes, specifically at the edge of Diana's grove, which is presented as a sacred natural space that, situated between the Upperworld and the Underworld, causes a blurring of the boundaries between the two worlds.⁵⁴ Beyond the ambivalence of the location, however, Statius uses the term *silva*, in the plural, to offer a natural description of groves and forests, which, independently from their context, are part of the same geographical representation as other landmarks, such as the "black rivers" (*nigra flumina*) in lines 521–522. These natural references precede the necromantic invocation of the Argive and Theban souls, in which the *lucus*, by acting as a ritual reference point, is employed semantically to describe a grove in a specific religious condition. As we have already noted in Ovid, in the Statian excerpts *lucus* appears in direct opposition to *silva*, in that the former figures as the sacred land of the ritual, located beyond the human milieu and with borders that are not even trespassed by the souls who stand in a *lucus*, which is specifically called *maestus*.⁵⁵

A similar use of *lucus* as a place of ritual returns in an episode found in the following book, in which Polyxo exhorts a group of women to swear an oath.⁵⁶ In this passage, the *lucus*, near the Hill of Minerva, temporarily becomes both the sacred site of the oath ritual and a numinous land shared by various deities who oversee the act as witnesses.⁵⁷ It follows, then, that the primary characteristic of a *lucus* is the sacrality of the ground, which Statius

54 See Parkes 2012, 222, 254–255. Blurred boundaries between the Upperworld and the Underworld are a common feature of the *Thebaid* and indicate how landscape in Statian poetry is "vulnerable to collapse and depredation", as Carole Newlands (2004, 138) notes.

55 According to TLL 1752.81-1753.3 s.v. *lucus*, the adjective *maestus* frequently denotes a *lucus* that is found in the Underworld. On this point, see also Parkes 2012, 254–255.

56 Stat. *Theb.* 5.152-158: *tunc viridi luco (lucus iuga celsa Minervae / propter opacat humum niger ipse, sed insuper ingens / mons premit et gemina pereunt caligine soles), / hic sanxere fidem. tu Martia testis Enyo / atque inferna Ceres, Stygiaeque Acheronte recluso / ante preces venere deae; sed fallit ubique / mixta Venus, Venus arma tenet, Venus admovet iras.*; "Then in a green sacred grove (a sacred grove that shades the ground close to Minerva's lofty summit, dark itself, but upon it a mighty mountain presses down and the suns perish because of the double darkness), here they pledged their faith. You, Martian Enyo were witness and infernal Ceres, and the Stygian goddesses came before the prayer, Acheron opened; but everywhere Venus deceives mingling among them, Venus holds the weapons, Venus brings the wrath."

57 It is worth noting that the same procedure is also attested in Tac. *Ann.* 12.47, in which he recounts the undertakings of the Armenian king Rhadamistus, who performed sacrifices that accorded with the swearing of an oath in a *lucus*, while the gods acted as witnesses. See also Tac. *Ann.* 14.30.

represents in a manner similar to Ovid's depiction of Diana Trivia's grove in Book 7, and which derives from divine presence and ritual action—a performance that momentarily frames spaces that would otherwise be invisible and indistinguishable from others.⁵⁸ These two factors seem to form the basis of the sacralization of a grove, an exclusive characteristic of a *lucus*, which in Statius's poetry can be represented by the progressive graduation *silva* > *nemus* > *lucus*. Such is the case of Diana's grove, where the above-mentioned necromantic ritual takes place. For in lines 419–430, Statius narrates that:

silva capax aevi validaque incurva senecta,
 aeternum intonsae frondis, stat pervia nullis
 solibus; haud illam brumae minuere, Notusve
 ius habet aut Getica Boreas impactus ab Ursa.
 subter operata quies, vacuusque silentia servat
 horror et exclusae pallet male lucis imago.
 nec caret umbra deo: **nemori Latonia cultrix**
additur; hanc piceae cedrique et robore in omni
 effictam sanctis occultat *silva* tenebris.
 huius inaspectae **luc**o stridere sagittae
 nocturnique canum gemitus, ubi limina patrum
 effugit inque novae melior redit ora Dianae;

There stands a **forest**, enduring of time and bent by robust old age, with foliage forever unshorn, penetrable by no suns. Winters did not damage it, nor does Notus have power over it nor Getic Boreas hurled down from the northern Bear. Beneath is the hidden quiet, an empty awe protects the silence and the semblance of shut out light makes a faint pallor. Nor does the shade lack a deity; **Latonia is added to the grove as its inhabitant**. In sacred darkness the **forest** hides her, carved in every pine, cedar, and oak. Her arrows whistle unseen in the **sacred grove** and her dogs howl at night when she escapes her uncle's threshold and returns in a better state to the countenance of a new Diana;

In the present passage, we can see how the poet employs *silva* as a geographical descriptor and, at the same time, as a reference to a land that can be potentially sacred. But as the narrative develops, the reader sees how the *silva* is transformed into a *nemus* where Latonia is introduced (*additur*) and her image is carved into the trees. The shift from something general (*silva*) to something more specific (*nemus*) has an inner narrative logic that, as we have noted in Ovid, sees the *nemus* as a place shared by both humans and gods and, importantly, as malleable and accessible. It is precisely because of these two characteristics that trees can then be carved and, as the passive verb *additur* suggests, individuals can easily introduce the goddess into

⁵⁸ For performance and sacralization, see Rüpke 2021, 76.

a space which, once again, figures as the conceptual intermediate state of a grove in the process of becoming sacred (*lucus*).⁵⁹ This progressive sequence is perhaps misleading, since in a few other instances *silva* seems to overlap with *nemus* or *lucus*, as if *silva* were not only the comprising term for a sacred grove and forest, but also an allusion to how the deities extended their influence beyond the sacred woods.⁶⁰ However, it is precisely this potential coincidence and the basic differences between the terms that enact Statius's lexical arrangement to describe a progression *silva* > *nemus* > *lucus*, as we do indeed find in the description of another grove in Book 4:

tandem inter **silvas** (sic Euhius ipse pararat)
errantes subitam pulchro in maerore tuentur Hypsi-
pylen; illi dependet et ad ubera Opheltes
non suus, Inachii proles infausta Lycurgi.
quamvis et neglecta comam nec dives amictu, regales
tamen ore notae, nec mersus acerbis
exstat honos. tunc haec adeo stupefactus Adrastus:
'diva potens **nemorum** (nam te vultusque pudorque
mortali de stirpe negant), quae laeta sub isto
igne poli non quaeris aquas, succurre propinquis
gentibus; [...]

[...]

Dircaeos tibi, diva, greges numerumque rependam
sanguinis et magna **lucus** signabitur **ara**.⁶¹

At last, wandering in the **forest** (so Euhius himself had arranged), they suddenly see Hypsipyle, beautiful in her sadness. Opheltes, not hers but the unfortunate offspring of Inachian Lycurgus, hangs at her breast. Her hair is neglected, her clothing is poor; yet her honor shows royal signs on the face, not sunk in misfortune. Then Adrastus, stunned, addresses her: 'Powerful **goddess of the groves** (your face and modesty deny in fact that you are of mortal stock), glad that under this fire of the sky you do not seek for water, help neighboring people; [...]

[...]

'I shall repay you, Goddess, with Dircaean flocks and quantity of blood, and a great **altar** will mark the **sacred grove**.'

This set of lines depicts the king of Argos, Adrastus, and his companions entering a forest (*silva*) in Nemea, where, upon meeting Hypsipyle, they invoke her as "goddess of the groves." The words *diva nemorum* mark her relationship with the land and a progressive sacralization of the space (*silva* > *nemus*) that only ends at lines 770–771, when Hypsipyle is promised the erection of an altar in exchange for her help in the war against Thebes. The *ara*

59 Cf. Parkes 2012, 221.

60 Stat. *Theb.* 4.832–833; 7.40.

61 Stat. *Theb.* 4.746–756, 770–771.

signals the final moment of the progression *silva* > *nemus*, indicating how the *nemus* is finally transformed into a sacred space (*lucus*) with an architectural structure that must “mark” (*signabitur*) Hypsipyle’s consecrated land. However, behind what appears to be a straightforward sacralization of a space that semantically begins with *silva* and ends with *lucus*, there is a catch. The grove that Adrastus and his companions entered was, in fact, a space that had already been consecrated. For in Book 5, Statius writes:

Interea campis, **nemoris sacer** horror Achaei, terrigena
 exoritur serpens tractuque soluto
 immanem sese vehit ac post terga relinquit.
 livida fax oculis, tumidi stat in ore veneni
 spuma virens, ter lingua vibrat, terna agmina adunci
 dentis, et auratae crudelis gloria frontis
 prominet. Inachio sanctum dixere Tonanti
 agricolae, cui cura loci et **silvestribus aris**
 pauper honos; [...]⁶²

Meanwhile, an earthborn serpent rises in the open plain, **sacred** horror of the Achaean **grove**, and drags his immense self in a loose slide and leaves behind his back. A livid fire is in his eyes, a green foam of venom in its mouth. Three times his tongue flickers, three are the rows of hooked teeth, and the cruel glory juts out from his gilded brow. The farmers called him **sacred** to the **Inachian Thunderer**, who took care of the place and a poor offering on **woodland altars**; [...]

Jupiter, the Inachian Thunderer, is presented as the owner of the grove where Adrastus and his companions meet Hypsipyle. The sacred snake acts as its guardian, watching over the “woodland altars” (*silvestribus aris*) that belong to the god, thus marking Jupiter’s ownership of a land that, according to the words *sacer horror Achaei*, should not be trespassed upon.⁶³ If we analyze the two books together, we can see that Statius creates a deliberate mismatch by constructing two narrative levels: one that pertains to the progression *silva* > *nemus* > *lucus* (Book 4), and one that concerns instead the entry of Adrastus and his companions into an already sacred place (Book 5), which is difficult to identify due to the lack of clear borders. In this second narrative level, we are dealing with the presentation of a mechanism that we have already observed in the Ovidian episode of Actaeon, where the hero is portrayed as

62 Stat. *Theb.* 5.505-513.

63 The adjective *silvestribus* implies the geographical and natural context of the altars as they are inside a forest, together with the sacred place.

having made the mistake of entering the god's domain by leaving a profane space (*nemus*).

In the passage from Book 5 quoted above, Statius does indeed play on the apparent profanity and shared use of the Nemean grove by calling it a *nemus*, even though he is already warning the reader of its sacred condition through the adjective *sacer* and the sanctity of the snake. It is only sixty lines later, when Capaneus, Adrastus's companion, speaks to the animal before killing it, that Statius reveals that it is in fact a *lucus*.⁶⁴ There is, therefore, an internal logic to the use of the term *nemus*: It is a substitute term that represents the *lucus* in its tainted condition, after the intrusion not only of Adrastus and his companions, but also of the infant Opheltes, who was brought into it by his nurse, Hypsipyle, even before the Argive soldiers entered. As the first human transgressor, Opheltes is eventually killed by the snake while playing and crawling on the sacred ground.⁶⁵

A similar narrative construction with *nemus = lucus* and the punishment of involuntary transgressors is found in another passage of Book 5. In lines 185–187, Statius narrates how a group of sailors indulge in sumptuous banquets in *nemora sacra*. Later in the narrative, however, the poet tells us that the groves were *sacri luci*.⁶⁶ The adjective *sacer* has, even more, the same warning function as in the case of the Nemean grove, and *nemus* appears as a substitute term for *lucus* to describe its defiled condition. Akin to Opheltes's case, the defilement of the *lucus* is paid for with the transgressors' own lives.⁶⁷

However, despite their similarities, Opheltes's story presents an important difference: The Nemean grove is destroyed for the creation of the infant's funeral pyre. Its destruction is recounted in Book 6, where Statius creates a progressive conceptual degradation as soon as he begins to relate the sor-

64 Stat. *Theb.* 5.565-570: [...] 'at non mea vulnera,' clamat / et trabe fraxinea Capaneus subit obvius, 'umquam / effugies, seu tu pavidus ferus incola luci, / sive deis, utinamque deis, concessa voluptas, / non, si consertum super haec mihi membra Giganta / subveheres.' [...]; [...] 'But not my wounds,' cries Capaneus, and comes up to assault him with ashen spear, 'You shall never escape, whether you be the savage inhabitant of the terrified sacred grove or the delight granted to the gods (and to the gods let it be!), no, not even if you brought a Giant against me joined above your limbs.' [...]."

65 Stat. *Theb.* 5.534-549. Statius already alludes to the killing of Opheltes in the above-reported passage of Book 4, in which he portrays Hypsipyle in *maerore*. The same representation of Hypsipyle returns at line 552. We should note that the need to punish those who defile a *lucus* is also found in the *lex luci Lucerina* (CIL IX, 782) and its twin, the *lex luci Spoletina* (CIL XI, 4766).

66 Stat. *Theb.* 5.250.

67 Stat. *Theb.* 5.195-240.

row of the once-sacred grove (*aderat miserabile luco / excidium*).⁶⁸ The isolated mention of *lucus* serves to emphatically highlight the first step in the degradation of the sacred place, which, after its desecration and the death of its guardian, is described as a *nemus*—a numinous ground within the forests (*silvae*) through which nymphs and fauns once passed.⁶⁹ But at the end of the story, the grove is subjected to the flames of the pyre,⁷⁰ and the florid description of Opheltes's funeral represents a further step in the desacralization of the once-sacred space: All that remains now is a forest (*silva*). The present passage thus conveys a reverse phenomenon to that which we have observed in Statius and Ovid, in which the original status of *lucus* passes first to *nemus* and then to *silva*.

Conclusion

I began this contribution with Scheid's digression into German Romantic literature to show how nineteenth-century thought influenced later theories on Roman sacred groves, leading to various general assumptions. However, if we analyze how the terms *lucus*, *nemus*, and *silva* are employed by imperial poets, we find that certain generalizations are difficult to support, precisely because Ovid and Statius have clearly shown patterns of differentiation between the words. Even if they at times share a close proximity, their textual use always follows an inner narrative logic. What appears to be free interchangeability, as Malaspina has argued, can instead be explained as the result of a rhetorical game in which the authors twist the semantic similarities in order to hide *the* sacred grove in the plot, while at the same time giving clues to the reader as to the true holy condition of the woods. The aim of this twisting mechanism is to advance and provide a dramatic revelation as the narrative unfolds through the sequence *silva/nemus* > *lucus*, encountered either in a progressive or regressive form. Hence, the works of Ovid and Statius testify to the importance of semantic differences for the development of the story, which usually passes from the confusion of the characters to their fi-

68 Stat. *Theb.* 6.96-97: "Destruction has come for the miserable sacred grove." At line 155, the same grove will be called *silva infamis* ("ill-famed forest").

69 Stat. *Theb.* 6.95-96.

70 Stat. *Theb.* 6.107-110.

nal punishment due to the transgression of a *lucus*, or, conversely, depicts the degradation of the same *lucus* to a defiled state. Thus, when the poets avail themselves of progressive or regressive sequences, or when they need to emphasize the differences between *lucus*, *nemus*, and *silva*, the usual representations of *lucus* as a smaller or more specific space than *nemus*, and of *silva* as a term that can broadly refer to these other two natural spaces, become less relevant.

Yet despite their similarities, the poetry of Ovid and Statius shows that they had specific preferences in their rhetorical use of *lucus*, *nemus*, and *silva*. Ovid presents the existence of two main types of contrast: namely one from the natural point of view and one from the numinous perspective. In the former, *lucus* and *silva* signal two different semantic areas, since *lucus* denotes the sacred grove and *silva* acts as a marker of the wider natural space, leaving *nemus* as an intermediate concept that can represent the threshold of the *lucus* and an area that is shared by humans and gods. In the latter, there is, instead, a sacred hierarchy, in that *lucus* functions as a ritual reference point, while *nemus* and *silva* are presented as similar spaces that, although inhabitable by gods and monsters, have a less sacred dimension than *lucus*. The Ovidian *lucus* can have precise boundaries (i.e., walls or a *nemus*) and can be represented at the center of a triple-encircled structure, while Statius heightens the visual confusion between the three spaces, shifting the weight of their understanding to a more conceptual level. In doing so, Statius presents the *lucus* as a space that can be temporarily inhabited by multiple gods or is in constant danger of losing its sacrality. On the other hand, *nemus* is portrayed as an ambivalent numinous space that is reachable to humans, even though it is permanently touched by the divine.

These differences illustrate how Ovid and Statius partly indulge in an individual discourse that benefits from the lack of clear definitions of what 'owned by the gods' ultimately means. Deities certainly needed groves and other spaces to materialize their divine presence (see Rüpke in this volume) and to endorse their connection with humans. Imperial poets, however, take advantage of this vagueness to present a subjective perspective that navigates between perception, divine intervention, and human performance. This indeterminacy leaves gods' landed property in a situation that can be employed strategically, and additionally demonstrates the limits of a legal approach to the understanding of divine property in antiquity.

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Inheritance of Land—The Origin of Property

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Abstract

Around the Mediterranean Sea in antiquity, people believed that the most important elements of life—such as land, human beings, big cattle, and animals—belonged to the Gods or, for the Jews, to God, and were not for sale or purchase. Despite this knowledge, all of the various cultures and peoples did, of course, trade in these beings, while, as the Roman *mancipatio* teaches us, making use of workaround forms of purchase agreements. This chapter analyzes how Christians developed a systematic reflection on such sales and purchases and how they moved away from the traditional reluctance in dealing with these goods. Christians, as will be shown, developed the idea that as the supreme God had only one Son, the one that was sent to Earth and killed, this sole heir of God left all that was owned by God to the Son's co-heirs in his New Testament. As heirs of the Son, Christians felt fully entitled to sell and purchase those goods. This conceptualization was a major shift that was soon followed by Justinian in abolishing the workaround praxis of the *mancipatio* and allowed for a commodification of, for example, land and nature.

Keywords: Inheritance, Land Ownership, Land Transfer, Colonialism, Post-colonialism, Early Christianity

Land—Finite and Foundational

As land and grounds cannot be multiplied, but are indispensable, it is impossible to leave their use, without restriction, to the play of unforeseeable forces or the choice of individuals; a society of order and law that is just compels bringing to the fore the interest of the public much more forcefully compared to other owned goods.¹

This contemporary political statement retains the special legal character that was given to land in antiquity. Though, then, it was not only argued with regards to the finite, scarce, and essential nature of this particular good, but antiquity also anchored such restraints in ritual, belief and—like today—in registering land claims in legal documents.

The English aristocracy was similar to the French bourgeoisie and the church in the seventeenth century, it feared the loss of its land monopoly and resisted a kind of land registration in the nineteenth century. Such a registration system designed by its ‘primary architect,’ Robert Richard Torrens (1780–1864), was introduced in the colony of South Australia by which the land, regarded as *terra nullius* and part of wild nature, was made available for ownership and colonialization.² Felicitas Sommer argues that registering land is not only an act of noting down claims in lists, but also that the register itself makes such claims apparent and elevates them to become part of public consciousness.³

This observation finds support in one of the most explicit formulations of a colonial land claim in antiquity, namely the note about the exclusive land ownership of Israel’s God and his passing part of it, Palestine, on to Israel,

1 Beschluss vom 12.1.1967 vergl. BVR 169/63, BVerfGE 21, 73/86: “Die Tatsache, dass der Grund und Boden unvermehrbar und unentbehrlich ist, verbietet es, seine Nutzung dem unübersehbaren Spiel der Kräfte und dem Belieben des Einzelnen vollständig zu überlassen; eine gerechte Rechts- und Gesellschaftsordnung zwingt vielmehr dazu, die Interessen der Allgemeinheit in weit stärkerem Maße zur Geltung zu bringen als bei anderen Vermögensgütern.” I owe this quote Felicitas Sommer and I am also thankful to her for providing me with her yet unpublished PhD dissertation (Sommer 2022, 5).

2 See Bhandar 2015, 253–254; Sommer 2022, 163. Here, the combination between commodification and racism is also mentioned, as criticized in Bhandar 2015.

3 See the fourth chapter in Sommer 2022, 51–87.

combined with the rejection of competing claims by previous inhabitants.⁴ The foundational statement can be found in Jewish law, the third book of the Torah, Leviticus 25:23-24, as we can see from Philo of Alexandria (ca. 15 BCE-ca. 40 CE), who quotes these verses: "(108) And of the supreme authority of the living God, the sacred scripture is a true witness, which speaks thus: 'And the land shall not be sold for ever; for all the earth is mine, because you are all strangers and sojourners in my sight.'" To this, Philo adds:

Does not the scripture here most manifestly show that all things belong to God by virtue of possession, (109) but to created things only inasmuch as they have the use of them? For, says God, nothing shall be permanently sold to any one of all created beings, since there is one being to whom the possession of the universe does permanently and surely belong; for God has given the use of all created things to all men.⁵

A little later in the same work on *The Cherubim* he summarizes:

It is, therefore, not only true, but a thing also which most especially tends to consolation, to consider that the world and all the things in the world are the works and the property of him who created them. And his own work, he who is its real possessor, gives to others, because he has no need of it himself. But he who uses it has no property in it, because there is one Lord and master of all things, who says most truly, 'All the earth is mine,' a saying which is equivalent to every created thing is mine; and 'you are all strangers and sojourners in my sight.'⁶

In the mind of Philo, Jewish law made it manifest that no single human and no other divine being had a claim to land ownership on the entire Earth. A particular case was Palestine, which the same Jewish law regarded as a land promised and given to Israel by its God, or, as Gerhard von Rad formulated it: "In the entire Hexateuch [the first five books of the Jewish Bible, the Torah, and the book of Joshua] there is probably no more important idea than that expressed in terms of the land promised and later granted by Yahweh."⁷ This divine promise, as stated in Jewish law, is one of divine heritage:

1 After this, the word of the Lord came to Abram in a vision: 'Do not be afraid, Abram. I am your shield, your very great reward.' 2 But Abram said, 'Sovereign Lord, what can you give me since I remain childless and the one who will inherit my estate is Eliezer of Damascus?'

4 I have shown the related claim in the Jewish tradition of the conditional nature of land ownership by individuals and the restriction of land not to be commercialized in more detail in Vinzent 2024b.

5 Philo Alex., *De Cherub*. 108–109 (trans. here and later Yonge 1993, slightly altered).

6 Philo Alex., *De Cherub*. 119.

7 Rad 1966, 79.

3 And Abram said, 'You have given me no children; so a servant in my household will be my heir.' 4 Then the word of the Lord came to him: 'This man will not be your heir, but a son who is your own flesh and blood will be your heir.' 5 He took him outside and said, 'Look up at the sky and count the stars—if indeed you can count them.' Then he said to him, 'So shall your offspring be.' 6 Abram believed the Lord, and he credited it to him as righteousness.⁸

Though there is no mention of land, only that Abram is promised an heir, a little later in the same chapter, we read:

17 When the sun had set and darkness had fallen, a smoking firepot with a blazing torch appeared and passed between the pieces. 18 On that day the Lord made a covenant with Abram and said, "To your descendants I give this land, from the Wadi of Egypt to the great river, the Euphrates—19 the land of the Kenites, Kenizzites, Kadmonites, 20 Hittites, Perizzites, Rephaites, 21 Amorites, Canaanites, Girgashites and Jebusites."⁹

This promise relates back to an earlier passage in the same book, Gen 12:1-3:

The Lord had said to Abram, 'Go from your country, your people and your father's household to the land I will show you. 2 I will make you into a great nation, and I will bless you; I will make your name great, and you will be a blessing. 3 I will bless those who bless you, and whoever curses you I will curse; and all peoples on earth will be blessed through you.'

The promised heritage of land was not one of a *terra nullius*, but clearly that of a well-populated land of different populations, cultures and languages—and yet, it is the divine promise and command to make this land exclusively Israel's own, a promise of fame, of blessings and curses. William D. Davies, in his Pantyfedwen Lectures of the year 1968, was the first to explore the 'Jewish territorial doctrine' in detail,¹⁰ and showed its centrality both for Jews and, later, for Christians.¹¹ According to him, the Torah gave Israel's "occupancy of the land" its "legal' basis."¹² Registered into the foundational writings of the Jewish religion, this claim also became a core of Jewish festivals (and rituals), a list of which is given in Book three of the Torah. In it one reads that this list has been passed on by Moses when he was speaking to the Israelites about the time "when you enter the land I am going to give you," highlighting that

⁸ Gen 15:1-5.

⁹ Gen 15:17-21.

¹⁰ Davies 1994, 20–21.

¹¹ The endowment of the lecture series goes back to 1961 and Sir David John James (1887–1967), a Welsh dairy businessman and founder of thirteen London cinemas. It is not by accident that Davies chose this topic, as the Six-Day War was still fresh in memory.

¹² Davies 1994, 20–21.

the festivals are to gather “crops of the land”¹³ and to offer them to its God.¹⁴ These festivals serve as a remembrance that God had brought the Israelites out of Egypt into the Promised Land.

Not only Jews, of course, believed that land was exclusively owned by the divine(s); we find traces of this idea in other antique cultures, too, but nowhere do we have the registered law claim as we find it in the Jewish tradition. It has been shown that the “notion of private property was at the heart of Greek concepts of land tenure well back into the dim and distant past”¹⁵ with examples from Homer onwards, but property rights were protected not by written law, but only by custom.¹⁶ This also accounts for the claim of divine property, as in the Greek tradition no clear distinction existed between ‘sacred’ and ‘profane,’¹⁷ as “*hieron* (or ‘belonging to a deity’)” has been used and applied to land, “the word *hosion*, however, is extremely rarely used for built property and [...] not at all for land” and “the conceptual distinction between *hieron* and *hosion*—whatever the latter’s meaning, on which there is no agreement—was never applied to landed property.”¹⁸

Looking at Athens, we can learn from Aristotle that a firm idea of private landed property existed, whereas the division between sacred, public and communal remained ambiguous.¹⁹ The notion of inalienability of the land, so dear to Jewish thinking, had at least been applied to sacred land, without being an established rule “either for Athens or for the rest of the Greek world.”²⁰ ‘Ownership’, therefore, was rather vaguely defined in the Greek world, which

13 Lev 23:9.

14 See Lev 23.

15 Foxhall 1997, 128.

16 See Economou–Kyriazis 2017, 60.

17 See the contribution to this volume by Sofia Bianchi Mancini.

18 Rousset 2013, 121.

19 See Aristotle’s division of landed property into three categories in *Pol.* 2.8.3 (1267b): Διήρει δ’ εἰς τρία μέρη τὴν χώραν, τὴν μὲν ἱεράν, τὴν δὲ δημοσίαν, τὴν δ’ ἰδίαν (“He divided the land into three parts, one sacred, one public and one private”), but into two categories (with the sacred becoming a differentiated subcategory) as communal and private in *Pol.* 7.10.11 (1330a): ἀναγκάειον τοῖνον εἰς δύο μέρη διηρῆσθαι τὴν χώραν, καὶ τὴν μὲν εἶναι κοινήν, τὴν δὲ τῶν ἰδιωτῶν, καὶ τούτων ἑκατέραν διηρῆσθαι δίχα πάλιν, τῆς μὲν κοινῆς τὸ μὲν ἕτερον μέρος εἰς τὰς πρὸς τοὺς θεοὺς λειτουργίας, τὸ δὲ ἕτερον εἰς τὴν τῶν συσσιτίων δαπάνην... (“It is necessary therefore for the land to be divided into two parts, of which one must be common and the other the private property of individuals; and each of these two divisions must again be divided in two. Of the common land one portion should be assigned to the services of the gods, and the other to defray the cost of the common meals...”) (trans. Rackham 1944), see on this Rousset 2013, 113; Papazarkadas 2011.

20 Rousset 2013, 122.

did not differentiate clearly between “full ownership and other degrees of control, possession, usufruct or enjoyment,” as to be found in “legal systems influenced by Roman law.”²¹ And one has to add that the term ‘ownership’ (*dominium*) only “emerged at the very end of the Roman Republic” and “was still unknown at the time of Cicero.”²² During the Roman Empire, then, the distinction between ownership and possession (*possessio*) was introduced with the former being “the supreme and most unrestricted right over a thing,” whereas “possession was the actual holding of the thing, the state of having effective control over it,” “ownership was a matter of entitlement; possession was a matter of fact.”²³

Though Rome has shared the concept of private property with Greece, it still shows elements of the idea of divine landed property, as present in the Jewish tradition. Without speaking of divine property, Cicero (106–43 BCE) sees nature as the agent that gives human beings the right to use things. He admits that “private property [...] existed by agreement or convention rather than by nature,” and that “the accumulation of possessions [...] rooted in man’s nature itself.”²⁴ With the Stoics he agreed “that the fruits of the earth existed for the use of man,” but he added that “nature has given to men the common right to all things that have been created for common use.”²⁵ Cicero was not less a representative than Philo of a nascent Roman Empire with a drive towards concentration of land ownership. Cicero himself had a “passion for the acquisition of property [...] he collected residential properties [...] and gave much attention to their renovation and furnishing [...] being in fact a slum landlord who owned various tenements in Rome and Puteoli.”²⁶ Likewise, when Horace (65–08 BCE) despises the greedy, he gives “the landowner [...] the epithet ‘blameless,’”²⁷ and in this he “is very closely related to Augustan policy.”²⁸ In his *Letter to Florus/Epistula* 2.2 he criticizes ownership, no longer with reference to the divine that negates permanent possession, but to death:

21 Rousset 2013, 124. Here are given references to (amongst others) the work by Kränzlein 1963.

22 Domingo 2017, 3.

23 Domingo 2017, 5–6.

24 Wood 1983, 742–743. See Cic. *Off.* 1.22.

25 Wood 1983, 742–743. See Cic. *Off.* 3.21–24.

26 Wood 1983, 742–743.

27 Mader 1987, 12.

28 Mader 1987, 13.

Ownership comes by use too, if you believe lawyers:
 Any land that feeds you is yours [...]
 Fix the boundaries and stall neighbours' quarrels: as if
 Anything were ours, that in a moment of fleeting time,
 Changes owners, by gift on request, by force or fee,
 At last by death, passing into another's hands.
 Since then no one's granted perpetual use, and heir
 Follows heir just as one wave will follow another,
 What use are barns, or estates?²⁹

With Horace's mention of death, however, the ultimate agent that enforces the change of ownership through inheritance, he provides the Roman blueprint for the "new Israel" (Justin Martyr) of Christians to transform their former Jewish tradition of divine ownership of the Earth and the lending of parts of Palestine to Israel into an ideology of fully inherited ownership of God's entire land, the Earth.

Inheritance, the Cradle of Property

What Horace put in poetic words, Max Weber formulated in rational terms. In his *Grundriss der Sozialökonomik. III. Abt. Wirtschaft und Gesellschaft*, writing about "closed social relations,"³⁰ Weber mentions the monopolizing of chances of those who are involved in these relations. To guarantee chances as entirely inalienable (which he calls "rights"), he refers to "inheritance," from which he deduces the notion of "property" (and from which, not fully clearly how, he differentiates "free property"³¹ as that which is not inherited, but can freely be divested).³² Inheritance, therefore, is not just a special form or process of property; it is inheritance that makes goods inalienable beyond the death of the individual owner and creates property.

How was it possible that the Roman imperial ideology of individual property, more prominent in Greek and Roman minds than in that of a Hellenized

29 Hor. *Epist.* 2.2.159-177 (trans. Kline 2005).

30 Weber 1922, 23.

31 Weber 1922, 23.

32 I thank the reading group of the previously mentioned SFB for having introduced me to this passage of Weber.

Jew like Philo, made its way into those of Christians and through them into a Western world that Weber conceptualizes?

After the Jews had conquered the land of Palestine, Israel developed a “royal ideology,” according to which land was “a source of centralized wealth and glory for the monarch and the empire, the monarch being the earthly representative of YHWH located in heaven,” while the people were “the monarch’s labor force in the land.”³³ It was a theocratically underpinned imperial concept, Canaan a “land grant, an unearned gift” by the God of Israel. While this God remained the land owner, the Israelites had a “conditional entitlement to the land by treaty,” “a promised entitlement” and “the personal sanctuary and garden” of its deity, of which they were the “tenants.”³⁴ It has been shown that the Hebrew Bible, especially its legal opening by the Torah, had already developed the sense of inheritance of the land, it being viewed as Israel’s ‘birthright,’ yet it was not an individualized concept.³⁵ Instead, it was one of “kinsman-type relationships,”³⁶ or “tribal allotment,”³⁷ an imperial ideology that the invaders into a land that was promised to them as a group of tribes by their divine, had taken from the occupants before them.³⁸ Worshipping a God who not only was regarded as the owner of Canaan, but universally of all land on Earth, the Israelites as heirs of their God provided themselves with the legal documents of the divine right to belonging there and the land belonging to them. Still, this concept of inheritance fitted into the foundational assumption of the divine being remaining the sole owner. “Although the Israelites are consistently depicted as actors in obtaining their own land,” it was highlighted that “by its very nature,” it remained “a gift”.³⁹ Inalienability, here, is in line with Weber’s concept, yet, also very different from it, as it does not refer to “individuals or the related communities or societies,”⁴⁰ but to the latter two only. “The land cannot be permanently sold outside of the tribe to which it is allotted (Lev 25:23), and the borders cannot be moved (Deut 19:14).”⁴¹ In addition,

33 Habel 1995, 134.

34 Habel 1995, 134–135.

35 This applies even to Joshua, who seems to be in a special relationship with the God of Israel, as shown by Daley 2021, 77, 150.

36 Daley 2021, 46–47.

37 Daley 2021, 53.

38 See Num 33:50–56.

39 Daley 2021, 52. Reference is made to Deut 4:21.

40 Weber 1922, 23.

41 Daley 2021, 54.

this type of inheritance remained conditional, the Israelites could lose their inheritance if they were not obedient to their God's commands.⁴²

When, in fact, Israel lost the land and people had to move into countries of exile, the concept changed to one of future, "eschatological hope" with foreigners being "included with the Israelites as coheirs and native sons,"⁴³ and, a little later in the books of Enoch and Judith, it turns out that not all of Israel is going to inherit, but only the chosen and righteous ones, and not the sinners.⁴⁴ Inheritance is now linked to exclusivity, as registered in the divine Scriptures of the time.

Inheriting the Earth—Christian Colonial Property Regimes

Comparable to the Jewish Scriptures, Christians had developed their own canon of sacred writings which some saw as independent of the Jewish ones, while the growing majority bolted their own collection on to these.⁴⁵ Still, since Marcion of Sinope—a holder of the former view—had coined the title 'New Testament' for the Christian collection in contrast to what he called the 'Old Testament,' this novel one was understood in legal heritage terms, just as the Jewish Scriptures were; hence their name "Testament."⁴⁶

Interestingly, the canonical New Testament does not provide a reference to Leviticus 25:23-24, and yet, the three synoptic Gospels within it preserve the parable of the wicked tenants.⁴⁷ This is a story about a householder who let a vineyard out to tenants. Instead of paying their rent, they beat, kill, and stone the householder's servants, and when the Landlord sends his son, the tenants say: "This is the heir; come let us kill him and have his inheritance".⁴⁸ When Jesus asks his disciples what to do with these tenants, the disciples reply that one should kill the tenants for their misbehavior and lease the vineyard to new tenants. Though, according to Matthew, Jesus does not explicitly say that the Lord was going to kill the wicked tenants, their death is some-

42 See Daley 2021, 55. Reference is made to Deut 4:1; 12:9-12.

43 Daley 2021, 108. Reference is made to Ezek 40-48.

44 Daley 2021, 129-130.

45 See on this Vinzent 2024a.

46 See on this Vinzent 2023, 179; 2019, 162-163.

47 See Mt 21:33-46; Mk 12:1-12; Lk 20:9-19.

48 Mt 21:38.

how implied when he responds with reference to the Jewish Scriptures that the Lord is making the “rejected stone” become the “head of the corner”⁴⁹ by giving his property to another nation.

That the fate of the tenants is paramount can be seen by the other versions of the same story in Mark 12:10, where there is no mention of the Lord moving his vineyard to another nation. The Lord’s sole reaction to the tenants is that the rejected stone will become the ‘cornerstone’.⁵⁰ In contrast, Luke gives a most explicit statement. In his version of the story, the disciples are horrified by the thought that the vineyard will be passed on “to others,” to which they respond: “God forbid!”⁵¹ Jesus’s response, however, is even more drastic: “What then is this that is written: The very stone which the builders rejected has become the head of the corner? Everyone who falls on that stone will be broken to pieces; but when it falls on any one it will crush him”.⁵² This conclusion—perhaps also present in the Gospel of Matthew, but missing in some manuscripts—is a sharpening of the parable’s mention of destroying the wicked tenants.⁵³ It broadens the scope, and it is no surprise that the verse following this parable talks about “the scribes and the chief priests trying to lay hands” on Jesus “at that very hour.” It is Jesus’s utter provocation, directed against the Jewish leaders, a call for the newly chosen heirs to defend their heritage as a rightly received one and to revolt and resist against those wicked tenants who had killed the Landlord’s son and, in return, an exhortation to kill them.

The entire parable of the wicked tenants is, however, missing in the Gospel of John, nor do we find it in Marcion’s Gospel (= *Ev), which was part of the earliest known version of the New Testament, put together by Marcion of Sinope shortly after the end of the so-called Bar Kokhba revolt (132–135 CE), the second Jewish-Roman war.⁵⁴ In *Ev, we read only that the Pharisees who had questioned Jesus and asked from where Jesus took his authority tried to lay on their hands on him.⁵⁵ Still, the message of this Gospel—in Marcion’s New Testament only this one gospel was included,

49 Ps 118:22.

50 Mk 12:10, compare the Gospel of Thomas (EvTh 66).

51 Lk 20:16.

52 Lk 20:17–18.

53 See also Lindemann 2017, 17. Mt 21:44 is missing in D, 33, it, sy^s, Or, Eus^{sr}.

54 This gospel has recently been reconstructed by several scholars, the most recent being the one who also introduced the shortcut *Ev for it, see with further literature Klinghardt 2021.

55 See *Ev 20:1–8; 20:19.

together with a preface and ten Pauline letters—is not simply a pacifist one, but it tries to disentangle what it calls ‘Christianity’ (the first appearance of this label in history, as far as we know) from ‘Judaism,’ and make room for a new messianic religion.⁵⁶ A further passage in *Ev and Lk highlights that Christians are no competitors for Israel’s heritage. When Jesus is asked by someone, to tell his brother to share his heritage with him, Jesus responds that he had not been set as a judge in heritage questions.⁵⁷ The response is in coherence with a further parable, dealing with the question whether one can put new wine into old wine skins, and where the conclusions of *Ev and Luke are very different.⁵⁸ While *Ev states that new wine has to go into new wineskins, so that both be preserved, Luke states that “whoever drinks old wine does not want new one, because the old one is better.”⁵⁹ From the discrepancy between *Ev and Lk we can deduce that the earliest New Testament, attributed to Marcion around the middle of the second century has a very different view of the relation between Christians and Israel compared to the canonical New Testament, as we find it towards the end of the second century.

The first New Testament is not making a case for Christians to be co-heirs of God.⁶⁰ This idea of being heirs or even co-heirs is absent from both the one Gospel of this New Testament and its collection of ten Pauline letters. This New Testament is not one of inheriting land nor of anything else, except for the kingdom of heaven. The aim, as the Sermon of the plain in this New Testament clarifies, is one of poverty, not richness. “Blessed are the poor for theirs is the kingdom of heaven”.⁶¹ This becomes even clearer from Marcion’s preface to this New Testament. In it, as is reported by Tertullian of Carthage in the beginning of the third century, Marcion stated that Christ or the Messiah has been “revealed by a formerly unknown God for the salvation of all nations,” and that the Messiah of this New Testament “differed from that

56 See Vinzent 2022, 305–321.

57 See *Ev and Luke, 12:13–15. Similarly, in the Gospel of Thomas (EvTh 72): “[A man said] to Him, ‘Tell my brothers to divide my father’s possessions with me.’ He said to him, ‘O man, who has made Me a divider?’ He turned to His disciples and said to them, ‘I am not a divider, am I?’” It is unclear whether EvTh, with the term “divider” (μεριστής), provided the ground for the insertion of this term into the Synoptics or whether the latter provided it for the former. It is unattested for *Ev (see Klinghardt 2015, 785).

58 See *Ev and Luke, 5:33–39.

59 Lk 5:39.

60 See the English translation of this version of the New Testament by BeDuhn 2013.

61 *Ev 6:20.

other Christ (or Messiah of the canonical New Testament) who would be sent, sometime in the future, by the Creator-god designated for the restitution of the status of Israel.⁶²

Marcion's pre-canonical New Testament, therefore, made the written counterclaim to the Jewish Torah that while the Torah was about land claim and inheritance from the god who created this world, his was the message of a different hitherto unknown God who had a universal outlook. The god of the canonical New Testament was a petty god who made a special heritage promise to a particular tribe to pass on to them the Land of Israel and to send a Messiah to restore Israel in its heritage claim. Marcion destabilized the old Jewish idea of the divine as being the sole owner of the entire earth and surpassed it by negating any value of soil, land, earth. Unsurprisingly, rivalry land claims between Jews and Christians play no role in Marcion's New Testament. The difference between Marcion's pre-canonical New Testament and the later canonical New Testament in this matter can be seen from another key passage in Paul's Epistle to the Galatians. I will give the version of Marcion's pre-canonical New Testament in the left row, that of the canonical New Testament in the right one:

***Epistle to the Galatians 4⁶³**

22 For it is written (in the Law) that Abraham had two sons, one by the slave woman and the other by the free woman. 23 One by the slave woman, the other by the free woman as the result of a divine promise.

24 These things are being taken figuratively: The (women) represent two testaments. One testament is from Mount Sinai and bears children who are to be born into the synagogue of the Jews according to the Law, into slavery, the other gives birth far above all authority, power and dominion, and every name that is invoked, not only in the present age but also in the one to come, into the holy church, to which we promised ourselves, that is our mother.

Epistle to the Galatians 4

22 For it is written (in the Law) that Abraham had two sons, one by the slave woman and the other by the free woman. 23 His son by the slave woman was born according to the flesh, but his son by the free woman was born as the result of a divine promise.

24 These things are being taken figuratively: The women represent two covenants. One covenant is from Mount Sinai and bears children who are to be slaves: This is Hagar. 25 Now Hagar stands for Mount Sinai in Arabia and corresponds to the present city of Jerusalem, because she is in slavery with her children. 26 But the Jerusalem that is above is free, and she is our mother.

62 Tert., *Adv. Marc.* IV 6,3: *Constituit Marcion alium esse Christum qui Tiberianis temporibus a deo quondam ignoto revelatus sit in salutem omnium gentium, alium qui a deo creatore in restitutionem Iudaici status sit destinatus quandoque venturus. Inter hos magnam et omnem differentiam scindit, quantam inter iustum et bonum, quantam inter legem et evangelium, quantam inter Iudaismum et Christianismum.*

First, one notes that the version from the canonical New Testament is more explicit about names and locations. Compared to the earlier version (left), it adds the slave's name, Hagar, and locates Mount Sinai "in Arabia," making the link to "the present city of Jerusalem." From this physical city of Jerusalem that finds no mention in the pre-canonical version, it distinguishes a Jerusalem "that is above". In contrast, the pre-canonical version speaks of "the holy church" as an entity which is "above all authority, power and dominion, and every name," "present," and "future," and seems to use the figurative example to set freedom in antithesis to slavery, church in antithesis to synagogue, where only Mount Sinai represents the divine law given to Moses there. It becomes even clearer from the text that follows only in the canonical version that it is this version which goes far beyond an antithesis between church and synagogue, which leaves open the question of inheritance of the land of Israel, as it is interested in a transcendent realm, whereas the canonical version harks against present Jerusalem and claims its heritage:

The additional text in the canonical version first provides praise for the "barren woman," hinting at Sarah, but also at the virgin Mary (who only is known from the canonical New Testament, not from the pre-canonical one), that she is more fruitful and has a greater number of offspring than the "desolate woman" who stands for the slave woman. Verse 28 then makes the direct connection between Sarah's son Isaac and "the children of promise," and takes the latter to be the readers of the Epistle. This identification leads to the mention of the continuous in-group mutual power struggle and persecution, ending with the command "to get rid of the slave woman and her son," a call for the extermination of the Jewish siblings. Quite different is the pre-canonical version, which associates the Synagogue with a life under "authority, power and dominion," but without calling for a suspension, rejection, or murdering of its members.

Nevertheless, it was the later version of the soon-to-be canonical New Testament that became and remains the authoritative writing of today's Christianity. It paints the old Jewish heirs as Christ's murderers and enemies of the Christian, as we have seen from the parable of the wicked tenants. It builds on inheritance traditions, known from Lev 25:23-24, and like in Leviticus and other books of the Torah (Exodus, Deuteronomy), in it "God remains the landowner and specifies the required treatment of the

63 See the reconstruction (adopted and adapted) in BeDuhn 2013, 232.

***Epistle to the Galatians 4**

31 Therefore, brothers and sisters, we are not children of the slave woman, but of the free woman.

Epistle to the Galatians 4

31 Therefore, brothers and sisters, we are not children of the slave woman, but of the free woman.

27 For it is written:

'Be glad, barren woman,
you who never bore a child;
shout for joy and cry aloud,
you who were never in labor;
because more are the children of the desolate woman

than of her who has a husband.' (Isa 54,1)

28 Now you, brothers and sisters, like Isaac, are children of promise. 29 At that time the son born according to the flesh persecuted the son born by the power of the Spirit. It is the same now. 30 But what does Scripture say? 'Get rid of the slave woman and her son, for the slave woman's son will never share in the inheritance with the free woman's son.' (Gen 21,10)

31 Therefore, brothers and sisters, we are not children of the slave woman, but of the free woman.

vineyard [...], obedience, and the giving of the first fruits."⁶⁴ Similar to the Torah, in which "the Israelites were directed by God to 'disinherit' the prior inhabitants of the land by force," the parable "depicts the Jewish leaders as those who take a similar action *against God himself*, by virtue of their rejection and execution of his own son. Taking the inheritance away from the son, and therefore from God himself, would be unthinkable, but this sort of alleged, irrational behavior on the part of the Jewish leaders is consistent with Matthew's depiction of them both in Mt 23 and in the Passion narrative. The kingdom, like the land, is still regarded as given (δίδωμι) by God as a gift, but God exercises his right to take the kingdom from false shepherds and give it to those who are faithful."⁶⁵ As can be seen, inheritance claims seem to have been a key element in the separation processes between Christians and Jews

64 Daley 2021, 333.

65 Daley 2021, 333–334.

during the second century, whereby the Christian position towards the Jews hardened and became more hostile.

The comparison above between the two versions and the different attitudes that appear in the pre-canonical version and the canonical version is supported by the varying lexic and semantic in these versions. Whereas the noun “heir” appears frequently in the canonical New Testament, it never appears in Marcion’s pre-canonical New Testament, and the verb “to inherit” is not present here in relation to the separation process either.⁶⁶ The term “heritage” can be found only once in the Marcionite *Epistle to the Laodiceans in addition to the question of the brother’s heritage.⁶⁷ Here, we read that those who are “elected,” “the saints,”⁶⁸ are promised the inheritance of God’s glory through God’s wisdom who acted in Christ. The statement supports what we read in the parable of the wicked tenants, yet without the threat of killing those who are not (or no longer) elected.⁶⁹ It seems to reflect a milieu of Christians in which the prophetic and even more exilic Israelite tradition of God’s inheritance being based on the special relationship between God and his elected had been influential. This view became sharpened in an anti-Jewish form in the later canonical New Testament, as mentioned, identifying Christians with God’s faithful elected who had inherited the traditions and riches of Israel and the Jews, God’s kingdom, and with it “the Earth.” Further clear indicators for this changing relationship are two beatitudes in the Gospel of Matthew, unsurprisingly also missing in *Ev and John.

In Mt we read: “3 Blessed are the poor in spirit, for theirs is the kingdom of heaven [...] 5 Blessed are the meek, for they shall inherit the Earth.”⁷⁰ This expression of self-assurance of God’s heritage is further elaborated on before and after the mid-second century in writings like the Epistle of Barnabas and the works of Justin Martyr.

66 “Heir” can be found 15 times in the canonical NT. The verb “to inherit” can only be found in different contexts in *Gal 5:21 (“envies, drunkenness, orgies, as I predicted: those who do such things will not inherit the kingdom of God”); *1 Cor 15:50 (“I tell you this, brothers: flesh and blood cannot inherit the kingdom of God, the perishable does not inherit the imperishable”).

67 This is the title of the Epistle that is known in a longer version as Paul’s Epistle to the Ephesians from the canonical New Testament.

68 *Laod 1:17-20.

69 A great number of New Testament scholars do no longer regard this Epistle to be by Paul, according to James D. G. Dunn, who speaks of “Post-Pauline authorship” of this Epistle as “a matter of substantial consensus in Pauline scholarship,” (Dunn 1996, 19).

70 Mt 5:3.

The Epistle of Barnabas claims that “their [the Israelites’] testament is that of us too, of course, it is ours, but they have lost it forever,”⁷¹ and Justin in the years after 160 CE addresses his audience as the “true Israelite race,”⁷² pointing to a divine disinheritance of the Jews and a replacement of those heirs by his own group.⁷³ Of course, Daniel Boyarin is right that such antagonistic concepts hardly reflected “an actually existing situation,” but that the writers were “actively participating (on one side of the ‘dialogical’ process) in the very discursive practice that brings it into existence.”⁷⁴ These writers paved the way for a Christian supersessionism, as we can see from the collection of 27 books that was brought together at the time of Irenaeus in the latter third of the second century and which, in the third century, adopted Marcion’s title of ‘the New Testament.’ In it, the term “inheritance” with its cognates becomes central, and with it the debate about the shift of God’s inheritance from the Jews to the followers of Christ.⁷⁵

This second century development explains why, prior to the early third century, no explicit recourse to Leviticus 25:23-24 can be found. The earliest Christian author who makes use of these verses is the famous teacher in the school of Alexandria of the late second and early third century, Clement of Alexandria. He moves away from Philo’s position significantly and is the first Christian author to conceptualize land heritage no longer in terms of tenancy, but rather as a full transfer of ownership. Even though Clement maintains the saying as God’s promise (“the land shall not be sold in perpetuity,” “for the whole land is mine”), he immediately addresses his readers, that the land is also theirs, if they “receive God.”⁷⁶ People, therefore, who have accepted God not only became Christians, but were also co-owners of the land. Leviticus is, according to Clement, “proclaiming the good news to

71 Barn 4.

72 Justin, *Dial.* 135: ἰσραηλιτικὸν τὸ ἀληθινὸν ... γένος, see also *Dial.* 11; see Stern 1985, 122–123.

73 See on this with further literature Dassmann 2006, 180–181.

74 Boyarin 2001, 455.

75 For example, “inheritance” (κληρονομία) is found in Mt 21:38; Mk 12:7, 13; Lk 20:14; Acts 7:5; 20:32; Gal 3:18; Eph 1:14, 18; 5:5; Col 3:24; Heb 9:15; 11:8; 1 Pe 1:4; κληρόνομος is exclusively found in the canonical New Testament, for example, in Lk 20:14, a verse that is missing in *Ev, and in Mt 21:38; Mk 12:7; Rom 4:13, 14; 8:17; Gal 3:29; 4:1, 7; Ti 3:7; Heb 1:2; 6:17; 11:7; Jam 2:5; κληρονομέω, present in Mt 5:5; 19:29; 25:34; Mk 10:17; Lk 10:25; 18:18; Rom 4:14; 8:17; 1 Cor 6:9, 10; 15:50; Gal 3:29; 4:30; 5:21; Ti 3:7; Heb 1:4; 6:12, 17; 12:17; 1 Pe 3:9; Rev 21:7, whereas in the pre-canonical New Testament in *Ev 10:25; 18:18, σχήσω is used instead.

76 Clem. Alex., *Protr.* 12. We can also compare Minucius Felix, who grants that everything belongs to God, while he asks God for earthly possessions, Min. Fel., *Oct.* 36.

those who have believed,” based on the saying: “The saints of the Lord shall inherit the glory of God and His power.”⁷⁷ This promise of inheritance reminds of *Laod/Eph 1:17-20 and also the apocryphal *Apocalypse of Elias*, as indicated by Origen’s *Commentary on Matthew*, and serves Clement to cement a claim of possession, based on the idea of inheritance, that goes beyond Philo.⁷⁸ According to Clement, God bestows on his listeners “the land and the sea and heaven too; and all the living creatures in them.”⁷⁹ The addressees shall only “thirst for the Father.”⁸⁰ While “the bastard, who is a son of perdition, foredoomed to be the slave of mammon, has to buy for money, God assigns to His own son who loves the Father as his own, for whose sake God still works, and to whom alone He promises” the “whole land.”⁸¹ Moreover, “what belongs to friends,” Clement suggests, “be reckoned common property, and man be the friend of God—for through the mediation of the Word has he been made the friend of God—then accordingly all things become man’s, because all things are God’s, and the common property of both the friends, God and man.”⁸²

As we can see, Clement is broadening the scope of divine ownership not only to one of the Word, his Son, but also to those ‘sons’ to whom the Word mediates and passes on the divine power. In this sense, divine property becomes “common property,” an unlimited inheritance. No wonder Clement writes an entire homily—or rather, a tract—on the question of “whether a rich man can be saved.”⁸³ Surely, his philosophical upbringing in the Stoa and him being influenced by Middle Platonism and Jewish Alexandrian philosophy furthered the development of his doctrine of property, wealth, and poverty, but it was the canonical New Testament that pushed it to become one of an inheritance of divine property.⁸⁴ Although he shares with the Stoic Seneca the view that property is ethically ‘indifferent’ and, as we have seen, rather makes a case for the possibility to own property and wealth, he cites the commandment of charity as a decisive criterion for the meaningfulness of property and wealth, based, however, on another idea of personal and private property: “If no one owned anything,” he reasoned, there would also be

77 Clem. Alex., *Protr.* 12.

78 See Orig., *Comm. in Mt.* 27, 9 (250 GCS, Klostermann).

79 Clem. Alex., *Protr.* XII.

80 Clem. Alex., *Protr.* XII.

81 Clem. Alex., *Protr.* XII.

82 Clem. Alex., *Protr.* XII.

83 Clem. Alex., *Quis div. salv.* On the history of the adiaphoron, see Vinzent 1999; 1997.

84 Ritter 1993, 291–300.

no possibility of communal ownership, which would be “in open contrast and contradiction to many [...] beautiful teachings of the Lord.”⁸⁵ To Clement, the neighbor “becomes the point of reference”⁸⁶ that decides on qualifying property, setting the course for future reflections on how to deal with property and the relationship between nature and creatures. Even in the face of the Stoa, and especially the individual-ethical nature of a Seneca, Clement formulates a community orientation that will resonate with others like Cyprian and find expression in Chrysostom.⁸⁷

In the mid-third century, Cyprian takes Clement’s suggestion of divine inheritance further by claiming that “whatever is God’s is by our usurpation communal,” and he then adds that “nobody is exempt from his benefits and gifts, so that the entire human race can equally enjoy divine goodness and generosity.”⁸⁸ Usurpation, however, is stronger than inheritance, it is the grasping of privileges which was a particular problem, discussed during the third and fourth centuries, and Cyprian’s statement shows a mounting confidence in Christians exerting inheritance and ownership claims and rights, for the sake of the common good.⁸⁹ Community, to them, has to come first, and propels Christian communities and churches to become the biggest landowner in the Roman Empire.

It is therefore not surprising that in the nineteenth century, the founder of Marxism and communism, Karl Marx, refers to this Christian teaching, and a long debate ensued whether or not Christian authors supported a critical, left-orientated stance towards ownership and property with a claim to common ownership of land and resources, or whether they opened the door towards early capitalism and colonialism, for which Thomas Aquinas was hailed or criticized.⁹⁰ Without picking up this predominantly twentieth-century debate about the ambiguity of early Christian teaching on nature and property, let us go a little further back in history to see that Clement was not a lone voice.⁹¹

85 Clem. Alex., *Quis div. salv.* 13, 1–2. On the history of the adiaphoron, see Vinzent 1999; 1997.

86 Ritter 1993, 297.

87 On Chrysostom, see Vinzent 2024b.

88 Cypr., *De op. et eleemos* 25 (l. 393–394 Hartel): *Quodcumque Dei est in nostra usurpatione commune est, nec quisquam a beneficiis ejus et muneribus arcetur, quominus omne humanum genus bonitate ac largitate divina aequaliter perfruatur.*

89 See Reinhold 1971.

90 See Marx 1859, 108. Schilling 1930, 57–87.

91 See Künzli 1986, 139–167; Farner 1947, 7–11; Schilling 1940; 1930; 1908.

A few years prior to Clement and Cyprian, another early Christian urban testimony from Rome, the so-called *The Shepherd Hermas/Poimēn tou Herma* (Latin: *Pastor Hermae*), states in its very first parable what property is, indeed, without drawing on the idea of divine property.⁹² His criticism of those who are engaged in acquiring and cultivating fields, enjoying expensive and luxurious displays of their wealth of “buildings and dwelling-chambers,” which Hermas sees as “superfluous,” is based on the Roman lived experience and legal idea that owning property involves compliance with regulations and laws of the local Lord or Lords, as all these properties “are under the power of”⁹³ the Lord of the particular place or country. To Hermas, owning property, therefore, does not run against an ownership claim of a transcendent Lord, but, rather, brings the property owner into a conflict between legal and social obligations inherent in owning property and those legal and ethical demands that are defined through the relationship of the believer to his divine lawgiver. Hermas, therefore, is a good example of a Christian who has embraced the Roman practice of private property and added a theoretical framework to it. Similar views which recognize and acknowledge that land, nature, and property belong to the lord of a country, the king or emperor can also be found in other Christian authors of the second century, such as the anonymous Presbyter of Irenaeus, or later Patristic authors like Pseudo-Macarius.⁹⁴

In sum, the previous pages aimed to show that the Jewish religious and intellectual tradition had developed a legal claim of divine universal ownership of land by registering it within its core legal framework of the Torah. As Sommer has shown for modern times, it was the written-down nature that elevated the divine promise into the hearts and minds of Jewish, and

92 See Rüpke 2004. On the notion of urban religion, see Rüpke–Urciuoli 2021.

93 Herm., *Par.* 1.

94 See Ps.-Macarius, *Hom. Spir.* 15,27. See Iren., *Adv. haer.* IV 30: “For we are all accompanied by some property, moderate or large, which we have gotten out of the Mammon of iniquity. For whence are the houses in which we dwell, and the garments which we put on, and the furniture which we use, and all the rest of what serves us for our daily life, but out of what in our Gentile state we gained by avarice, or what we have received from Gentile parents, or kinsmen, or friends, who acquired it by injustice? Not to say that even now, while we are in the faith, we gain. For who sells, and desires not to gain from the buyer? And who buys, and would not fain be dealt with by the seller to his profit? Again, what person in business does not carry on his business, that so he may get his bread thereby? And how is it with those believers who are in the royal court? Have they not goods from among the things which are Caesar’s, and doth not each one of them according to his ability impart unto such as have not?” (Trans. ANF), see on this Vinzent 2014, 52–55.

later Christian, people. For Israel, it served its imperial agenda to get hold of Palestine, which was inhabited by people with whom Israelites did not identify. As the chosen and elected of their God, the foundational code of the Torah laid down their demands to occupy the land, transferring ownership of the land not to themselves, but to their divine, who, in turn, lent the land to the Israelites. God remained the sole owner, which wiped out the rights of the earlier inhabitants of the land and opened up the possibility for the Israelites to conquer it.

Apparently, up to the second century CE, no Jew, including the first generations of what then became known as Christians, dared to question this theological, social and political construct, and it was only the in-group fight between Jews during the first two centuries CE which led to competitions between messianic strands of Jews (those who pretended Bar Kokhba to be their messiah and the group who took Jesus to be its messiah) which pushed the debate further. This, however, happened through fights, claims, and counterclaims, most effectively supported by the creation of a novel written inheritance claim in the Christian 'New Testament.'⁹⁵

While the first pre-canonical version of this 'New Testament' disentangled the Jewish heritage claim from a link to Palestine and broadened it to a universal claim of the entire Earth—as always present in the Jewish tradition—the later canonical New Testament turned it into a competing and rivalling claim against the Jews. In the wake of this canonical New Testament, Christians did not give up the idea that God was the universal owner of the Earth, but they developed the idea that God had sent his Son, who by God's tenants of his land, the Jews, was killed. As a result, God had transferred his heritage to a new nation, the Christians, who no longer regarded themselves as tenants, but claimed to be co-heirs of God's Son and, because of the Son's death, had become full heirs of him and of his father. They registered themselves in their novel Torah, the New Testament, as full owners of Israel-Palestine and of the entire Earth. The logical consequence of this construct allowed Christians to adopt the Greco-Roman concept of private land ownership and underpin it theologically, but also with regard to a land register, their testament. As Weber rightly saw, it was this construct of inheritance that formed the basis for moving from a partial or limited appropriation of land, from the use of it and from property, to a full, un-

⁹⁵ See for this Vinzent 2022.

restricted, and, if not freely sold and disposed of, eternal ownership—an ownership that would last beyond the owner's grave.

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Land of Priesthoods and Temples: Working and Conceptualizing Divine Property in Mediterranean Antiquity

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Abstract

In many societies around the Mediterranean Sea in the Bronze and Early Iron Ages, land could be owned by culturally constructed beings, namely divinities. Methodologically, this contribution suggests using this historical fact as a lens into a more detailed reconstruction of ancient thinking about landed property in particular and property more generally. The extraordinary ontology of the owners—produced in doing even more than in thinking—produces the cracks in the web of accepted and implicit norms and tacit rules that result in meaningful sources. Looking back into early stages of divine property in Mesopotamian urbanism, this chapter demonstrates that above all, thinking about and pragmatically dealing with scarce space—in crowded cities or crowded necropoleis—produced reflections and rules about some crucial aspects of ancient, and in particular Roman, regimes regulating relationships between humans, objects, and other humans. The findings suggest that transfers of rights to use objects to such ‘special’ persons or ‘meta-persons’, above all land and even immaterial spaces in time, could develop substantial complexity. This was further refined by thinking about and sanctioning infringements of certain exclusivities. ‘Property’ might be usefully employed as a term to broadly bring together such varieties of forms for comparative purposes; as an analytic or classificatory term it did not prove useful.

Keywords: Deities, Urban Space, Transfer of Property, Temporal Property, Human-object Relations

Introduction

In many societies around the Mediterranean Sea in the Bronze and Early Iron Ages, land could be owned by culturally constructed beings, namely divinities.¹ Methodologically, this contribution suggests using this historical fact as a lens into a more detailed reconstruction of ancient thinking about landed property in particular and property more generally. Other chapters in this volume use situations of exchange of property (buying, selling, inheriting) or situations of conflicts about property (contention, arrogation, theft) to explore backgrounds to everyday notions and to tap into textual sources produced in such situations rather than in the everyday usage or taking-for-granted of property. The interest of this chapter is in the extraordinary ontology of the owners, i.e., divine actors, that is expected to produce the cracks in the web of accepted and implicit norms and tacit rules that result in meaningful sources for my investigation.

Who are these beings? Beyond the rare situations of individually experienced or collectively and ritually produced epiphany, divinities are predicated on the one hand with the tension of their supposed power and postulated overwhelming presence across cultures and on the other hand with the contested and ephemeral nature of their socially and situationally acknowledged presence. It is by talking about divinities, by communicating with them, or by claiming that they are represented in specific images or architecturally constructed spaces that such agents are present.² There was no lack of physical representations in ancient societies but their human users often felt the necessity to conceptually distinguish and—in culturally highly variable ways—make distant these very same symbols from the referents, thereby aiming at preserving the otherness, the alterity, the inaccessibility, and the power of those actors.

Any decision about such kinds of physical presence, as is shown by historical data, involved specific constructions of space and relationships to that space, its extent, primary and alternative use, its protection, and change-

1 I am grateful to the members of the SFB 294 “Strukturwandel des Eigentums” and in particular of the historical projects grouped in “Säule A” for their repeated engagement and substantial critique (and improvement) of developing drafts of this text as well as more general discussions, from scholars of Roman Law to anthropologists of contemporary China. Liudmila Rusinova carefully edited the text and the bibliography. I dedicate this article to Richard Gordon on his 80th birthday.

2 Rüpke 2010; 2021.

ability.³ The concept of landed property allows one to set such use into wider comparative horizons. Yet, how is property to be conceived for such an enterprise? Given the specific constituents of divine space, I will not start from the notion of a bundle of rights—as useful as the concept is for later analysis of ramifications—but simply from the notion of a somehow exclusive and long-term relationship.⁴ The focus on space, or even more precisely: on territory,⁵ rather than movable property, two- or three-dimensional images, statues or statuettes, or moveable gifts to the gods⁶ offers, again, a wider comparative perspective beyond the religious realm but above all allows one/us/me to explore the variations of relationships of a class of owners that are not fully distinguishable from their property. To be present in a society, and in particular an urban society, divinities need a spatial presence; whether the latter's upkeep is financed from daily contributions or rent produced by the land owned by that goddess or god is of secondary importance.⁷

Last but not least, looking at the property of the most powerful but also most remote owners, who were hardly able to defend themselves against the weakest thief (even if in some instances the Romans for example insisted on the principle that the gods themselves mete out punishment rather than any human representative), also offers a view also into the power relations behind the immediate subject-object-relation. As we will see in several instances and in the focus on the Roman world in the latter part of this contribution, the cultural investments into effective property protection under such circumstances are large and manifold, tapping into and driving a property regime with far-reaching consequences in a long history of reception of Roman law. Yet, it is three millennia earlier that I start.

A Proto-History of Divine Property

Any concept of divine property needs a concept of the divine or divinities that can arrogate or exert rights associated with property. Furthermore, it

3 Rüpke 2006; 2013; Lafond–Michel 2016; Arnhold–Maier–Rüpke 2018.

4 See e.g., Bannon 2017.

5 Lévy 2013b.

6 For the concept, see van Straten 1981; Linders–Nordquist 1987; Rüpke 2018.

7 Rüpke 2022b.

needs a concept of property that predicates an exclusivity in the treatment of stuff—to be very, very general. Latin *proper* means a close relationship between a person and a thing or between two things (as Latin *prope* means simply: nearby, close to). Such a treatment then would be different from how such stuff is usually treated. Such concepts need not be explicit, they could just be implied in practices.

If this is agreed, it is easy to identify the region and period that identifiably witnessed divine property for the first time in human history. It was in Mesopotamian urbanization, probably during the fourth millennium BCE. Suddenly blue-eyed gods arrogated rights and possibilities to collect, store, work, and sell stuff or use it as payment for services rendered, and to own land and tools necessary in those production cycles. The blue-eyed-ness of those gods is not my white-supremacist invention or some pseudo-Aryan myth but an observation of the British archaeologist David Wengrow about the role of lapis-lazuli acquired in long-distance-trade in the manufacturing of divine imagines in the emergent urban settlements of the West Asian and North African early civilizations.⁸ This quickly indicates the complexities of my easy identification. From an economic perspective, the rise of gods and urbanization were co-evolving, not distinct processes that happen to cross-fertilize. And most certainly to account for these complexities I need to stop making gods subjects of historical action, that is, I need to exchange religious language for/with history-of-religion language.

The rise of cities between Euphrates and Tigris is highly debated by specialists and it is beyond my competence to speak authoritatively on any details. A set of material products and social practices addressed as Ubaid culture is correlated with settlements and networks of exchange of growing size already in the fifth millennium. The decisive factors of the complex and—in arid North and wet South Mesopotamia—regionally diverse processes have been differently identified. Technological advances in ploughing and sowing are part of it,⁹ massive growth of exchange networks¹⁰ (not least enabled by successful managing of donkeys)¹¹ also. A rapid division of labor soon reflected in endless lists of different professions went hand in hand with the establishment of settlement hierarchies.¹² The threshold for becoming a city

8 Wengrow 2010.

9 Liverani 2006.

10 Algaze et al. 1989.

11 Van de Mierop 2016, 66.

12 See Van de Mierop 1992; 1999.

was not some number or density of inhabitants but a settlement's urbaneness or urbanity¹³—that is, its engagement in marking out the site as special, as different from other settlements, not least by towering temples and only much later massive walls overlooked by these temples—both massive labor investments. These temples were not the famous ziggurats that are often associated with these developments—important, but again definitively later—but, rather, tripartite buildings structurally similar to the buildings of chiefs in Ubaid villages.

Mesopotamian temples were not necessarily in the center of the settlements thus turned into urban ones. They were, however, walled off and associated with storage rooms, and occasionally even production sites—space for weaving at Uruk, for example—and administrative space. It is in their complexity that they go beyond simple meeting rooms or shelters for the co-evolving images. It is in their complexity that their divine referents started to develop a proper relationship to what I have called 'stuff' above.

When documents allow us to look into details—that is, around 3000 BCE (and hence probably a millennium after the development of urbanity)—these temples behaved like proprietors in a contemporary sense. Land was rented out, staff was hired and paid by crop shares or other goods, cereals and textiles were stored and sold. Administrators of these complexes seem to have had priestly, that is, also permanent ritual roles, but they stemmed from successful noble families.¹⁴ All in all, the share of these enterprises in the overall economy was astonishingly small—either symbolic or merely triggering of larger developments in key areas by establishing and legitimizing conventional exchange-relations between different objects (most importantly grain) and by creating trust between people that had to rely on mutual promises. Such a temple economy was no temple monopoly-capitalism.¹⁵

The house owner (and this is the contemporaries' conception of these sites) was not some invisible power but, rather, a god of visible shape—not flesh and blood, but stone and gold, incorporating and presenting luxury goods of foreign origin or elaborated, highly processed design. Somebody with a face, a name, and a gender, male or female—and yet, someone fundamentally different from humans.

13 Rau 2020; Rüpke–Urciuoli 2023.

14 Crawford 2015, 94; Zettler 1992, 210.

15 See earlier positions, e.g., Schneider 1920; Gelb 1979.

People had had the obligation to care and usufruct of things before. No doubt, there were habitative relations between families and plots of land and differences in size. There must have been differences in occupations and the procedures to allot subsistence to such different people. I have no ideological restriction to loosely use the notion of ‘property rights’¹⁶ to describe such relationships, the details of which we do not know. Long-distance trade and multiple exchange presuppose some such rights. Yet, I would like to stress that the conceptualization of such practices reached a new level of abstraction when attributed to a power that is represented by the coagulation of the probably most important sources of prestige—foreign luxury materials—and its architectural articulation as a closed and basically inaccessible space, as property administered by a well-trusted but also self-controlling human quickly engaging in elaborate documentation. Gods are good to think with, right from the start. Yet, it is the much later, ancient Roman period, on which my contribution will focus.

Gods and Roman Property Regimes

The divine members of Roman society—if I may address divinities in such a way—were present in physical space.¹⁷ She or he (a gendered conception was obligatory, if not evaded by nebulous duals or plurals like the deity or deities *Pales* or *Di manes*, the ‘good gods of one individual’) had a place of her or his own within the boundaries of Roman territory.¹⁸ The gods’ property rights complicated the fundamental difference between public space—that is, territory owned by the community as a whole (a *locus publicus*)—and private space owned by a human or corporate (juridical) person (a *locus privatus*). It was easy to give something piously to the gods, but far more problematic to take something piously away from them. Only elaborate rituals enabled the transferal of cultic space from one location to another. Stories about the unmovable god Terminus, who refused to make room for the new Capitoline temple and had to be integrated into the new structure, demonstrated the fact that a god could deny his consent to be moved, to give up his own

¹⁶ See Jakob 2015.

¹⁷ See Scheid 1998.

¹⁸ On the limits of Rome, see below. The following section is based on Rüpke 2006.

territory, even if he was given adequate compensation.¹⁹ Thus, the principle of the immobility of the borderlines of private property, marked by *termini* (“boundary stones”) that were venerated at the festival of the Terminalia (on the 23rd of February), was secured. Stories of *evocare deos*, the “calling out of deities” of besieged cities by promising them a new cult place in Rome, such as evoking the divinity Juno during the siege of Veii, demonstrated the possibility of such a move. Of course, the outcome was conceptualized as depending on divine decisions; Juno accepted the invitation.²⁰ These decisions were independent of the usual, the Veian, worshipers’ consent. I will come back to this negative side of reflecting on property, that is, the negation of such attributes, later in the text.

Only ‘public’ space—space not owned by individuals respective families, that is, property of and indeed part of the *res publica* (“the common thing”)—could be made *sacer* (“fully sacralized”), that is turned into divine property, by the rite of *consecratio* (“consecration”).²¹ The decision to create a public burden entailing expenses of upkeep and rituals was not left to individuals but could only be taken by the Senate and performed by the leading magistrates. At the same time, the change in the status of an area was not supposed to infringe on private property rights. When Cicero was exiled, his enemy Clodius consecrated part of his urban property to permanently disown him, but on his return, Cicero was successful in demonstrating the illegal character of this action and was reinstated.²² Not every *locus sacer* (“divine property”) was transformed into a *templum*, a special type of space for ritual performances. The latter Latin term did not designate a building; a temple building was called an *aedis*, simply “a house,” specified by a name of a divinity and specifying that divinity by the very location.²³ Instead, an *augur*, a particular type of public priest (see below), established a rectangular space as a *templum* through special rituals of designation and declaration. Thus, a theatre for observations of omens (*omina*) produced by birds was created, in other words, divinatory rather than divine space. The choice of the place was a human decision in both cases. Only exceptionally would a god directly claim a piece of land. That might happen by a lightning strike

19 Livy 1.55.3-4.

20 Livy 5.21.3, 22.3-7.

21 For details see Rüpke 2019b.

22 Cic. *Dom.* 51. 62; *On the answer of the haruspices/De haruspicum responso*, see Rüpke 2019b; Begemann 2015.

23 Rüpke 2023a.

leaving a visible mark in the soil. The strip of land would be marked off by a miniature fence or box-like structure bearing the inscription *fulgur conditum* (“lightning covered”)²⁴; this was called a *puteal* in Latin. The owner would hardly lose more than a square foot.

Private religious feelings could also lead to designating a larger or smaller place for the veneration of a particular god or group of gods. That would establish a *sacrarium*, something sacralized to a certain extent, but not divine property, not a *locus sacer*, in the technical sense. Such a place was easily transferable and convertible back to secular uses. Normally, the problem would not occur. Household shrines, if present at all in the overcrowded apartments of many people, were movable altars or cupboards or frequently wall paintings. They were only minimally articulated in architecture.²⁵ More permanent places were looked for to deal with the post-mortal personalities of ancestors. The burial of corpses or urns created *loca religiosa* (“places of awe”). Romans living in urban spaces were keen to limit burning and burial to places outside the city proper. Exceptions were made only to honor outstanding public figures.²⁶ Property rights were not to be infringed by a burial, nor were burial places to be violated by using the surrounding area for agriculture or new burials, as we will see below. The concern to formulate effective sanctions or assure property rights resulted in several elaborate funerary inscriptions from imperial times spelling out such provisions (see below.)

The seemingly so clear separation between *sacer* and *religious* (between “fully sacralized and owned by the divine” and “to some extent sacralized and object of religious scruples”) is, however, undermined by the narrow definition of *ager publicus* (“public land”) as the basis for consecrations: As this quality of land did not exist in the provinces,²⁷ generally speaking the distinction existed only in analogy there.²⁸ In this sense, any generalizations in the sources and of their interpretation is marred already in the Roman period by the struggle of Roman jurisprudence to come to grips with the wide varieties of local norms (that were in principle accepted) in cases of conflicts and involvement by the principle of analogy.²⁹

24 In general, Belayche 2011; Bonnet et al. 2017.

25 Bakker 1994.

26 Cic. *Leg.* 2.58; Plut. *Quaest. Rom.* 79; Servius, *ad Aen.* 11.206.

27 Plin. *Ep.* 10.48-9.

28 Gai. *Inst.* 2.5-7; Ulpian in *Digests* 1.8.9, pr-1.

29 Ando 2011; 2014.

Physical space was not the only form of divine property. The most important form of communication with the gods, the sacrifice, was a form of transfer of objects since it entailed a gift. Depending on what was sacrificed, all the problems and precautions taken in the case of property transfer were also relevant to the objects involved. Time was another dimension of sharing and separating, but before addressing this specific form of immaterial property at the end of the chapter, we need to deal with spatial constellations.

Places owned by gods and dedicated to their veneration could assume different forms. Ideally, a plot of forest or open land (*lucus*) could serve as a place for divine presence (see the chapter by Sofia Bianchi Mancini). Wherever identifiable, at least minimal structures, such as an altar, for example, would mark such a place, serve the cult, and perhaps identify the divine owner. Such places were not restricted to the countryside. The *Volcanal*, a place dedicated to the cult of the god Volcanus (already identified by the sixth century with the Greek Hephaistos), was situated in the *Forum Romanum*, close to the Curia and the Comitium in the very center of an area closely associated with the Romans' identity as a political community. Varro regretted the disappearance of many groves in the growing first-century capital; they were objects of insufficient public interest and of insufficient public sanctions of private greed, manifested in houses that occupied ever more space within the city.³⁰

Roofed structures for the gods could likewise take different forms. An important cult place of Mars was housed by the Regia and can probably be identified with the trapezoid building on the Via Sacra close to the house of the Vestals. The temple of Vesta, the *aedes Vestae*, was a circular building that did not qualify as *templum*. The standard form of the rectangular, house-like temple on a high platform is exemplified by the Capitoline temple of Jupiter overlooking the Forum as well as by many cult buildings in the Forum proper. It is—like Mesopotamian temples—the very elevation on a platform that distinguishes houses of the divine from houses of human owners, both called *é* in Sumerian and *aedes* in Latin.

Temples were important in Rome's symbolic economy.³¹ Large temple buildings were a highly visible means of demonstrating a city's piety, power, and wealth to foreigners. The beginning of the republic is linked to the dedication of the exceptionally large temple of Jupiter Optimus Maximus

³⁰ Cancik 1985.

³¹ For the concept, Rüpke 2022a.

on the Capitoline hill.³² It is, however, difficult to determine and hotly debated whether and how the exceptional size of the first Capitoline temple, rivalling the religious centers of the contemporary Greek world, relates to the economic and military power of the magnificent city of the Etruscan kings whom the Romans had just expelled. The last decades of the second century BCE also saw enormous building projects in the cities surrounding Rome, for example the monumental façade of the temple of Fortuna at Praeneste or the enormous temple just outside of Tusculum.³³ In this way, the rivals of Rome asserted their independent civic identity and wealth. And the impression of late Republican Rome itself on visitors, as expressed in contemporary texts, was not least a product of its magnificent, towering temples. In his first Catilinarian speech, Cicero reminds his fellow citizens of the gods' presence by pointing to the temples around the Forum.³⁴

And yet, the Rome of gold and marble is an Augustan, and, even more, Flavian, creation.³⁵ Despite an impressive series of temples built from the late fourth century BCE onwards, many temples seem to have been in need of repair by the time when C. Iulius divi filius Caesar Octavianus (soon to become Augustus) encouraged his generals to rebuild and rededicate urban temples (on dates different from their initial dedications).³⁶ Between 302, when a temple to Salus, which had been vowed in 311, was dedicated on the Quirinal hill, and 44, when Augustus' father, Julius Caesar was honored with the decision to build a temple to *Clementia Caesaris*, at least seventy-six temples were erected in Rome. The list, which refutes the idea of a thorough Hellenization of Roman religion from the late-third century onwards, is restricted to public temples—that is, temples built on public land, dedicated by ordinary magistrates or those appointed especially for this purpose such as *duoviri aedibus dedicandis* (“a two-men commission for dedicating a temple”) and maintained at public expense. The actual building costs, however, were usually not paid for by the normal budget of the Roman state, with its extremely limited administrative machinery.

The money to finance such extraordinary projects came from extraordinary sources and individual initiatives. In many cases, temples were vowed by generals on the battlefield. Depending on family traditions, location,

32 Livy 2.8.6-8.

33 Coarelli 1987; Quilici—Quilici Gigli 1995.

34 Cic. *Cat.* 1.33.

35 Boyle—Dominik 2003.

36 Gros 1976.

situation, perhaps even individual predilections—reasons are normally not given—a military leader facing a difficult situation such as the flight of his own troops or simply expressing gratitude for an overwhelming victory named a deity to which he promised a temple and cult in Rome. The booty from his conquest offered the means of financing its construction. However, such building projects were discussed by the Senate, perhaps modified by priestly interventions, and, finally, land had to be allotted. In the end, a period of sometimes more than a decade could elapse before the dedication of the finished building could be performed and the religious obligation of the vow thereby be discharged, either by the magistrate who vowed it or his son, by someone in public office at the time, or by someone specially appointed by the Senate to do so.³⁷

A man who founded a temple associated with his own achievement, either on the battlefield or in restoring public order by fining somebody, acquired prestige. Roman historians, especially the annalists represented by Livy, who is probably the single-most important source for the history of Republican religion, commemorated victorious generals and their vows. Inscriptions on temple buildings, which are only occasionally preserved for Republican times,³⁸ would have named the dedicator, e.g., Gnaeus Flavius for the shrine of Concordia.³⁹ Public memory, however, stressed the name of the deity and the day of the dedication. The temple known as *Isis Metellina*, which was built for the goddess Isis by a member of the Metellus family, was an exception in integrating the name of the sponsor as part of the divine name tag.

There were also other ways to honor a god. Public games, which involved a large portion of the Roman populace, commemorated a victory much more directly and immediately. Such alternatives were often preferred. The long process of decision-making and construction that temples required and that involved multiple parties resulted in a symbol of communal coherence and piety much more than one of individual achievement and excellence, even if individual initiative provided the starting point.⁴⁰ Long-term maintenance of the temple, however, posed problems. Before Augustus, the prestige resulting from restoring temples was minimal and seems to have been sought

37 Orlin 1997; Rüpke 2019a.

38 E.g., *ILS* 20 (= *CIL* VI, 331).

39 Plin. *HN*. 33.19, cf. Livy 9.46.6-7.

40 Orlin 1997, 188–190.

only for prominent buildings. Public attention was attracted instead by ever-larger building complexes, such as the theatre of Pompey or Caesar's *Forum Iulium*.⁴¹

A Brief Excursus: Revenues From Divine Land-Owning

To give even more flesh to the economic dimension of what landowning by divine proprietors might imply, it is important to take a quick look at 'exchange rates'. Without doubt, the revenue from leased land would form the major source of income for annually recurring basic costs. Roman expectation of a net capital revenue of this type amounted to 4 to 6 percent.⁴² For the annual minimal costs of 400,000 to 500,000 Roman sesterces of a major priesthood, this association (*collegium*) would have needed minimal capital of about ten million sesterces. An *iugerum*—that is, two-thirds of an acre—of good Italian land would have cost about 1,000 sesterces. The minimum capital, then, represents some 7,000 acres of land. To finance the war against Mithridates, the late Republican general Sulla sold land belonging to the priesthoods for some thirty-six million sesterces.⁴³ At contemporary prices, this would have represented more than 50,000 acres, thus illustrating the margin of security inherent in this system of financing. But how would such a reverse operation be judged? For some, war excuses everything, but taking away divine property under normal conditions induced sanctions.⁴⁴

Protecting Divine Property in Roman Law

After looking at institutional realities in Rome and its temples' land-holdings, I will switch back to questions of conceptualization and focus on the dark side—on the failure to protect divine property established along the

41 On the latter Rüpke 2019c.

42 Shatzman 1975, 50; Wesch-Klein 1990, 22; see in detail Duncan-Jones 1982, 33 ff. and 348 ff.

43 App. *Mith.* 84.

44 For further details, Rüpke 2023b.

lines described so far.⁴⁵ This allows for a review of the categories identified so far from the point of view of constituting such places, now switching to the point of view of infringement of such culturally-produced special spaces and objects. The semantics of the Latin concept of sacrilege, point to a specific focus on what was seen as misbehavior against gods. Surprisingly, these semantics focus on property relationships. The etymology of the words *sacri-legus* and *sacrilegium* is entirely transparent: *sacrilegium* (“taking (away) what is holy”) described the theft of the sacral and qualified the evildoer as *sacri-legus*.⁴⁶ The term in this technical sense can be found throughout the entire Roman legal tradition. In other genres, it takes on a further sense, becoming a term of abuse used to describe the extreme of morally unacceptable behavior. This sense of the word is already attested in Plautus, and thus since the earliest literary texts.⁴⁷ In the Roman legal tradition, this metaphorical usage is first attested in the religiously-charged semantics of Tetrarchic laws since the end of the third century CE; it is then extended increasingly after the three hundred seventies.⁴⁸ In 386 CE, a simple breach of Sunday observance suffices to provoke usage of the term.⁴⁹

The persistence of the theme, which had already occupied a prominent place in the brief list in Cicero’s *Laws/De legibus*, is remarkable.⁵⁰ It is most acutely and durably delimited in property law.⁵¹ Here, punishment for breaches of norms is declared not to be the affair of the gods; sacrilege is subject to sanctions under criminal law. But the divine property, thus protected, is precisely demarcated. It comprises property of the gods forming part of the public realm—sacralized spaces that have been established by public dedication (*consecratio*, “sacralization by transfer of property rights to the divine”), and the objects they contain. Only they qualify as *sacer* in the technical sense, and it is the community that bears responsibility for keeping them in this status of divine property, as defined at the beginning of this chapter.⁵²

45 Following and summarizing the findings presented in Rüpke 2016.

46 Paulus in *Digests/Digestae* 48.13.11.

47 Plaut. *Rud.* 706; *Pseud.* 363; see Ter. *Ad.* 304.

48 *Collationes* 6.4 from *Codex Gregorianus* 5: *De nuptiis*; Delmaire 2005, 66.

49 *Cod. Theod.* 2.8.18.

50 Cic. *Leg.* 2.22.

51 *Digests* 47.12.

52 See Scheid 1981.

Yet, how was non-public religion treated? The law with respect to graves provides an important answer. From the earliest legal texts onward, it is addressed more widely and in a continuous manner. A grave established by individual resolve and in compliance with the law of property acquired a religious character as soon as it became the resting place of a body or mortal remains. Terminologically, it was then distinguished by the term *religious*, which has been translated above as a “place of awe”. Against the background of a continual discourse against lavish graves, these laws were not directed primarily against the theft of movable property (grave robbery), but, rather, against alterations to the property ‘on the ground’—in other words, change of purpose by commercial use or (and this must have formed the primary concern) further use by an unrelated individual as a place of burial. For all the talk of the collective character of the divinized ancestor addressed by the plural *Di Manes*,⁵³ the grave was assigned to a deceased individual.

The analogy with sacrilege is clear, as is the clear gradation in the severity of sanction in comparison with offences against divine property qualified as *sacer*. Assimilation to the field of the religious was assured through the agency of priests—more precisely, the pontiffs. In Cicero’s systematization and in a very few grave inscriptions, they were even assigned legal supervision over both spheres.⁵⁴

Reference to graves does not fully answer the questions arising from the definition of sacrilege. This was also clear to jurists, who, in discussing the law relating to graves, addressed the further area of privately-constituted cult structures. But enhancement of status by the presence of the dead body did not apply here. To come back to the *sacraria*, cult structures erected on private land or in the home, did not enjoy protection of their legal status as *religiosus*; they could easily be ‘freed’ of that status.⁵⁵ The same *sacra* whose continuity was the subject of juridical discourse were thus, in principle, conceived of as mobile; their status depended on their longevity in family tradition, not on their presence in the same location.

The intrinsic quality of mobility did not, however, distinguish private from public cults. The latter, too, were in principle regarded as mobile; their complete translocation was as conceivable in Virgil’s tales of the flight from Troy as in Camillus’s contemporary thought experiment with respect to

53 Excellent, Bettini 1986.

54 Cic. *Leg.* 2.55; *ILS* 1782 (= *CIL* VI, 8954); Plin. *Ep.* 10.68–69, see Van Haepereen 2002, 308–333.

55 Ulpian, *Digests* 1.8.9.2; cf. Ando 2008, 112–113 and Aelius Gallus in Festus, p. 424 Lindsay.

the proposed removal to Veii after the Gaulish assault, as related by Livy.⁵⁶ Approval of the gods asked to leave their traditional place was invoked in the ritual of evoking gods; Terminus, the god of boundary stones who, when called upon, refused his approval, is the exception introduced for the sake of the narrative.⁵⁷ But there is no doubt that boundary stones were also mobile following a legal change of ownership; here, too, it is the law relating to land ownership that sanctions religious deviance consisting of digging up boundary stones.⁵⁸ Graves, too, were effectively mobile; in the absence of a monument, memory of the site would scarcely survive a generation's span of some twenty years.

The absence or presence of legal sanctions was not without consequences. Where sanctions existed, they required that boundaries be clearly marked in a way that went far beyond the architectural marking of a focal center, whether a temple building or a funerary inscription. While the sacral character of a private location was primarily visible by virtue of its religious use in sacral practices, boundary markings defined a public space as sacred even when it was not being used as such.⁵⁹ This was still the core of the legal problem in the fourth century CE: Private cult locations were identified not based on architectural features, but, rather, by the presence of traces of rituals performed on that spot.⁶⁰ Conversely, locations and practices might be separated: Constantine permitted the new construction of a temple of the Gens Flavia (from which his family was descended) at Hispellum so long as it did not lead to illegitimate practices, or *superstitio* ("superstitions").⁶¹

Temporal Property

Gods could have territorial property. Some of them had temporal property, too. During the Republic, the term *feriae* signaled a god's ownership of a particular day. Jupiter owned all the Ides—the 13th or 15th of each month, and Mars owned the 1st and 23rd of March and other days, too, according to

56 Livy 5.50.4; Cancik 2006; Barchiesi 2006; Ando 2008, 110–112.

57 Livy 1.55.4; Dion. Hal. *Ant. Rom.* 3.69.3–6; Rüpke 2019a, 163–165; Ando 2008, 114.

58 *Digests* 47.21 for the sanctions.

59 Festus p. 476.26–29 Lindsay on the marking of divinatory space by metal stars.

60 *Cod. Theod.* 16.10.12.

61 *CIL X*, 5265.

the *Fasti Praenestini*.⁶² However, no deity was permitted to own permanently more than one day in succession. To avoid conflicts of ownership, at least one free day usually intervened between two *feriae*, replicating the spatial principle of a measurable border between divine territories.⁶³

How could divine ownership of time be marked? Just as the usual ritual activity on such a day would be spatially limited, the god's temporal ownership was likewise negatively expressed: *Feriae* were not available for many human activities. On the one hand, there were restrictions on agricultural activities. Cato the Elder discussed in his second-century treatise *On Agriculture/De agricultura* how an intelligent farmer could use such days without breaching religious bans.⁶⁴ But because they lacked a general concept of labor, a general ban on labor did not occur to the religious specialists. Public activities, too, were limited: No popular assemblies could be held, and no juridical activities involving magistrates could be performed. Hence, the occurrence of annual *feriae* or the short-term announcement of extraordinary *feriae* for the expiation of prodigies could severely interrupt or halt processes of decision-making. The legitimate meeting of the Senate, however, was not subject to these bans in the centuries of the Republic and the early Empire. As in the spatial realm, working out the details of divine property was a business involving power relations and pragmatism.

Conclusions

Given the (culturally construed) fact that you could not renegotiate contracts with the gods, thinking theoretically about and dealing pragmatically with that scarce space—in crowded cities or crowded necropoleis—produced reflections and rules about some crucial aspects of ancient, and in particular, Roman, regimes regulating relationships between humans, objects, and other humans. This chapter could not demonstrate (and did not intend to demonstrate) that the concept of property aroused out of the transferal not only of agency but also 'stuff' to the culturally produced agents called 'divinities' or similar beings. What became evident is, however, that transfers of

⁶² *InscrIt* XIII, 2, 123.

⁶³ Rüpke 1995, 492–522, esp. 493.

⁶⁴ Cato, *Agr.* 2.4, 138; Columnella 2.21; Servius, *ad G.* 1.268–272.

rights to use objects—above all, land—and even immaterial spaces in time, could develop substantial complexity in their transferal to such special persons or meta-persons. This was further refined by thinking about and sanctioning infringements on certain exclusivities. ‘Property’ might be usefully employed as a term to broadly bring together such varieties of forms for comparative purposes. As an analytic or classificatory term, it did not prove useful.

This contribution did not aim at reconstructing this specifically religious factor in a larger history of Roman concepts of relating to land. Rather, it pointed to several constellations and situational solutions to upcoming problems. Further work might build on that in very different directions. This might start from interest in the norms thus produced. It could include a deeper interest in the cooperation from the different social agents involved in these processes and the more general question of the social and cultural function of self-world relationships conceptualized as ‘landed property’ in a world of overlapping spaces and co-spatialities of usage.⁶⁵ From a perspective of the history of Roman concepts of the divine, the review presented here underlines the bi-directionality of the relationship between agents and objects. The objects become agents in establishing and stabilizing the divine agents; it is land as built-up space that represents, that is to say, materializes, the divine in humanly-used space, and it is land as capital that allows for its upkeep and further functioning. Gods and goddesses depend on it as *vice versa*.

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God, Ownership, and Economic Language in the Second Century CE: Irenaeus of Lyon's *Against Heresies* as a Case Study

Maria Dell'Isola

Abstract

The present paper attempts to discuss the relationship between Christians and the divine counterpart in the second century of Christianity. By focusing on selected passages from Irenaeus of Lyon's *Against Heresies/Adversus Haereses*, I aim to identify a set of key features that can define the mutual relationship between Christians and God within the wider framework of the representation of Christians as members of a household where the only administrator is God. Against this theoretical background, analysis of the relationship between divine and human agents within the context of God's ownership of the land and the entire material world will focus primarily on the commercialization of theological language in Irenaeus of Lyon's *Against Heresies*. Furthermore, I will connect the economic vocabulary used by Irenaeus to the concept of *divine economy* as conceived and described by Irenaeus himself. Throughout his *Against Heresies*, Irenaeus frequently employs the term *economy* with reference to both the divine creation process of the material world and the rules and dispositions imposed by God within his regulatory intervention. This shows that the Christian belief in God's authority over the land was perceived in terms of economic rules and regulations, as a contractual relationship between divine and human agents.

Keywords: Irenaeus of Lyon, Christianity, Divine Economy

Introduction

This paper discusses specific issues of the relationship between Christians and the divine counterpart, choosing the second century as a highly representative framework in this regard, given its nature as a period of incubation, development, and refinement of Christian theology—a theology that would only unequivocally establish itself in the subsequent centuries. By focusing on selected passages from Irenaeus of Lyon's *Against Heresies*—one of the most influential theological treatises of early Christianity, due to its anti-heretical stance—I aim to identify a set of key features that can define the relationship between Christians and God against the wider background of the literary and religious representation of Christians themselves as members of a household where the only administrator is God. This premise is further stressed and justified by the well-established Hebrew and subsequent Christian tradition of God conceived and represented as the only creator of the entire material world. In this sense, He is the final owner of the Earth along with everything it contains, and this firmly establishes his unparalleled authority over the land.¹ Therefore, the scripturally established belief that God exercises ownership of the land and those who inhabit it—as a result of the fact that he was solely responsible for its creation—provides the overarching theoretical premise to contextualize and interpret the notion of divine property.

A reference to ownership necessarily entails a reference to the economic dimension which traditionally regulates processes of acquisition or property claims. This implication inevitably requires a focus on material data which can concretely prove transfers of property. However, the presence of gods as active participants in economic relationships does not undermine the possibility of defining a form of divine property as long as it can be proved—at least in terms of literary representation—that human actors truly perceived the divine counterpart as actively participating in processes of transfer of material and non-material goods. Against this background, analysis of the mutual relationship between divine and human agents within the broader

¹ On this, see, for instance, Irenaeus, *Against Heresies* 3,24,2; 3,25,1; 4,2,5; 4,20,1. For the Latin text (and Greek original, where preserved) of Irenaeus's *Against Heresies* (from now on, in the footnotes, in the abbreviated form: Iren. *AH*), I refer here to Rousseau-Hemmerdinger-Doutreleau et al. 1965. The English translation is from Roberts-Donaldson 1903. On this topic, see Markus Vinzent in this volume.

framework of God's ownership of the land and the entire material world will focus mainly on the commercialization of theological language in Irenaeus of Lyon's *Against Heresies*.

Jennifer A. Quigley investigates in a recent book how early Christ-followers used financial language to articulate and imagine their relationship to the divine.² By focusing mainly on Paul's *Letter to the Philippians/Pros Philippēsiōs* and reading it alongside ancient material evidence—including evidence of financial practices found in contracts, dedications, and other transactions—Quigley analyzes the intersections of religion and economy in early Christianity within the broader social and material contexts of the ancient Greco-Roman world. Quigley specifically focuses on how the divine counterpart was understood as an active participant in a variety of financial transactions, such as land management. This was a religious practice that was rooted in Greek and Roman religion where, as Jörg Rüpke states, specific forms of communication with the gods (sacrifice, for instance) entailed a form of transfer of property.³

Taking a cue from Quigley's theoretical approach, I will focus on the economic language used by early Christian authors in late second-century Christianity. The commercialization of language was a reflection of the emergence of the issue of wealth and poverty in the late second century.⁴ As Vinzent states, the centrality of such a relationship in the context of Christian teaching is reflected in the writings of several authors, as Clement of Alexandria's *Who is the rich man that shall be saved?/Tis ho sōzomenos plousios*,⁵ for instance, unequivocally attests.⁶ Against this theoretical background, I will attempt to contextualize the notion of divine property by specifically referring to the description of the Christian community as a sacred space where communication with the divine is performed through a series of practices, such as offerings, and God is portrayed as the owner of the land deemed sacred and the administrator of his household.⁷

This analysis of these practices includes a specific focus on the perception and construction of Christian community as a building which serves as God's house within the boundaries of land deemed sacred by virtue of

2 Quigley 2021.

3 See Rüpke 2006, 218.

4 On this, see Avila 1983; Garnsey 2007; Hays 2011; Rhee 2012.

5 On Clement of Alexandria, see Hildebrand 2015.

6 See Vinzent 2022, 339–351.

7 On this, see Iren. *AH* 4,18,6 (quoted in Vinzent 2022, 342).

God's presence. The image of God's house as divine property is built upon traditional language in which a prominent role is attributed to the semantic field of land, material construction, architecture, foundations, household, walls, and columns.⁸ Along these lines, I will analyze the use of a similar vocabulary—conceived in terms of reception and recontextualization of previous images—in Irenaeus's *Against Heresies*. I will address a series of passages in which God is portrayed as the owner of all things created. In this context, Irenaeus's *Against Heresies* 4,36,1-2, with its focus on God as the master of the household and on his administration of the land, serves as a highly representative example. The case studies will then be further explored and contextualized against the broader theoretical background of the *divine economy* as conceived and described by Irenaeus himself.

By 'divine economy,' Irenaeus refers to God's divine enterprise, which is to distribute or dispense. The economic language used to refer to God's plan of salvation mainly derives from the original meaning of *oikonomia*, a Greek term referring to the management of a household, in connection with the sale of land or purchase or rental of property, as aptly demonstrated by Klaus-Peter Reumann.⁹ More importantly, by referring to a papyrus text of the late second century CE, Reumann also shows that *oikonomia* was used for *diathēkē*, a term clearly alluding to the last will and testament of a Roman citizen. This attests—Reumann concludes—that "*oikonomia* was being used for *diathēkē* in every-day Greek at precisely the time Irenaeus was employing *oikonomia* to refer to the covenants (*diathēkai*), testaments or legal arrangements in a will, by God or Christ, to distribute goods to men. Theological terminology followed existing secular usage."¹⁰

By focusing on this economic framework and the use of economic language, I will attempt to open up new possibilities for understanding religious agency within the theory of divine property. Irenaeus's concept of divine economy is a highly significant case. In fact, throughout *Against Heresies*, he frequently employs the term 'economy' with reference to both the divine creation process of the material world and the rules and dispositions observed and imposed by God within his regulatory intervention. This proves that the entire Christian belief of God's authority over the land along with

8 See in this regard, for instance, *Ephesians* 2,19-22; *1 Corinthians* 3,9-17; *1 Timothy* 3,15.

9 See Reumann 1959. See also Leshem 2013; 2020.

10 Reumann 1959, 289.

everything it contains was perceived in terms of economic rules and regulations, as a contractual relationship between divine and human agents.

The Interplay Between Religion and Economy in Early Christianity

As previously stated, Quigley published a monograph in 2021 based entirely on the theoretical category of theo-economies in early Christianity, meaning by this term the interpretation of ancient economy—in terms of material evidence, including documentary and epigraphic sources—within a religious studies framework. Her interest in this approach derives primarily from the observation that classicists, economic historians, and archaeologists have not yet paid much attention to the evidence that gods were understood as actants in the economy. Yet a closer look at the available material evidence (not only literary, but also documentary and epigraphic evidence) reveals that ancient economy can be viewed and interpreted within a religious studies framework.¹¹ Quigley focuses specifically on Pauline communities by choosing the *Letter to the Philippians* as a major and representative case study. However, she contextualizes the financial language used in relationship to God or Christ in canonical and other early Christian texts within the broader framework of Greco-Roman religious tradition, in order to detect a potential line of continuity or similar patterns. Primarily two types of evidence are considered in her analysis:

First, I considered the role of temples and other cultic sites as financial institutions, including as banking centers, storage sites, and property managers. Within temple institutions, the gods are often understood as owning property and managing wealth, and cultic officials play an important role in mediating these transactions and overseeing the investment and distribution of divine wealth. Cultic sites are also economic sites, and both gods and humans do business in temples, from the transactions of sacrifice to sacred storage to manumission contracts. Evidence from Greco-Roman temples and synagogues throughout the Mediterranean shows that both Jews and practitioners of various Greco-Roman religions understood the divine as an active financial actor within sacred spaces. The gods are also present in

¹¹ See Quigley 2021, 148.

what we might consider solely business settings. I also examined evidence for the presence of the gods in noncultic spaces, focusing on inscriptions and statues found in commercial spaces, including *makella*, or marketplaces. Gods, especially Hermes, are frequently invoked in image and text as overseeing and regulating the transactions occurring within commercial spaces. Divine and divinized beings are also represented on currency and weight standards. The gods not only are participants in temple business, or even just invoked in the statuary and inscriptions of commercial spaces, but are also present on the very media of exchange. Divine and semidivine figures are found regulating the financial pipework of the ancient economy and on the currency itself.¹²

Considering the evidence from Greco-Roman contexts as foundational, and theo-economy as an overarching theoretical category, Quigley then turns to Paul and the early Christ followers at Philippi. Her approach to the analysis of the *Letter to the Philippians* is based entirely on a close examination of the language used by Paul to describe the community of Christ followers at Philippi. She notes that the letter uses the term *koinōnia* to describe not only the community itself, but also Paul's relationship to the Christ followers at Philippi and their mutual relationship with God and Christ. At first glance, Quigley states, the use of *koinōnia*—a Greek term very frequently and generally translated as *fellowship*—does not seem to be relevant for an overall interpretation of Christian community in terms of a theo-economic perspective. However, she provides evidence that *koinōnia* is a term regularly used for contracts, such as land leases and marriage agreements; moreover, it is a term which plainly alludes to a situation in which there is shared risk of loss and reward.¹³ This leads Quigley to conclude that:

In a letter in which the support (including financial support) of Paul in prison is a major theme, the use of the multivalent language of *koinōnia* should be read with its financial connotations at the fore. By examining some of these everyday legal and financial comparanda, I considered the rhetorical implications of a 'koinōnia in the gospel' (Phil 1:5). Paul writes that he has a venture in the gospel with the Philippians, who are described as a divine worksite where work will be completed on time by the day of Christ (Phil 1:5-6), and the Philippians are a divine field that will yield a harvest of righteousness (Phil 1:11).¹⁴

12 Quigley 2021, 152–153.

13 Quigley 2021, 154.

14 Quigley 2021, 154.

The use of *koinōnia* is only one example provided by Quigley. She also extends the analysis to other very meaningful terms, like *bebaiōsis*, which was also used in contracts and business transactions. Gaining enhanced knowledge of the economic background of the language used in early Christian texts could improve a reading so far mainly focused on financial relationships between humans, thus opening a broad interpretive view in which a divine-human economy conceives God as an economic actor and theological resources are represented as commodified. As a result, early Christian texts can be re-evaluated in terms of mutual dependency in day-to-day life, with a broader divine economy not separate from the materiality of financial life but, on the contrary, acquiring meaning from it.¹⁵

That this approach is not merely restricted to detecting potential terminological similarities between the economic vocabulary and theological language has been further stressed by Devin Singh. Similar to Quigley, Singh reads the monetary language used to describe theological concepts through the lens of an intentional construction of divine economy as a process defined by a materialized codification of the relationship between humans and the divine. By focusing on the striking similarities between the monetary language and the textual representation of divine economy, Singh:

[...] thus sought to examine in what ways the similarities between monetary and Christological incarnations were more than merely analogous. Did the striking conceptual resonances stem from actual historical links between these two economies? Could we posit more than a coincidental and allusive parallelism between money and Christ?¹⁶

Starting from the assumption that there is a strict and intricate interdependence between monetary and economic thought and practice, and by focusing specifically on late antiquity, Singh attempts to prove the validity of what he defines as ‘monetized theology’ by reconstructing an understanding of Christ as an economic administrator. Following this approach, Singh ascertains the effective influence of Greco-Roman economic practice on the wider formulation of a Christian theological discourse which was inevitably shaped by the surrounding context and social sphere.¹⁷ His decision to focus mainly on the image of Christ as an economic administrator derives directly from the striking relevance of the term *oikonomia* in patristic discourse between

15 Quigley 2021, 155–159.

16 Singh 2018, 16.

17 Singh 2018, 16–17.

the third and the fifth centuries. However, Singh states, despite the centrality of the concept of *oikonomia* in patristic texts, a discourse on its effectiveness has not been articulated in a systematic fashion. The principal aim of his analysis is, therefore, to recover the ancient references to and uses of the term *oikonomia* to describe “the management of concrete resources and money and highlight valences that invoke an economic aim toward profit, gain, or victory.”¹⁸ After all, “the *oikonomia tou theou* (the economy of God), however the church critically appropriates this, is the heart of the church’s being”,¹⁹ and, more specifically, “the doctrine of the church is the doctrine of the economy of God’s household.”²⁰

I contend, however, that a first and immediate counterargument to the abovementioned approach would be that the relationship between human and divine agents within early Christianity (and onwards) was based, by definition, on a series of symbolic acts of offerings and rewards, without necessarily recurring to a material form of exchange. On the other hand, Christian teachings were based on the assumption of the divine gift of eternal life as a reward for human devotion and oath of allegiance to God. Nevertheless, the absence of materiality in the exchange process between divine and human agents does not necessarily exclude the economic framework of this symbolic transaction. In fact, as Thomas R. Blanton IV has aptly demonstrated by recurring to Pierre Bourdieu’s theory of symbolic goods, the relationship between gods and human agents could be interpreted as a reproduction of the ideology and practice of Roman patronage, where a reciprocal gift exchange also involved spiritual, non-material counter-gifts.²¹

Despite the abovementioned analysis provided by Quigley and Singh, scant attention has been paid to date to the economic and material background of the metaphorical use of the image of God’s household in early Christianity. In the context of the strict intersections between religion and economics, a more accurate investigation of the commercialization of language in early Christian texts can prove fruitful for reinterpreting the formulation of theological concepts through the lens of their historical and material derivation. Moreover, analysis of the relevance of economic language used by early Christian authors will prove that the relationship

18 Singh 2018, 40.

19 Meeks 1989, 33.

20 Meeks 1989, 23.

21 Blanton IV 2014.

between wealth and poverty in the late second century (and in the following centuries) was crucial. Peter Brown has stressed that both commerce and religion were not two distinct spheres in early Christianity—on the contrary, the ethos of one sphere was strictly associated with that of the other—and that the first three centuries saw rather a broad extension of the language of exchange, commerce, and treasure. As evidence of this, he concludes that “seldom in any literature have money and images borrowed from commerce bulked so large as in the literature of late Roman Christianity.”²²

The Economic Language in Irenaeus of Lyon’s *Against Heresies*

Written in Greek in the second half of the second century, Irenaeus of Lyon’s *Against Heresies* is entirely preserved in a Latin translation of uncertain date of composition (it was composed probably between the third and the fifth century). However, extensive fragments of the original Greek version are preserved. The work was originally conceived as Irenaeus’s extensive response to the doctrine of Valentinus, a Gnostic teacher, and that of Marcion of Sinope.²³ The original plan included two books: the first part aimed at describing the Gnostic teaching and doctrine; the second book aimed at refuting it. However, the final version of the treatise counts five books. The full title was *The Refutation and Overthrow of the So-called Gnosis/Elenchos kai anatropē tēs pseudōnymou gnōseōs*, but the treatise is commonly known as *Against Heresies*. As stated above, the final Latin version of the entire work is a faithful translation of the Greek original text, as the comparison with passages preserved in Greek plainly proves.²⁴

The first two books of *Against Heresies* are entirely based on a detailed description of Valentinian teaching. The second part of the treatise, by contrast, is devoted to the exposition of Irenaeus’s own theology in response to Valentinian doctrine. The choice to focus here on Irenaeus’s *Against Heresies* derives largely from the theological motif running through the entire treatise. Irenaeus’s work aimed primarily at reiterating the uniqueness of God by refuting the rejection of the material world supported by the Gnostic groups.

22 Brown 2012, 85.

23 On Irenaeus, see Osborn 2001 and Behr 2013.

24 On this, see Cosentino 2009, 8–9.

Irenaeus is, therefore, urged to stress the connection between God himself and the creation of the world He is responsible for. This treatise is a highly representative case study for demonstrating the second-century Christian concept of God's ownership of land due to Irenaeus's systematic plan, which was aimed at emphasizing the belief in one God, creator of the entire material world.

Against this wider theoretical background, Irenaeus's treatise appears characterized by numerous details related to the concept of divine economy—here intended as a mutual relationship between God and Christians in terms of active participation in a preestablished plan of salvation. Moreover, by inheriting and recontextualizing previous scriptural traditions, Irenaeus introduces various significative references to the image of God portrayed as divine architect and owner of a land deemed as sacred. As I have previously said, the intangible reality of God makes it difficult to demonstrate the actual perception of God himself as an active participant in a mutual relation between distant and different spheres of action (one of them being completely immaterial). However, the well-attested tendency to portray the concept of God's ownership of the Earth and those who inhabit it by recurring to theoretical categories derived from economic language attests that second-century authors felt compelled to render divine ownership in terms of a real and concrete pact of mutual interaction. This, I contend, proves the tendency to use language familiar to second-century Christians affected by a growing interest in the theological issue of the relationship between wealth and poverty. Moreover, it also shows the urgency of conceiving and definitively defining the relationship between human and religious agents by recurring to theoretical patterns derived from everyday life. This firmly renders theological concepts through a materialized codification aimed at reinforcing the underlying assertion of a pact/contract between God and Christians. The traditional covenant—firmly established by Scriptures—between humans and the divine counterpart was thus interpreted and reconceptualized in economic terms to render a mutual relationship otherwise difficult to conceive more effective and materially perceptible.

On the other hand, the concreteness of God's role as administrator of his land/community in second-century Christian texts has already been stressed. By emphasizing that Irenaeus speaks of God as “drawing up the plans for the edifice of salvation” (*Against Heresies* 4,14,2) and of God's provision for what is “most apt,” “worthy,” and “in many modes adapted to the

harmony (*consonantia*) of salvation,” Eric Osborn states that the concept of divine economy in Irenaeus’s *Against Heresies* shares plain similarities with the classic writings of Vitruvius on architecture.²⁵ God is thus portrayed as the wise architect of creation who ensures human salvation by creating a specific design defined by proportion, order, and distribution between the parts.²⁶ In this sense, the economy for him is “the history of salvation, a succession of times or seasons where man participates in God.”²⁷ This history of salvation has been entirely designed by God, and it is the whole plan of God, as the large use of *dispositio* (which translates the Greek *oikonomia*) through all of Irenaeus’s work clearly attests.

That *dispositio* is the exact translation of *oikonomia* has been proven by Ad-hémar d’Alès in a very detailed analysis of the theological vocabulary used by Irenaeus. More specifically, d’Alès states that the term *oikonomia* occurs at least 30 times in the original Greek (where the original Greek text of *Against Heresies* is preserved), and in almost all cases (27 at least), *oikonomia* is translated with *dispositio* in the Latin version.²⁸ The frequent use of *dispositio* in *Against Heresies*²⁹ proves that the history of salvation is entirely conceived as an ordering arrangement of things or events reflecting a well-defined purpose planned by God, who is the artificer of all things created. Moreover, as previously said, *oikonomia* was used in second-century papyri as a synonym for *diathēkē*, here clearly alluding to testaments. Therefore, we may conclude that the use of *oikonomia* in Irenaeus places the relationship between God and humanity on a legalistic level: God’s ownership is defined through the arrangement of a relationship sanctioned by a formal covenant involving property and inheritance. By adopting an economic language, Irenaeus establishes a definite materialized codification between human and divine agency.

A first and very representative example of the abovementioned theoretical framework is provided by Irenaeus in *Against Heresies* 4,36,1-2. Here, the emphasis on both God as the landlord of the household and his management

25 See Osborn 2001, 75–76 for both a detailed description of the link between *oikonomia* and the values of architecture in Vitruvius’s writings on architecture and the use of these values in Irenaeus’s *Against Heresies* (particularly in connection with construction of the notion of an economy of salvation).

26 Osborn 2001, 76.

27 Osborn 2001, 79.

28 d’Alès 1919, 3.

29 In the Latin version *dispositio* is attested 85 times (see d’Alès 1919, 4).

of the land offers significant insights into the material articulation of the relationship between early Christ-followers and the divine:

By these words He clearly points out to His disciples one and the same **Householder** (*patremfamilias/oikodespotēn*) — that is, one God the Father, who made all things by Himself; while [He shows] that there are various husbandmen [...]. For God planted the vineyard of the human race when at the first He formed Adam and chose the fathers; then **He let it out** (*tradidit/paredōke*) to husbandmen when He established the Mosaic **dispensation** (*per eam legislationem/nomothēsiās*): He hedged it round about, that is, He gave particular instructions with regard to their worship:³⁰ **He built** a tower (*aedificavit/oikodomēsen*), [that is], He chose Jerusalem: He dug a winepress, that is, He prepared a receptacle of the prophetic Spirit [...]. But last of all He sent to those unbelievers His own Son, our Lord Jesus Christ, whom the wicked husbandmen cast out of the vineyard when they had slain Him.³¹ Wherefore the Lord God **did even give it up**³² (*tradidit/paredōken*) (no longer hedged around, but thrown open throughout all the world) to other husbandmen, **who render** the fruits (*reddentibus/apodidousi*) in their seasons — the beautiful elect tower being also raised everywhere. For the illustrious Church is [now] everywhere, and everywhere is the winepress dug: because those who do receive the Spirit are everywhere [...]. It is therefore one and the same Father who planted the vineyard, who led forth the people, who sent the prophets, who sent His own Son, and who gave the vineyard to those other husbandmen that **render** the fruits (*reddunt/apodidousi*) in their season.³³

The description of God as the owner of all things created and planner of the history of salvation is rendered through the use of metaphorical images referring to the semantic fields of management, material construction and arrangement, legislation, work relations and hierarchy, commercial exchanges, offerings, and compensation. Among the various lexical and semantic choices, some appear highly representative. For instance, *oikodespotēs*, exactly like the Latin *paterfamilias*, is a Greek term usually used to refer to the master or steward of a house. In early Christian texts, it is often used in reference to God, as attested, for instance, by Ignatius in the *Epistle to the Ephesians/Pros Ephesios* (6,1) or in the *Shepherd of Hermas/Poimēn tou Herma* (Latin: *Pastor Hermae*) (*sim.* 5,2,9). The contractual relationship between God as owner and administrator of a house and his workers is clearly

30 Here a more literal translation of the Latin *cultura* as *cultivation* would be preferable, given the broader agricultural contextualization of the parable.

31 See the interpretation of this in the paper by Vinzent in this volume.

32 Here a translation of *trado* with the more literal *hand over* would be preferable, given the overarching context of the passage, based entirely on a process of transfer of ownership or usufruct.

33 I have mentioned the relevant Latin terms and the corresponding Greek terms (where available or reconstructed, as attested in Rousseau et al. 1965).

expressed by the verb *trado* in Latin (*paradidōmi* in Greek), both unequivocally alluding to a process of transmission and delivering (for instance, traditions and teachings, but also goods). The opposite process is evoked by the use of the verb *reddo* in Latin (*apodidōmi* in Greek), alluding to the ideas of rendering, paying, giving back, rewarding—all actions attested in early Christian texts both as performed by God to the advantage of men and directed to God by men themselves. In fact, all these images were also present in the scriptural tradition reflected by Irenaeus in his work. Therefore, a language featured by metaphorical images derived from the semantic fields of manual labor, management, and economic ties is not restricted to Irenaeus's work. However, Irenaeus connects the abovementioned semantic sphere to a broader theological discourse aiming at extending the interpretation of the scriptural image to the entire trajectory of God's intervention into history, thus connecting into a single overarching structure both ancient and more recent events and eventually reestablishing the unity and centrality of God ("one and the same Father") in the process which led to the initial establishment of a church which "is now everywhere". The same description continues a few passages later, along the same lines:

Also by the parable of the workmen who were sent into the vineyard at different periods of the day, one and the same God is declared, as having called some in the beginning, when the world was first created; but others afterwards, and others during the intermediate period, others after a long lapse of time, and others again in the end of time; so that there are many workmen in their generations, but only one **householder** (*paterfamilias/oikodespotēn*) who calls them together. For there is but one vineyard, since there is also but one righteousness, and one **dispensator** (*dispensator/oikonomos*), for there is one Spirit of God **who arranges all things** (*qui disponit omnia/to diepon ta panta*); and in like manner is there one **hire** (*merces/misthos*), for they all received a penny each.³⁴

Here, the language is even more explicit, with the use of terms like *dispensator* (and *oikonomos*) which plainly refer to the administration of property. While belonging to the same semantic field expressed by the previously-mentioned terms *paterfamilias* and *oikodespotēs*, *dispensator* and *oikonomos* do not refer exclusively to the general functions of management and supervision. More specifically, they involve the allusion to the role of an administrator having charge of revenues and property, especially when used in Christian contexts. Thus, stricter reference to the field of money/goods exchange is plainly evoked here. On the other hand, as in the previously discussed passage, in

³⁴ Iren. *AH* 4,36,7.

this case all the images derived from the semantic fields of manual labor, management, and economic ties were also present in the scriptural tradition reflected by Irenaeus. However, Irenaeus is responsible for the implementation of this economic language by extending the underlying dynamics to the entire history of God's intervention into human events; a history which runs through the ages and inevitably finds its final fulfillment at the "end of time". Once again, Irenaeus's aim is to reinstate the uniqueness of God and the continuity of his intervention into the history of humanity without interruptions within a long, overarching trajectory.

The central image of God as householder is repeatedly stressed throughout the text, as the following example also unequivocally attests:

For the Lord is the good **man of the house** (*paterfamilias/oikodespotēs*), who rules the entire house of His Father; and who delivers a law suited both for slaves and those who are as yet undisciplined; and gives fitting precepts to those that are free, and have been justified by faith, as well as throws His own **inheritance** (*hereditatem/klēronomian*) open to those that are sons.³⁵

Here, the usual traditional language of ownership, property management, work relations, and legal regulation gains further meaning by referring to inheritance, the economic device establishing a direct relationship between owners and recipients within a commercial discourse on offerings and compensation. Moreover, it is important to stress that Irenaeus extends the right to inheritance also to all those who "have been justified by faith", within his usual tendency to include all phases of God's intervention within a single, gradually comprehensive development. Furthermore, an opposition between "slaves and those who are as yet undisciplined" and "those that are free" is apparent here. Slavery is a recurrent motif in Irenaeus's argumentation, as attested by a set of other passages in his work³⁶, and is always mentioned in association with law. Law is described as the necessary condition to instruct men and women awaiting the final coming of Jesus. Since enslaved people are not yet aware of the coming of Jesus, they live in alleged ignorance of the ultimate truth that will be revealed by Jesus with his arrival. In this sense, slavery is conceived as a metaphor for lack of knowledge: individuals are slaves as long as they ignore the ultimate coming of Jesus. Law serves to train individuals, at least until the arrival

³⁵ Iren. AH 4,9,1.

³⁶ See, for instance, Iren. AH 4,11,4; 4,13,2; 4,13,4; 4,15,1.

of Jesus liberates them. In this sense, the Law of God was indeed entirely functional to the coming of Christ which liberates from slavery. Against this broader background, the reference to *undisciplined* in Irenaeus addresses the semantic field of *disciplina* (the Greek *paideia*³⁷), meaning education and teaching in a broader sense. Thus, individuals who are not disciplined still lack knowledge of something derived from education and teaching. This broad semantic field increasingly reinforces the hierarchical structure of the abovementioned image, built entirely upon the uncontrasted role of the Lord as the man of the house.

This economic relationship between human beings (recipients) and God (owner and giver) is further confirmed by a passage in which Irenaeus stresses the centrality of offerings:

Now **we make offering** (*offerimus/prospheromen*) to Him, not as though He stood in need of it, but rendering thanks for His gift and thus sanctifying what has been created. For even as God does not need our possessions, so do we need to offer something to God; as Solomon says: He that has pity upon the poor, lends unto the Lord. For God, who stands in need of nothing, takes our good works to Himself for this purpose, that He may grant us a recompense of His own good things, as our Lord says: Come, you blessed of My Father, receive the kingdom prepared for you. For I was an hungered, and you gave Me to eat; I was thirsty, and you gave Me drink; I was a stranger, and you took Me in; naked, and you clothed Me; sick, and you visited Me; in prison, and you came to Me. As, therefore, He does not stand in need of these [services], yet does desire that we should render them for our own benefit, lest we be unfruitful; so did the Word give to the people that very precept as to the making of **oblations** (*oblationum/prosphoras*), although He stood in no need of them, that they might learn to serve God: thus is it, therefore, also His will that we, too, should **offer** (*offerre/prospherein*) a gift at the altar, frequently and without intermission. The altar, then, is in heaven (for towards that place are our prayers and oblations directed); the temple likewise [is there], as John says in the Apocalypse, And the temple of God was opened: the tabernacle also: For, behold, He says, the tabernacle of God, in which He will dwell with men.³⁸

Here, the economic language, with its emphasis on exchanges of offerings and rewards, is repeatedly stressed through the introduction of other significant terms, such as *oblatio* and *prosphora*, which allude more specifically—among other, more general meanings—to sacrificial offerings or also offerings of gratitude to benefactors. These terms are relevant not only due to their direct reference to economics, but also because they are practices which

³⁷ The Latin text uses the term *indisciplinatus*, while in the Greek text *apaideyτος* is used.

³⁸ Iren. *AH* 4,18,6.

create a direct relationship between owners and givers, thus establishing a dependency and at the same time strengthening a divine disposition. On the other hand, in *Against Heresies* 4,18,1, Irenaeus had already introduced the issue of the importance of offerings, thus marking explicitly the necessity to continue performing them. More precisely, Irenaeus stresses that this necessity is no longer restricted to the past, but has to be extended to all Christians (i.e., those who are free in the faith).

The representative passages analyzed thus far stress some relevant questions. Two issues immediately come to the fore here. The first one concerns the combination of commercialization and *dispositio*. These two terms plainly refer to two different theoretical concepts. However, within the overall argumentation of Irenaeus's *Against Heresies*, they are interpreted as two related aspects against the same theoretical background of divine economy. The link which connects the commercialization of language with *dispositio*—here conceived as an ordering arrangement of things or events reflecting a well-defined purpose planned by God—is the shared, explicit reference to a divine counterpart acting as active participant in the economic transactions connecting two different realms. However, the divine participation assumes different roles depending on the directions implied by the perspective adopted. On the one hand, the commercialization of language establishes a bottom-up approach, because it evokes the practice of trading with the divine counterpart. Through *commercial* exchanges, individuals who are not enslaved are able to reach God through a connection defined by a materialized relationship. And it is interesting that Irenaeus uses vivid imagery and symbolism that was familiar to landowners—that is to say, to people who were familiar with commercial exchange, buying and selling—by appealing also to traditional scriptural language in which this connection had already been established. On the other hand, *dispositio* presumes a relationship defined by the opposite direction: By assuming the role of *paterfamilias* (*oikodespotēs*) and *dispensator* (*oikonomos*), God establishes a hierarchical relationship with men and women in terms of domination, planning, and supervision of an *ideal* family. This strict hierarchy is further entrenched by its integration within the broader theoretical framework of enslavement, as previously mentioned. Thus, the association between the two images of slaves and education only serves to strengthen the notion of Lord's domination over the entire familial structure. Furthermore, given the strict association between family and property in the ancient Mediterranean social structure, the allusion to inheritance in Irenaeus's text confers additional meaning to the metaphorical

use of landed property and householding in the description of the human-divine relationship.

Conclusion

Dealing with property is at the core of early Christian teaching. A sharp contrast between earthly and heavenly life, with the latter conceived as the real ultimate goal of human existence, urged Jesus's followers—and, later, new converts and adherents to the new religious system—to ascribe a specific trajectory to their social and religious agency, thus converting the use of goods into a vertical process of mutual exchange of offerings and non-material rewards. The eschatological expectations shaping the first centuries of the Christian era proved to be a key factor in the devaluation of life on earth, thus shifting the overarching trajectory of human history towards its final fulfilment at the end of time, as stressed by Irenaeus himself. Due to this temporal pressure, therefore, the significance of wealth—and, as a consequence, property—was reduced. Within the same context, the distribution of private possessions to the poor comes to the fore, thus playing a central role in later Christian theological debates and treatises.³⁹ These treatises address the topic of wealth and property by focusing mainly on commercial exchange and donations performed within the restricted and limited circle of human relations. Therefore, donations are conceived and described as a direct and exclusive transfer of ownership between humans.

On closer inspection, however, God as an active participant within a relationship conceived in terms of economic dynamics becomes easily recognizable. On the one hand, this reflects the traditional Christian exhortation to renunciation, stating that men and women are not the final owners of their possessions, but only users of what comes from God and returns to God. On the other hand, the tendency to attribute economic features to the theological description of the human/divine relationship is a direct reflection of the emergence of the issue of wealth in the late second century. Given the centrality of such an issue in theological debates, Christian authors showed a ten-

³⁹ For instance, for a detailed discussion of private property in John Chrysostom see Oliynyk 2019, 247–249. See also Leyerle 1994. On the same topic in Basil of Caesarea's works, see Matz 2011.

dency to describe relations with the divine in terms of commercial exchanges and property management, thus recontextualizing traditional scriptural images similarly codified. In doing so, they translated (and materialized) a theological dimension into a language familiar to wealthy Christians.

The extensive description of divine economy in Irenaeus's *Against Heresies* offers an illustrative example of this tendency. By analyzing a series of representative passages, I have demonstrated that early Christian texts can be reevaluated in terms of mutual dependency on everyday life: They are not separate from the materiality of financial life, but, on the contrary, acquire meaning from it. In this sense, the economic language used to describe theological concepts aims at intentionally constructing the notion of divine economy as a process defined by a materialized codification of the relationship between humans and the divine. As already stressed, the images and metaphors used by Irenaeus are not exclusive to his work, because he recontextualizes a traditional and, in some cases, explicitly quoted, scriptural imagery. However, Irenaeus adds further meaning to the tradition by framing the entire course of history—in terms of religious progression—within the overarching concept of divine economy. The fact that Irenaeus alludes to the event of incarnation by using the keyword 'economy' reveals his intention to interpret the trajectory of incarnation/salvation as a mutual exchange between men and women on the one hand, and God on the other hand. That this mutual exchange is defined by an economic dimension is guaranteed by the original meaning of *oikonomia*. If the incarnation is conceived and described by Irenaeus as *oikonomia*, this means the path to salvation takes on the shape of a pact, a testament, a contract between humanity and the divine. Moreover, Irenaeus's argumentation shows clear evidence of the second-century Christian tendency to shift the concept of God's inheritance from the Jews to the followers of Christ, as Vinzent has aptly demonstrated in his contribution to this volume. In this sense, the economic language used by Irenaeus was not only a reflection of the emergence of the issue of wealth and poverty in late second-century Christianity, but it also attests a growing tendency to frame a specific theological agenda into a language aiming at enhancing the dimension of the *pact* between humans and God.

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Mancipatio: The Starting Point of a Uniform Property System?

Lydia von der Weth

Abstract

This contribution sheds light on the importance of regulating land ownership in a society because of its limited availability. The legal system codifies social values and practices, and in times of change, new practices can emerge that circumvent but do not violate the existing legal system. In ancient Rome, this occurred through ritual practices such as *mancipatio* and *testamentum per aes et libram* as a means of circumventing a divided property system. Like modern legal transactions, these practices were publicly legitimized by witnesses and had far-reaching consequences. This chapter examines the framework, requirements, modes of operation, and effects of these practices both historically and for the contemporary legal system, emphasizing their role in integrating economic changes into the legal system.

Keywords: *mancipatio*, *testamentum per aes et libram*, Ownership, Inheritance Law, Roman Law

Introduction

The regulation of the ownership of land in a society is a central task of the legal system, not least because of land's limited availability. Law codifies socially accepted values and practices. Thus, for over one hundred years, the German Civil Code has regulated how ownership of land is transferred in Germany, namely, by requiring the involvement of a notary.

In times of social and economic change, however, the existing legal system is unable to provide adequate regulations for newly established practices. The legal system has not yet adapted to the new reality but, instead, lags behind it. This article deals with the question of what happens when the legal system and change conflict. It elaborates how, in these transitional phases, innovative substitutive practices can emerge, assume a regulative function, become part of the legal system, and shape legal practice far into the future. Old regulations that stand in the way of change are thus circumvented without any obvious violation of established norms. This enables the law and society to adapt to the new legal reality.

In what follows, this contribution develops these arguments with reference to the example of Rome in the fifth century BCE. In that time of economic change, legal substitutes for land transactions developed in the form of the *mancipatio* and, subsequently, testamentary freedom in the form of the *testamentum per aes et libram*. From a legal perspective, it is particularly interesting here that early Roman society divided property into alienable and inalienable things—it thus had a divided property system. But this was an obstacle to economic change, since some central goods were *de jure* not available for sale or transfer. Rather than ignoring this divided property system, people circumvented it through the ritual-like transaction of *mancipatio*, which covered up the fact that things that were actually considered inalienable, *res Mancipi*, were nevertheless alienated or sold. Something similar happened in the law of succession, for here too, with the *testamentum per aes et libram*, a way was found to get around the legally prescribed succession in Rome. This is not only the model for our regulations for drawing up wills, which are still in force today, but also essentially a transaction of circumvention. The old regulations mentioned were therefore by no means abolished, but, rather, deprived of their function.

For circumvention of the legal order, the processes of *mancipatio* and *testamentum per aes et libram*, which were bound to strict formulas and schematic procedures, played a central role. The heart of the processes seems to be the

facilitation of unplanned social and economic changes through a transaction of circumvention. These transactions were assured of social entrenchment by making them public through having witnesses involved. We still have such ritualistic transactions in our legal system. When it comes to transactions with far-reaching consequences for a person's wealth and family, the legal community agrees that they cannot be conducted like an everyday transaction. Rather, witnesses and legal experts are needed to accompany the process. Anyone who has ever bought a house knows the process of going to the notary: One has to appear in person, then documents are read out, and signatures are solemnly placed. The entire process still has the air of a ritual about it. Drawing up a will at a notary's office is similar. In this respect, this contribution provides an explanation for the ritualistic processes in real estate transactions, or wills, which cannot be explained solely by functional requirements such as its public nature.

In this contribution, I will show the framework conditions, the necessity of the practices, the functioning of these practices, and, last but not least, their effects on our contemporary legal system. In what follows, we will first take a look at our legal system today to understand how the legal transfer of real estate has developed historically, and then discuss the Roman legal transaction of *mancipatio* for the transfer of real estate and other inalienable property. Further development from the *mancipatio* to the *testamentum per aes et libram* is also analyzed on the basis of regulations in force today. Finally, the connection between economic changes and the practices that facilitate the integration of these changes into the legal system, will be discussed.

For a number of years, jurists were silent on the ritual of *mancipatio*. Joseph G. Wolf's 1998 article *Funktion und Struktur der Mancipatio* summarized the state of jurisprudential research on the *mancipatio* and expressed the inalienable character of the *res Mancipi*.¹ In an essay on property and inheritance law,² Jan Dirk Harke took up Wolf's idea and traced the development of the *mancipatio* from a transaction of transfer of property to an instrument for making a will. Wolf's idea that some things, among them land, are not inalienable, I take up in the following and develop it further.

1 Wolf 2015, 501.

2 Harke 2020, 397.

The *Mancipatio*

Mancipatio is the name for a ritual by means of which land, among other things, could be transferred in the fifth century BCE. To better understand this Roman legal construct, I will first give a brief introduction to German land transfer law and then examine its Roman legal origins.

Land Acquisition under Current German Law

In 2020, around 289,900 owner-occupied homes were sold or land purchase contracts concluded nationwide.³ In all these transactions, both the seller and buyer were bound by the following regulations: According to § 873 of the German Civil Code (BGB), (1) the parties must agree on the transfer of the ownership of the land, (2) registration in the land registry is required, (3) the parties must be in agreement, and (4) the seller must be entitled to dispose of the land. Consent here has some special features, given that the legal community has agreed that a transaction such as the transfer of a plot of land is not an everyday transaction for the individual, and is therefore carried out under special conditions. According to § 925 of the BGB, both parties must appear before a notary at the same time and declare their consent to the transaction. This formal requirement is intended to make those present aware of the significance of the transaction and, at the same time, ensures that a legally competent person guarantees compliance with the formal requirements.

The purpose of requiring registration in the land registry is to make the legal situation public. It is thus always verifiable and evident for all who owns which property. This is particularly relevant if someone claims to be the owner of land but is not the real owner. If the person making the disposition has been registered in the land registry, he or she is deemed entitled to the land—regardless of whether he or she is actually the owner (§§ 892, 893, BGB). The land registry thus provides German law with a permanent public record, on whose accuracy of content legal transactions can rely. The acquisition of a plot of land therefore encounters certain obstacles

³ Statista 2022.

that are intended both to make the parties aware of the significance of the transaction and to make the community aware of the transaction.⁴

Land Acquisition under Roman Law

Because the acquisition of land in Rome followed similar rules, it can serve as a model for regulations in force today. Like today, a plot of land and its transaction was just as important and detailed—if not more so—in Rome.

According to the founding myth of Rome, Romulus gave every *pater familias* a plot of land.⁵ This shows the importance that a plot of land or field had for a Roman person in the empire at that time. It was not only a place where the most important goods for survival could be produced, but was, above all, a center of life and a safe haven.⁶ Control of land and its subsequent redistribution was the starting point in Rome—as it is today—for the distribution of power.⁷ Initially, the *gentes*, the tribes, held this power: As the rulers, they controlled both the land and the people who lived on the land.⁸ Land did not belong to individuals, but, rather, to family groups who lived and farmed together.⁹

The above-mentioned ritual, the *mancipatio*, provided for the transfer of land as well as for that of enslaved people and herd animals. Though the word *mancipatio* is mentioned in the Law of the Twelve Tables, an ancient Roman codification, traditionally dated to 450 BCE,¹⁰ the ritual itself is not described.¹¹ Nonetheless, this indicates that this practice must have already played a role in Roman legal contexts before this point, or at least that the procedure was so well known that the creators of the law did not deem it necessary to explain it more precisely.

4 Further discussion of the registry can be found in the contribution in this volume by Felicitas Sommer.

5 Varro, *Rust.* 1.10.2. Amunátegui Perelló 2012, 329, 348; Griese 2019, 49.

6 Griese 2019, 18.

7 Griese 2019, 19; Wesel 2014, 23 ff.

8 Terrenato 2010, 510.

9 Jongman, 2002, 31.

10 Kaser 1975, 19; Wolf 2015, 115; Livy 3.9.2, 3–5.

11 Table V2, VI 1, VI 5b.

The Roman jurist Gaius explains *mancipatio* in detail, however, in his textbook *Institutes*, which he wrote for law students in the second century CE.¹² When analyzing the sources, it is important to keep in mind that Gaius lived in a period of the Roman Empire when the Roman bourgeoisie took enslavement for granted and enslaved people lived in large numbers in the most degrading conditions.¹³ This situation was very different from the one in which *mancipatio* was established. In the early days of Rome, enslaved people were rare, were part of the domestic community, and were primarily from other Italian tribes.¹⁴ In the time of Gaius, on the other hand, people from all of the colonies that Rome had conquered were enslaved mainly for their labor, and were in a completely different social position.¹⁵

Here, the *mancipatio* is presented using the example of the sale of an enslaved person:¹⁶

Est autem mancipatio, ut supra quoque diximus, imaginaria quaedam venditio: quod et ipsum ius proprium civium Romanorum est; eaque res ita agitur: adhibitis non minus quam quinque testibus civibus Romanis puberibus et praeterea alio eiusdem conditionis, qui libram aeneam teneat, qui appellatur libripens, is, qui mancipio accipit, rem tenens ita dicit: HUNC EGO HOMINEM EX IURE QUIRITIUM MEUM ESSE AIO ISQUE MIHI EMPTUS ESTO HOC AERE AENEAQUE LIBRA; deinde aere percutit libram idque aes dat ei, a quo mancipio accipit, quasi pretii loco.

Mancipation, then, as we have said earlier, is a sort of imaginary sale; it is also part of the law peculiar to Roman citizens. It is carried out as follows. There are brought together not less than five witnesses, adult Roman citizens, together with another of the same status, who holds bronze scales and is called the 'scale-holder'. The person who is taking by mancipation, while holding the object says the following words: 'I declare that this man is mine by quiritary right and let him be bought to me with this bronze and bronze scales.' Then he strikes the scales with the bronze, and gives it to him from whom he is taking by mancipation by way of a price.

Gaius does not explain the origin of the ritual, calling it an "imaginary sale." The precise origin of the *mancipatio* is disputed, and its legal nature, espe-

12 Harke 2016, 13.

13 Kaser–Knütel–Lohsse 2021, 146.

14 Kaser–Knütel–Lohsse 2021, 146.

15 Kaser–Knütel–Lohsse 2021, 146.

16 Gai. *Inst.* 1.119. All translations of Gaius's texts are by Gordon–Robinson 1988.

cially, has been explained in different ways.¹⁷ Because a “man” changed “ownership” against the payment of a price, it is sometimes assumed that it was originally an exchange agreement.¹⁸ But the ritual can also be seen as approximating a real trial before a court magistrate, which can be seen in the similar formulations that the parties have to use.¹⁹

According to Gaius’s description, it is mandatory that the purchaser meets with five witnesses as well as a “scale holder,” all of whom must be Roman citizens, making it a total of seven people. In the event of an enslaved person being handed over, there were eight, although the Roman citizens involved did not count the enslaved person as a human being. The transaction ritual begins with the purchaser seizing the object and simultaneously saying: “I DECLARE THAT THIS MAN IS MINE BY QUIRITARY RIGHT.” Then the purchaser strikes the scales with the piece of bronze and gives this piece of bronze, instead of a purchase price, to the seller. The seller remains silent this whole time—his role is a purely passive one. He does not speak nor interfere in the procedure by acting, accompanying the event merely by his presence. Only the purchaser touches the ‘object’ being sold. He thus steps into the seller’s domain during a point in which the ‘object’ still belongs to the latter. With the words he says, the purchaser then declares that the ‘object’ belongs to him. He will not acquire the ‘object’ unless he claims ownership over it. Gaius describes a passive seller who does nothing more than bring an ‘object’ with him to the ritual and an active purchaser who does not acquire the ‘object’ without actually declaring that the ‘object’ already belongs to him.

In the next section, Gaius explains which ‘objects’ can be transferred by *mancipatio*, the *res mancipi*:²⁰

17 A similarity to religious ritual is assumed, which is also reflected in Jörg Rüpke’s contribution in this volume. It is assumed that it is a kind of justifiable crime. See Amunátegui Perelló 2012, 330; Leifert 1936, 138 ff. On the origin of *mancipatio* in religious rituals, see also Tuori 2008, 500 ff.

18 Cf. e.g., Amunátegui Perelló 2012, 329, 341 ff.; Pfeifer 2013, 78.

19 Gai. *Inst.* 4.16.

20 Gai. *Inst.* 1.120

Eo modo et serviles et liberae personae *mancipantur*; animalia quoque, quae *mancipi* sunt, quo in numero habentur boves, equi, muli, asini; item *praedia* tam urbana quam rustica, quae et ipsa *mancipi* sunt, qualia sunt Italica, eodem modo solent *mancipari*.

Both slaves and free persons are *mancipated* in this way, as also animals which are capable of *mancipation*. In this category are counted cattle, horses, mules and donkeys; again, any land, urban and rustic, which is itself capable of *mancipation* as is Italian land, is customarily *mancipated* in this way

The *res Mancipi* enumerated can be associated with an agricultural life, farming, the cultivation of arable land. The sale of free persons is also accomplished via *mancipatio*. Finally, four-footed herd animals are mentioned. All these *res Mancipi* are not only elements of agricultural life but also of a family association that lives together on the land and cultivates it. If the *res Mancipi* can be reduced to a common denominator according to their economic function, they must also have always belonged to the same group of *res Mancipi* the inalienable objects of a family.

The Inalienability of the *Res Mancipi*

The *res Mancipi* alienated via *mancipatio* were originally inalienable, as Wolf has pointed out.²¹ That *res Mancipi* concerns originally inalienable ‘objects’ can be deduced from the formulation of *mancipatio* found in Gaius. On the other hand, Roman family law also favors non-transferability.

The Wording

The passive role of the seller and the active role of the purchaser already suggest that it is no longer just a transaction of exchange. In the active role of the purchaser, one can see the imprint of a rule of law that is not first established by the ritual but only gives the purchaser the opportunity to declare that he

²¹ Wolf 2015, 137 ff.

has always adhered to this rule of law.²² Placing one's hands on the *res Mancipi* supports the declaration that the buyer always had the power of disposition over the item.²³

But this represents a discrepancy that needs to be explained: The purchaser declares that he was 'always' the owner of the *res Mancipi*, but it is only when the ritual is completed that he actually becomes the owner. The answer lies in the nature of the *res Mancipi*. The ritual maintains the appearance that the seller has not sold anything. According to the ritual, therefore, no actual exchange of ownership has occurred. It is the seller who is protected from disclosing that he is giving something or someone away. This can be deduced directly from the formulation itself. The purchaser says: "I declare that this man is mine by quiritary right," while the seller remains silent. This concealment of the relinquishment of the rule of law and the declaration by the purchaser that the *res Mancipi* has always belonged to him seems to make sense when it is taken into account that the fact the transferor is giving away a *res Mancipi* he is not actually allowed to give away is itself concealed.²⁴ If there were no restrictions regarding inalienable objects, there would be no need to conceal the transfer.

Roman Family Law

Roman family law can also be used as an argument for the notion of inalienability. If the common characteristic the *res Mancipi* share is their purpose for agriculture, the only reason to use the ritual of *mancipatio* to dispose of them is to remove the things that form the basis of a farmer's livelihood from their 'owner's' freedom of disposition.²⁵ Though they were *de facto* alienable through *mancipatio*, they were not *de jure*, so they are treated as if they were always in the possession of the purchaser. This boundedness of the *res Mancipi*, the fact that they were not to be detached from the family unit, also has its origins in family law. The Roman *pater familias* had the power of disposal not only over the 'objects' that were in his house, but also over the subjects who

²² Wolf 2015, 38.

²³ Wolf 2015, 38.

²⁴ Wolf 2015, 116, 119 ff.

²⁵ Wolf 2015, 137.

lived under his roof.²⁶ His children were viewed as belonging to his house. If a son married and fathered children, these grandchildren also fell under the *paterfamilias's* authority. As soon as a daughter married, however, she left the household and, thus, the father's control. In the same way, the people whom he enslaved were under his authority and, together with freemen, were part of the *familia*.²⁷ The *paterfamilias's* power extended so far that he had power over the life and death of his subjects in so-called family courts, as long as he did not exercise this power in what was deemed a tyrannical way.²⁸

So, even though a male Roman citizen may already have had children of his own, he could—at the age of 30—still be subject to his father's authority while the latter still lived. He could indeed participate in legal relations himself, but did not purchase any property because that would then automatically be transferred to his father.²⁹ On the other hand, no legal suits could be filed against the dependent son, which consequently made him less attractive as a business partner.³⁰ This was partially dealt with by the possibility of the father placing some special assets (a *peculium*) at his son's free disposal and which he could do with as he pleased.³¹ Enslaved people could also have a *peculium* placed at their disposal, which they could use and manage as they wished.³²

In a farming society, this strict distribution of power and authority of disposal was perceived as rational. Because of the limited circle of people, it is always clear to the legal community who can effectively participate in legal life.³³ The circle of debtors and creditors was extremely limited, as was whom one could turn to for enforcement. This strict allocation ensured, also for those who live under the roof of the *paterfamilias*, that *res Mancipi* and possessions were not simply separated from this family connection and sold off. The family's *res Mancipi* was thus kept together. The category of the *res Mancipi* here indicates the most important 'goods' because they, as stated above, were the cornerstones of an agriculturally based community, and their remaining in the family is of the most major significance. Viewed in connec-

26 D. 50.16.195.2 Ulpian 46 *ad edictum*; Wieacker 1940, SF-Sieber, 10.

27 Kaser 1975, 59.

28 Kaser 1975, 60; Babusiaux 2021, 49.

29 Gai. *Inst.* 2.87; Wieacker 1940, SF-Sieber, 14.

30 Kaser 1975, 63.

31 Kaser 1975, 64.

32 Kaser 1975, 64.

33 Kaser 1975, 63.

tion with the *mancipatio*, this strict distribution of the power of disposal hints at the fact that, though only the *pater familias* had the power of disposal over goods, the *res Mancipi* in particular could not be easily removed from the ‘assets’ of the household. To circumvent this binding nature, the *mancipatio* was established. But, so as not to render the old laws ineffective, it only testified that the *res Mancipi* had “always belonged to the purchaser”—as if purchaser wanted to spare the seller from revealing that he was about to remove an essential part of the household. This indicates that the *res Mancipi*, and thus also land, were more than ‘objects’ whose sale was required to be public. Rather, they were ‘goods’ that were always intended to be available to the household, i.e., they were inalienable objects.

As soon as a society begins to become detached from its agricultural context, however, this restriction becomes not only a limitation, but actually stands in the way of further developments. This became relevant when sons no longer automatically took over their fathers’ farming businesses but moved to the cities or took land under the plow themselves in one of the newly conquered territories.

In the sixth century BCE, a development took place that supports the legal situation described above. The tribes that settled in the region of the current city of Rome had not only considerably increased their territory through war, but also built roads, houses, and, above all, strongly fortified walls, as archeological finding testify.³⁴ But there is also evidence of larger farms in the surrounding area that were engaged in commercial exchanges with the city and sold wine, olives, and pottery.³⁵ This was a time in which surpluses were generated that also fostered trade with other cities.³⁶ The attraction of leaving the family and beginning a life in the city or starting one’s own farm increased with the upturn in trade and the protection of the territory.

This is also reflected in the possibility of the legal transaction of *emancipatio*—a possibility to resolve the relationship of power between father and son.³⁷ Through this process, the emancipated son left his father’s family, lost his legal inheritance, and became a *pater familias* himself.³⁸ The *emancipatio* could dissolve the personal power that the father had, and the property that a family possessed could be divided. The fixed structures were thus relaxed,

34 Cifani 2021, 83–91; Bleicken 2004, 15; Blösel 2015, 23.

35 Cifani 2021, 98, 99; Sirks 2017, 91.

36 Scheidel 2010, 597.

37 Wieacker 1940, FS-Siber, 24.

38 Kaser 1975, 68 ff.

and ‘objects’ were in fact separated from it though they were not separated from it *in jure*.

The ritual of *mancipatio* shows, that in this case the economic development of the Roman Empire is accompanied by an individualism that in turn broadens the development of legal maneuvering room and allows the individual *pater familias* more power of disposal. But the *mancipatio* was only the beginning. As we will see, the *pater familias* was soon no longer content with having unlimited power of disposal during their lives, but also wanted this beyond his death. Out of the ritual of *mancipatio*, a possibility developed of drawing up a will, and thus also disposing of one’s assets after death.

The Development of Testamentary Freedom

We should first—to better understand this issue—provide a sketch of German inheritance law. In Germany today, an inheritance is worth something if it transfers land. If there is no real estate in the inheritance, 24 percent of these cases are looked upon as completely worthless; 72 percent of inheritances with no real estate have values of less than 150,000 euros.³⁹ In other words, inheritances that are actually valuable are those in which real estate is transferred. If land is included in the inheritance, the average is 1.6 objects. Of those, 47 percent are single-family homes, 9 percent condominiums, and 26 percent are two-family homes; the remaining properties are divided across plots of land and multi-family houses. (Commercial properties are not yet included.)⁴⁰ It thus turns out that the transfer of property and land via inheritance is just as relevant for our understanding of the transfer of property as that via purchasing.

This transaction can be completed in two ways: either by intestacy or by means of a testament, §§ 1924 ff., 1937 German Civil Code. Intestacy is governed by §§ 1924 ff. of the German Civil Code. In principle, the so-called parentela system applies, §§ 1924–1930, according to which the relatives are divided into orders, and relatives of an earlier order exclude those of a later order, § 1930. The first order includes the descendants of the deceased, § 1924 I, i.e., sons and daughters. Within this first order, inheritance is by clan. If a

³⁹ Reiner 2015, 7.

⁴⁰ Reiner 2015, 7.

testator has two children, they each inherit half § 1924 IV, German Civil Code (excluding the inheritance rights of the spouses for the sake of argument).⁴¹

In the second order, we find the parents of the testators and their descendants § 1925 I, and in the third order, the grandparents of the testator § 1926 I. In the second and third orders, succession takes place according to genealogical lines, whereby the parent or grandparent and his or her descendants each form a line and inherit equal shares. For all orders, the principle of representation §§ 1924 II, 1925 II, 1926 II, must also be observed. This principle states that the first representative of the line always inherits and those behind him/her subsequently receive nothing. Expressed the other way around, if a person in a line has predeceased the testator, the next representative takes his/her place.

But this system only takes effect if the testator has not made a (valid) will § 1937. If she has, then what is written in the will obtains the inheritance at the expense of everyone else. The will, embodied in the testament, is unique and solely authoritative. A will can only be made in person §§ 2064, 2065, and also only in compliance with the legally established form, either as a public testament before a notary § 2232, or as an independently signed will § 2247—or in the form of an emergency will in the mayor's presence confer § 2249.

Inheritance Law in Roman Law

How was the matter regulated under Roman law? First, we will look at legal succession, as passed on to us in the Twelve Tables, and then testamentary succession in more detail. This allows us to identify continuities between our modern inheritance law and Roman inheritance law.

41 Erben und Vererben—Informationen und Erläuterungen zum Erbrecht, ed. Bundesministerium der Justiz, 12.

Legal Succession in Roman Law

According to legal succession, if the head of a Roman family died, the relatives who were subject to his personal authority and acquired legal independence upon his death would inherit.⁴² This included the children described as belonging to the household, the descendants of his sons and his wife, who were called his own heirs.⁴³ If there were no heirs (and no testament; see below), agnates would be appointed heirs.⁴⁴ Agnates were the male relatives who would have been under a single personal authority along with the testator if their common *pater familias* were still alive.⁴⁵ This included the father as well as his paternal siblings, and uncles and male cousins in the paternal clan, but not the aunts and female cousins, who were excluded from the agnatic right of inheritance.⁴⁶ The relation was no longer directed at this level to clans, but, rather, to the degree of relation.⁴⁷

Thus, those entitled to an inheritance under Roman law were those who were separated by the lowest number of births from the testator. In the case of several agnates, who were equally removed from the testator, the estate was divided *per capita*.⁴⁸ This means that, as early as this second level, the inheritance was likely to disintegrate into its individual parts. If there were no agnates to accept the inheritance, it then went, on the third level of gentiles, to the entire clan.⁴⁹

Roman legal succession entails the stipulation that, if one's own heirs did exist, the entire inheritance would go to them. All members of a family living on the land of a *pater familias* would be assured that the land—and everything found on that land—was secured in its existence and would not be passed on to a third party who was not part of the family. This legal succession enabled the family to continue to operate as a kind of cooperative and to profit from the goods and chattels of the *pater familias*, including after his death, since they had also built that 'cooperative' up. But legal succession concealed a risk—namely, that the cooperative would dissolve, and the individ-

42 On this, see also Gai. *Inst.* 3.1 ff.

43 D. 50.16.195.2 Ulpian 46 *ad edictum*; Babusiaux 2021, 48.

44 *Law of the Twelve Tables*, 5.4.

45 Gai. *Inst.* 3.10.

46 Gai. *Inst.* 3.14.

47 Gai. *Inst.* 3.11.

48 Gai. *Inst.* 3.16.

49 Gai. *Inst.* 3.17.

ual's share would no longer suffice to actually support him. There were, thus, reasons—and with the expansion of the Roman Empire more and more—for stakeholders to deviate from laws concerning inheritance. If one wanted to circumvent legal succession, a remedy was provided, as in German law, by drawing up a will.

The *Testamentum per Aes et Libram*

Since the Law of the Twelve Tables from 450 BCE, Romans had enjoyed testamentary freedom, i.e., the freedom to dispose of one's assets or some of them after one's death. This can be seen in Table V.3: UTI LEGASSIT SUPER PECUNIA TUTELAVE SUA REI, ITA IUS ESTO (“According as a person has made bequest regarding his personal property or the guardianship of his estate so shall be the law”).⁵⁰ Testamentary freedom was initially sought to acquire legal heirs through adoption.⁵¹ As the use of the verb *legare* in the Law of the Twelve Tables indicates, at the beginning of the development towards making wills, a testator might not have had full disposal of his ‘goods,’ but had to distribute them individually.⁵² *Legatum* later became the legal term for a legacy, by which the testator bequeaths certain property or rights—or a mixture of the two—to someone.⁵³ Shortly after the Law of Twelve Tables, however, wills were already used to name a person or group who would legally succeed the testator and take his place in all respects.⁵⁴ Even if this authorization itself was not mentioned in the Twelve Tables, it was a logical development. After all, a testator who can dispose of all ‘goods’ belonging to him, it was thought, he should be able to do so as a whole. If the testator could dispose of all his assets by bequeathing each single item to someone else, the possibility of disposing of all his assets via a will was no longer a distant one.

This will, or testament, the so-called “testament with bronze and scales” (*testamentum per aes et libram*), in which the testator conveyed his assets to a trustee to whom he indicated how he should deal with his assets after his

50 Trans. Johnson et al. 1961.

51 Gai. *Inst.* 1.101-102.

52 Babusiaux 2021, 142.

53 Babusiaux 2021, 143.

54 Weber 1988, 67 ff.; Wieacker 1940, FS-Siber, 25 ff.

death, was described in the middle of the second century CE by the jurist Gaius as follows:⁵⁵

(103) Sed illa quidem duo genera testamentorum in desuetudinem abierunt; hoc vero solum, quod per aes et libram fit, in usu retentum est. sane nunc aliter ordinatur quam olim solebat. namque olim familiae emptor, id est qui a testatore familiam accipiebat mancipio, heredis locum optinebat, et ob id ei mandabat testator, quid cuique post mortem suam dari vellet; nunc vero alius heres testamento instituitur, a quo etiam legata relinquuntur, alius dicis gratia propter veteris iuris imitationem familiae emptor adhibetur.

But note that the two former kinds of will have gone out of use: only the one by bronze and scales has been kept. But the present procedure is quite different from former practice. Formerly the property purchaser that is, the person who received the property from the testator by mancipation, had the position of heir and so the testator gave him instructions on the distribution of his estate after his death. Nowadays, however, one person is appointed heir by the will, and the legacies are charged on him; another is brought in as property-purchaser in name only, in imitation of the old law.

⁵⁵ Gai. *Inst.* 2.103-104.

(104) *Eaque res ita agitur: qui facit testamentum, adhibitis, sicut in ceteris mancipationibus, V testibus civibus romanis puberibus et libripende, postquam tabulas testamenti scripserit, mancipat alicui dicis gratia familiam suam. in qua re his verbis familiae emptor utitur: FAMILIAM PECUNIAMQUE TUAM ENDO MANDATELA CUSTODELAQUE MEA ESSE AIO, EAQUE, QUO TU IURE TESTAMENTUM FACERE POSSIS SECUNDUM LEGEM PUBLICAM, HOC AERE, et ut quidam adiciunt, AENEAQUE LIBRA, ESTO MIHI EMPTA; deinde aere percutit libram idque aes dat testatori velut pretii loco. deinde testator tabulas testamenti tenens ita dicit: HAEC ITA UT IN HIS TABULIS CERISQUE SCRIPTA SUNT, ITA DO ITA LEGO ITA TESTOR ITAQUE VOS, QUIRITES TESTIMONIUM MIHI PERHIBETOTE; et hoc dicitur nuncupatio: nuncupare est enim palam nominare, et sane quae testator specialiter in tabulis testamenti scripserit, ea videtur generali sermone nominare atque confirmare.*

The procedure is as follows: as in other mancipationes the person making the will assembles five adult Roman citizens as witnesses and another to hold a pair of scales and after writing out his will he mancipates his property to somebody in name only. In these proceedings the property-purchaser says: I DECLARE THAT YOUR FAMILY AND PROPERTY ARE IN MY ADMINISTRATION AND CUSTODY; LET THEM BE BOUGHT TO ME WITH THIS BRONZE, AND (AS SOME ADD) THE BRONZE SCALES, SO THAT YOU CAN LAWFULLY MAKE A WILL ACCORDING TO THE PUBLIC STATUTE. Then he strikes the scales with the bronze and gives it to the testator as if it were the price; then the testator, holding the will in his hand, says: THESE THINGS, AS THEY HAVE BEEN WRITTEN ON THESE WAX TABLETS, I THUS CONVEY, I THUS BEQUEATH, I THUS ATTEST: AND SO YOU ROMAN CITIZENS STAND WITNESS FOR ME. This is called the declaration. For to declare means to announce openly and this means that the testator is regarded as specifying and confirming by his general statement what he has written in detail in his will.

The testator bequeaths his assets to someone whom Gaius calls the “property purchaser,” but who refers to himself in terms reflecting trusteeship (“administration and custody”). The testator tasks him, through a written statement, with following the testator’s wishes concerning his assets after his death. There are five witnesses and one other person holding bronze scales who see that the testator is presenting a written will to them. Together with the “property purchaser,” who solemnly declares the acquisition of the assets, there are seven people. This testament with “bronze and scales” became the only possibility for circumventing legal succession according to *ius civile*. It was thus possible—precisely as in German law today—for the Roman citizen to arrange his succession by drawing up a will or, if he did not, letting legal succession take effect.

By drawing up a will during one’s lifetime, legal succession is not—just as the case today with intestacy—of no effect, but is simply circumvented by

devaluing the traditional legal succession because it no longer has any object. If all the 'objects' in one's assets are already conveyed to the trustee, nothing remains for the legal heirs, and the fate of the inheritance depends solely on the wishes of the testator. This kind of legal transaction can be characterized as a circumvention transaction.

It is assumed that intestacy, as codified for the first time in the Twelve Tables, was previously mandatory; otherwise, it would not have been necessary to deprive it of its substance during one's lifetime. A testator could not simply decide who would take his place or acquire assets after his death—this was laid down, as shown, by legal succession as prescribed in the Twelve Tables. Rather, it was stipulated that it was the household and, finally, the agnates to whom the inheritance passed according to legal succession.⁵⁶

To circumvent this situation, individuals disposed of their assets wholly or in part during their lifetimes and transferred them for the future—or, more precisely, after their death—to a third party. The priests, who were responsible at that time for the legal system and related formulas, supported this scheme by conceiving the ritual and, with it, the person of the trustee.⁵⁷ The latter immediately and formally takes over the objects belonging to the testator, but his commitment binds him to observing the instructions of the testator. This means not only that he has to deal with them as the testator instructed him to do after his death, but also that he abstains from his rights until the testator's death and only then takes up the administration of the property left to him.

From Alienation of the Inalienable to Testamentary Freedom: An Erosion in the Service of Equal Treatment

The similarity of both rituals is apparent. In both, the seller and purchaser collect five witnesses and the scale-holder. In distinction from *mancipatio*, the seller here always actively participates in the event and gives the purchaser/trustee precise instructions about the goods conveyed. It is obvious that a legal institute that was created to override a rule in force, as *mancipatio*

⁵⁶ Gai. *Inst.* 3.16.

⁵⁷ Wieacker 1988, § 15, 310 ff.

did with the *res Mancipi*, could enable one to circumvent legal succession that is actually also unavoidable.

From a legal perspective, this presents us with a process of 'becoming a property owner': We move from a society that, the constancy of the family, removed all power of disposal from the individual over especially valuable goods like land to a community of law that permitted the individual to dispose of all his assets even beyond his death. Two observations can be made here. First, a change occurred, both socially and economically, that is reflected in the law. The goods that were bound together until then in the household were made fungible through the *mancipatio* so that they could be fed into the economic cycle. The inalienability and cohesion of the household community became an obstacle to and a restriction of power of the authorized *pater familias*. The latter saw his assets possibly disintegrating or else, stated positively, considered it made more sense to provide his son with land, cattle, and people whom he enslaved while he was still alive, to *emancipate* his son in order to give him the possibility to also participate in economic life.

Second, the legal observation can be made that a divided property system can be deduced from the ritual *mancipatio* between the *res Mancipi* on the one hand and all other objects on the other. With the intensification of trade, it is difficult to see why *res Mancipi* should be excluded from legal transactions while *res nec Mancipi* are accessible to legal transactions, even if they are as valuable or even more valuable than the things intended for agriculture.

The special provision of *res Mancipi* created to keep the farmland in the family certainly contained the seed of this law being circumvented. The ritual of *mancipatio* originally made it possible to circumvent the restrictions of inalienability by finding a means—not obviously, but by claiming that the object had always belonged to the purchaser—to detach what the *pater familias* considered surplus economic goods, such as cattle and enslaved people, from the household and profit from them in the form of money. The path that *mancipatio* as the process by which the inalienable became alienable was thus marked out. If the inalienability of 'objects' intended for agriculture served to secure succession in an agricultural society, the circumvention of this barrier at the same time meant an impairment on this succession. The testator received the opportunity to exchange property removed from his right of disposal for those over which he had free disposal. In this way, he could dissolve that part of his assets that were reserved on a mandatory basis for his legal successor and remove the 'object' from legal succession. The *mancipatio* itself thus already changed what was conveyed by mandatory legal succession and

could take its substance away completely. Taking this first step could lead further and open up the possibility of circumventing legal succession. If the testator has free disposal over his assets during his lifetime and can thus avoid the legal succession of his relatives, there is no longer any reason not to allow him to do so beyond his death. The freedom of disposal *inter vivos* dictates the freedom of disposal upon one's death, for then there is no legal way to see how a disposal made immediately before death would be valid whereas one conditioned by death would not. The pattern by which this idea can be transformed corresponds completely with the scheme tested by the *mancipatio*.

This old regulation was in no way repealed, but was merely deprived of its function through its circumvention. The inalienable became alienable, goods not freely inheritable were subjected to the arbitrariness of the testator, and always with recourse to the same ritual. In this way, the contradiction in the shape of the distinction between agricultural and other 'goods' was resolved. This occurred at the moment when agriculture was no longer the sole measure of all things, but trade and exchange were also beginning to determine the economic success of individuals. Legal instruments like *mancipatio* and wills show that, in Roman society, the individual came to the fore, wanting to have as much freedom of disposal over his 'goods' so that the individual could exist in a society centered around the economic success of individuals. Thus, the sale of part of one's land was no longer necessarily a threat to the individual, but, rather, an opportunity to start something new. Even today, there is a wide range of heirs. From those who are forced to sell their family home because they cannot afford to pay the inheritance tax on their inherited home, to those who sell their family home to buy a condo in the city or invest in a company, to large corporations that have no emotional connection to the land they own or the people who live on it. The legal community seems to have agreed then, as it does now, that the importance of such legal transactions must be taken into account in the sale of land and the making of wills through rituals such as *mancipatio* or meeting at the notary's office.

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Letters from an American Farmer—An Eighteenth-Century Agrarian Utopia?

Dirk Schuck

Abstract

This article is concerned with Hector St. John de Crèvecoeur's *Letters from an American Farmer*. In the late eighteenth century, Crèvecoeur formulates a colonial agrarian utopia, which is built on the idea that landed property owned by individual settlers is the sole basis for individual economic subsistence and political freedom alike. By analyzing Crèvecoeur's flawed critique of slavery, it shows how a legitimation of settler colonialism in the name of early modern republicanism and a specific critique of feudal domination went hand in hand in the early modern European mindset. Crèvecoeur's at the time immensely popular book is analyzed not as an early plea for American democracy, but rather as a melancholic critique of an emerging commercialization of the social in the name of agrarian romanticism.

Keywords: Landed Property, Freedom, Economic Subsistence, Early Modern Republicanism, Agrarian Capitalism, Agrarian Romanticism, Habit

Introduction

A book titled *Letters from an American Farmer: Describing Certain Provincial Situations, Manners, and Customs, Not Generally Known; and Conveying Some Idea of the Late and Present Interior Circumstances of the British Colonies in North America* hit the market in London in 1782. Published by Thomas and Lockyer Davies, who, half a century earlier, in 1733, released the first English translation of M. de Voltaire's *Lettres sur les Anglais*, the new book's author gave himself the name of Hector St. John de Crèvecoeur. An enthusiastic depiction of life in the North American Colonies, the book became an immediate success throughout Western Europe. It provoked such a strong public controversy about the merits of emigration to the Americas that, still in the same year, a politically engaged librarian at the British Museum by the name of Samuel Aynscough released a written condemnation of Crèvecoeur's *Letters*. Aynscough's pamphlet was called *Remarks on the Letters from an American Farmer; or a Detection of the Errors of Mr. J. Hector St. John; Pointing out the Pernicious Tendency of these Letters to Great Britain*.

What was so troublesome in Western Europe in the late eighteenth century about a book bearing such an unsuspecting title? Especially in England and Germany at the time, the level of migration to the Americas reached such heightened levels that it threatened the prosperity of the British kingdom or of the German fiefdoms. Although the title of *Letters* might appear harmless enough to our contemporary understanding, this was not the case in the late eighteenth century. On the contrary, the title might have been alarming to authorities merely for its stress on the 'American Farmer.' This could be read, and, indeed, was meant by Crèvecoeur, as a cipher for political liberation. Who was the 'American Farmer'? In the book, Crèvecoeur gave himself the persona of 'Farmer James,' a descendant of ordinary English folk and a second-generation migrant whose father made his way across the Atlantic to pursue a better life for his family and himself. Farmer James sees himself as an American. What we have to take into account is that the year of the publication is 1782, which means that Britain was just about to lose the war with its colonies over their independence from the Crown, later to be called the Revolutionary War. In fact, Crèvecoeur's book made him so popular in such a short amount of time that the French king consulted him as an expert on the American territories in the negotiations for peace between Britain and its colonies that took place in Versailles in 1783.

To understand the book and the public turmoil over it, it is important to have a broad idea of the life of its author: Michel-Guillaume de Crèvecoeur, who gave himself the name Hector St. John when entering the English colonies in America in 1759. Unlike his protagonist, Crèvecoeur was neither an ordinary Englishman by birth nor a second-generation migrant to North America; he was the son of a French aristocrat who, as a young man, embarked on a ship from London to the French colonies in Canada unbeknownst to anyone in his family. His English fiancé had just died of an unknown disease days earlier. From all we know, he first fought as an army officer on the French side in the Seven Years War before resigning from his post in 1759. He then made his way to the English colonies, thereby hiding his aristocratic French descent.¹

In the aftermath of his book's success, his true identity was swiftly revealed. The infuriated librarian Aynsough was quick to point it out, thereby meaning to show that Crèvecoeur's depiction of his life as an 'American Farmer' was a scam. Crèvecoeur did, however, live the life of an ordinary English settler in disguise once he had entered the British colonies. After earning some money via wage labor in various cities, he purchased a landed estate north of New York, where he lived as a farmer for nearly twenty years until the outbreak of the American War of Independence. He also married an Englishwoman with whom he had three children.

What is discussed in the *Letters*? The book starts with a prologue in which an English gentleman asks Farmer James to write down his true experience of living the life of an American Farmer. As James is doubtful about his capabilities as a writer, it is his wife and the local minister who convince James

¹ The claim that Crèvecoeur fought in the French army in Canada was first made by his grand-nephew, Robert de Crèvecoeur, who wrote the first biography of Crèvecoeur in 1883. Robert de Crèvecoeur based his evidence on maps, drawn by an anonymous army officer, he found in the French military archives in Paris which resemble those Crèvecoeur drew later of the American provinces. Julia Post Mitchell, whose 1916 monograph on Crèvecoeur was regarded in the first half of the twentieth century as the standard source on Crèvecoeur, did not follow Robert de Crèvecoeur's hypothesis in her own reconstruction of Crèvecoeur's biography. However, additional evidence supporting Robert de Crèvecoeur's suggestion later surfaced in the form of a letter of recommendation the young Crèvecoeur seems to have received for his service by the Countess d'Houdetot, with whom he had been acquainted since he was a child. See Philbrick 1970, 17; Moore 2019, xiii; Eiser mann 1985, 32–43. All biographical information given relies on the aforementioned sources. Crèvecoeur is still regularly mentioned in textbooks on early modern American history, but there is currently no vibrant discussion of his works like that which existed in the twentieth century.

to accept the challenge. The first letters describe his life as a farmer and his journeys through the North American colonies. This first part of the book also contains the one letter still known to the American public today, which is called *What is an American?* Many scholars claim that it is in this letter in which the idiom of America as a 'melting pot' appears for the first time.² However, the *Letters* goes on to paint a more equivocal picture of the Americas towards the latter parts of the book. Farmer James abhors the slave plantations in the South for their cruelty, and describes life in the Southern colonies as being decadent and very different from life in the Northern colonies. The last letter then turns to the outbreak of the War for American Independence, which James describes as a frightening civil war in which neighbors suddenly take up arms against each other.

After starting out as an enthusiastic appraisal of American life, the *Letters* ends on a pessimistic note by raising the question of how the hurt that has already been done can be cured, and what comes next for America. One thing we can learn from Crèvecoeur's *Letters* is what 'America' represents in the minds of Europeans at the time, and how this utopian image is deeply flawed by its rationalization of slavery and colonial suppression. From a political historian's perspective, what is additionally fascinating about the *Letters* is its specific engagement with the British colonial government, and what Crèvecoeur sees as a benign British colonial paternalism protecting 'America' as an agrarian state of independent freeholders. This last point will still gain more clarity as my argument about the *Letters* proceeds.

In the following, my aim is to first understand Crèvecoeur's utopian vision of America as an agrarian state of independent freeholders. I will, therefore, give a detailed hermeneutic analysis of what landed property means to Crèvecoeur as a guarantor for an individual's freedom, and as an emancipatory base for an individual's self-fulfillment. I will not follow the text chronologically, but, rather, will start my analysis from behind: For Crèvecoeur, the opposite of a society grounded on freeholding is one in which individuals are made economically dependent on others for their own subsistence. Although he realizes that the enslavement of Africans differs in its level of cruelty and abhorrence from the interrelations of feudal dependence in Europe, Crève-

2 With reference to Crèvecoeur, this was already pointed out by Post Mitchell in 1916. See also Eismann 1985, and Moore 2013. Sollors shows the importance of the *Letters* for the deployment of the political metaphor of the 'melting pot' in Sollors 1986. See also Larkin 2007 as one of the latest contributions to the debate.

coeur nonetheless understands both feudal dependence and enslavement as political forms of oppression that do not allow for a free society. Therefore, he contrasts his vision of 'America' as an agrarian state of freeholders in the Northern colonies with the southern British colonies in which, for him, a different form of society has taken shape which depends on a plantation system of chattel slavery, and concomitant mass-scale oppression (2).³

In the second part of this chapter, I am going to take a closer look at Crèvecoeur's political vision for the New World. For this, we also have to get an idea of his understanding of the history of human societies.⁴ Why is it that, for Crèvecoeur, in 'America,' a new form of society, disposed of the ills of the Old World, seems to be within reach of political imagination? Crèvecoeur's understanding of what needs to be protected about the current state of political affairs within the northern British colonies shows him to be in favor of the British colonial government's restrictions on free trade and commerce, and, therefore, to be opposed to American political independence. This apparent paradox must be interpreted against the background of his critique at the dawn of a commercial age he strongly opposes. The unique, historic chance which, for Crèvecoeur, 'America' offers is to set a different path for Western society: One which is not only freed from the ills of feudal dependency and enslavement, but which also remains protected from the commercialization of social relations apparently developing in Europe at the time. This is why my claim in the second part of the chapter will be that Crèvecoeur can neither be seen as a proponent of American independence, nor as a democrat in any meaningful sense. On the contrary, his political utopia of an agrarian state of independent freeholders is in need of strong governmental restrictions on commerce and industrial expansion, and, consequently, American democratic independence. More and more, his vision reveals itself to be, at its core, romantic (3).

3 It will be shown in the following that Crèvecoeur's assessment of slavery is deeply flawed in the way that it reflects the hypocrisy and self-righteousness of his praise for New England, where slavery existed, albeit on different scales than in the nineteenth-century antebellum South. For a critical assessment of slavery in New England, see Melish 1998. However, there is an interesting aspect to Crèvecoeur's speculation that enslaved Africans enjoyed the status of agrarian freeholders in their mother country (see below) when compared to Peter H. Wood's later historic argument that African expertise was essential to invigorating the colonial rice industry; see Wood 1974. Unfortunately, I cannot follow this line of argument any closer in the following chapter.

4 This understanding is, of course, essentially colonial. Although Crèvecoeur criticizes slavery, his work represents an epitome of the rationalization of settler colonialism. See Bhandar 2018, 4.

In the concluding part of the chapter, I will then reconsider the social and economic implications of Crèvecoeur's political views. As much as he sees himself as a critic of the remnants of a system of feudal dependency in the Old World, it might be more accurate to view Crèvecoeur's *Letters* as a moralist denunciation of an emerging agrarian capitalism. His utopian vision of America is one in which America must be regarded as a haven from old and new forms of exploitation alike. However, for Crèvecoeur, this requires that 'America' remains an agrarian state of 'simple folk.' And from his point of view, this is what the British colonial government achieved. Therefore, his political vision of the American future becomes obscured by the fact that the newly founded U.S. has moved in precisely the opposite direction by its achievement of political independence from Britain. Crèvecoeur's agrarian romanticism gets emphasized by the ending of the *Letters*: Farmer James phantasizes how he and his family settle among Indigenous Americans. There, undisturbed by the turmoils of civil war, they might manage to start a new agrarian colony of their own, as James imagines it (4).⁵

The Emancipatory Meaning of Becoming a Freeholder

In this part, I will first have a look at what it means, in the eyes of Crèvecoeur, for a European peasant to become a freeholder in the New World. In a second step, I will contrast this with Crèvecoeur's depiction of slavery as a gruesome form of oppression which takes place in the southern British colonies. This will give us a first idea of the sentimental character of his idealized depiction of American farm life to which I will turn again at the end of the first part of this chapter.

The early modern idea of landed property which I want to reconstruct in this chapter is one in which the ownership of land is synonymous with economic independence, and, therefore, individual freedom. This drawing of a tight connection between peasant subsistence and liberty presents Crèvecoeur as a recipient of early modern republican thought, as I will show in more detail in the second part of this chapter. For now, my aim is to under-

⁵ The one President of the US who shared Crèvecoeur's primitivist agrarian vision of 'America' to a certain degree is Thomas Jefferson. Indeed, in 1782, Jefferson immediately recognized, as Myra Jehlen puts it, the 'propaganda value' of the *Letters*. See Jehlen 1979, 204.

stand what the ownership of land symbolizes for Crèvecoeur politically. In his eyes, European migrants who arrive from the Old World do not know what it means to work land they themselves own. They have never experienced harvesting products that were simultaneously their own possessions. On the contrary, the property relations of the Old World alienated them from that experience. In early modern Europe, most farmers were tenants who paid rent to their landlords. Those farmers would then hire day laborers who would help them and their families work their fields. Neither European peasants nor their laborers ever owned the land of which they made agrarian use. The land was usually owned by a noble who collected rent as his profit. What 'America' had to offer to those European peasants was a way out of this social structure of economic dependence by becoming a freeholder.

Although Crèvecoeur's persona, Farmer James, pretends to be barely educated, the *Letters* swarms with hidden references to Western early modern philosophical discourse. To begin with, Crèvecoeur articulates precisely the Lockean image of America from John Locke's theory of natural rights: European settlers bring agriculture to America, which is why they are, according to Locke, allowed to appropriate the land of Native people.⁶ In James's depiction, Indigenous people welcome the settlers because they bring progress, and, thereby, eventual prosperity. James imagines himself as a friend and helper to Native people, a mindset that was widespread as a rationalization of colonial appropriation at the time. As we will see in more detail in the second part of the chapter, Crèvecoeur adheres to a gradational theory of human development in which agriculture forms the highest possible stage.

However, Farmer James draws a line between Indigenous people who are, in his eyes, not to blame for living the life of hunters and gatherers, and Europeans who come to America to do the same. As they come, in Crèvecoeur's view, from a more 'enlightened' cultural background, those Europeans should be able to become cultivators, or else risk failure. Whereas Crèvecoeur views Indigenous people as 'noble savages' who had remained undisturbed from the toils of modern civilization, he regards Europeans who come to America to live a life as hunters and gatherers as degenerate, and this juxtaposition hints at his gradational theory of civilizational progress.⁷

6 See Locke 1967, § 41.

7 Crèvecoeur never uses the phrase 'noble savage' explicitly, but his depiction of Indigenous people is situated within the imagery of this common discourse within the European republic of letters

Although his view of Indigenous people places them at the initial stage of civilizational development (of hunting and gathering), Farmer James nonetheless decides to leave Western civilization at the end of the *Letters*, and to go and live with Indigenous people.⁸ James is so disappointed with the divisive politics of the American fight for independence that he imagines to build up a new colony on his own by bringing his family (and already-chosen mates for his daughters) with him to the Indigenous community. As James sees himself as someone who acts as a benign educator of Indigenous communities, he imagines that settlers will be welcomed for their supposedly superior knowledge of farming and medicine. I will return to this revealing aspect of Crèvecoeur's narrative later. For now, it makes sense to focus on his initial juxtaposition of 'noble savages' (i.e., Indigenous people) and 'European savages' who seem to not be capable of choosing the path of becoming cultivators and farmers.

From Farmer James's experience, there are some Europeans who are not able to cope with the immensity of their newly achieved freedoms and, consequently, degenerate into a life of vice and idleness. Having lived what he calls a slavish life in the old world, some who come to the colonies do not manage to discipline themselves in the ways necessary to become a freeholder. Having been dependent on a noble lord for all of their lives, they lack the capacity to bring *themselves* to work. However, this is not what happens with most of the arrivals who undergo, in the eyes of Crèvecoeur, a fundamental change in their personalities for the better:

This great metamorphosis [of the European peasant, DS] has a double effect: it extinguishes all his European prejudices; he forgets that mechanism of subordination, that servility of disposition which poverty had taught him, and sometimes he is apt to forget it too much, often passing from one extreme to the other. If he is a good man, he forms schemes of future prosperity; he proposes to educate his children ____ than he has been educated himself; he thinks of future modes of conduct, feels an ardour to labour he never felt before. Pride steps in and leads him to everything that the laws do not forbid; he respects them; with a heartfelt gratitude he looks towards the east, towards that insular govern-

at the time. His reference to the imagery of the 'noble savage' serves as a counter-image to his description of 'degenerate' European 'savages'.

8 "Do you, my friend, perceive the path I have found out? It is that which leads to the tenants of the great ____ village of ____, where, far removed from the accursed neighbourhood of Europeans, its inhabitants live with more ease, decency and peace than you imagine; who, though governed by no laws, yet find in uncontaminated, simple manners all that laws can afford."; Crèvecoeur 2013, 159.

ment from whose wisdom all his new felicity is derived and under whose wings and protection he now lives. These reflections constitute him the good man and the good subject.⁹

I will discuss Crèvecoeur's fondness of the British colonial government in the second part of this chapter. For now, I am solely interested in the psychological impact he sees as one of the main effects for Europeans of their migration to the American colonies. To be able to motivate oneself to become an American farmer, one has to have the essential experience of what it means to work one's *own* lands. For James, this is the greatest gift one can receive in this world. However, it is not the agrarian work itself—the 'tilling' and 'ploughing' of the ground—that carries with it this emancipatory quality per se: The enslaved people forcefully brought from Africa to work on Southern plantations do agricultural work but do not experience the bliss of the Northern farmer. This is because they are themselves owned by others, and, as James imagines, were probably torn out of a native environment in Africa in which they enjoyed a similar status to the American freeholder. Crèvecoeur's critique of slavery is revealing in the way that he draws a parallelism between feudal 'enslavement' and factual slavery. With regard to their alienating effects, both statuses vary for him only in degree. James refers to the distorted social environment of the American South in the same words in which he laments the ills of the Old World. This conflation of slavery with feudal oppression is a central building block of his political ideology. What, for him, the institution of slavery brings to the New World are the alienating effects of the old feudal interplay of master and servant, although in a more extreme way. His moralist depiction of gruesome life in the Southern colonies in the later parts of the book represents a negative mirror image to his earlier doxology of independent farm life:

While all is joy, festivity and happiness in Charles-Town [where plantation owners go for amusement, DS], would you imagine that scenes of misery overspread in the country? Their ears by habit are become deaf, their hearts are hardened; they neither see, hear nor feel for the woes of their poor slaves, from whose painful labours all their wealth proceeds. Here the horrors of slavery, the hardship of incessant toils, are unseen [in Charles-Town, DS], and no one thinks with compassion of those showers of sweat and of tears which from the bodies of Africans daily drop and moisten the ground they till. The cracks of the whip urging these miserable beings to excessive labour are far too distant from the gay capital to be heard. The chosen race eat, drink and live happy, while the unfortunate one grubs up the ground, raises indigo or husks the rice, exposed to a sun full as scorching as

⁹ Crèvecoeur 2013, 43.

their native one, without the support of good food, without the cordials of any cheering liquor. This great contrast has often afforded me subjects of the most afflicting meditations. On the one side, behold a people enjoying all that life affords most bewitching and pleasurable, without labour, without fatigue, hardly subjected to the trouble of wishing. [...] [On the other side, DS] the daughter torn from from her weeping mother, the child from the wretched parents, the wife from the loving husband, whole families swept away and brought through storms and tempests to this rich metropolis!¹⁰

My aim here is not to discharge Crèvecoeur of claims of colonial suppression. His stance on slavery can surely be regarded as self-righteous and hypocritical: He enslaves a person to whom he imagines himself to be a culturally superior friend and educator. My sole interest lies in analyzing how Crèvecoeur's critique of feudalistic rule in the Old World overlaps with his critique of slavery in the New World, and, most importantly, how he imagines a society of small-propertied freeholders as a way out of both. His critique of slavery resembles G. W. Friedrich Hegel's master-slave dialectic: Whereas the master owns enjoyment, the slave has to labor for it. The characters of both are afflicted in a way that they are unable to experience the world in any holistic sense (and must fight to the end). The master has amusement but neither understands what hardship makes his leisure possible nor develops his sensibilities, because doing so would make him susceptible to the pain he inflicts on the people he enslaves. Enslaved people, according to (long discredited) Hegelian philosophy, develop a conscious capacity to endure pain, to work hard, and to master their natural environments. Not only do they not gain any satisfaction out of this, but also, according to Hegel, they have to become desensitized to their own pain in order to be able to cope. With regard to their experience of themselves and of others, both are allegedly alienated from their true inner capacities as humans.¹¹ To compare the suffering of enslaved people with the insensibility of their masters, and to draw an inherent connection between them is, of course, problematic in many ways.¹²

10 Crèvecoeur 2013, 121.

11 Although today commonly associated with Hegel's argument in the *Phenomenology of Spirit*, this master-slave-dialectic is already present in a number of early modern European critiques of chattel bondage. Crèvecoeur seems to have been aware of this imagery. It might also serve as supporting evidence that Crèvecoeur conflates feudal bondage and slavery.

12 The supposed inability of enslaved people to experience physical pain served as an argument to support slavery in Enlightenment debates. The above-quoted passage from the *Letters* might be interesting to compare to the autobiography of Frederick Douglass, in which he treats the "terrible spectacle" of the beating of his aunt Hester (and her screams) as the moment in which he becomes aware of his aunt being enslaved. Cited after Hartman 1997, 3. In contemporary Black

With regard to my argument, it only serves to underline the political impact of Crèvecoeur's sentimentalist stance. For Crèvecoeur, freedom and an individual's capability to make sensible experiences are inherently connected. For him, the one person to experience them is the freeholder.

In the *Letters*, Crèvecoeur's expressive image of the horrors of slavery serves as a contrast to his jubilation about what it means to be freeholder. Freeholders not only own the lands they work, but also enjoy an unrestrained experience of their activities and of their natural environments. By wandering around on his estate, Farmer James experiences a "propensity to spontaneous musing, the simple art of deriving pleasing sensations from everything around" him. This for him represents "the pure gift of nature."¹³ What Crèvecoeur is saying is that Farmer James knows how to feel pleasure as well as how to discipline himself and to achieve his goals. In contrast, the quasi-feudal plantation owners of the South who are "hardly subjected to the trouble of wishing" not only have to 'harden their hearts', and 'deafen their ears' but also lack the very capacity to achieve something by the work of their own hands (op. cit.). With respect to their individual capabilities, their moral decadence and luxurious way of life let them become inhumane, and, therefore, also weakens their sensitivity. In Crèvecoeur's political imagination, Farmer James, the exemplary 'American farmer,' represents the opposite of this existential alienation:

The instant I enter on my own land, the bright idea of property, of exclusive right, of independence exalt my mind. Precious soil, I say to myself, by what singular custom of law is it that thou wast made to constitute the riches of the freeholder? What should we American farmers be without the distinct possession of that soil? It feeds, it clothes us; from it we draw even a great exuberancy, our best meat, our richest drink; the very honey of our bees comes from this privileged spot. No wonder we should thus cherish its possession, no wonder that so many Europeans, who have never been able to say that such a portion of land was theirs, cross the Atlantic to realize that happiness!¹⁴

The liberating effect of being a landowner James experiences is closely tied to his sense of self as a farmer. Not only would he not feel the same pride if his "soil" was owned by a landlord, but he would also not be able to regard his working activities as an empowerment "without the distinct possession

Studies, this example serves to elucidate the relationship between terror and self-making. See Hartman 1997.

¹³ Crèvecoeur 2013, 16–17.

¹⁴ Crèvecoeur 2013, 17.

of that soil." This is, in a way, a deeply romantic aspect of Crèvecoeur's image of the American farmer; in its stress on the fundamental emancipatory qualities of what it means to be a freeholder, it symbolizes liberation from oppression. I turn now to what this means for Crèvecoeur in terms of political order.

Crèvecoeur's Political Utopia

In this second part of the chapter, my aim is to gain a better understanding of the political implications of Crèvecoeur's vision for America as an agrarian state of independent freeholders. I will show how he adopts early modern economic thought into his vision of American economic development. My claim will be that, as much as he sees 'America' as a haven from feudal oppression, he also regards it as sheltered by the British colonial government from increasing commercialization. I will end this part of the chapter by making the claim that Crèvecoeur was neither a proponent of American independence nor a democrat in any meaningful sense, because his political vision relied on strong governmental restrictions on free trade, commerce, and industrialization.¹⁵ In Crèvecoeur's view, this was assured, until the fa-

15 My claim that Crèvecoeur's political position should not be regarded as democratic refers to his approval of the British colonial government. This approval is best expressed in essays that were only published later outside of the *Letters* (but could have well been a part of it under other editorial circumstances) like *The American Belisarius*, for example. In the *Letters*, Crèvecoeur mentions "commerce" only three times. Jehlen makes the interesting claim (see Jehlen 1979, 212) that he omits a detailed discussion of commerce to be able to paint his idyllic picture of America as a peasant society. Jehlen clearly sees Crèvecoeur's sophisticated political position and calls him a "monarcho-anarchist" because, in his political views, Crèvecoeur combines an approval of the British 'protection' of the colonies with an ideal of individual self-sustainment by subsistence farming on a societal level. Jehlen, however, fails to see that this 'anarchist' framework is not only in need of minimal interference "at a distance" (a phrase Crèvecoeur uses often in the *Letters*), but also more active economic restrictions on the part of the colonial government. My claim is that this is what, in the *Letters*, Crèvecoeur means by the "wisdom" of the colonial government. See Johnson et. al. on the British restrictions on colonial free trade and commerce: "This policy was believed to be wise, both politically and economically" (Johnson et. al. 1915, 35). More recently, Edward Larkin argued that Crèvecoeur was not in favor of American nationalism but saw America as a cosmopolitan haven for the industrious and poor. However, Larkin does not acknowledge the antidemocratic tendencies in Crèvecoeur's text because he relies on a contemporary idea of cosmopolitanism that is anachronistically applied to the *Letters*. As the dedication to the first edition makes clear,

tal war, by a paternal government which acted as a benign hegemon over the colonies.

Farmer James is hypocritical with regard to his claim of the friendly relations he shares with Indigenous people and with regard to his critique of slavery, which is obviated by the fact that he was an enslaver himself. His political utopia, however, is a very particular one when it comes to policy advice for how social and economic politics shall proceed in the colonies. Let me resume the narration of Crèvecoeur's individual fate for a moment: His success in France was even bigger than in the English-speaking world. His book led him into the highest circles of the French nobility. In Paris, he became acquainted with the Marquis de Lafayette, the later head of the French national guard after 1789, to whom Crèvecoeur dedicates the French Edition of the *Letters*.¹⁶ He became a regular member of the salon of Madame de Houdetot, the famed patron of Rousseau and many other philosophers. Through her, he was put in touch with Benjamin Franklin, whom he tried to convince of his political sympathy for the newly independent United States of America. This speaks to his opportunism and shows his ambition for political advancement. Louis XVI gets so impressed with Crèvecoeur at the peace negotiations in Versailles that he later appointed him the first French consul for the State of New York in 1784. This is when Crèvecoeur headed back to his beloved America only to find his wife murdered, and his estate destroyed.

The reason why the *Letters from an American Farmer* must, in part, be understood as a political utopia, I argue, is because Crèvecoeur depicts in them a political order that he deems must be preserved but never changed. In the *Letters*, this idealized depiction refers to the political, social, and natural con-

Crèvecoeur's cosmopolitanism refers to the Abbé Raynal's *Histoire des deux Indes*. Raynal's *Histoire* should not be read as an appraisal of commerce (and cosmopolitanism), but rather as an analysis of when (colonial) circumstances of international trade purportedly serve peace, and when they do not. My point is that, following the overall logic of Crèvecoeur's political and economic reasoning, a concert of sovereign democratic nations does in fact not count under those peace-enabling conditions (a more difficult question might be if it does for Raynal). This inherent opposition in Crèvecoeur's text between American democratic sovereignty and security (or peace) might be what is hard to grasp from a contemporary (liberal) perspective. See Jehlen 1979; Larkin 2007.

16 It might have been for reasons of political caution that Crèvecoeur changed the dedication from Raynal to Lafayette. Raynal's *Histoire des deux Indes* was forbidden in France at the time and the author exiled (see on Raynal also note no. 18). Still, Crèvecoeur's newly-written French version is considerably less political as a whole. This is also why, at the time, it gets interpreted in Germany as the 'ripe' version of the *Letters*. See also note no. 39.

ditions in the Northern British colonies before the war, which means that, in a way, his utopia is already lost. One astonishing thing about the *Letters* is how jubilant passages about the New World are mixed with melancholic reflections on how the historic course of events always tends towards decline. As much as Crèvecoeur regards 'America' to be a haven for poor but industrious Europeans in search of a better life, he also recognizes that there are forces beyond their control that will eventually turn against them. This he takes to be especially true with regard to developments in the Southern colonies where, in his view, a renewed feudalism is already beginning to take shape. I will turn once more to these pessimistic elements of Crèvecoeur's social criticism at the end of this chapter. For now, we have to understand what makes up the core of Crèvecoeur's political beliefs, and why America bears such utopian potential for him.

I already mentioned that I regard Crèvecoeur as part of the early modern republican tradition of political thought. I will now elaborate further: An essential part of early modern republicanism is a strong belief that, to achieve individual freedom, one needs to establish one's own subsistence and economic independence from others. For early modern republican thought, political and economic conditions are deeply intertwined. That people are capable of developing their own will, and articulating their own wishes, is what is coined in this discussion as not being 'enslaved' by others. This idea of 'enslavement' is an economic one insofar as the only way to ensure independence from any outer domination is by way of (agrarian) self-subsistence. The idea is that once your self-preservation is dependent on someone else, your freedom is fundamentally lost. You will always be only a subject at the other's mercy. Although the early modern republican metaphorical deployment of 'slavishness' is problematic in many regards, as a political metaphor, it was highly influential at the time.¹⁷

The one most important natural condition for freedom Crèvecoeur sees realized in the British colonies is an abundance of land.¹⁸ This natural condition, of course, depends on dispossessing Indigenous people but this

17 Alan Coffee has shown how Douglass later develops the early modern republican meaning of 'slavishness' further to describe the social continuity of the institution of slavery after the American civil war. Thereby, Douglass gives the idiom of 'slavishness' a different meaning which addresses the problem of how racial segregation was continued after the abolition of slavery as a lawful institution. See Coffee 2020.

18 See Locke 1967, § 33.

does not appear to Crèvecoeur as a contradiction.¹⁹ Indeed, the prospect of possessing one's own land is the main reason, in his eyes, why so many Europeans take up the arduous task of travelling to the Americas in the first place, as described by Crèvecoeur above. This natural condition must imply, of course, that this land is accessible and that people who come to the colonies will be able to expand their Western border ever further.²⁰ We can easily see how this natural condition is perceived by Crèvecoeur as an essential prerequisite for his republican utopia, which is based on the chance for everyone to become a freeholder. Everything else he regards as secondary to this.

However, the natural and political conditions of Crèvecoeur's utopia are intertwined with each other: The vast nature of America also enlivens the political imagination of the arrivals. I want to refer to what the local minister says in the opening chapter of the *Letters* to convince Farmer James why his views matter and have to be documented. After reflecting on how Europe is filled with ancient ruins that tell stories of centuries of political oppression and lost fights against this oppression, the minister describes what he sees as the main characteristic of the New World:

Misguided religion, tyranny and absurd laws, everywhere depress and afflict mankind. Here we have, in some measure, regained the ancient dignity of our species; our laws are simple and just; we are a race of cultivators; our cultivation is unrestrained, and therefore everything is prosperous and flourishing. For my part, I had rather admire the ample barn of one of our opulent farmers, who himself felled the first tree in his plantation and was the first founder of his settlement, than study the dimensions of the temple of Ceres.²¹

The mentioning of the temple of Ceres is a further hint at the religious roots of ancient republican thought. Ceres is the Roman goddess of agriculture, and the priest of the temple of Ceres was allowed to be appointed from among the common people. However, the minister (who is a priest himself) would rather study the progress of agriculture in the New World than the ruins "of the temple of Ceres." As he points out, it is "here" where "we have [...] regained the ancient dignity of our species." It is worth noting here that he

19 In her contribution to this volume, Anna Möllers shows the precise connection of a stadial theory of economic history and Indigenous dispossession. In Crèvecoeur, this connection is implied but never explicitly stated.

20 The idea that this excess of land might one day be gone, was surprisingly absent from the early modern imagination of the Americas. See Webb 1979, 2–8.

21 Crèvecoeur 2013, 7.

refers to the European people coming to the New World as “a *race* of cultivators.” From our knowledge of later nineteenth century biological racism, this might appear as a paradoxical claim at first sight: The usage of ‘race’ in this context, from my point of view, seems to signify the priest’s supposition of a fundamental *malleability* of the people which come to America. They are still flexible with regard to the evolvement of their habits and manners, and due to the natural conditions, they will turn into “a race of cultivators” once they arrive. Still, one could make the claim that it appears to be an exclusively European “race of cultivators” which Crèvecoeur imagines to be formed into one. This imagery of malleability is also an essential part of Crèvecoeur’s most famous characterization of the American people as ‘melted.’

Here individuals of all nations are melted into a new race of men, whose labor and posterity will one day cause great changes in the world. Americans are the western pilgrims who are carrying along with them the great mass of arts, sciences, vigour and industry which began long since in the East; they will finish the great circle. [...] The American ought therefore to love this country much better than that wherein either he or his forefathers were born. Here the rewards of his industry follow equal steps the progress of his labour; his labour is founded on the basis of self-interest; can it want a stronger allurements? Wives and children, who before in vain demanded of him a morsel of bread, now, fat and frolicsome, gladly help their father to clear those fields whence exuberant crops are to arise to feed and clothe them all, without any part being claimed, either by a despotic prince, a rich abbot, or a mighty lord.²²

If this is the first textual appearance of the image of Americans as “melted,”²³ it is worth noting that it applies only to white Americans. What is also interesting about this passage is that it gives us a hint at what is Crèvecoeur’s general narrative of ‘human civilization,’ which seems to be carried by the idea that white Americans will finish the ‘circle of civilization’ that once started with the first great agricultural civilizations in East Asia.²⁴ For Crèvecoeur, the substance of what he calls “the great mass of sciences, vigour and industry” is the development of the technique of agriculture. What is important

22 Crèvecoeur 2013, 31–32.

23 See note no. 2.

24 Crèvecoeur also frequently refers to Europe as “the East” in the *Letters*. However, it seems to me that in this passage he has a global circle in mind. The idea that East Asia used to be the historic cradle of the technique of agriculture was popular during that time in the physiocratic movement of the French Enlightenment (which Crèvecoeur might be referencing in this passage). On the importance of East Asian agricultural history for the physiocratic (and especially Francois Quesnay’s) philosophy of history, see Maverick 1946.

for us here is the fundamental historic meaning Crèvecoeur assigns to the development of the practice of agriculture as the most important marker of 'civilizational' progress. The precise reason why the "American [...] ought to love this country much better" is that (as an American) he is allowed private ownership of the lands that "feed and clothe" his family.²⁵ This is what Jefferson regards as the propagandistic quality of Crèvecoeur's *Letters*:²⁶ They manage to transform a philosophy of history (which is centered on the advancement of an agricultural mode of production) into a popular narrative about the white European individual's liberation from feudal oppression. Still, it is important to see that, for Crèvecoeur, it is the British government that ensures those conditions.²⁷

As I mentioned earlier, Crèvecoeur only pretends to be uneducated, or, to put it more precisely, speaks through the persona of Farmer James to make his claims more convincing. However, especially with regard to his speculations about 'civilizational' progress, it is clearly discernible that he is familiar with the emerging political economy of his time. Early modern political economy generally depicts 'civilizational' progress as a succession of four stages of human economic development.²⁸ In this economic theory of the development of human societies, an early stage of hunting and gathering is succeeded by a pastoral economy, which is then followed by the develop-

25 For readers today, Crèvecoeur displays a strange mixture of conservatism and progressivism centered around the idea that *it is the patriarchal head of the household who is to hold inalienable property rights*. However, it is worth mentioning here that he befriended the early modern advocate for women's rights Mary Wollstonecraft, who was also a strong defender of the family as the nurturing cell (Karl Marx's 'Keimzelle') of a functioning civil society, later in life. Wollstonecraft's defense of the family rested on the idea that once the family is not embedded anymore into a framework of feudal oppression, the relation of sexes can transform into a relation of friendship. In stark contrast to Wollstonecraft's writings, Crèvecoeur never questions a gendered division of labor or applies the republican critique of domination to marriage, as Wollstonecraft does. Wollstonecraft mentions her discussions with Crèvecoeur in Wollstonecraft 2009 [1796], 127.

26 See note no. 5.

27 One could make the claim that Crèvecoeur's assertion that the British colonial government protects the interests of white individual landowners best might only be regarded as a coherent argument when it is assumed that Crèvecoeur is familiar with Montesquieu's depiction of "the English constitution" in the *Spirit of Laws* (see Montesquieu 1989, 2.11.6), because he assumes that it is constitutional monarchy and not democracy which best protects the white male individual's right to private property. However, this could have also been his reading of Locke's *Second Treatise on Government*. Most likely he was familiar with both texts.

28 For the emergence of the theorem of the four stages of economic development, see Berry 2013, 32–65.

ment of the practice of agriculture.²⁹ As I tried to make clear in the preceding part of the chapter, only Indigenous people who allegedly do not know about agriculture, according to this theory, are not guilty of 'backwardness' in living as hunters and gatherers. However, following the narrative of the four stages, the practice of agriculture under favorable political conditions is able to create such an abundance of goods that it might serve as the basis for (and opens up the possibility of) ways of individual self-preservation not previously known. Because of its own economic success, agriculture as the dominant mode of subsistence will eventually be succeeded, therefore, by a commercial framework of an ever-widening market economy that is mainly based on trade, and a market exchange of goods and services.³⁰

What is special about Crèvecoeur's view is that he wants to stop the development short at the third stage of agriculture as the predominant mode of subsistence. As an abundance of goods for consumption technically allows for many professions to prosper, commercial trade in goods and services itself might eventually form the center of a nascent commercial and industrial society. In many ways, the theory of the four stages shows best how early modern political economy tried to make sense of the rise of the capitalist mode of production. What is, from my point of view, fascinating about Crèvecoeur is that he denies the historical inevitability of this development and wants the development to freeze at the third stage of agriculture. Therein, his *Letters* resemble the similarly utopian mindset of James Harrington's *Oceana*, which was written about a century earlier and depicts an ideal English republic as a nation of independent peasants and freeholders.³¹ To read the *Letters* not only as a passionate depiction of the benefits of moving to 'America' for ordinary Europeans (which they surely were), but also as a passionate plea for American nationhood and political independence, risks diminishing the genuine sophistication of Crèvecoeur's political and economic argument, because it is the British colonial government which Crèvecoeur

29 For a thorough analysis of ideological implications of this juxtaposition, see Möllers in this volume.

30 This might be regarded as a dialectical element of the narrative of the four stages that was often overlooked for the sake of telling a straight story of economic progress (e. g. von Hayek 1991, 119–21). Compare the view of Friedrich August von Hayek to David McNally's (1988), or David Dwyer's (2005) assertion of Adam Smith's view on the virtuous effects of agriculture.

31 Following John G. A. Pocock, one could make the claim that Harrington and Crèvecoeur argue along the same line in this regard (of cutting 'commercial' deployment short through agriculture). See Pocock 1965.

regards as having the political power to impose the accordingly necessary restrictions on free trade, industrialization, and commerce.

His policy aim is to stop socioeconomic evolution in the British colonies short at the agricultural stage of development, and thereby avoid the fourth stage of an increasing societal commercialization. This is why he adheres to the 'American farmer' as his ideal of individual fulfillment and political liberation. In a substantial way, Crèvecoeur's social utopian vision for America is both romantic and anticapitalist. This is where his British adversary Aynscough, to whom I will return once more in the last part of this chapter, misinterprets Crèvecoeur's political message in the *Letters*: Crèvecoeur is not opposed to the British government of the colonies. On the contrary, he sees the British colonial rule as a way to implement his agrarian utopia. For his vision of American society, the agricultural sector of the economy has to stay dominant. The policies of the British crown assured this by restricting the development of industrial production. Britain also did not allow the colonies to enter into international trade.³² Crèvecoeur regards this as precisely the sheltering economic policies that allow for 'America' to stay a primarily agrarian economy of self-subsistent farming units.

To make sense of Crèvecoeur's political views one has to realize that, on the one hand, he is putatively opposed to the feudal subjugation of others but, on the other hand, he is in favor of restricting economic development to assure the persistence of an agrarian mode of subsistence. This is where my reading of Crèvecoeur departs from the mainstream of proto-democratic interpretations of the *Letters* in the second half of the twentieth century: It seems to me to be historically inaccurate to claim that Crèvecoeur was an early proponent of American democracy. This would mean to interpret the numerous passages in the *Letters* in which he hails the British crown for its "wise" government of the colonies as solely as a precaution to avoid political prosecution and eventual censorship. Still, Crèvecoeur gives reasons why he sees the economic policies of Britain as favorable to its colonies that are consistent with his agrarian vision. This is how Farmer James, as quoted above,

32 In recent economic history, it is generally agreed that the British colonial restrictions on free trade by the colonies, and commerce *within* the colonies, did not have the protectionist effect the British government hoped for. However, this is not a counterargument against my claim that Crèvecoeur embraces it as a political (mercantilistic) ideology. On the intentions of the British colonial restrictions, see Perkins, 1988, 24. Besides calling the British colonial government "wise", Crèvecoeur often claims that it "protects" the colonies, which is another example of mercantilistic jargon in the *Letters*.

imagines the European arrival to view the colonial government: "Pride steps in and leads him to everything that the laws do not forbid; he respects them: with a heartfelt gratitude he looks towards the east, toward that insular government from whose wisdom all his new felicity is derived and under whose wings and protection he now lives."³³

What "the laws do not forbid" must not be read here in a solely civil sense of not getting in the way of others but in an economic sense that the British government encourages the arrivals to become self-subsistent farmers. This is why Crèvecoeur genuinely adheres to the colonial government. His loyalty is not a pretended one. One of the sentences on which grounds he is often regarded to be an early proponent of democracy is the following: "Europe contains hardly any other distinctions but lords and tenants; this fair country alone is settled by freeholders, the possessors of the soil they cultivate, members of the government they obey, and the framers of their own laws, by means of their representatives."³⁴

This passage refers to the communal self-government of the colonies regarding domestic affairs in the provinces. It is Crèvecoeur's communitarian ideal that American farmers decide on matters of their communal administration by themselves. It is not within their political sphere of influence, however, to enable economic policies that would be harmful to the predominance of an agrarian mode of subsistence like, for example, state investment in industrial production.³⁵ For Crèvecoeur, it would, of course, also not be in the American farmers' self-interest to implement economic policies that allow for other sectors of the economy to eventually outrun them. How far Crèvecoeur's democratic convictions actually reach is up for debate.³⁶

33 Crèvecoeur 2013, 43.

34 Crèvecoeur 2013, 40.

35 Industrial production meant at the time mainly sectors like textiles and cloth, or iron manufacturing. Britain aimed at protecting its homeland in its leading position in those economic sectors – including relying on the colonies as a purchaser of those manufactured goods. However, as it eventually proved impossible to suppress colonial production for domestic markets, this policy (largely through the *Navigation Acts*) gradually faded in its effectiveness. In addition to Perkins 1988, see also Price 1996 for a detailed analysis of economic entanglement between Britain and its North American colonies. Price convincingly shows that trade with the colonies was primarily an effort of the third estate. Due to their station, those interest groups also were not as opposed to political reform as the high nobility, for example. Many economic endeavors between Britain and its former colonies therefore remained in place after the achievement of American independence.

36 This issue reaches beyond the scope of this paper. To reconnect it to the idea of property, one would need to take into account the early modern argument for 'constitutional monarchy' as the best way

What might have encouraged later proto-democratic readings of Crèvecoeur is the fact that Alexis de Tocqueville later hails strong communal structures as a distinctive feature of American society much like Crèvecoeur does. It is, of course, true that, for de Tocqueville, those parishes form the essential backbone of American democracy. However, in Crèvecoeur, that communal structure is still not connected with an overall democratic vision of the colonies, or the future U.S. In the *Letters*, the concept of democracy is not mentioned once.

Conclusion: Crèvecoeur's Social Criticism Reconsidered

Crèvecoeur is a strong critic of what he sees as the remnants of an economic system of feudal dependency in Europe. What is anachronistic about his perspective, however, is that the typical tripartite structure of economic dependency in early modern European agriculture between landlords who own the land, tenant farmers who rent it, and day laborers who work for the tenant farmers for wages, is a historically specific structure to the early modern European agrarian economy, which some historians of economics, for that reason, signify as 'agrarian capitalism'.³⁷ Against this tripartite model, Crèvecoeur imagines America as a country almost exclusively populated by agrarian freeholders who own the land that they work themselves, and, therefore, the products they harvest.³⁸ In a grand simplification, he regards this agrarian economy of small-propertyed freeholders to be the best economic system and best possible political order at the same time. Thereby, as we have just seen, it is clear to him that the political sustainment of such an agrarian state

to protect private property (see Montesquieu 1989, 2.11.6). Crèvecoeur's essential ambivalence in his political position lies in his effort to reconcile the idea of private property with strong statist control.

³⁷ See Brenner 1985; Wood 1984; McNally 1988.

³⁸ As Crèvecoeur grew up as a French aristocrat in the mid-eighteenth century, it might be worth pointing out that the tripartite structure of noble proprietors, tenant farmers, and wageworkers also already dominated the French rural economy at the time (see Rozental 1956, for a contrasting view see McNally 1988, 85). If anything, his strong stance against this tripartite agrarian structure of economic exploitation shows his 'republican' (or 'revolutionary') sympathies. Still, this does not mean that he was a 'democrat' in any meaningful sense. Economically, he might more accurately be described as a proto-socialist arguing for a strong statist control of the economy like the physiocrats imagined it for his mother country. See McNally 1988, 89–90.

of freeholders is in need of strong governmental protection by economic policy. This might have been one of the reasons why, as a French consul to New York, from all we know, he engaged little with the newly founded American government which, after all, had just fought a war for political and economic independence precisely against those colonial restrictions. What he did instead was to focus on building up agricultural societies all over the country. To me, this seems to indicate that he sticks with his political vision albeit being aware that, by the latest historic developments, the odds had significantly turned against him. It was not long until he resigned from his diplomatic post and went back to Europe, where he made a name for himself as a governmental advisor on agricultural matters.

The political nuances I have just tried to carve out of Crèvecoeur's political vision in the *Letters*, however, did not dominate the public debate about his book in Europe at the time. To most readers, the book's overall message was just an enthusiastic call for emigration to the Americas, and a passionate plea against the social and psychological ills of feudal dependency. Aynscough, whom I have mentioned twice, saw the *Letters* as a propagandistic American attempt to drain Europe of manpower, a concern he shared with many German recipients of the *Letters*.³⁹ To European officials whose concern it was to ensure the prosperity of their polities, the possibility for poor Europeans to migrate to the Americas was an economic but also a political threat, as it showed that a different political order was possible. As with most official European commentators who were hostile to the *Letters*, Aynscough was primarily concerned with how his country would cope with the U.S. as its economic competitor:

The time being come when the independence of America is in some measure acknowledged by this country, we already see allurements thrown out to encourage the inhabitants of all nations to come and settle with them, and by that means to recover their country from the desolation it has sustained by the war, by draining various nations of their most useful inhabitants, without waiting for the flow increase of natural population [...] This politic conduct in them ought as much as possible to be counteracted, in order to prevent an emigration, which may in the event prove more fatal to this country than the war itself. As

³⁹ The German public reception of the *Letters* is remarkable in its own right: Whereas the more political English version (which I have discussed here) is generally deemed to be dangerously revolutionary, the more sentimentalist French version is considered by several commentators to be the 'ripe' expression of Crèvecoeur's social thought. See reviews Anonymous, 1785a;1785b; Ettinger 1788.

false lights are always held out to the credulous, it is the duty of every good citizen to draw away the veil under which truth is eclipsed.⁴⁰

However, as we have seen, it is not historically accurate to see Crèvecoeur as a propagandist for the American cause of political independence, as I have argued above. After all, a probable reason why his wife of British descent was murdered while he was away might have been that the Crèvecoeurs were considered loyalists to the crown. Crèvecoeur sees the 'America' of the *Letters* as a unique historic chance to accomplish the republican vision of an agrarian state of independent freeholders and for the implementation of that vision, he is in strong need of the British colonial government—or, for that matter, a similarly paternal political authority.

As I pointed out in the first part of this chapter, Crèvecoeur regards Indigenous people as culturally inferior to the European arrivals who can teach them the practice of agriculture. However, he also admires Indigenous people at times for their supposed simplicity. After all, his vision of America bears strong signs of a self-conscious primitivism of an idealized farm life.⁴¹ It seems to me that the one political theory with which Crèvecoeur is in close dialogue is his specific interpretation of a Lockean theory of natural rights. It almost seems that he wants America as a country to remain in what Locke would still consider the 'natural state,' meaning a political and societal order of self-subsistent farming units independent of each other, and still in no further need for an enhanced development of a market-mediated division of labor. As for many ancient and modern moralists after and before him, it is the emergence of *money*—understood as the one necessary precondition for making profit⁴²—which he sees as the *one* economic institution which ushers in a fatal dynamic towards individual greed and economic and judicial mechanisms of disenfranchisement and exploitation. His characteristic image of the American farmer, which is best expressed in Farmer James's narrative of the life of Andrew, the Hebridean (to which I could not relate in detail here for reasons of space) is one of a frugal, content, and simple-minded

40 Aynscough 1783, 2–3.

41 This is where his own life and the fictitious life of Farmer James part ways: At the end of the *Letters*, James imagines living with the 'Indians' to protect his family from the calamities of the war. However, his racist prejudice becomes obvious when James makes the claim that living with the 'Indians' also would entail bringing future husbands for his daughters with him. Still, James explicitly chooses the company of Indigenous people to rebuild the agrarian society of small freeholders he regards as being lost by the war. See Crèvecoeur 2013, 166–173.

42 See Locke 1967, § 49; Jehlen 1979, 212–214.

man.⁴³ As much as he loves 'freedom,' he condemns cunning and fraud. What makes Crèvecoeur pessimistic about the development of the Southern states in which plantations are situated is that a new ruling class takes advantage of seemingly endless possibilities of appropriation in an unscrupulous way against which the ordinary and unsophisticated American farmer is helpless. Notice that it is those people, in the eyes of Crèvecoeur, who brought the institution of slavery to the New World:

The three principal classes of inhabitants [of Charles-Town in Virginia, DS] are lawyers, planters and merchants; this is the province which has afforded to the first the richest spoils, for nothing can exceed their wealth, their power and their influence. They have reached the ne-plus-ultra of worldly felicity; no plantation is secured, no title is good, no will is valid, but what they dictate, regulate and approve. [...] These men are more properly law-givers than interpreters of the law and have united here, as well as in most other provinces, the skill and dexterity of the scribe with the power and ambition of the prince. Who can tell where this may lead in a future day? The nature of our laws and the spirit of freedom, which often tends to make us litigious, must necessarily throw the greatest part of the property of the colonies into the hands of these gentlemen.⁴⁴

In all its oversimplified manner, Crèvecoeur comes close here to recent scholarly views on the evolvement of capitalistic societies which regard not only their judicial institutionalization as substantial to the successful persistence of their modes of production and appropriation but also the social installment of a lawyerly class capable of modifying the law in the ways necessary for the evolvement of a capitalist economy. From the standpoint of legal history, Crèvecoeur seems to be on the right track by accentuating the societal impact of such a professional specialization.⁴⁵ Comparable to a claim made by Burke shortly thereafter about the leading role of lawyers in the French revolution,⁴⁶ Crèvecoeur regards the lawyerly class as taking the place that, in the feudal system, used to be occupied by the clergy.⁴⁷ To reconnect Crèvecoeur's pessimist view of the future political and economic development of

43 See Crèvecoeur 2013, 49–65.

44 Crèvecoeur 2013, 120–121.

45 It could be seen as astonishing that, in her recent assessment of the legal history of capitalism, Katharina Pistor describes the legal "masters of the code" along the same lines. They do not interpret the law, but "code" it. See Pistor 2019.

46 See Burke 2014, 42: "Judge, Sir, of my surprise, when I found that a very great proportion of the [National, DS] Assembly (a majority, I believe, of the members who attended) was composed of practitioners in the law."

47 This is again to be found in *The American Belisarius*: "What a pity, that our forefathers who happily extinguished so many fatal customs, and expunged from their new government as many errors

'America' with his primitivist utopian vision, one could make the claim that only if the right to landed property is regarded to be a natural right in the fullest sense—meaning without being in need of further legal codification—his model of an agrarian society of independent freeholders seems sustainable.

One of the reasons for the astonishing success of the *Letters* in the late-eighteenth century might have been that it combines a romantic idea of farm life with a strong ethical denouncement of political and economic subjugation. It almost appears as if, in the eyes of Crèvecoeur, America represents a paradisiac state that not only offers its European arrivals an individual space for their own emancipation, but also a fundamental possibility for humankind to start history anew. However, by the time Crèvecoeur publishes the *Letters* in 1782, following his own line of argumentation, this paradise was already lost. One might argue, of course, that it never existed, as it was built on the abhorrent practice of enslavement in the first place.

As mentioned earlier, the very last passages of the *Letters* imagine how Farmer James's family (and chosen mates for his daughters) flee the turmoil of the war to go and live with Indigenous people. This surprising turn at the end of the *Letters* might be regarded as a conclusion to Crèvecoeur's pessimistic narrative of civilizational progress. As the misdeeds of politics—Indigenous people, for that matter, allegedly know no politics, according to James—lead to civil war, the only chance to keep building up the agrarian utopia Crèvecoeur posits is to start a colony of one's own among Indigenous people, at least temporarily. Among Indigenous people, as James imagines it, the new settlers will be welcomed when they acknowledge the tribal order, on the one hand, and will help improve it, on the other.⁴⁸ As he himself has become a voluntary outcast of Western civilization, James wants to 'help' Indigenous people 'better' cultivate their lands, and maybe even 'teach' them how to become cultivators of land themselves.⁴⁹ James speculates about whether this aim is too far-fetched: On the one hand, it seems true to him that Indigenous people in America remained undisturbed from the 'slavish-

and abuses, both religious and civil, did not also prevent the introduction of a set of men so dangerous." Cited after Jehlen 1979, 220.

48 Crèvecoeur 2013, 149–173.

49 As Möllers points out in this volume, for this line of colonial reasoning it did not matter if Indigenous people already were cultivating their lands. Agricultural cultivation always had to be regarded as an exclusive advantage of a supposedly more advanced civilization allegedly represented by European settlers.

ness' incited by feudal subjugation. In his eyes, this speaks for the possibility that the Indigenous people might one day be capable of becoming farmers in the utopian meaning Crèvecoeur ascribes to the term. On the other hand, Indigenous people for James never experienced the motivation that only comes with landed property either. This is why James first and foremost cares about the white people he has brought with him, and how to prepare them for a possible return into the 'civilized' world. A rare moment of racist self-awareness can be witnessed when James reflects on his disgust regarding a possible marriage between one of his daughters with an Indigenous man.

It is only in this very last passage of the *Letters* that Crèvecoeur ever refers to the concept of surplus as quoted below. After all, his agrarian utopia cannot do without the idea that one will improve the value of one's own possessions by industry. It is this most specific modern motivation that James secretly aims to keep alive in his colonial family while being in self-imposed exile. For him, this is the only way to protect his offspring from the idleness of what he sees as a noble savage's life. Still, in his eyes, Indigenous ways of life were preferable to the vices incited by the factionalism of civil war.⁵⁰

I end my analysis of Crèvecoeur's *Letters* with a last quote which expresses how James is torn apart by the prospect of his children living with Indigenous people. More than to underline Crèvecoeur's hypocrisy and self-righteousness (which it surely does), this passage shows how, in the end, his idea of an agrarian society of independent freeholders cannot be maintained without the motivation to make small gains, at least for oneself. It seems to me to be an almost subconscious revelation that this is the only time in his grand narrative that Crèvecoeur mentions the concept of surplus. Not only that: It is James who puts all of his (secret) efforts into keeping the idea of a surplus alive within the confines of an 'Indian' society:

Still the danger of Indian education returns to my mind, and alarms me much; then again I contrast it with the education of the times; both appear to be equally pregnant with evils. Reason points out the necessity of choosing the least dangerous, which I must consider as the only good within my reach; I persuade myself that industry and labour will be a sovereign preservative against the dangers of the former; but I consider, at the same time, that the share of labour and industry which is intended to procure but a simple subsistence, with hardly any superfluity, cannot have the same restrictive effects on our minds as when we tilled the earth on a more extensive scale. The *surplus* could be then realised into solid wealth, and at the same time that this realisation rewarded our past labours, it

⁵⁰ This antipatriotic stance speaks for the cosmopolitan reading of Larkin 2007.

engrossed and fixed the attention of the labourer, and cherished in his mind the hope of future riches. In order to supply this great deficiency of industrious motives, and to hold out to them a real object to prevent the fatal consequences of this sort of apathy; I will keep an exact account of all that shall be gathered, and give each of them a regular credit for the amount of it to be paid them in real property at the return of peace. Thus, though seemingly toiling for bare subsistence on a foreign land, they shall entertain the pleasing prospect of seeing the sum of their labours one day realised either in legacies or gifts, equal if not superior to it.⁵¹

Here, James imagines acting as if he personally is responsible for the maintenance of a specific kind of social and economic order. He himself represents the sovereign in the way that his actions make sure that one's industrious endeavors will be rewarded in a future state that has allegedly transcended the 'primitive' state of an Indigenous society in which property is still non-existent. For all his admiration of simplicity, his agrarian utopia cannot exist without maintaining precise measurements of exchange value that make sure of an individual's motivation to gain profitable advantage from one's work. For Crèvecoeur, as much as the cultivation of land assures subsistence, it must also allow for partial proprietary expansion. What to make of that contradiction? James's at-times pessimistic melancholia about the path Western civilization is following seems to be grounded in a narcissist unawareness that the value he ascribes to his land is, after all, one which results from its commercial valorization.

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⁵¹ Crèvecoeur 2013, 169.

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The Construction of Land as Property: Ideas about the Relationship between Land and Humans in Nineteenth-Century Political Economy and Indigenous Counter-Narratives

Anna Möllers

Abstract

With this article, I will show that the construction of the relationship between land and humans has served as a key part in theories of property within the Western Enlightenment and political economy since John Locke, and especially in the nineteenth century. By reading the passages about colonialism and established settler colonies in North America of Thomas Robert Malthus, John Stuart Mill, and Edward Gibbon Wakefield, I examine how they constructed different social figures like the settler, the gambler, and the ‘savage’ with respect to land and land as property. I also challenge this perspective of land and the anthropological patterns it produces by examining Indigenous perspectives on their lands to find out if there is a counter-narrative—an alternative to the Western construction of land in liberal political economy. Therefore, I engage the work of contemporary Indigenous scholars like Leanne Betasamosake Simpson, but also some texts from Indigenous authors from the nineteenth century, like William Apess and In-mut-too-yah-lat-lat (also known as Chief Joseph).

Keywords: Political Economy, Racial Capitalism, Indigenous Perspectives, Civilization Theory, Property, Colonialism

Introduction

The discourse of European political economy from the sixteenth century on was closely linked to anthropological discussions, which included travel journals and other texts from expeditions as empirical proof for philosophical reflections on the history and origin of society. Concepts about property and its importance for the state and, later in the eighteenth and nineteenth centuries, society, often included an abstract idea of a prehistoric, primitive society in order to depict a teleological improvement of human history towards modern European society, representing the ultimate goal for all human societies. Philosophers like John Locke, Adam Smith, and John Stuart Mill always discussed their ideas about property within the frame of European expansion and in relation to the figure of the ‘savage’—an exemplary presentation of the so-called state of nature.¹ Colonization was also explicitly referred to in some parts of this discourse. Especially from the early nineteenth century on, some authors of politico-economic thought argued for the importance of colonization in order to establish a ‘perfect’ relation of resources (like laborers, land, and capital) in the society of the mother country. One of these authors was Edward Gibbon Wakefield, to whom I will return later in this article.

A variety of social figures—for example, the settler, the laborer, the gambler, and many more—were constructed in this colonial discourse. A social figure, as Sebastian J. Moser describes it in his article “Social Figures—Between Societal Experience and Sociological Diagnosis,” is a constructed character within media or a scientific discourse that is utilized to showcase a change or crisis within society and the normative expectations connected to it.² With this understanding in mind, I want to look for a set of different figures in the European discourse of political economy in the nineteenth century and their relation to land.

One central figure that was shaped during European expansion was that of the ‘savage.’ This figure has always functioned as the uncivilized counterpart for the self-conception of Europeans. The figure of the ‘savage’ was closely tied to theories of political economy, and it has shaped the understanding of modern society ever since Locke referred so prominently to the

1 Cf. Meek 1976, 2–3.

2 Cf. Moser–Schlechtriemen 2018, 165.

Americas in order to explain his notions on private property.³ The figure of the ‘wandering savage’ was constructed as a counterpart of the so-called *homo oeconomicus*, or the ideal white settler. Rationales and logics of property and habits were established and used to legitimize the dispossession of Indigenous people in different colonial contexts and centuries, for instance in the colonies of British North America (what is today known as Canada) in the nineteenth century.⁴ The central part of these narratives, I argue, was land, and the connection between humans and land.

With my contribution to this edited volume on the topic *Relating to Landed Property*, I give an overview of how the construction of the relationship between land and the individual subject was used to create liberal narratives and figures, and how these figures were used to legitimize colonization and dispossession of Indigenous people in the Colonies of British North America. Following the works of Brenna Bhandar and Robert Nichols, I emphasize landed property in colonial contexts. My goal is to find out what kind of anthropological concepts lie beneath the logics used by European Colonizers to justify dispossession and eviction, and how they were connected to the idea of property and habitus—especially in the nineteenth century. Furthermore, I want to address a counter-ontology of the relationship between land and humans, one put forth by Indigenous scholars like Leanne Betasamosake Simpson, in order to emphasize that the Western, liberal understanding of land as a commodity is not without alternatives.

The first part of this article will deal with some canonical theories of European political economy. After giving a short overview of the ideas of Locke concerning property and civilization theory, I will focus on theories of the nineteenth century; in addition to Mill, I will include political economists like Thomas Robert Malthus and Wakefield. Wakefield incorporated many ideas from Mill and other economists in his text about some general rules of the ideal colonization strategy, and also accompanied Lord Durham on his mission to the Canadian colonies. Even though my focus is on the nineteenth century, I will include the Lockean notion of private property and some ideas of the Scottish Enlightenment from the eighteenth century since these were relevant to the further discussion of colonization within the discourse of European political economy in the nineteenth century.

3 Cf. Greer 2012, 366.

4 Cf. Edmonds 2010, 8.

I will not offer an entirely new way of reading these classical texts, and my aim is not to read them in a holistic way, but rather to analyze how they construct land when they deal with colonization, dispossession, and political anthropology regarding non-European societies. In addition to these sources, I will also work with some texts of the Aborigines' Protection Society (APS) dealing with allotment plans for Indigenous families in the Colonies of British North America. This allows me to showcase how the figure of the 'savage' was mobilized in a specific colonial discourse about land distribution and dispossession. In addition to this Eurocentric canonical textual basis, I will include some texts of Indigenous resistance in the second part of this article, in order to find out how land is conceptualized in these texts. Here, I will focus on two texts from the nineteenth century by William Apress and Chief Joseph.

Despite the importance of Locke for the basic assumptions on property and its relations to colonization, I want to focus on the nineteenth century, because Mill and other philosophers of political economy started to discuss colonization at that time in a frame of what could be called social engineering thought. The notion that a society was, in a sense, adjustable due to the re-organization and redistribution of resources like laborers, capital, and land became prevalent in the mid-nineteenth century. Since Indigenous textual sources are scarce, however, I am working with a much wider time and geographical (North America in general) frame, so that I can incorporate Indigenous perspectives.

Part One—Property and Civilization in Locke's *Two Treatises*

"In the beginning all the World was America."⁵ This famous quote by Locke reveals a lot about the relationship between the 'Age of Discovery' and European political economy. As explicitly stated by various historians and economists such as Ronald Meek, America served as the central example for the so-called 'first stage of civilization' in economic and anthropological theories as early as the sixteenth century.⁶ It becomes more evident what exactly made Amer-

5 Locke (1960) [1698], 319 (§ 49).

6 Cf. Meek 1976, 37–65.

ica perceptible as the earliest stage of human society when reading Locke's quote a little further:

In the beginning all the World was America, and more so than that is now; for no such thing as Money was any where known. Find out something that hath the Use and Value of Money amongst his Neighbours, you shall see the same Man will begin presently to enlarge his Possessions.⁷

America, in this argumentation, serves as a projection for an abstract pre-historic state of human societies. To understand how modern society developed, Philosophers like Thomas Hobbes, Locke and Smith referred to Indigenous, non-European peoples, especially the ones in America.⁸ The goal was to examine the 'natural state' of human beings as an abstract entity, without the influence of a 'modern' society and government. Locke understands the invention of money as a means of exchange as one of the most important developments in human history, because it enables people to accumulate possessions. According to Locke and many of the political economists who espoused his ideas in the following centuries, one of the key characteristics of 'primitive' societies was the fact that they did not have property. Property and the means of subsistence were two categories commonly referred to in travel journals and in the early humanities. Unlike for Hobbes, who emphasized the function of the state as the main mechanism of stability for human societies, property and its presumed stabilizing effect became the key category for the development of modern societies in Lockean theory.

Since property is something allegedly crucial for the stability of society, Locke also gives a very detailed explanation of how something becomes property. "The wild Indian, who knows no Inclosure" can own the fruit he finds or the game he hunts. However, to have property in land, one needs to mix their labor with the land, Locke asserts. After declaring that every man "has a Property in his own Person", Locke states:

Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his Labour with, and joynd to it something that is his own, and thereby makes it his Property.⁹

The property in the one's own person is a construct Locke requires to show how something like private property in land is possible despite it being "given

7 Locke (1960) [1698], 319 (§ 49).

8 Cf. Meek 1976, 16–17.

9 Locke (1960) [1698], 305–306 (§ 27-28).

[...] to Mankind in common.”¹⁰ The basic idea was that land is a commons, until someone adds something, which is already his own (his own person, hence his own labor) and thus makes the land property. Locke himself explicitly excludes the ‘Indian’ in this prominent passage, because Locke considers Indigenous people incapable of putting labor into the Earth directly, allegedly unlike the members of “the Civiliz’d part of Mankind, who have made and multiplied positive Laws to determine Property.”¹¹ For them, Locke writes, “this original Law of Nature for the beginning of Property, in what was before common, still takes place.”¹²

This shows that the basic idea of private property in land within Locke’s *Two Treatises* is strongly connected to the figure of the ‘savage,’ who, Locke asserts, is not capable of owning land. This narrative shaped European colonial discourse, even in the nineteenth century, when reflections on colonization became a central part of European politico-economic thought and America was still partly the focal point of this discourse, despite the Declaration of Independence of the U.S. in 1776. For Wakefield, the new focal point in relation to British Colonies was British North America, and even “some States of the American Union, which in one sense of the word are still colonies of England.”¹³ For Wakefield, at least, the U.S. was the Heritage of a successful colonization project.

Allan Greer has argued that Locke refers directly to the ‘American Indian’ to implicitly legitimize dispossession in colonial contexts by stating that the Natives, who inhabit the ‘wastelands,’ can be referred to as ‘commoners’ who live like the cottagers and peasants of the Old World.¹⁴ By constructing a dichotomy whereby common property in land is set in a past stage of human society, and enclosure and private property are the key criteria for improvement, dispossession in colonial contexts is legitimated as purportedly reasonable. Furthermore, Barbara Arneil has shown how Locke’s ideas on property are related to his position as the secretary for the Council of Trade and Plantations, and she emphasizes Locke’s cooperation with Shaftesbury on the Fundamental Constitutions of Carolina, writing, “From these early beginnings, the close historical and philosophical links between English liber-

10 Locke (1960) [1698], 304 (§ 26).

11 Locke (1960) [1698], 307 (§ 29-30).

12 Locke (1960) [1698], 307 (§ 29-30).

13 Cf. Wakefield 1849, ix-x.

14 Cf. Greer 2012, 367–368.

alism and the colonial enterprise can begin to be drawn.”¹⁵ Following her argument that one cannot separate the process of colonization from theories on property and political economy, I want to show in the next parts of this article how the figures of the laborer, the settler, and the gambler are constructed against the figure of the ‘savage.’

Part Two—The Laborer, the Settler, and the Gambler

Settler-colonialism was viewed by Europeans from an economic perspective in the mid-nineteenth century as a solution for ‘balancing’ society in the European ‘mother country.’ Still, the *topos* of American wastelands continued to be mobilized in discussions about political economy. While the U.S. became an example of a successful colonization project, philosophers now referred to the Colonies of British North America (today’s Canada) next to Australia and New Zealand as the ‘newer projects.’¹⁶ Mill argued that overpopulation in England was dangerous for society, as it produced working-class people whom he believed were reckless, wasteful, and improvident, and because of this, incapable of improving their situations.¹⁷ In order to change not just the structure of society, but also the behavior of individuals, Mill recommended colonization:

Towards effecting this object [improvement in the habits of unskilled day-laborers] there are two resources available, without wrong to any one, without any of the liabilities of mischief attendant on voluntary or legal charity, and not only without weakening, but on the contrary strengthening, every incentive to industry and every motive to forethought. § 4. The first is, a great national measure of colonisation. [...] By giving the preference, as Mr. Wakefield proposes, to young couples or [...] to families with children [...] the expenditure would be made to go the farthest possible towards accomplishing the end, while the colonies would be supplied with the greatest amount of what is there in deficiency, and here in superfluity, present and prospective labor.¹⁸

Mill posits colonization as the remedy not only for society as a whole, but also for the individual, who would access land in a way that is “without wrong

15 Cf. Arneil 1994, 609.

16 Cf. Wakefield 1849, ix-x.

17 Cf. Mill 1848, 132–133.

18 Mill 1848, 456.

to any one". He perceived settler-colonies as an outsourcing of one's labor resources in order to disburden society in the mother country, where there was an alleged overpopulation in the working class. At the same time, Mill proposed populating settler-colonies with people who are, in this objectifying thought, labor resources. In addition to this very abstract thinking, the individual could purportedly profit too, because, living in a balanced society with fewer working-class people competing with one another, the individual would finally be incentivized to behave more efficiently, to earn more money, and to be able to have access to their own (landed) property. Mill suggests in his text that the land in the colonies is wasteland, free for the white settlers to own. This erasure of Indigenous peoples in these theoretical discussions about colonization as a solution for the economic problems of Western society is a specific way of thinking that gained prominence in European politico-economic discourse of the late-eighteenth century.¹⁹ Malthus and Jeremy Bentham had already introduced similar, even though not yet fully developed ideas, which became virulent along with Mill's theories concerning the economy and society at large.²⁰

Mill asserts in the quotation above that it is crucial to put laborers in an environment in which they are incentivized to improve their situations. This is an important tool for keeping society as a whole functioning, Mill posits, because welfare or charity would encourage a mentality in which the individual does not have to work in order to improve their lot. This tells us a lot about the concept of land as property in Mill's work. On the one hand, land serves as an incentive for former laborers, who can now become aspiring proprietors. On the other hand, land is one of three basic parts of a functioning modern society, Mill asserts, in addition to labor and capital. In this very abstract sense of social engineering thought, colonizing projects were embedded in the desire to form a 'perfect,' new capitalist society with a balanced proportion of working-class people and proprietors. As Greer notices, this approach to "engineer[ing] colonization according to the laws of geometry"²¹ coincided with new scientific methods for land measurement and cartogra-

19 In practice, Western colonizers profited from the trans-Atlantic slave trade and land seizure from as early as the sixteenth century, and the discourse in economic thought often was detached from reality in colonial contexts.

20 Cf. Arneil 2021, 1147–1158.

21 Greer 2012, 273.

phy, and was characteristic of the late-eighteenth and early-nineteenth centuries.

But that was not everything. For Mill, land was also and foremost connected to the idea of self-improvement. As Bhandar presents in detail in her book *Colonial Lives of Property*, ideas of self-improvement have played a critical role in colonial contexts of dispossession. She writes that the established “racial regime of ownership [...] articulates both land and its people as in need of improvement.”²² When reading Mill carefully, one can see how closely the ‘improvement’ of land and the people who cultivate it are intertwined:

It is not to the intelligence alone, that the situation of a peasant proprietor is full of improving influences. It is no less propitious to the moral virtues of prudence, temperance, and self-control. The laborer who possesses property ‘whether he can read and write, or not, has’, as Mr. Laing remarks, ‘an educated mind: he has forethought, caution, and reflection guiding every action; he knows the value of restraint, and is in the constant habitual practice of it.’²³

Mill is sure that owning land brings an educational effect. Not only can the intelligence of a person who cultivates landed property be improved, but certain virtues, like prudence, self-control, and restraint, are produced. For this self-improvement, it is crucial that the land belongs to the person who cultivates it, because a day-laborer would not spend the same amount of planning and thinking about how to cultivate the land in the best possible way as a proper proprietor, Mill alleges. For this analysis, Mill quotes Mr. Laing, who wrote a report from Norway, comparing the mode of living of settled and unsettled people and the influence he presumed this form of subsistence would have on the character.²⁴ Here, the link between anthropological assumptions and the use of the figure of the ‘savage’ is quite obvious. In order to gain these virtues, which are also preferably virtues for an individual of a new, ideal settler-colonial society, cultivation of the soil is needed. This in turn ensures not only the subsistence of a functioning society, but also improvement of the individual. What stands out in particular is the way in which the improvement of an individual and the improvement of society as a whole are intertwined. For Mill and Wakefield, the individual (laborer or peasant, for example) needs to be controlled and readjusted by economic incentives rather than directly by the state, so that the sensitive structures of society can change for the bet-

22 Bhandar 2018, 36.

23 Mill 1848, 334–335.

24 Cf. Laing 1836.

ter. Applied to a systematic colonization project, in which it would be possible to build an 'ideal' society, the individual fills the role of a setting screw, which can be adjusted with the right incentives and normative ideals to behave in a way that is profitable for society at large. This pattern of thought is rather specific to nineteenth-century social engineering thought.

Moreover, from the end of the eighteenth century, economists and first theorists on demography began to frame rural and urban areas as exerting almost opposite influences on human virtues and vices. While rural areas were perceived as the perfect environment for virtuous and hard-working men, cities and urban areas were perceived as a breeding ground for vicious behavior and the decay of society: Malthus, for example, in his famous work *An Essay on the Principles of Population*, uses data from the American colonies for his population theory, and notices that populations in rural areas grow much faster, writing, "In the back settlements, where the sole employment is agriculture, and vicious customs and unwholesome occupations are little known, the population has been found to double itself in fifteen years."²⁵ Thomas Jefferson explicitly asserted this dualism between rural and urban areas in relation to virtues and good habits in his *Notes on the State of Virginia* in 1785. While owning land and working one's own soil were purportedly connected to the virtues of agrarianism and allegedly made the farmer independent, thus refining his character, wage laborers in urban areas were not able to develop such qualities while being dependent on an employer. Jefferson, while failing in his career to take steps against the structures of slavery and being an enslaver himself,²⁶ advocated for a broad class of independent farmers in order to have a stable and good-functioning government.²⁷ This ideal subject of an independent farmer was, of course, white and male.

British Settler colonies were discussed explicitly in relation to theories of political economy by Wakefield, who participated in the planning of establishing Settler Colonies in New Zealand and Australia, also visited the Canadian settler-colonies twice and worked with Durham on his popular report on the situation in the Canadian settler-colonies after the riots of 1837.²⁸ Colonization, according to Wakefield, was a class project about the "competition for room."²⁹ This competition was on the verge of being destructive for cap-

25 Malthus 1826, 5.

26 Helo 2023.

27 Cf. Jefferson (1982) [1785], 31.

28 Cf. Johnston 2003.

29 Wakefield 1849, 72.

italist society in Britain, Wakefield thought, because, he believed, there was an imbalance between capital and “more room for the profitable employment of capital.”³⁰ Land, or, as Wakefield calls it, “room,” was defined by its ratio to capital, making conditions on the continent of America special because of the alleged accessibility of land and the chance to outsource not only labor-class people, but also capital, which Wakefield perceived as too accumulated and no longer properly employable in Great Britain. These conditions produced another type of capitalist figure, Wakefield believed, who was a menace to society: the gambler. Wakefield notes:

Ever since capital began to be superabundant in England, the spirit of the gambler has been growing amongst our commercial and manufacturing classes. The old-fashioned, steady, plodding, prudent, and honorable merchant or manufacturer has become a rare exception from the general rule: speaking generally, our men of business of all ranks and kinds are, in comparison with their predecessors of the last century, unsteady, in haste to be rich, fearless of risk, sharp or ready to take advantage of all opportunities, rather than signally honest and true. A similar change has doubtless taken place in America [...].³¹

Wakefield posits the gambler, an alleged product of a capitalist societies in which no more room for agreeable employment of capital could be found as the counterpart to the virtuous and steady manufacturer of the eighteenth century, who earned wealth through hard work and patience. This narrative produced an image of ‘good’ former capitalism that could be brought back with the balanced ingredients of land, labor, and capital, and with virtuous, steady manufacturers in America. According to Simone Knewitz, the American discourse on property focused on a concept of ‘producerism’, which constructed opposite social figures of elite class members and white workers on the one side as the ‘productive classes’ and bankers, speculators, Indigenous people, and slaves as ‘unproductive and threatening’ on the other side.³² As Bhandar puts it, the reality of capitalist systems often needs non-capitalist rationales and narratives, like the figures of the self-sufficient settler or the hard-working, honest, and true merchant or manufacturer. In reality, land was partitioned and systematically registered in order to make it as fungible as possible, so that a new social and political elite could form themselves in settler-colonies through land speculation.³³ However, in European

30 Wakefield 1849, 76.

31 Wakefield 1849, 78.

32 Cf. Knewitz 2021, 33.

33 Cf. Bhandar 2018, 85–87.

politico-economic thought, the connection between land, people, and wealth was coded with a direct causal link between labor, work, and planning on the one side and wealth on the other. The meritocratic narrative of the self-sufficient farmer who could acquire wealth and prestige with honest work was closely linked to the discussion of systematic colonization: In order to build this new, 'ideal' society, Wakefield promotes carefully selecting people to become the next farmer generation in the settler-colonies. In order to establish a valuable class of laborers quickly, Wakefield suggests letting young couples without children get a parcel of land, so that the new settler colony can grow as fast as possible.³⁴ Young (white) couples are favorable when it comes to labor capacity, because they are ostensibly physically fit, not yet engaged in raising children, and so are the 'perfect' labor resource. The same style of thinking that renders land a commodity without any other value reduces people to labor resources. The central idea of European politico-economic thought in relation to settler-colonial contexts of the nineteenth century was that everything in a new, planned colony could be set up in an ideal ratio of the abstract categories of human, land, and capital resources. Land, therefore, needed to be categorized and tiered into different levels of potential usage. Proper surveying, registration, and marking of land with physical borders was deemed to be the best way to make the condition of the land transparent. Important resources like timber, water, or the condition of the soil were registered, so that the economic value of a piece of land was instantly estimable.³⁵ Bhandar shows how a system of land registration made land not only more fungible, but also facilitated taxing and replaced traditional systems of possession of Native people. She argues that an abstract, economic view on land was developed in a colonial context, where it violated personal and spiritual relationships of Native Americans and First Nations peoples with their land.³⁶

34 Cf. Wakefield 1849, 405–412.

35 Cf. Wakefield 1849, 401.

36 Cf. Bhandar 2018, 78–80.

Part Three—The ‘Savage’

The ideal, white-male settler was constructed—as I mentioned earlier—with a stereotype of the ‘savage’ in mind whose ostensible difference and ‘otherness’ were explained in particular by different modes of subsistence. As many historians, political philosophers, and economists have shown, the ‘savage’ was *the* prominent figure of the ‘first stage of civilization’ in the frame of many theories about the progression of human societies, and was the figure, therefore, which also represented the state of nature of the human being. The four-stages theory, as it was depicted by many thinkers of the Scottish Enlightenment, amongst others by Smith in his lectures on jurisprudence from 1762–1763, was a prominent idea about how societies in history pass through different stages of subsistence. The teleological assumption that every society would need to go through similar phases to be on a ‘civilizational’ level with England and other ‘modern’ European countries was an important notion, which was either spelled out concretely or at least referred to implicitly in European politico-economic theories.³⁷ Smith explicitly explains the four stages of society as follows: The first stage of human societies consists of hunters and gatherers, who have no notion of property except for some wild berries and game. They also have, allegedly, no government and few hierarchy structures. The second stage is the nomadic or pastoral stage. The herding of cattle precedes the agricultural society, which would be the third stage. The transition from the second to the third stage is crucial, because this is the process from a nomadic to settled mode of subsistence. With a pastoral lifestyle, society has to be nomadic, because whenever the cattle have consumed whatever the land provided, the people and cattle need to resettle.³⁸ The concept of agriculture is strongly connected to the idea of settlement, and to private property in land. These theoretical stages were constructed in a linear and temporal manner, with the assumption that every society would evolve in the same direction, even if, in reality, there were many Indigenous societies all over the world who sustained themselves through a combination of herding animals, agriculture, and hunting and gathering. The fourth

37 Cf. Meek 1976, 99–100.

38 This is an abstract and—as we know from many ethnographic accounts—highly problematic description of nomadic societies. There are and were a wide range of different combinations of a pastoral and agricultural ways of living, which was not unnoticed by ethnographers of the eighteenth and nineteenth century but was often misinterpreted as a transitional phase.

stage was that of a commercial society characterized by a division of labor, so that not everyone had to be self-subsisting, but was instead dependent on a market that provided an exchange of different commodities.³⁹

Smith associated America with the first stage of this scheme, and Asia with the second, writing, “We find accordingly that in almost all countries the age of shepherds preceded that of agriculture. The Tartars and Arabians subsist almost entirely by their flocks and herds.”⁴⁰ Regarding property, Smith adds:

It is easy to see that in these several ages of society, the laws and regulations with regard to property must be very different. In Tartary, where as we said the support of the inhabitants consists in herds and flocks, theft is punished with immediate death; in North America, again, where the age of hunters subsists, theft is not much regarded.⁴¹

Smith included different parts of the world in the temporal frame of the four-stages theory, with America serving as the example for the original state of human nature, and Asian nomadic and pastoral societies relegated to the second stage. Both stages were characterized by a purportedly missing understanding of private property in land, because even in the pastoral society, there were just movable property objects to be owned privately. Land was used commonly and therefore could not be owned in these stages of society.

For Smith, the notion of private property was connected to the third and fourth stage of development. The third one, agriculture was not just the stage in which private property in land was apparently possible for the first time in history; the settled lifestyle allowed for the cultivation of arts and sciences, so that society would, over time, separate into different groups who cultivated different arts, and people would enhance their exchange of commodities. This eventually led to a fourth stage, a ‘commercial’ society.⁴²

Mill shared this understanding of the four stages, but unlike Smith, he emphasized the importance of the transition from the first to the second stage of civilization with regards to the emergence of new arts and crafts. Mill argued that pastoral communities played an important role in the ‘progress’ of civilization, because in cattle, they owned property for the first time. This would influence hierarchy structures and there would be more and less prosperous families within one ‘tribe’. But unlike in commercial

³⁹ Cf. Smith 1982 [1763], 14–17 [27–38].

⁴⁰ Smith 1982 [1763], 15 [29].

⁴¹ Smith 1982 [1763], 16 [32–33].

⁴² Smith 1982 [1763], 16 [32–33].

societies, Mill believed these hierarchy structures to be subtle, because there was no market where the more prosperous owners of cattle could increase their profit, and they would share their surplus with the less fortunate. This theoretical stage of civilization would thus tend to provide enough food for everyone with minimal labor, because the cattle would provide everything the small society needed. That means that the more prosperous families now could afford to have leisure time, which was, according to Mill, an important condition for the invention and cultivation of new arts.⁴³

Mill also emphasized possible psychological reasons that ensured the continuance of the hunter and gatherer stage in North American contexts, hence impeding the progression to the agricultural stage. He writes about “several little Indian villages”⁴⁴ near the St. Lawrence River that are surrounded with fertile soil and best conditions for cultivation, but instead of planting potatoes and maize, the villagers hunt and gather. For Mill, this is not the consequence of the idleness Mill and his racist contemporaries attributed to enslaved people, but rather of a purportedly different mindset concerning labor and land:

It [the cultivated land] would perhaps scarce repay his labor the first year, and he would have to look for his reward in succeeding years. On the Indian, succeeding years are too distant to make sufficient impression, though, to obtain what labor may bring about in the course of a few months, he toils even more assiduously than the white man.⁴⁵

This was a very common characterization of the figure of the ‘savage’ in the nineteenth century: The connection between labor and reward had to be very closely linked temporally for the ‘savage’ in order to create enough incentive. The virtues, or good habits learned when someone cultivated land, nineteenth-century European thinkers believed, include patience, restraint, and foresighted behavior—and the ‘savage’ was the counterpart to this ideal. Europeans perceived the ostensibly unpredictable lifestyle of hunter-gatherers as something negative and contrary to a settled agricultural lifestyle—a society with less foresight, less safety, less restraint. The ‘cure’ was, of course, private property in land. With private property in land, people were believed to be more anxious and foresighted, and it was by means of this thinking that everyone could learn these good habits.

43 Cf. Mill 1848, 13.

44 Mill 1848, 203–204.

45 Mill 1848, 203–204.

In British settler colonies, these anthropological ideas had a huge influence on the lives of the Indigenous peoples. By the mid-nineteenth century, many Indigenous peoples were already displaced or had died because of starvation and epidemics. Sidney L. Harring argues that even though Canadian historians tried for a long time to create the myth of an ideal, orderly and policed frontier “as distinct from that of the United States,”⁴⁶ the consequences of the reserve-policy and the ecological impact of the fur trade and cattle farming made it nearly impossible for most of the First Nations peoples to maintain a traditional way of life or even to survive. Thus, Harring declares that it is appropriate to apply the term genocide to the context of Canadian colonization even without taking into account the context of residential schools.⁴⁷ For those who survived there were many projects to ensure their ‘assimilation.’ The means by which this assimilation was enforced was mainly through reserve policy and the coerced cultivation of land and (missionary) boarding schools. The Aborigines’ Protection Society (APS), for example, wanted to ensure the ‘assimilation’ of Indigenous peoples with an allotment system, in which they would be forced to cultivate the land in a very specific, European way. In 1835, the British House of Commons established the Committee on Aborigines, which was soon followed by the APS. This new Society consisted mostly of Quaker members and made it their mission to protect “those, who have no power to protect themselves”.⁴⁸ Unlike the majority of colonizers, the APS perceived Native Americans and First Nations peoples as original owners of the land in question, at least on a theoretical level. Indigenous people allegedly did not cultivate the soil, and so in the narrow sense of Lockean and politico-economic thought, they could not be the legal owners of their land. Like Robert A. Williams explained as early as 1990, the Lockean argument about the creation of private property through the mixture of labor and land was a common narrative in the British-American discourse in relation to the dispossession of Indigenous groups from the early eighteenth century onwards and was still mobilized after the Declaration of Independence, when the question for the American colonizers arose of whether they could purchase land directly from Indige-

46 Harring 2015, 263.

47 Cf. Harring 2015, 283–284. Considering the myth of peaceful colonization and the debate about the terminology of genocide, see also Benvenuto 2014, 2–5.

48 N. N. Report of the Parliamentary Select Committee on Aboriginal Tribes, (British Settlements) 1837, x.

nous groups or if they would have to respect the right of the crown.⁴⁹ Besides the Lockean notion of property rights, the older narrative of the doctrine of discovery was mobilized in these contexts, too: In 1823, Chief Justice John Marshall decided that the ‘American Indian’ did not have any natural right to the lands and thus could not sell their lands to whomever they would like to, because in the logic of the discovery doctrine, the right to preempt land from Indigenous people belonged to the British crown and, since 1776, to the U.S. With this decision, the doctrine of discovery was legally accepted and the legal status of Indigenous people in relation to their lands was degraded to an occupancy right.⁵⁰ It is noteworthy that this decision, which influenced many court cases related to the ‘Indian Title’ not only in the United States but also in Canada, was decided in a conflict without the participation of Indigenous people. The disagreement was over two different ways of purchasing Indigenous land, and the question was purportedly whether Indigenous people were allowed to sell their land directly or if the U.S. had a preemptive right and, hence, the purchase would be a government lease.⁵¹

Nichols shows in his book *Theft is Property!* how this process of the construction of a juridical system and vigilante justice of settlers evolved in a simultaneous way. He argues that these mechanisms, which constructed the ‘Indian Title’ historically, are still present today.⁵² With respect to the mode of subsistence, a nomadic or semi-nomadic mode of subsistence was not only perceived as uncivilized, but was also criminalized, because European settlers in the Americas did not want any land to be kept away from the possibility of being commodified and marketized.⁵³ People who wanted to keep their land outside of the market system were thus criminalized and dispossessed.⁵⁴

The APS, who allegedly wanted to ‘save’ the ‘Indian,’ promoted ways that ensured that some remains of Indigenous land would stay with them, but with the condition of assimilation to a European-settler lifestyle: an allotment system that would give landed property to Indigenous people on the condition that they would cultivate it in a ‘European’ manner. Structured time plans were bound to a parcel of land, like the goal of building a ‘proper’

49 Cf. Williams 1990, 228–229.

50 Cf. Williams 1990, 231.

51 Cf. Nichols 2020, 169 no. 39.

52 Cf. Nichols 2020.

53 Cf. Ojha 2003, 1274–1275.

54 Cf. Bhandar 2018, 36.

dwelling within a certain time and cultivating a certain part of the land parcel within one, two or three years. Then, if the Native family had proven to the white settler government that they could 'handle' landed property in a way which was deemed good for the whole society (cultivating land and generating surplus, for example) they would eventually be given a proper title to the land.⁵⁵ Many First Nations peoples had long combined land cultivation and hunting and gathering. Corn was traditionally cultivated long before Native people had contact to European colonists.⁵⁶ These modes were not recognized as complete by the colonial British government, but instead perceived as a transition to a fully 'civilized' life. The APS argued that hunting would gradually decline if the Native Americans comprehended how much more practical and safe cultivation of the soil was.

The relationship between the constructed figure of the 'savage' and land was, from this perspective, always characterized as something unpredictable, or loose. In order to gain access to land that was fertile and fit for cultivation for the masses of white settlers, Francis Bond Head, the Lieutenant-Governor of Upper Canada in 1837, argued for the coerced displacement of the Chippewas and Ottawas, since they could purportedly live elsewhere considering their mode of subsistence with hunting and gathering, while the white settlers depended on the cultivation of fertile soil.⁵⁷ Mill, meanwhile, graded different levels of human societies in relation to their use of land, portraying the 'savage,' who depended on hunting, as the lowest stage of this civilization scheme, because the land was allegedly not used in the most efficient sense. Mill thought that land was, to the 'savage,' an

instrument of production, of which they make slender use, compared with more settled communities, but which is still the source of their subsistence, and which has a marketable value if there be any agricultural community in the neighborhood requiring more land than it possesses. This is the state of greatest poverty in which any entire community of human beings is known to exist.⁵⁸

Use of the land is a key category with which Mill and other contemporary European political economists categorize the state of civilization of a specific

55 Cf. N. N. Report of the Parliamentary Select Committee on Aboriginal Tribes, (British Settlements) 1837, 12–14.

56 Cf. Dickason 2002, 21–23.

57 Cf. N. N. and the Sub-Committee of the Aborigines' Protection Society 1839, 17.

58 Mill 1848, 12.

society. Land, viewed from an economic perspective as the means of subsistence in an agricultural sense or as a commodity, has a certain potential for production, and every mode of subsistence which is considered not exploiting the land in the most efficient way is considered not 'civilized.'

The presumed unpredictable behavior of Indigenous people with respect to land is not only perceived by European theorists as an impediment to civilized settler colonies, but also considered a danger for them. Malthus, for example, considers the 'Indians' a constant problem for white settlers, writing, "and the inhabitants, probably, are occasionally subject to the incursions of the Indians, which may destroy some lives, or at any rate diminish the fruits of industry."⁵⁹ Indigenous peoples of America and Canada are constantly perceived as a threat to civilization, not just because of their presumed aggressive and destructive behavior, but also because they were believed to not share the same understanding of land as property. Malthus goes on to describe different Indigenous peoples, always comparing not just their use of land, but also the conditions for land being perceived and respected as private property. About New Guinea, Papua Guinea, and New Caledonia, he writes:

The state of society in them is probably very similar to that which prevails among many of the savage nations of America. They appear to be inhabited by a number of different tribes, who are engaged in frequent hostilities with each other. The chiefs have little authority; and private property being in consequence insecure, provisions have been rarely found on them in abundance.⁶⁰

According to Malthus, constant war, but also missing hierarchy and sovereignty are reasons for a weak sense for private property. Indigenous peoples purportedly had no understanding for private property and were thus strongly racialized as being incompatible and even dangerous for white settlements.

⁵⁹ Malthus 1826, 6.

⁶⁰ Malthus 1826, 68.

Interim Conclusion

Land in the common ontology of Western politico-economic thought is a commodity, but also the main means to improvement. Land has an alleged educational effect on the individual and is therefore a special commodity that is set against other forms of property. The self-sufficient farmer is a key figure in this narrative of a functioning society, even if, wealth in reality was created through gambling and land speculation. The need for non-capitalist narratives like the working-class man who can become an ideal farmer and make a new beginning in America is obvious, because the narrative creates an illusion of a causal link between labor and wealth. Improvement of the land and of the proprietor himself is the main goal of this narrative, which produces other figures, such as the 'savage,' as in need of improvement, but also the gambler as in need of returning to his virtuous and humble natural state. With the figure of the gambler, the dangers of Europeans' own, 'civilized' society are portrayed. In addition, the figure of the 'savage' is also constructed through a relationship to land, which is characterized by an ostensibly missing understanding of land as private property, and thus connoted with dangerous, aggressive, and destructive behavior.

Part Three—Counter-Narratives from an Indigenous Perspective

As Nichols elucidates, the appropriation of Indigenous land in North America was never completely without protest or resistance from the Indigenous peoples.⁶¹ There are few textual sources from the nineteenth century that document Indigenous perspectives, but contemporary scholars like Glen Shean Coulthard and Simpson challenge Eurocentric perspectives on colonialism and uphold a culture of resistance.⁶² Simpson focuses especially on the current situation of the Nishnaabe people, whereas Coulthard is a member of the Dene First Nations who addresses all First Nations of Canada with his work.⁶³ Their interests include the question of how to change a politics of recognition, as well as how to incorporate Indigenous under-

61 Cf. Nichols 2020, 103–106.

62 Cf. Coulthard 2014; 2007.

63 Cf. Simpson 2014.

standings of land in the school system or other pedagogical institutions, so that a traditional understanding of living can be passed on to future generations. I draw on both current Indigenous scholarship and textual sources from the nineteenth century in order to find out what differentiates Indigenous understandings of land from the Western politico-economic points of view.

Simpson shares a common Nishnaabe children's story in her article "Land as pedagogy: Nishnaabeg Intelligence and rebellious transformation," in which a Nishnaabe girl learns how to make maple syrup by observing nature around her. She sees a little squirrel, and with careful observation and imitation of the behavior of the squirrel, learns how to get to the sweet maple syrup from inside the tree. Later, the girl comes back with her whole family to show them what she learned and to enjoy the maple syrup together. As Simpson argues, the story says a lot about how the Nishnaabe see their land and how they relate to it. Land in the Nishnaabeg understanding is, foremost, a source of knowledge and a part of the social web of the family. The story is not just about maple syrup, but also about how to engage with family, with nature and the land, and how to reproduce a "loving web of Nishnaabeg networks within which learning takes place."⁶⁴ The land is tied so closely to the social reality and practice that it cannot be separated from it and perceived solely as a tool or an instrument for learning. Instead, land is embedded in the social practices that create networks, like those of family and friends.

Land is the connection not just to the living family, but also to ancestors. Apess, who was an Indigenous Methodist preacher in Massachusetts, but also an activist for Indigenous rights, wrote popular texts in the 1830s like his autobiography and *Indian Nullification of the Unconstitutional Laws of Massachusetts Relative to the Marshpee Tribe; or, The Pretended Riot Explained*, in which he not only demanded more rights for Indigenous people concerning their lands, but also showed how he connected his identity to being Christian and Indigenous at the same time, and explained why land was a central part of his Indigenous identity. Apess had Pequot, African, and European ancestors, and considered himself Indigenous—all the more so after he spent some time with Canadian First Nations people in Ontario.⁶⁵ Apess was a missionary and considered Christianization a valid remedy for helping his fel-

64 Simpson 2014, 9.

65 Cf. O'Connell 1992, xxxiii.

low Native people to get out of miserable life situations, like alcoholism or circles of violence. He considered dispossession and the violence of settler colonialism the main sources of these life situations. Apess saw great potential in Christianization, but he was very aware of the appropriation of land through the missionary system.⁶⁶ He used biblical interpretations in his resistance against the racialized property system:

That their color should be a reason to treat one portion of the human race with insult and abuse has always seemed to him [Apess writes in the third person here] strange, believing that God has given to all men an equal right to possess and occupy the earth, and to enjoy the fruits thereof, without any such distinction.⁶⁷

Apess argued that the Earth was given to all men with an equal right to possess it, regardless of color. The idea that the Earth was given to mankind as a commons has a long theological tradition and builds the foundation for many Enlightenment philosophers and early political economists like Locke. Apess used this Christian notion of Earth as a commons to argue against an exclusive right to land, even though he shared some convictions about private property in land, having grown up in a white settler-society. He also recognized the violence and unjust dispossession of Indigenous lands, making it his life's work to write about the validity of Indigenous land claims. In addition, he actively helped the Marshpee in Massachusetts gain back control over their lands, from which white settlers were stealing wood.⁶⁸ For Apess, the Marshpee's right to their lands derived from their ancestors:

In fact the Marshpee Indians, to whom our laws have denied all rights of property, have a higher title to their lands than the whites have, for our forefathers claimed the soil of this State by the consent of the Indians.⁶⁹

This claim is deeply connected to the idea that property rights in land arise out of possession, which is replaced in colonial contexts—as Bhandar argues—with a logic of registration and title.⁷⁰ This connection to ancestors is not only attached to the argument about possession and property rights. For Chief Joseph, who was a leader of the Wallowa (who belonged to the Nez Percés) in what is now Oregon, the relationship to his ancestors was

66 Cf. Apess (1992) [1835], 175.

67 Apess (1992) [1835], 168.

68 Cf. O'Connell 1992, xiv-xv.

69 Apess (1992) [1835], 167.

70 Cf. Bhandar 2018, 81.

a key argument for why he did not want to sell the lands and advocated to keep them for his people. Chief Joseph, or In-mut-too-yah-lat-lat (which he explains in this article means something like ‘thunder traveling over the mountains’⁷¹), wrote an article in 1879 about his perspective on the forced land appropriation and expulsion of the Wallowa tribe from Northeast Oregon to reservations in Idaho. The article was published in the *North American Review* and framed with an introduction by William H. Hare, a missionary Bishop from Niobrara in Nebraska. In his article, In-mut-too-yah-lat-lat gives a brief summary of his life as a chief. He explains how the land is connected to his ancestors in a material and a spiritual way and is, therefore, nothing he would sell. In his narration, this thought is embedded in the story of the death of his father:

I saw he was dying. I took his hand in mine. He said: ‘My son, my body is returning to my mother earth, and my spirit is going very soon to see the Great Spirit Chief. When I am gone, think of your country. [...] Always remember that your father never sold his country. You must stop your ears whenever you are asked to sign a treaty selling your home. A few years more, and white men will be all around you. They have their eyes on this land. [...] This country holds your father’s body. Never sell the bones of your father and your mother.’⁷²

The land is connected to the family and the ancestors in a very material way, as the graves and bones of the bodies of ancestors are a part of everyday life and are included in ritual practices. The spiritual meaning of this connection is, from an Indigenous perspective, a deep belonging of the people to the land, not the other way around. This is the reason why “no man owned any part of the earth”⁷³ from the perspective of In-mut-too-yah-lat-lat and his father. Land is not something that can be private property, and hence cannot be sold. The way in which In-mut-too-yah-lat-lat structures his article shows the relationship to land as an important component of his social network. He intertwines the story of the appropriation of the lands of the Wallowa with the story of how he learned about his cultural understanding of land from his father, who learned these values from his father. Apess, who, unlike In-mut-too-yah-lat-lat, shared some ideas about land as private property with the European politico-economic view, would nevertheless agree on the deep connection with his ancestors through land. As Apess writes, the

71 Cf. In-mut-too-yah-lat-lat/ Chief Joseph 1879, 415.

72 In-mut-too-yah-lat-lat / Chief Joseph 1879, 419.

73 In-mut-too-yah-lat-lat / Chief Joseph 1879, 417.

dispossession of Indigenous people is nothing less than to “drive them from their homes and the graves of their fathers.”⁷⁴

Nichols argues therefore that we need to rethink dispossession of Indigenous lands more in the contexts of deracination and desecration.⁷⁵ I want to discuss these two aspects very briefly: Deracination is an important aspect, because driving Indigenous people from their lands also means separating them from their source of mental freedom. This is an idea that is now very much appreciated in contemporary Indigenous studies, but it was already an important argument for Apeš. In his opinion, dispossession is the same as “depriving them [Indigenous people] of all means of mental culture.”⁷⁶ The relation of land and humans was understood as deeply rooted in social, spiritual, and cultural practices and had nothing of the randomness Sir Bond Head, for example, presumed in order to justify the evictions of Indigenous peoples from their lands. Desecration on the other hand, is an important aspect of land seizure through colonizers, because in Indigenous thought, it was not only their relationship to the land that was destroyed, but also the land itself was, to them, a fellow sufferer. The appropriation of their land was interrelated with commodification and use in the Western market system, which made the land itself an abstract means for production. This process not only hurt Indigenous people, but also the land itself, which was desecrated and exploited for material profit. In-mut-too-yah-lat-lat also refers to this, writing: “We were contented to let things remain as the Great Spirit Chief made them. They [white people] were not; and would change the rivers and mountains if they did not suit them.”⁷⁷ From the perspective of Chief Joseph and his Father, land is something that is related to a responsibility to maintain, preserve, and steward.

This is something Simpson also highlights in her reflections in *Land as Pedagogy*. She considers land or parts of it as agents, and the relationship between land and humans as based in “mutual respect, reciprocity, and caring.”⁷⁸ She adds, “By placing the tobacco down, she [the girl from the children’s story] is speaking directly to the spirit of the maple tree. I understand it as her spirit speaking directly to the spirit of the maple tree, entering into a

74 Apeš (1992) [1835], 212.

75 Cf. Nichols 2020, 28–29.

76 Apeš (1992) [1835], 188.

77 In-mut-too-yah-lat-lat / Chief Joseph 1879, 420.

78 Simpson 2014, 12.

balanced relationship of mutuality.”⁷⁹ The popular ritual of the offering of tobacco whenever you take something from nature as a resource shows how the relationship between land and human beings is envisioned in Nishnaabeg culture as a mutual and reciprocal influence. In-mut-too-yah-lat-lat tells us about fruitless negotiations with the white settlers, before he and his people are displaced and evicted and, in this context, he uses the words: “I have expressed my heart to you. I have nothing to take back. I have spoken for my country.”⁸⁰ With this, he probably means his fellow Nishnaabeg people, but it is also possible that he is referring to the land itself, because in his understanding he is not only letting down his people when he decides to leave, but also the land: “I said in my heart that, rather than have war, I would give up my country. I would give up my father’s grave. I would give up everything [...]”⁸¹ The pain and misery he feels when leaving the land of his ancestors behind is a remarkable subject of his article and can be traced to the concept of responsibility and liability with respect to land.

Greer argues that the relationship of Indigenous peoples to their lands is often discussed with the terminology of places rather than land or property. Places, unlike the abstract, measurable, geometric entity of land in politico-economic thought, are filled with social meaning, local knowledge, and experiences: “places not only are, they happen.”⁸² He also mentions that analytically, within Western contexts, we still inhabit a world of places, and that the highly abstract construct of land as a commodity never erased the other social realities that are still connected to places. Following the work of Manulani Aluli Meyer, an Indigenous *Weltanschauung* can be a synonym for “that which has endured.”⁸³ In order to overcome the dichotomy of Indigenous vs. Western knowledge, she argues that certain forms of knowledge that have endured can help us develop new perspectives and ideas.⁸⁴ It is noteworthy that the concept of places and the concept of land as an abstract commodity embedded in an economic system which values commercial worth first and foremost exist next to each other and are negotiated over and over again in specific cases, like land claim court cases or even less formal in a dispute with a neighbor about the garden hedge. This tension between these two concepts

79 Simpson 2014, 12.

80 In-mut-too-yah-lat-lat / Chief Joseph 1879, 422.

81 In-mut-too-yah-lat-lat / Chief Joseph 1879, 423.

82 Greer 2018, 291.

83 Meyer 2013, 98.

84 Meyer 2013, 98.

of land as ‘places’ and land as an abstract commodity with market value can be relevant not only for Indigenous people, but for everyone.

Simpson argues that this understanding of land that highlights the social realities and local knowledge and the interaction with land within a social web is a crucial part of a school system that would center Indigenous perspectives on land and should be a benchmark for pedagogical concepts in Indigenous cultures. She thinks that

Aki [the Nishnaabeg word for land] is also liberation and freedom—my freedom to establish and maintain relationships of deep reciprocity within a pristine homeland that my ancestors handed down to me. Aki is encompassed by freedom, a freedom that is protected by sovereignty and actualized by self-determination.⁸⁵

Scholars like Meyer argue that spirituality as a part of Indigenous knowledge systems can open ways to engage to our surroundings in a meaningful way.⁸⁶ Still, the current situation of many Indigenous tribes can be difficult with respect to getting physical access to their lands. Land in the Western economic system is tied so closely with its value and potential for production that this traditional understanding of land can be hard for many Indigenous people to practice. Simpson is aware of that fact when she writes in the spirit of Coulthard that “being engaged in land as pedagogy as a life practice inevitably means coming face-to-face with settler colonial authority, surveillance and violence because, in practice, it places Indigenous bodies between settlers and their money.”⁸⁷ Practicing this understanding of land as pedagogy means for Simpson actively participating in anticolonial resistance. This can be part of a healing journey for individuals, and for Indigenous societies.

Conclusion

I have shown with this paper that the concepts of property in land and the improvement of land and the individual within Western economic thought have had a long tradition since Locke. These concepts changed subtly in nine-

85 Simpson 2014, 16.

86 Meyer 2013, 99.

87 Simpson 2014, 19.

teenth-century social engineering thought, in which the individual became more and more the focal point of European politico-economic theory, which needed to be governed through certain incentives in order to retain a purportedly good functioning society. This incentive is oftentimes equivalent to property in land. Therefore, colonization became a popular part of European discourse on political economy. My analysis of the discursive social figures of the laborer, the settler, the gambler, and the 'savage' with respect to land (as property) provided insight into the normative notions connected to the individual in this abstract, 'ideal' society.

Furthermore, I pointed out how Indigenous individuals from the nineteenth century and contemporary Indigenous scholars challenged these ideas about land. The Western understanding of land as a commodity embedded in a market system is not the only concept of land that exists today. In order to help Indigenous communities regain control and access to their lands, it is important to understand why our concept of land is tied closely to colonial contexts. Centering Indigenous concepts of land and Indigenous people's views on relationships between people and land is an important step in post- and decolonial thought, and is helpful for a critical take on the system of landed property and possessive individualism with regard to over-exploitation of natural resources and climate change. Some Indigenous scholars and activists are advocating not only another understanding of land, but also for the rights of land and nature, since they see themselves as connected to nature and the planet and feel responsible for acting against the exploitation of natural resources. As I have emphasized, this understanding of land is not an essentialist Indigenous perspective, but can help clarify the tension between the concepts of land as a 'place'—as part of a social reality—and the concept of land as an abstract commodity used for market exchange and logics of governing individual behavior through the rationales of economic incentives.

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“The Measure of Justice”: Locating the Fight for Land Reparations within Du Bois’s ‘General Strike’

M. J. Packo

Abstract

This paper explores the origins of the phrase ‘Forty Acres and a Mule,’ from its failed inception as a post-Civil War land redistribution scheme to its modern resonance as a rhetorical symbol for the unmet redress for slavery and racial discrimination in the United States. With a focus on twentieth-century historiography, this contribution argues that discussion surrounding ‘Forty Acres’ has too often focused on asking whether the federal government ever meaningfully intended to provide freedpeople with the land of their former enslavers or if they had been merely led to believe they were entitled to it. The author makes the argument that ‘Forty Acres’ can actually be contextualized as both myth and promise without much contradiction. However, the long-standing preoccupation with this question ultimately serves to obscure the agency exercised by freedpeople in forming their own demands for reparations following Emancipation.

Keywords: Reparations, Reconstruction, Emancipation, ‘Forty Acres,’ Du Bois

Introduction

To have given each one of the million Negro free families a forty-acre household would have made the basis of real democracy in the United States that might have easily transformed the modern world [...]. The German and English and French serf, the Italian and Russian serf, were, on emancipation, given definite rights in the land. Only the American Negro slave was emancipated without such rights and in the end this spelled for him the continuation of slavery.¹

The end of the Civil War in 1865 meant the end of slavery in the United States. However, it left open what exactly freedom for emancipated people would mean in its aftermath. Labeled as ‘freedmen,’ nearly four million formerly enslaved people found themselves granted an uneasy legal status in which they could no longer be relegated to objects of property, but also could not be assured they were entitled to equal rights or citizenship. Having lived their lives without the rights to education, property ownership, or familial ties, nearly four million people found themselves living as impoverished refugees in the only lands they knew. These lands simultaneously also occupied a legal grey area. Thousands of acres throughout the South were labeled confiscated or abandoned enemy property, the ownership thereof left unclear in the aftermath of the war. These conditions led to widespread discussion to redistribute parceled acreages of land to families of freedpeople to ensure their economic stability. Many believed this to be not only a practical solution to restructuring the postwar South, but also an ethical imperative owed to slavery’s victims—a call to redress.

Beginning with William E. B. Du Bois’s 1935 landmark study titled *Black Reconstruction in America*, many scholars have argued that the current U.S. inequality gap back can be traced back to the failure to provide freedpeople with a means of economic independence following the Civil War. The eventual restoration of lands in the South to former enslavers served to safeguard wealth and property ownership in the hands of the wealthy white planter class and would ultimately hinder the long-term accumulation of Black wealth. The history of the plan to provide freedpeople with ‘Forty Acres and a Mule’ has nowadays largely become lost in the question of whether it was widespread myth or unfulfilled promise. This paper will first address how this came to be and some of the methodological issues that underpin historical analysis on the topic. I will argue that the ‘myth or promise’ debate

¹ Du Bois 1998, 661.

ultimately misses the point, and serves to obscure a much more salient perspective: That the strength and persistence of freedpeople's demands for land should be considered the very first large-scale reparations movement for slavery in U.S. history—and a very radical one at that—which could have very fundamentally altered the future of U.S. American race relations had it managed to be meaningfully implemented.

The Origins of '40 Acres and a Mule'

The lands and islands surrounding the coasts of Georgia, South Carolina, and northern Florida were some of the first areas of the U.S. American South taken by Union troops during the Civil War. These areas consisted mostly of large cotton plantations and, as a result, the population in some districts was comprised of at least 80 percent enslaved people. As Union forces approached, the wealthy white enslavers fled, sometimes taking with them the people they enslaved for domestic work, but otherwise leaving behind the vast majority of their agricultural workforce. Without a formal education or substantial money or possessions, and with many formerly enslaved people maimed, traumatized, and severed from their familial ties due to the nature of chattel slavery, 'liberating' these tens of thousands of people meant, in practice, leaving many as refugees in the only lands they knew.

Urged to deal with the thousands of these freed people who had congregated in Savannah, Georgia, Union General William Sherman and Secretary of War Edwin M. Stanton called a meeting in January 1865 of twenty Black leaders, headed by a formerly enslaved minister named Garrison Frazier. Frazier and his committee insisted that the best way to alleviate the situation was to grant land to the freedpeople and allow them to foster their self-sufficiency in protected, independent communities. In his words: "The way we can best take care of ourselves is to have land, and turn it and till it by our own labor [...] (and we) would prefer to live by ourselves, for there is a prejudice against us in the South that will take years to get over."² Four days after their meeting with Frazier's committee, Sherman issued Special Field Order No. 15, which legalized the redistribution of confiscated and abandoned

² New-York Daily Tribune 1965.

Confederate lands into individual forty-acre plots exclusively for the settlement of freedpeople. Mules no longer needed for the war could be lent out for preparing the land for crops. This order was the first actualization of what is now known as the 'Forty Acres and a Mule' promise.³ Over the course of only a few months, nearly forty thousand people who had previously been relegated to property under the law now found themselves owners of the very lands on which they had been forced to work.

This decision served multiple interests. Union loyalists saw it as a measure to punish Confederate rebels. Northern capitalists saw a chance to break up large land monopolies and maintain the rate of agricultural production necessary to continue an economy of industry and export. Most importantly, it would function to provide freedpeople with a means of economic subsistence—a tangible effort to start them off with something more than “nothing but freedom.”⁴ Many abolitionists also believed land redistribution served a moral purpose as a means of redress for the injustice of slavery. The idea of land redistribution to freedpeople was nothing new; some of the first lands Union troops confiscated in South Carolina's Sea Islands had been undergoing experiments in free labor and small-scale land allotment projects to freedpeople since 1861, although ultimately only a thousand Black families ever managed to obtain land under these programs at federally subsidized auctions.⁵ Throughout the early years of the war, Thaddeus Stevens and the radical Republicans in Congress urged that confiscated lands in the South be treated as “conquered provinces, [to settle] with new men, and exterminate or drive out the present rebels from the country.”⁶ Even some policymakers who opposed giving freedpeople land in the South encouraged the government to consider other settlement or colonization efforts in Texas, Panama, or West Africa.⁷ The details of land distribution plans during this period varied widely: Would plots be leased, sold, or given? Would the government provide support for their relocation and settlement? Would poor white families loyal to the Union also be eligible? All proposals for the land question proposed the allocation of individual acreages to Black families for homesteading and agriculture. Most also

3 Cox 195, 413–440.

4 In December 1865, former Confederate General Robert Richardson declared: “The emancipated slaves own nothing because nothing but freedom has been given to them.” (Foner–Hahn 2007, 6).

5 Franke 2019, 57.

6 Fleming 1905, 722.

7 Escott 2009; Lane 1864.

prescribed at least some amount of sovereignty over their leadership and management. Though it was ultimately a decree brought on by the acute needs in time of war, the issuance of Special Field Order No. 15 was seen by land distribution supporters and formerly enslaved communities as the first tangible step in what would later become a large-scale, federally sanctioned policy for the post-Emancipation transition.

Congress ratified this expectation two months later in March 1865 with the creation of the Bureau of Refugees, Freedmen, and Abandoned Lands, commonly known as the Freedmen's Bureau. Managed as a section of the War Department, in addition to providing social welfare services to refugees and former slaves, the Bureau's mandate also explicitly stated its function to redistribute confiscated land into forty-acre plots. Freedmen's Bureau agents were tasked to "select and set apart such confiscated and abandoned lands and property as may be deemed necessary for the immediate use of Refugees and Freedmen, the specific division of which into lots, and rental or sale thereof according to the law establishing the Bureau."⁸ With the end of the war in sight, it appeared that plans for a large-scale, federal program of land distribution were being set in place.

The assassination of Abraham Lincoln completely overturned this trajectory: Andrew Johnson spared no time in pardoning the Confederacy and granting the restoration of their lands and titles, a decision which branded the promissory titles on Sherman's Lands unconstitutional due to their infringement on the Fifth Amendment of the Constitution. The rescindment of Special Field Order No. 15 effectively set legal precedence to upholding the property rights of former enemies of the state over those of their victims. Over the course of 1866 and 1867, white landowners were able to successfully petition the Freedmen's Bureau for the restoration of their lands. The freed-people who had been led to expect eventual ownership of their forty-acre plots were told to arrange tenancy and labor contracts with their former enslavers; their refusal meant forced dispossession. Often relayed this news by the very Freedmen's Bureau agents who had arranged their settlements, the vast majority of freedpeople were understandably deeply unsatisfied, disheartened, and offended by these options. Many would verbally object, some would take up arms to resist, and others petitioned the president to no avail.⁹ Though its director O. O. Howard was sympathetic to their cause,

8 Reprinted in Kerr-Ritchie 2007, 253.

9 Bram-Moultrie-Sampson 1865; Araujo 2017, 356-388.

Johnson's administration would gradually strip the Freedman's Bureau of any sufficient funding or power, and any agents still loyal to the subject of lands for freedpeople would come to resign or be removed from their positions.¹⁰ Politicians, abolitionists, and freedpeople would continue to advocate for land distribution for decades to no avail, but with the aging ex-slave population, growing hostility in the South due to white terrorist violence, and the changing landscape of wage labor and industry, calls for land were replaced by movements for different forms of reparation.

To date, no meaningful program of reparations to the descendants of enslaved people has been undertaken on a federal level in the United States. To quote economist William A. Darity Jr.: "Reparations authentically is a foregone promise to the ex-slaves and their descendants. The phrase 'Forty Acres and a Mule' somehow has been cloaked in the mists of African-American folklore."¹¹ Interestingly enough, the most common argument given by individuals against reparations is not the significant costs they would entail, but rather that the descendants of enslaved people do not deserve them.¹² A significant portion of the U.S. population believes that racial equality has been achieved, or at least successfully minimized since Emancipation, despite economic data overwhelmingly demonstrating the opposite.¹³ The phrase 'Forty Acres and a Mule' is used today by reparations advocates as a rallying cry for U.S. society to address the compounded harm resulting from the lack of redress—to quote Robin D. G. Kelley, a "shorthand for broken promises."¹⁴ The same phrase is condescendingly used by opponents of reparations to suggest that Black Americans are digging their heels into the past and unwilling to accept that equality has already been won.

Historiography of a Broken Promise

That 'Forty Acres' has been lost to the "mists of African-American folklore" has its roots in the field of history itself. The narrative of the 'Dunning School,'

10 Oubre 2012.

11 Darity 2008, 660.

12 University of Massachusetts 2023.

13 Kraus et al. 2019, 899–921.

14 Kelley 2007.

the early twentieth-century stream of Reconstruction history attributed to Columbia University Professor William Dunning and his contemporaries, generally went as follows: After the Union victory, Southern states accepted their loss and genuinely worked to reintegrate into the United States. After the assassination of Lincoln, Lincoln's successor, Johnson, took on the role of repairing and rebuilding the broken Union of states as quickly as possible. However, any meaningful progress on reunification was held back by vengeful Republicans in Congress, who, wanting to grow their constituency and punish the South, wrestled power away from President Johnson and forced through hasty, 'ill-advised' policies of Black suffrage and heavy taxation. Masses of uneducated Black voters, who were allegedly ignorant and unprepared to exercise the responsibilities of democracy, purportedly ushered in an era plagued by corruption, incompetency, and minority rule. White Southerners ostensibly suffered greatly, but over time, were able to wrest power away from Northern capitalists and corrupt Republican politicians and re-establish 'home rule' (or, in other words: white supremacy). Historians of the Dunning School demonized the radical reformers of the Reconstruction, downplayed the contributions of Black Americans, and structured the historical narrative around the plight of elite white landowners in the South.

The first, and still most landmark challenge to the Dunning School's scholarship, would come in 1935 with the publication of Du Bois's *Black Reconstruction in America*. Arguing that his contemporaries had disingenuously spent their time "explaining and excusing the former slaveholder, the planter, the landholder, and the capitalist," Du Bois refocused the narrative of Reconstruction onto that of the laborer and highlighted the agency of Black Americans in what he considered was fundamentally "the story of a normal working class movement."¹⁵ Influentially, Du Bois illuminated enslaved people's role in what he described as the 'general strike': "how the black worker won the war by a general strike which transferred his labor from the Confederate planter to the Northern invader, in whose army lines workers began to be organized as a new labor force."¹⁶

Like the historians he criticized, Du Bois also characterized the Reconstruction as a "splendid failure,"¹⁷ albeit the failure in his view was that

15 Du Bois 1988, 341.

16 Du Bois 1988, 87.

17 Du Bois 1988, 708. See also Phulwani 2018.

Reconstruction failed to actually realize the promise of citizenship to Black Americans, rather than the oppression of the South. Published in the midst of the Jim Crow era, *Black Reconstruction* told a sobering account of a brief time in which interracial democracy could have been a tangible possibility. Met with unsurprising contempt from mainstream historians of its time, Du Bois's work had very marginal impact in academic circles until it found its way into the hands of revisionist historians of the nineteen sixties and seventies.¹⁸ Inspired by the era's renewed discourse on racial equality, human rights, and democratic participation, historians extended their analyses to highlight the roles of prominent non-state actors and challenge the narratives of historians from the previous decades.¹⁹ By the 1980s, historians were writing histories of Reconstruction centered on the centrality of Black Americans in their own emancipation and shaping the nation's history.²⁰ Historians began to conceptualize emancipation as a process—"the distance between legal rights and the capacity to enforce those rights" rather than a binary change of status occurring with the thirteenth amendment.²¹ Among the most recent turns in scholarship are those authors repositioning the fight for slavery reparations as a long-term struggle as old as the cause of abolition itself.²²

However, despite the wealth of scholarship that followed *Black Reconstruction*, the legacy of the Dunning School remains in the American consciousness. This narrative's explaining away of slavery's role in U.S. history found its way into school textbooks, offering students a palatable, so-called 'balanced' view of slavery and the Civil War. The 2022 Zinn Education Project Report noted that multiple curricula contained approaches echoing the Dunning School narrative, inviting "students to instead view U.S. history through a mythical lens: a gradual, straight line from slavery to a post-racial present."²³ The report attributes this collective, wide-scale overshadowing of history to having left the American public largely "unaware of Reconstruction's significance and unprepared to confront the nation's realities."²⁴ Initiatives such

18 This is not to underplay the important influence of Du Bois's work in communities of radical Black thought and labor organizing during this period. For more, see Burden-Stelly 2018, 181–206.

19 Rose 1999; Ransom–Sutch 2001; Magdol 1977; Oubre 2012.

20 Cox 1958; Foner 2014.

21 Blight–Downs–Downs 2017, 4.

22 Finkenbine 2005, 105–19; Araujo 2017; Sinha 2016.

23 Blazina–Cox 2022.

24 Blazina–Cox 2022.

as the New York Times' 1619 Report and the national reckoning with racism of the past decade has pushed the United States to question the dominant historical narrative and confront the legacies of slavery and the failure of Reconstruction. However, with generations of Americans raised with the legacy of the Dunning School historiography and the Southern "lost cause" narrative, Forty Acres and a Mule often occupies a symbol for Black Americans of ongoing struggle rather than inscribed history.

'Forty Acres:' Myth or Promise?

Writing a history on the subject of land distribution during this period comes with two particular and quite relevant hindrances. First, the problem of the archive: Primary source data that reliably represents the perspectives of freedpeople is very rare. The vast amount of archival data is largely accounts in the form of reports, memoirs, and letters from the perspective of white bureaucrats, soldiers, landowners, missionaries, and abolitionists. Navigating sources on the matter thus requires reflection on the fundamental differences between the archive, history, and memory, and consideration of that which cannot be proven but nonetheless deserves to be told.²⁵ Secondly, the analysis of source data from this period, as well as secondary sources through interviews with freedpeople, was started by the Dunning School of scholarship, and thus current analysis often requires working both with and against this data.

Dunning School historian Walter Fleming was the first to write a dedicated history of 'Forty Acres and a Mule' in 1906, describing the phrase as a widespread, misguided hope upon which "the ignorant and helpless blacks (had) for forty years been victimized."²⁶ According to Fleming, with the passage of the Confiscation Acts of 1861 and 1862, freedpeople became "easily convinced" that, should the South fall, their enslavers' lands and property would be seized and redistributed. Republicans in 1863 led by Thaddeus Stevens "agitated" the idea in Congress as early as 1863. "Rumors" spread through "grapevine gossip" and enslaved people began to aid the North as guides and informants with the expectation that they would be rewarded

25 Hartman 2008, 1–12; Blouin 2004, 296–298.

26 Fleming 1906, 737.

with confiscated property.²⁷ As the North continued to advance, Fleming writes, refugee camps of freedpeople began to form and follow Union troops, fed by rations and told by Northern soldiers that eventually they would be given the lands of their enslavers. In keeping with the patronizing language of his contemporaries, Fleming claims that, “before the war closed, all [those] who had come into contact with the federals were convinced that the Government meant to care for the blacks at the expense of the whites.”²⁸

According to this view, Johnson’s pardoning of the Confederates and restoration of their property was “in regard to legalities,” and further rumors of land were the fault of soldiers, northern missionaries, and the Freedman’s Bureau for discouraging freedpeople from wanting to work and stoking “idleness and discontent.”²⁹ During Reconstruction, Fleming asserts, this misguided hope was exploited by disingenuous politicians and charlatans. Fleming and his contemporaries describe how, from the eighteen seventies until the turn of the century, ‘corrupt’ Black politicians promised land in exchange for Republican votes, and charlatans traveled the Southern countryside selling to freedpeople sets of painted wooden stakes that could be used to divide out the land to which they were supposedly entitled. Fleming’s account is in keeping with the general narrative of the Dunning School: Radical Republican politicians are painted as vengeful villains, corrupt and unwilling to accept reunification without Southern suffering. Black actors are at best passive actors, naïve and taken advantage of by swindlers and Northern elites. At worst, they are depicted as corrupt and lazy, at fault for their own peril in the aftermath of the war.

Despite Fleming’s clear bias, there is certainly some evidence in support of the claim that rumors of land distribution were spread by Union troops, white social workers and “grapevine” gossip. Elizabeth Hyde Botume, a volunteer teacher with the Freedman’s aid society noted in her memoirs of 1864 that, within the camp in which she worked, “the freedman had got the impression that the abandoned lands of the old owners were to be divided amongst them. Their impressions arose from the talk they had heard around them by white and colored soldiers.”³⁰ Reverend Nicholas Graves, a formerly enslaved man, recalled in an 1881 account that one of the white teachers in

27 Fleming 1906, 722–725.

28 Fleming 1906, 725.

29 Fleming 1906, 731.

30 Botume 1893, 270.

his community had told them the government planned to provide everyone "forty acres and a mule apiece, and perwisions to last a year."³¹ Andrew Boone of North Carolina recalled in his WPA interview that during emancipation, "a story went round an' round dat de marster woud have to give de slavs a rule an' a year's provisions an' some lan', about forty acres, but dat wus not so. Dey nebber did give us anything."³²

It is, however, shortsighted to ascribe the widespread calls for land distribution during this period to unsubstantiated rumors. Fleming and his contemporaries underplayed in their accounts the fact that the information circulated through this grapevine telegraph was born from legitimate legal precedence and federal policy discourse: As previously discussed, land distribution projects had begun as early as 1861, and the Freeman's Bureau was founded with the explicit mission of land distribution. It is, moreover, misguided to equate gossip with misinformation. Du Bois noted the efficiency of the grapevine telegraph and cited it as the primary method of Black mobilization during the general strike. This is, of course, a generalization: As noted by Brian Kelly, Du Bois's depiction of the grapevine telegraph does not take into account the "uneven character of slave consciousness:" Enslaved people in isolated, rural plantations far from the front would have been far removed from communication channels.³³ Nevertheless, those who were privy to the gossip of land distribution programs were likely not hearing anything wildly different than what was, for example, circulating through abolitionists newspapers in the North that printed on numerous occasions Congressional speeches by Republicans addressing the question of land.

Writing in the wake of the Dunning School narrative, Du Bois and those who came after him spent their time in an uphill battle asserting there were legitimate policy decisions that underscored freedpeople's belief that they would be granted the land of their former enslavers: the debate over 'Forty Acres' as myth or promise. As has been discussed, the fact that freedpeople came to expect land based on gossip does not mean that this gossip was founded on outright lies. Lie and myth are furthermore not synonymous, despite their common use as such. To cite Cedric J. Robinson, myth is the underlying force behind both social order and liberation struggles, they are "constants in the long record of human experience [...] bracing concomitants

31 Haygood 1881, 120.

32 Reprinted in Covey-Eisnach 2014, 238.

33 Kelly 2016, 52.

to impositions of domination and oppression, whatever the form of a particular regime.³⁴ ‘Forty Acres’ can therefore be contextualized as both myth and legitimate expectation without much contradiction.

Ultimately, however, engaging in the myth or promise debate begs the question of whether one is even asking the right question. As long as slavery existed in the United States, enslaved people were aware of its injustice. Amidst this backdrop, the continued expectations for land should be recon-textualized as a perceived rightful entitlement to justice: a movement for reparations in the aftermath of slavery. Considered an extension of Du Bois’s general strike, the movement for land was decentralized and informal. The extant accounts of freedpeople from this time, however, are clear not only in their *expectation*, but also their *entitlement* to the land they had worked. Simon Phillips, who was formerly enslaved in Greensboro, Alabama, remembered that in the summer and fall of 1865, his enslaver had to fight to keep slaves from putting up stakes to divide the land before Union troops arrived.³⁵ A General Cox, in his memoirs, recalled hearing officers’ reports that they had “heard curious discussions among them around campfires, in which they had apportioned the real and personal property out among themselves.”³⁶ Once Union troops had run off or taken enslavers prisoner, formerly enslaved people, in a way, found ways to reappropriate Locke’s theory of property, affording themselves appropriation rights to the land based on the productive labor they had put into and extracted from it.³⁷

This concrete belief in entitlement to the lands they had worked formed a decades-long claim by freedpeople that land would serve the function of both transitional and reparative justice. Lacking the post-World War II legal vocabulary of human rights, it may be tempting to discount this perspective as starkly anachronistic. The concept of land as slavery reparations, however, was anything but anachronistic at the time, as summarized in detail by one Georgian newspaper in 1865: “[They] regarded the Southerners as their oppressors and believing that they were held in slavery contrary to some inherent or natural right, they expect the South to be punished for the wrong and reparation to be made to them by having all the property of the South confis-

34 Robinson 1983, xxvii.

35 Magdol 1977, 140.

36 Reprinted in Gottlieb 1939, 359. From Cox 1900, 543.

37 The contradiction of Locke’s labor doctrine and his role in the institution of slavery have been pointed out by many scholars. See, for example, Morgan 2018.

cated and distributed among them."³⁸ A moral right to the land was similarly familiar to white abolitionists: Stevens, in a speech opposing Johnson's rescindment of Sherman's Order, argued that "we shall not approach the measure of justice until we have given every adult freeman a homestead."³⁹

Emancipated individuals did not require a formal education in economics to recognize and clearly describe their role in the American economy, which they regularly referenced in articulating their demands for redress. This was often referred to as a debt owed for their labor and suffering, as described by abolitionist and former slave Sojourner Truth: "America owes to my people some of the dividends [...]. I shall make them understand that there is a debt to the Negro people which they can never repay."⁴⁰ In a speech, freedman Ben Wyatt acutely stated, "our wives, our children, our husbands, has been sold over and over again to purchase the lands we now locates upon; for that reason we have a divine right to the land."⁴¹ Wyatt recognized not only the value of Black labor, but also the value of bodies under slavery (which were often used for the leverage of debts), and argued that the commodification of enslaved labor and bodies had amounted to investment in the lands they had worked, and thus the entitlement to their use. Wyatt's speech goes on to locate the debt owed freedpeople within the scope of the larger American economy: "And den didn't we clear the land, and raise de crops ob corn, ob cotton, ob tobacco, ob rice, ob sugar, ob everything? And den didn't dem large cities in de North grow up on de cotton and de sugars and de rice dat we made?"⁴² Wyatt made it clear that he not only thought the South accountable for redress, but also ascribed a certain amount of responsibility to the North, which had indirectly upheld the practice of slavery by maintaining trade in raw materials produced by slave labor. He and his fellow freedpeople were not ignorant of the role their labor had played in the national, and even global, economy and, through their demands for 'Forty Acres', argued to re-enter their role in production as owners of their own labor on their own terms.

Another such example of this recognition is a letter by Jourdan Anderson of Tennessee addressed to his former enslaver in 1865. Anderson, his wife

38 Gottlieb 1939, 361; quoting *The Enterprise of Thomasville, GA*, July 12, 1865.

39 Stevens' speech on the Reconstruction Act of 1867 (in the Hart collection, *American History as Told by Americans*, IV, 484 ff.; as quoted in Gottlieb 1939, 388.

40 Kelley 2007, 233.

41 Wyatt 1867, Record Group 105.

42 Wyatt 1867.

Mandy, and their children had been invited to return to the plantation and work for wages. In a concise response dripping with humor and contempt, Anderson calculates the value of their unpaid work, with interest:

we have concluded to test your sincerity by asking you to send us our wages for the time we served you [...]. At twenty-five dollars a month for me, and two dollars a week for Mandy, our earnings would amount to eleven thousand six hundred and eighty dollars. Add to this the interest for the time our wages have been kept back [...].

Though generally lighthearted in prose, the letter ends on a serious, almost somber note drawing attention to the outstanding need for moral redress:

We trust the good Maker has opened your eyes to the wrongs which you and your fathers have done to me and my fathers, in making us toil for you for generations without recompense. Surely there will be a day of reckoning for those who defraud the laborer of his hire.⁴³

In these documents and accounts that remain, freedpeople expressed quite decisively their entitlement to lands not just for the pain and suffering they had endured, not only in lieu of unpaid wages, but also as a necessity to even out the playing field economically and define the very meaning of the 'freedom' they had been granted. As explained by one Black colonel: "We will be slaves until every man can raise his own bale of cotton, and say: Dis is mine."⁴⁴ In most cases, land for freedpeople offered a situation of not just financial but also physical security, as they repeatedly insisted that they be allowed to live in insular communities with their own people, shielded from the continuing prejudice and threatening re-emergence of the dominance of the white Southern planter class. In the wake of emancipation, freedpeople existed in what Elsa Barkley Brown has termed "communities of struggle"⁴⁵—structures of support, resistance, kinship, and community that had previously been denied them under the institution of slavery.⁴⁶

43 Anderson 1865, 265–267.

44 Glatthaar 1990, 246.

45 Brown 1994, 109.

46 Brown 1994, 107–146.

Conclusion: Land Reparations and the General Strike

Understood within the framework of a social movement, calls for land distribution function as another facet of Du Bois's general strike, as an assertion of the labor rights and property distribution which formerly enslaved people wanted in the post-Civil War landscape. If we are to revisit Du Bois's definition of the general strike, that it was fundamentally a transfer of Black labor which tipped the scale towards Northern victory: "This was not merely the desire to stop work. It was a strike on a wide basis against the conditions of work [...]. They wanted to stop the economy of the plantation system, and to do that they left the plantations."⁴⁷ However, in reading the records of the demise of Sherman's Order, it is clear that we must depart from Du Bois's analysis and underscore that many formerly enslaved people never left their plantations at all, and rather stood their ground and insisted on their right to appropriation of the land. Insistence on land division in acres to be worked by individual households represented both a stand against the hegemony of the elite, landowning class as well as a rejection of the perception of wage labor as slavery by another name. If their transfer of labor is to be understood as a strike, 'Forty Acres and a Mule' should be considered their demand just as much as the end of slavery.

Freedpeople underscored their demand for land in petition, letters, speeches, and, on numerous/many occasions, violent resistance. In this regard, reports from the Freedmen's Bureau in the aftermath of dissolving Sherman's Lands illuminate particularly well the widespread disdain of freedpeople communities towards Johnson's Reconstruction. Petitions for repossession by white landowners (former enslavers) regularly reported occupancy by their former slaves and their outright refusal to negotiate tenancy contracts on any terms. One landowner went so far as to conclude that "it would be unsafe for anyone to visit the Island again unless accompanied by a proper Guard or an U.S. Officer."⁴⁸ This often proved a fair assertion. Visits by former white owners in attempts to negotiate their resettlement were reportedly met by hostile groups of armed freedpeople, who threatened "to kill them if they came to disturb them in their homes again," demanding the officers who accompanied them consider "who were the real owners

47 Du Bois 1998, 60.

48 Clark et al. 1865, 4.

of the land—they who had been placed there by the government, or the planters who had been fighting against the government.”⁴⁹

These conflicts and protests would be violently suppressed over the following years in favor of the restoration of lands to the hands of the white elite class and Northern speculators. As noted by Katherine Franke, the vast majority of what was Sherman’s Lands is today held by white landowners, and the postwar history of these areas is largely glazed over so as not to dull the appeal of the coastal area for tourists.⁵⁰ Radical Republicans in Congress attempted to revisit the land question in 1867, to no avail. Abolitionists continued to advocate for land as reparations until the end of the decade. The idea of land as reparations would, however, gradually fade from discussion by the mid-eighteen seventies in favor of schemes of monetary compensation in the form of pension plans for former slaves modeled on those of veterans.⁵¹ This change in redress represented the changing landscape of agricultural to industrial labor and the dominance of wage over contract labor, not to mention the aging population of formerly enslaved people. With the re-emergence of the wealthy white southern class and white vigilante terrorist regimes, fights for land became not only improbable, but also undesirable, and ultimately led to the mass migration of Black people from the South.

The Emancipation Proclamation alone was not enough in itself to grant formerly enslaved people and their descendants “the condition of really freemen,” nor was it enough to erase the memories of what they had endured by any “measure of justice.”⁵² Though the modern vocabulary of reparations is missing from these discussions, the underlying need for both symbolic and material redress is nonetheless clear. The mass movement for ‘Forty Acres’ represented a radical proposal of labor and property renegotiation, which, had it been realized, could have significantly transformed the trajectory of American postwar racial inequality.

49 Gottlieb 1939, 198.

50 Franke 2019, 14.

51 Berry 2009.

52 Bram–Moultrie–Sampson 1865; Stevens’ speech on the Reconstruction Act of 1867 (in the Hart collection, *American History as Told by Americans*, IV, 484 ff.; as quoted in Gottlieb 1939, 388).

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The *Otherwise* Cosmogram

Helen A. Gibson

Abstract

Much as Marxist interpretations of wage labor are unhelpful for understanding enslaved people's lived experiences, a critique of landed property cannot begin and end inside the regime being analyzed. Thinking beyond a reduction of people and land to property allows for understanding of the ways in which enslaved people's relationships to themselves and to land was profoundly, infinitely dynamic. Understanding the ways in which enslaved people related to land(ed property) entails relinquishing *the scene of subjugation* in favor of analysis of radically dynamic lifeworlds with scales, such as the quantic, which are seemingly irrelevant to liberal property orders. This paper considers what Denise Ferreira da Silva terms "cosmic and quantic moments" in the context of Kinitra Brooks, Kameelah L. Martin, and LaKisha Simmons' 'Conjure Feminism.' Conjure Feminism, addressed in the context of granny midwifery, evidences the fact that enslaved people in the Americas exceeded the logics of landed property in their relationships to land. How does the cosmogram, a spiritual symbol with the power to create sacred space, inform *otherwise* historical understandings of land and property?

Keywords: Cosmogram, Cosmology, Otherwise, Wounded Captive Body, Scene of Subjugation, Granny Midwife, Transformed *Elementa*, Quantum, Indigenous Epistemology, Conjure Feminism

Sacred Reciprocity

It all comes down to vibration, agitational roughness.
 Everything living and dead, everything animate and immobile,
 vibrates. Vibration is the internal structuring of matter. Because
 everything vibrates, nothing escapes participating in choreographic
 encounters with the rest of the living world.
 —Ashon Crawley, “Stayed | Freedom | Hallelujah,” in *Otherwise Worlds:
 Against Settler Colonialism and Anti-Blackness*¹

As a cosmology of entanglement or entangled matter-ing, blackness
 signals what may be thought of as that spiritual vocation of an
 alternative we-ness, an alternative sociality with the earth and cosmos
 and therefore each other.
 —J. Kameron Carter, *The Anarchy of Black Religion: A Mystic Song*²

She holds the “vibrational, energetic remed[y]” of the flower essence gingerly, divining her next move as she always does before births.³ The essence is from her mother’s garden, or, rather, the one she cultivated *in search of her mother’s garden*.⁴ The garden is shaped like a cosmogram, a circle with a cross in the middle, a vibrational meeting point of the living and the dead. Everything is sacred, she knows, like her mother before her. She knows that “Everything that is alive is sacred and everything that is sacred is alive since both of these propositions reference being in kinship relations,” as Brian Burkhart would write of Native philosophy in *Indigenizing Philosophy through the Land* almost two centuries later.⁵ “Further,” Burkhart writes, “since every single thing, every grain of sand, is sacred, there are no levels of value. Everything has all the value there is. Everything is sacred.”⁶ This sacredness is rooted in reciprocity, in the vibrating oscillation of relationship.⁷ Her garden is a sacred one, just

1 Crawley 2020, 28.

2 Carter 2023, 24.

3 Amadou 2023.

4 Walker 1994.

5 Burkhart 2019, 200.

6 Burkhart 2019, 200.

7 Burkhart 2019, 287.

like a circle and a cross drawn in the dirt. Here, there is no value assigned to the invaluable—just a reveling in the sacredness of kinship.⁸

She, whom Denise Ferreira da Silva might term the “*wounded captive body in the scene of subjugation*,” is preparing for a birth.⁹ She calls on her elders. Ase. The spirits are “as thick as piss-ants,” and she can see them, feel them, hear them.¹⁰ She has called them to this place to assist in a birth, when the position of the sun in the cosmogram will indicate that the baby’s spirit is on one side of the veil or the other, joining the realms of the living and the dead. As a grand midwife—Black and Indigenous healer supporting birthing people in processes of birth and death—she knows, with Burkhart, that “Life is fundamentally the capacity for kinship,” and that this kinship is born of relationships between sacred beings, not property.¹¹

‘Locke’s Got Us All Locked Up’ in *the Scene of Subjugation*

She, the *wounded captive body in the scene of subjugation*, knows intimately that “Locke’s got us all locked up,” as J. Kameron Carter writes in *The Anarchy of Black Religion*.¹² She knows that people and other sacred beings are not ownable. She also knows that the dynamism of her garden in the shape of a cosmogram lies outside of the cosmology of whiteness. Carter writes, in elucidation of whiteness as cosmology, “Marked by a set of god-terms, whiteness, then, is an anthro-po-genesis, a cosmo-genesis, an *archē*, a worlding, a keyword of the beginning of this racial capitalist world. Whiteness is of ‘in the beginning...,’ which is just to say (again) that whiteness is the enactment of a cosmology.”¹³ In this cosmology, a right to property in land did not apply to enslaved people in North America, who were themselves explicitly racialized and rendered fungible property by such theorists as John Locke.

8 Harney–Moten 2021, 82; Gibson 2024a, 165.

9 Ferreira da Silva 2022, 15; Moten 2003; Hartman 1997. Ferreira da Silva reads “the *wounded captive body in the scene of subjugation*” as “a referent to the juridical authority to deploy total violence,” Ferreira da Silva 2022, 80.

10 Walker 1936, 20.

11 Burkhart 2019, 194; Gibson 2024b.

12 Carter 2023, 17.

13 Carter 2023, 14–15.

She, the wounded captive body in the scene of subjugation, knows that enslaved people, as alleged property, are not considered human beings in Lockean, (post-)Enlightenment thought. As R. A. Judy writes in *Sentient Flesh*, “What makes [Locke’s liberal epistemology] even more vexed a matter is that during the time he was writing *The Two Treatises of Government*, Locke had a substantial hand in drafting the 1669 *Fundamental Constitution of the Carolinas*, clause 110 of which states: “Every Freedman of the Carolinas has absolute power and authority over his negro slaves, of what opinion or religion whatsoever.”¹⁴ This “absolute power and authority,” endemic to white cosmology (including landed property), is emblematic of what Ferreira da Silva refers to in *Unpayable Debt* and elsewhere as “total violence.”¹⁵ *Total violence* is the “occupation of land and enslavement of person” that enabled expropriation of labor and land foundational to settler colonialism and (racial) capitalism.¹⁶ The wounded captive body in the scene of subjugation, by definition of her legal status as property, “holds the Human and Thing in extreme tension,” Ferreira da Silva writes.¹⁷ This insight is crucial to a critique of landed property, which relies on an implicit assumption of the human as universal.¹⁸ This assumption is disingenuous, as whiteness as cosmology denies the capacity for kinship, whether between sacred grains of sand, people and apples in a specific locality, or between people who are read as property.¹⁹

Whiteness as cosmology relies not on notions of kinship, but, rather, separability.²⁰ Carter writes, “At the heart of this cosmology is an imagination that we might identify, again with Ferreira da Silva in mind, as difference through governed or regulated separability in evisceration of ‘difference

14 Judy 2020, 3; Brückmann 2021.

15 Ferreira da Silva 2022, 54, 80, 273, 290, 295.

16 Ferreira da Silva 2014, 95; Racial capitalism might be described as “the system that binds together blackness and reproduction,” Gibson 2024a, 172; Cedric J. Robinson popularized the term in 1983 with his groundbreaking book *Black Marxism: The Making of the Black Radical Tradition*, Robinson 2000.

17 Ferreira da Silva 2022, 55.

18 See Laura Bella Theis and Yann Schosser in this volume.

19 Carter 2023; Ferreira da Silva 2022; Morgan 2021; Burkhart 2019.

20 Ferreira da Silva writes, “The fundamental *separation* the Category of Blackness has been produced to signify—the Negro, as Thing, Hegel’s object of no value—could never be articulated positively without risking the ethical principle that sustains the modern program, namely liberty. Unless, of course, it also included an account of how the subject of liberty had its conditions of existence as Owner secured by the *necessary* (juridically authorized) deployment of total violence on persons (body-mind composites) conceived as without (ethical and economic) value, namely, the wounded captive body in the scene of subjugation,” Ferreira da Silva 2022, 54.

without separability’ or otherwise cosmologies predicated on a physics of entanglement or entangled matter(ing).²¹ This ‘regulated separability’ is in profound contradiction to *otherwise* understandings of the quantum world—the focus of this contribution.²² *Otherwise* understandings might be likened to what Manulani Aluli Meyer refers to in “Holographic Epistemology: Native Common Sense” as “a spiritual dimension un-linked to religious dogma, described in ethereal, mystic, and yet experiential terms.”²³ *You have to feel it*—what Calvin Warren terms “spiritual breath and thinking as the same.”²⁴ This entangled mattering is beyond the scope of empiricism.²⁵

Burkhart, writing from within a Native philosophical worldview, further elucidates the evisceration of kinship inherent to Lockean notions of property, taken up in this volume and elsewhere: “The idea of property, for Locke, starts with human beings; each person owns her own body and all the labor that can be created by it.”²⁶ The *Fundamental Constitution of the Carolinas* epitomizes total violence in its conferral of ‘absolute power and authority’ to (white) enslavers and its rendering of enslaved humans Things. Burkhart continues, highlighting the significance of *enclosure* (read: ‘regulated separability’) to Lockean notions of landed property: “Thus, when people add their own labor, or their property, to some object, it becomes their property. An object becomes personal property when someone ‘hath mixed his labor with it,’ (Locke 1821, II 27).”²⁷ This theory, of course, discounts Indigenous agriculture as well as enslaved people’s labor, including reproductive labor—in short, obscuring what Ferreira da Silva refers to as “the total value expropriated from Native lands and Slave bodies under total violence.”²⁸

It is important to read continued, *epistemic violence* as a conscious commitment to upholding colonial ontologies (ways of being).²⁹ “The problem is, of course, that Indigenous people in New England and throughout the

21 Carter 2023, 15.

22 See Weheliye 2014; King–Navarro–Smith 2020; Carter 2023.

23 Aluli Meyer 2013, 94.

24 Gibson 2024a, 170; Warren 2018, 172; Crawley 2016.

25 Weyeliye 2023, 11.

26 Burkhart 2019, 35. See the contributions by M. J. Packo, Anna Möllers, Dirk Schuck and Schosser–Theis in this volume.

27 Burkhart 2019, 35; Carter 2023, 14.

28 Ferreira da Silva 2022, 273.

29 Gayatri Chakravorty Spivak popularized the phrase “epistemic violence” in her groundbreaking 1988 essay, “Can the Subaltern Speak?,” Spivak 1988, 25. See also Dotson 2011; Afeworki Abay 2023, 34–35.

Americas mixed their labor with the land through farming for 10,000 years,” Burkhart writes.³⁰ Indigenous relationships to nonhuman beings (such as animals deemed livestock) were criminalized from the onset of British colonialism in America.³¹ (Post-)Enlightenment obfuscation of the total value of expropriated lands is part of the continuing total violence. “Locke constructed his theory of property with the particular target of justifying settler colonialism in North America,”³² Burkhart continues, stating, “Locke’s *Two Treatises on Government* was written not truly as a general theory of property but specifically to defend England’s colonial policy against the counterclaims of Indians.”³³ This disingenuous theory of property masquerades as general, Burkhart and Judy argue, while obscuring what Burkhart terms “Indigenous locality” and centering “delocality”—positing humanity as universal while explicitly propertizing people and discounting millennia of relating to land as a sacred practice.³⁴

Enslaved people’s labor, allegedly irrelevant to Lockean landed property and discounted in Karl Marx’s thought as moot following its ‘purchase,’ was foundational to the settler-colonial relationships to land that helped build empires and quantify the world of capital.³⁵ To understand the significance of enslaved people’s relating to land(ed property) requires understanding the significance of ‘entangled matter(ing).’ Rendering humans things, land static, and the invaluable calculable was a dynamic, violent process of destroying and transmuting meaning.³⁶ Reification of landed property, however, is but one means of analyzing profoundly dynamic historical relationships that constituted and exceeded liberal property regimes.

She, *the wounded captive body in the scene of subjugation*, is the center of whiteness as cosmology, the ‘necessary’ expropriation of her total value upholding the juridical (including the significance of landed property in settler-colonial contexts) by creating the conditions of possibility for legal personhood. She knows that she upholds the economic by providing allegedly nonexistent labor—a reference to Marx’s distinction between slave

30 Burkhart 2019, 35.

31 Some of the first laws governing felonies in Virginia, for example, rendered Indigenous and enslaved people’s proximity to livestock felonious and punishable by death; Gibson 2015, 2, 7.

32 Burkhart 2019, 37.

33 Burkhart 2019, 37.

34 Burkhart 2019, xvii, 41; Judy 2020.

35 Ferreira da Silva 2022.

36 Morgan 2021; Smallwood 2007; Möllers in this volume.

and wage labor—and acting as capital.³⁷ She knows the weight of providing the conditions of possibility for freedom and securing the symbolic tethering of blackness to nothingness.³⁸ The historiography of ways in which racial capitalism was and is transcended (rendered cosmic/quantic) increasingly entails explicitly spiritual analysis that, like what Robinson terms the Black radical tradition, receives its analytical thrust from epistemologies that orient its adherents away from liberal property regimes, including those of the colonial era.³⁹

Much as Marxist interpretations of wage labor are unhelpful for understanding enslaved people's lived experiences, a critique of landed property cannot begin and end inside the regime being analyzed.⁴⁰ Understanding the ways in which enslaved people related to land(ed property) entails relinquishing *the scene of subjugation* in favor of analysis of radically dynamic lifeworlds with scales, such as the quantic, which are seemingly irrelevant to liberal property orders.⁴¹ As Judy writes of both this human dynamism and the insignificance of politics for the propertyless, "The human condition is perennially transitional, or to use an older language, metabolic. Indeed, we cannot speak here in any way that is generatively meaningful or enabling, of 'the part of no part,' or the propertyless—the *Eigentumslosen*—as either being the subjects of politics or subjects in politics."⁴² Thinking beyond a reduction

37 Ferreira da Silva 2022.

38 Moten 2013; For exemplary scholarship on enslaved women as theorists of their own experience, see Morgan 2021; 2018; 2004.

39 Robinson 2000. See, for example, Gibson 2024b; Carter 2023; Stewart 2021a; 2021b; Uhuru 2020; Crawley 2020; 2016; Warren 2017. Carter writes, "What Robinson referred to as the principle of incompleteness in *The Terms of Order: Political Science and the Myth of Leadership* (1980), he would not long thereafter in *Black Marxism: The Making of the Black Radical Tradition* (1983) align with the cosmological orientations one finds in obeah, in Haitian Voodoo, in hoodoo in parts of the southern United States, in Jamaican myalism, in Trinidadian shango, and the like. These practices drew on the materials of nature (roots, vegetation, etc.) to produce medicines and other concoctions for curing and healing. But even more, these root work practices offered 'ritualistic links . . . with the spirit world beyond the shadows and the sacred trees.' What Robinson has his finger on is an alternate worlding beyond the racial-colonial idea of 'the world as such.' Laying this out fittingly in a section of *Black Marxism* titled "The Roots of the Black Radical Tradition"—which in my own thinking I've come to annotate as "The Root Work of the Black Radical Tradition"—Robinson understands this black radical worlding as premised on "a mystical sense of continuity between the living, the dead, and those yet to be born," Carter 2023, 19–20.

40 Harney–Moten 2021, 127.

41 Ferreira da Silva orients readers towards the infinite via "cosmic and quantic moments," Ferreira da Silva 2022, 261; Gibson 2022. See also Carter 2023; Gumbs 2020; 2018.

42 Judy 2020, 17.

of people and land to property allows for understanding of the ways in which enslaved people's relationships to themselves and to land was profoundly, infinitely dynamic.

Flower essences in hand, this paper addresses “cosmic and quantic” dynamism in the context of ‘Conjure Feminism,’ which, Kinitra Brooks, Kameelah L. Martin and LaKisha Simmons write, “helps to underscore the ways in which Black enslaved women, for example, lived as fully human in spaces of dispossession that erased their humanity at every turn.”⁴³ Conjure Feminism, elucidated in this contribution's discussion of granny midwifery, evidences the fact that enslaved people in the Americas exceeded the logics of landed property in their relationships to land. How does the cosmogram, a spiritual symbol with the power to create sacred space, inform *otherwise* historical understandings of land and property? First, we turn to a discussion of what Ferreira da Silva terms “transformed *elementa*.”⁴⁴

‘Transformed *Elementa*’

She, the *wounded captive body*, has revealed that *the scene of subjugation* appears static. Bound by the absolute time of Newtonian thought, the *scene* holds together “the cosmology of (racial) capitalism.”⁴⁵ She has also hinted that subject of landed property brings to the fore the “necessity” of total violence as the operational logic behind both expropriation of Indigenous people and land and the “post-Enlightenment philosophical infrastructure and political (juridical, economic, ethic, and symbolic) architecture” that renders enslaved people—whose expropriated reproductive and other physical labor creates ‘value’ from Indigenous land—purportedly readable as Human and Thing.⁴⁶ Yet—and this is where the grand/granny midwives come in—because this *scene* depends on the juridical force of ‘necessity,’ any disruption of the non-sense of people as property destabilizes the fabricated, ‘regulated separability’ of Human and Thing. In fact, “this very juridical form of property holds the key to unraveling the equivalence [‘of blackness and property’], because

43 Brooks–Martin–Simmons 2021, 458; Ferreira da Silva 2022, 261.

44 Ferreira da Silva 2022, 46.

45 Carter 2023, 19.

46 Ferreira da Silva 2022, 48, 47.

having a title over a person's labor does not alone assure the use of her capacities."⁴⁷ Held together by the force of 'necessity' (via total violence), the *scene* is not static, and can be read *otherwise*. Quantum entanglement implies that the *scene's* matter(ing) should be read otherwise.

Enslaved people's lived experience as Human and Thing fundamentally upends the "historical separation of the Colonial, the Racial, and Capital," Ferreira da Silva argues in *Unpayable Debt*, and begs material considerations of the colonial not only in "coffee, cotton, sugar, and commodities that become money, but also in the soil, the waters, the forests, and the air—in transformed *elementa* (the most basic components) of mass energy of each and every drop of blood and each and every scream of pain."⁴⁸ Any attempt to think transformed *elementa* without acknowledgement of the total violence (past and present) undergirding liberal juridical and economic realities merely reiterates post-Enlightenment ontology (Enlightenment-derived ways of being), rather than comprehending the significance of the mechanisms of subjugation that create perceived value via transformation.⁴⁹ One of the most significant theorizations of this dilemma over the past several decades has been Fred Moten's proffering of the "para-ontological," meaning that the transformed *elementa* of screams of pain, for example, stage a sonic escape as well as partial reinscription in post-Enlightenment ontology.⁵⁰

Moten describes the para-ontological as "some sense of the fugitive law of movement that makes black social life ungovernable, that demands a para-ontological disruption of the supposed connection between explanation and resistance."⁵¹ Other contemporary philosophers, such as Judy and Ferreira da Silva, have advocated recourse to "*para-semiosis*" and "cosmic and quantic

47 Ferreira da Silva 2022, 74–75. This resonates with Saidiya V. Hartman's observation that "The forms of care, intimacy, and sustenance exploited by racial capitalism, most importantly, are not reducible to or exhausted by it," Hartman 2016, 171.

48 Ferreira da Silva 2022, 46.

49 Acknowledging the total violence of the present, Ferreira da Silva writes, "No matter how many times police killings of unarmed black persons are denounced, no matter how many criminal and civil-rights cases are opened in the wake of such events, each denunciation and every legal case seems to add to the glossary of justifications. Every authorized or unauthorized deployment of symbolic (in the case of subprime loans) or total (mass shooting, police shootings, or arrests) violence against black and Latinx persons has a justification that exceeds modern mechanisms of justice because it shares the same grounds, namely necessity," Ferreira da Silva 2022, 25–26.

50 Moten 2008, 179; Moten 2017.

51 Moten 2008, 179.

moments,” respectively.⁵² Judy and Ferreira da Silva have in common the fact that their theorization of para-semiosis and the cosmic/quantum is oriented towards the infinite, in keeping with current theorization of quantum entanglement and decoherence as they relate to contemporary Judaic studies, for example.⁵³ Judy theorizes “a way of being human that is nonontological” and elucidates that the aim of para-semiosis “is not a search for a way out, or even forward.”⁵⁴ Judy asserts, “Elaborating the theory of *para-semiosis* as poetic sociality is not indicative of a desire for the return to proper corporeal integrity in relation to things, but rather the desire to be free among things.”⁵⁵ This is in keeping with Carter’s elucidation, with explicit reference to Ferreira da Silva, of “otherwise cosmologies predicated on a physics of entanglement or entangled matter(ing).”⁵⁶

For Ferreira da Silva, transformed *elementa* are about the significance of ‘fractality.’ Ferreira da Silva writes,

Toward the end of this world, the knownworld, the wounded captive body in the scene of subjugation guides a speculative exercise in which indeterminacy directs the outline of both *deep implicancy* as a descriptor and *corpus infinitum* as an image of existence that obtains every event and every existent not as one (unity) or as unique (identity) but in their fractality, as each is a singular re/de/composition of that which has always existed.⁵⁷

Foregoing Enlightenment ‘unity’ and post-Enlightenment ‘identity,’ both of which do not do justice to the fractality of transformed *elementa*, Judy and Ferreira da Silva invite reflections on para-semiosis and cosmic and quantum moments that do not make recourse to fixed categories of identity, yet which acknowledge the capaciousness of transformation and possibility.

Ferreira da Silva invites readers to question our collective intellectual commitment to the laws of Newtonian physics, including that of absolute time, and to embrace the theories of quantum mechanics that enable—at the least, serious reflection on the material legacy of quanta—units of mass energy exerted during enslavement, for example, that are somewhere between the tips of our hair, the keys on a keyboard, and five billion light years away by now—and at most, serious consideration of the possibility that “the

⁵² Judy 2020, 21; Ferreira da Silva 2022, 261.

⁵³ Ochs 2012, 61, 69.

⁵⁴ Judy 2020, 21.

⁵⁵ Judy 2020, 17.

⁵⁶ Carter 2023, 15.

⁵⁷ Ferreira da Silva 2022, 17.

sole player” in *the scene of subjection* is holding together our understanding of linear time, as elucidated by Michelle M. Wright in *The Physics of Blackness*, and that we may release her.⁵⁸ This “we-ness,” part of what Carter terms “a cosmology of entanglement or entangled matter-ing,” is at the heart of grand midwives’ relationship to the *otherwise* cosmogram.⁵⁹

Beyond the Force of Necessity

*What is thinkable beyond the force of necessity?*⁶⁰ Beyond the force of necessity, a garden beckons. Spirits whisper. Quants suggest infinite possibilities for entangled mattering. Total value reverberates in every grain of sand in reciprocal, spontaneous relationship with every sacred being. “Vibrational, energetic remed[y]” of flower essence in hand, she pauses briefly to reflect on the *scene* she is disavowing.

Enslaved women’s wombs were expropriated via the establishment of matrilineal slavery with a 1662 act of Virginia’s General Assembly that became known as *partus sequitur ventrem*, or “offspring follows belly.”⁶¹ This law, which refused to acknowledge kinship ties between white fathers and their enslaved children, made enslavement in British North America heritable according to the condition of the mother. The refusal of kinship between white men and the enslaved women whom they raped or with whom they had coerced sex made affective ties moot. The law of *partus sequitur ventrem* rendered enslaved women’s wombs the most fungible property perpetuating/reproducing a lack of ethical position—the wounded captive body in the scene of subjugation.⁶²

She, as a grand (or ‘granny’) midwife, was said to have worked at the nexus of total violence under slavery, supporting enslaved women in countering logics of commodification. A widely acknowledged outcome of total violence in the context of slavery, she knows, is an alleged lack of subject position—nothingness—as inheritance.⁶³ From a post-Enlightenment ontological per-

58 Ferreira da Silva 2022, 286; Fanon 1967; Wright 2015.

59 Carter 2023, 24.

60 Gibson 2022.

61 Morgan 2018.

62 Ferreira da Silva 2022; Morgan 2018; Spillers 1987.

63 See Warren 2018; Moten 2017; 2013; 2008; 2003.

spective, grand midwives helped reproduce humans whose structural positions as alleged property secured the juridical, economic, ethical and symbolic dimensions of the “political architecture of the global present.”⁶⁴ From a juridical perspective, granny midwives brought commodified people into the world. Under conditions of total violence, they turned the ‘profit’ (read: total value) from this labor over to their enslavers.⁶⁵

The question of how the *otherwise* cosmogram, a spiritual symbol with the power to create sacred space, informs historical understandings of land and property for enslaved people, is a response to the invitation of Judy’s “*para-semiosis* of *poiēsis in black*” to depict freedom among things.⁶⁶ Judy’s *para-semiosis* entails understandings of consciousness (such as the phrase “us is human flesh”) that “implicitly postulat[e] an irreducible elemental level of existence.”⁶⁷ Like the phrase ‘us is human flesh,’ cosmograms—transformed *elementa* related to land—invite reflection on both ‘an irreducible elemental level of existence’ and “metabolic” processes of the human condition.⁶⁸

Transformed *elementa* (specifically, the entangled matter-ing of cosmograms) brings together the fields of Black study and historical archeology, a field in which archeologists have debated the significance of the cosmogram largely without explicit embrace of the tenets of Conjure Feminism.⁶⁹ The profundity of the West African-derived Bakongo cosmogram as inheritance is acknowledged, however, in relatively recent historical archeological scholarship. This inheritance—vibrational, entangled mattering beyond the force of necessity, is what grand midwives conjure in preparing for a birth. Grey Gundaker writes,

From an Africanist perspective, then, the cosmogram attests to the significance of Kongo and Nântu thought (Fu-Kiau 1991), often in terms cognate with other African cosmologies. From a diasporic perspective, it sums up a vast resource pool on which captives could draw to confront oppression in strange lands they worked to make their own.⁷⁰

64 Ferreira da Silva 2022, 49.

65 Walker 1936. Cabell 1811.

66 Judy 2020, 21.

67 Judy 2020, 21.

68 Judy writes in *Sentient Flesh*, “The human condition is perennially transitional, or to use an older language, metabolic,” Judy 2020, 17.

69 These are: “1. There are consequences for your actions. [...] 2. Death is not an ending but a transition. [...] 3. One is beholden to the Ancestors as well as to future generations. [...] 4. Spirit work is necessary for our physical, emotional, and psychological health,” Brooks–Martin–Simmons 2021, 456.

70 Gundaker 2011, 176.

Like Ferreira da Silva's "cosmic and quantic moments" that belie the *scene*, Gundaker depicts the cosmogram as a "vast resource pool" employed to make transformed *elementa* one's own.

Here, life as the capacity for kinship is beginning to take shape.⁷¹ Gundaker draws connections reminiscent of Conjure Feminism between *dikenga* ideology (that of the Bakongo cosmogram) and the writing of history, observing that, "a key premise of *dikenga* ideology is that nothing ever survives 'in-tact' because nothing ever survives in a fixed form. Period. Ever. Anywhere."⁷² This is an ode to para-semiosis, to what Ashon Crawley terms "vibration, agitational roughness."⁷³ Gundaker continues, "Change, mixture, and innovation are givens, not aberrations, however much 'people without history' are supposedly locked in a timeless seasonal round, or historians' accounts fixed in writing create illusions to the contrary."⁷⁴

In other words, to return to the quote by Crawley at the beginning of this contribution, "Everything living and dead, everything animate and immobile, vibrates. Vibration is the internal structuring of matter. Because everything vibrates, nothing escapes participating in choreographic encounters with the rest of the living world."⁷⁵ These choreographic encounters are not set in stone; they are experienced in dynamic, even anarchic relationship between sacred beings. The *otherwise* cosmogram is an allusion to the infinitely metabolic potential of mass energy to change material (and immaterial) realities and to question our interpretations of what Judy calls "'the part of no part,' or the propertyless—the *Eigentumslosen*—as either being the subjects of politics or subjects *in* politics."⁷⁶ She, as a grand midwife, invokes this 'cosmology of entanglement' in irreverence of the *scene*.⁷⁷

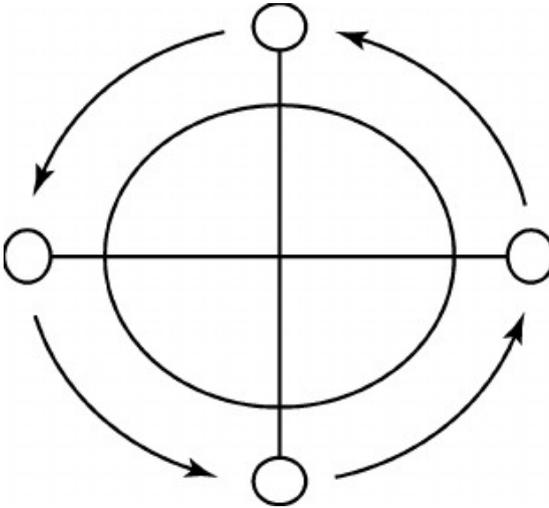


Figure 1: Bakongo cosmogram depicting the world of the living (above) and the world of the ancestors (below), birth (on the right) and death (on the left), connected via water (lines forming a cross) and the sun (represented at noon and midnight above and below, with the rising and the setting sun to the right and left).⁷⁸

‘The Future of the Cosmos’

Historians and archeologists have written about the prevalence of cosmograms among enslaved midwives, conjurers, and rootworkers.⁷⁹ Sharla Fett writes,

More than a symbol, a cosmogram drawn on the ground or embodied in the form of a forked stick or crossroads drew spiritual power to a particular point on earth. Crossroads

71 Burkhart 2019, 194.

72 Gundaker 2011, 176.

73 Crawley 2020, 28.

74 Gundaker 2011, 176.

75 Crawley 2020, 28.

76 Judy 2020, 17.

77 Carter 2023, 24.

78 “The BaKongo cosmogram (Fennell 2003, 6, figure 2; courtesy of Christopher Fennell),” Webster 2008, 118.

79 See, for example, Zauditu-Selassie 2007; Boroughs 2004; Wilkie 2003; 1997.

and cosmograms traced in the ground marked points of contact between the world of the living and the world of gods and ancestors.⁸⁰

Drawing on the ground in this context is a means of transmuting colonial realities, acknowledging sacred space and connecting the living and the dead. This practice of relating to land transfigures meaning, moving away from the image of “the racial event” (i.e., the construction of race) as ‘*a singular infinite re/de/composition of the fractal*’—something which is self-perpetuating on an elemental level because of a collective willingness to continue to construct the scene of subjugation.”⁸¹ The ‘*re/de/composition of the fractal*’ in the event of drawing a cosmogram in soil and the ephemerality of the sacred space created is an invitation to commune *otherwise*.

Granny midwives made cosmograms around the homes of enslaved birthing people, adding yet another dimension of ephemerality to the context of transformed *elementa*.⁸² Gardens of enslaved people in North America were also transformed into cosmograms, thus inviting “spirits to inhabit the space.”⁸³ While much attention within the field of historical archeology has been paid to pottery with cosmograms, marking the ground with a stick, growing gardens as cosmograms, and walking around the outside of a house in a cosmogram with a newborn baby emphasize the significance of ‘entangled matter-ing’ in an already dynamic practice.⁸⁴ Gundaker points to the metabolic significance of these events. Referencing the scholarship of Elaine Nichols, Gundaker highlights what she calls “cosmographic motion [...] reminding us that cosmograms are performed and that gestures are thresholds to understanding.”⁸⁵ This emphasis on motion speaks to the *corpus infinitum* of metabolic possibility enabled in the practice of conjuring via the cosmogram.

80 Fett 2002, 56.

81 Gibson 2022; Ferreira da Silva 2022, 294.

82 Wilkie 2004, 87; 2003.

83 Katz-Hyman–Rice 2001, 158.

84 For references to pottery depicting cosmograms, see, for example, Wilkie 1997, 98; Fett 2002, 80.

Corey Stayton writes on the dynamism of this practice, in echo and anticipation of Conjure Feminism, “The cosmogram paradigm regards the forces of life and death as complementary and deserving of celebration. The spirit of the ancestors (the dead) and the spirits of the living are connected, and it is the responsibility of the living to ensure that the dead are given honor, praise, and constant recognition,” Stayton 1997, 7.

85 Gundaker 2011, 177.

Gundaker's argument is reminiscent of that of Aluli Meyer's analysis in "Holographic Epistemology: Native Common Sense."⁸⁶ "How does one enter this kind of epistemological arena in which the integration of an idea is the understanding of it?" Aluli Meyer asks.⁸⁷ She, the grand midwife who has guided this contribution, knows the power of this question. Flower essence from her mother's garden in hand, she is prepared "[t]o see patterns develop themselves and then intersect, fractal and converge with others in an infinite array of evolving life."⁸⁸ She holds the baby, stopping at each of the four corners of the house. The baby feels the sunshine on its face, uniting it with ancestors rendered obscure during the *Maafa* (the spiritually significant term for the Middle Passage).⁸⁹ Born on one side of the veil or the other, the baby has been welcomed into "a cosmology of entanglement or entangled mattering [...] an alternative we-ness, an alternative sociality with the earth and cosmos and therefore each other."⁹⁰ Bending close, she whispers lovingly, "I, too, am the future of the cosmos."⁹¹

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86 Aluli Meyer writes, "Indigenous epistemology combining with quantum clarity creates a new-old-wisdom helping simplify complexity into purpose and common sense once again so observable knowledge can be valued once more," Aluli Meyer 2013, 94.

87 Aluli Meyer 2013, 99.

88 Aluli Meyer 2013, 99.

89 "The Maafa interfered with the communication to and from the world of the dead," Stayton writes; Stayton 1997, 20. Stephanie Smallwood details in *Saltwater Slavery: A Middle Passage from Africa to American Diaspora* ways in which African cosmologies were disrupted by water in the Middle Passage, as ancestors were bound to the land; Smallwood 2007.

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Freedom, Experience and Emancipation: A Pragmatistic Inquiry on the Practices of Relating to Land in North American History

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Abstract

This paper examines different perspectives on practices relating to land leading to and following the colonialization of North America from a pragmatistic standpoint. Those different perspectives are drawn from contributions in this volume, examining European liberalist ideas, Indigenous practices of learning, and spiritual practices of enslaved people. As American Pragmatism is understood as the first unique modern U.S.-American contribution to Western philosophy, we want to examine its potential as a methodical basis for mediating a critical stance on the effects of liberal thought by considering the practices in the historical perspectives presented.

We conclude that a pragmatist perspective helps recognize freedom as deriving not immediately from private property, but rather from learning, based on reciprocal experience. The facilitation of reciprocal experience is, as Indigenous practices show, embedded in social practice, and happens in relation to specific environments. It is susceptible to the violent displacement of groups. Under the seemingly most adverse conditions for social action that we have found in the situation of enslaved people, a potential root of emancipation can be found in the spiritual appropriation of land, not only reuniting propertized people with their ancestors' spirits, but also weaving a new social sphere.

Keywords: Pragmatism, Liberalism, Freedom, Experience, Emancipation

Introduction

Land plays a fundamental role in the history of property and, especially, in the tradition of liberal thought. Since the ability to own land guarantees independent self-preservation, a private retreat, and the capacity to store additional property, its importance to a school of thought concerned with the freedom of the individual is hardly surprising. Various liberal thinkers have, therefore, stressed the role of land. John Locke, for example, stated “the chief matter of property being now [...] the earth itself, as that which takes in and carries with it all the rest.”¹ Immanuel Kant later noted that the “first acquisition of a thing can be only acquisition of land.”² But liberal theory has, nowadays, come under increasing criticism considering the practical consequences of its implications in the past and present. More recent property research questions classical liberal ideas in general and property in particular and emphasizes the perspectives and voices of those groups that have become unfree as a consequence of liberal-led policies.³

In this article, we want to complement the critique of liberalism by focusing on one of its key historical reference points, particularly with regard to land ownership. As Locke himself stated in his famous *Two Treatises of Government*: “In the beginning, all the world was America”.⁴ He thereby claimed the habitat of various Indigenous people as a legitimate target of appropriation for his contemporaries. The implications and consequences of his and other liberal claims are well depicted in the texts by our co-authors in this volume. Dirk Schuck, Anna Möllers, and Helen A. Gibson each explore a different perspective on this matter. The topics of their texts range from a paradoxical European idea of an agrarian ‘utopia’ in North America (Schuck) and the displacement of Indigenous people from the land they were part of themselves (Möllers) to the enslaved people who reestablish connections to their ancestors, which were lost when they were abducted from their homelands, through practices relating to land (Gibson). These perspectives are, of course, overlapping and intertwined, as the arrival of the European settlers, their appropriation of land, and the system of slavery they created drove the depicted

1 Locke 1988, § 31.

2 Kant 1991, § 12.

3 Beyond the contributions in this volume, see von Redecker 2020; Loick 2016; Nichols 2020.

4 Locke 1988, § 49.

developments—the consequences of which are, to this day, still present in U.S. society.

We intend to develop our critique by means of American Pragmatism, particularly the strand of it that originates from the works of John Dewey. Several reasons guide this decision: First, as American Pragmatism is credited as “the only unique contribution American Philosophy has made to the tradition known as Western Philosophy”⁵, we want to explore this theory’s awareness of the historical background of its emergence. Developing from the late nineteenth century, American Pragmatism followed the historical events at hand and was able to reflect them. Even though Dewey’s philosophy hardly addresses the system of slavery or the violent displacement of Indigenous people directly, biographical data suggests him at least being aware of both: As Scott L. Pratt and Hollie A. Kulago point out, Dewey’s philosophy was very likely influenced by Indigenous knowledge he encountered via his first father-in-law.⁶ First of all, as a founding member of the NAACP⁷, Dewey seemed at least to be aware of the difficult situation of Black people in the United States. Secondly, Dewey was himself a critic of liberalism. While he mainly criticized the *laissez-faire* approach present in his lifetime, he worked on its historical roots as well. Moreover, we want to examine whether his critical stance can address the conceptual problems and shortcomings of historical liberalism, which fueled settler colonialism, displacement, and slavery. Finally, pragmatistic theory-building is grounded in practical experience—a relation that we will explain in more detail in the following chapter. Given the possibility this volume opens for us, namely, to be able to refer to the work of our fellow researchers, pragmatism seems like the ideal philosophical school to develop a critique which reflects on the entanglement of the given perspectives and emerges from within this entanglement.

In order to do so, we will start with a brief outline of the central idea of American Pragmatism, the concept of habits. We will point out the connection it draws between pragmatistic theory and practices and explain its social dimensions. Following this, we will describe Dewey’s critique of liberal-

5 Moore 1961, vii.

6 See Pratt 2002 and Kulago 2018, who point out how Dewey’s first father-in-law brought him into contact with Indigenous philosophy and how it influenced his further thinking. See also Villeneuve 2021, who accuses Dewey of instrumentalizing Indigenous philosophy for the benefit of his own concepts.

7 See Eldridge 2004, 12.

ism and apply it to the idea of Hector St. John de Crèvecoeur's agricultural 'utopia'.⁸ Schuck analyzes it in this volume. Doing so reveals a rather problematic concept of experience in Crèvecoeur's thought that we will address via a pragmatistic reconstruction of Indigenous concepts of experience and relating to land that we gain from Möllers' contribution to this volume. We will then turn towards the situation of the enslaved people and examine the spiritual roots of emancipation, present in the contribution of Gibson, via a reconstruction of the pragmatistic concept of symbols.

Pragmatistic Core Concepts

Before examining the historical constellations, we need to briefly outline the conceptional basis of American Pragmatism. In addition to a basic understanding of the theoretical assumptions of our examination, this will also explain American Pragmatism's linkage with practices. To accomplish this, we start with the concept of the habit as defined by Charles S. Peirce and explain its fundamental role in American Pragmatism. We then turn towards the social elaboration of the habit that Dewey developed in his social philosophy, connecting individual action with collective customs, intergenerational traditions, and socially constructed institutions.

Habit

The Habit is a core concept of American Pragmatism. It remains the key concept regarding the connection of pragmatism and practices. In addition, it lays the groundwork for retracing how deeply socially rooted individual practice is. To explain it, we will start with the central argument that pragmatism states about the question of certainty and then show how it aligns with the idea of habit.

⁸ We use the word 'utopia' in this text not as a normative expression, but as a quote. Crèvecoeur uses it for the social order he envisions in North America, even though he expresses contempt for Indigenous people and he himself was a slave owner. In other words, he envisioned a state of affairs that should be considered anything but utopian.

The work of Peirce is commonly seen as the starting point of American Pragmatism. In 1877 and 1878, he published two papers, titled *The Fixation of Belief* and *How to Make our Ideas Clear*. The ideas developed in these papers influenced the thought of William James and Dewey, who, together with Peirce, are understood today as the classic pragmatists. We will briefly outline the papers' central arguments to show how Pragmatism combines ideas and beliefs with practices. Peirce fundamentally claims every action to be based on firm belief—otherwise, one would not act. If one lacks belief, one experiences the unease of doubt, as the absence of belief means that one is uncertain about how to act. This sensation leads to the need for what Peirce calls “inquiry”⁹: the attempt to reestablish a belief or, more casually put, figuring out what to do next.

Alas, clearly not all action is directly linked to a conscious belief. This is not contradictory to pragmatism, as this is where the concept of the *habit* sets in. Habits are incorporated beliefs that can be unconsciously acquired or consciously stipulated. A doubt once overcome by a certain action leads to that action becoming, so to speak, a model solution for similar situations. Dewey describes this using the example of a child learning how to walk. Doing so is very hard and time-consuming for children, as they have to commit almost entirely to following a given course of action (rolling over, sitting, crawling, pulling themselves up with support, cruising, and letting go). But once they have successfully acquired this skill, they are no longer obligated to carefully watch every step they take and can pursue other actions while walking.¹⁰

To draw on Dewey's example of the child: A habit can be understood as the successful solution to certain problems that one has internalized in such a way that one can apply it quickly and without much thought. Everyone forms habits. In general, they are, therefore, ultimately necessary for getting along in a complex world. At the same time, habits can petrify our conduct and lead to problems. If a once-perfectly-fine-working habit is confronted with changed conditions, it may not lead to the desired outcome. In that case, the belief on which the habit is based can become threatened by doubt. It is very much possible, if one ignores this unpleasant condition and carries on performing the habitualized practice, that someone can harm oneself or others

⁹ Peirce 1998a, 371–374; 1998b.

¹⁰ See Dewey 1973, 86.

in the process.¹¹ The much better way of dealing with doubt, at least in a pragmatic sense, is to see it as the starting point for a new inquiry, to question our practices and hold them against the light of the tasks they should serve and the problems they should solve.

Social Dimensions of Habit

The introduction of habits shows the fundamental role of practices in pragmatism. But regarding our research interest, one might not be wrong to note that it does not provide much insight into the practices of bigger groups of people. Fortunately, as we want to show now, the concept of the habit can be expanded to the context of social processes. Dewey's pragmatistic social philosophy develops the idea of the habit further within its social embedding.

No habit is performed in a perfect vacuum, as it is always relative to its surroundings, either for its formation or for its implementation.¹² The objective or natural part of this environment is easy to comprehend: For example, the habit of riding a bike is strongly shaped by how a bicycle works. Driving a car requires a different set of habits. But habits are, of course, not only linked to objects. This can be seen by getting back to the example of children learning how to walk. In this case, a social dimension of the habit becomes visible. Children, to follow the example, will not be socially isolated in their attempts, as their attempts are most likely motivated by other people—for example, they see other people walking and their parents might support them. So, ultimately, habits are also socially embedded. Dewey acknowledges this in his *Lectures on Social Philosophy* he held in China between 1919 and 1920. Dewey outlines in these lectures his idea of the habit's social dimensions as follows:

A habit is a regulated pattern of individual behavior derived from prior experience. A custom is a habit that is common to the members of a society. When custom becomes regularized, systematized, and consciously insisted upon, we call it tradition. When social arrangements reach the degree of systematization characterized by delegation of respon-

11 Peirce 1998a, 377–383 discusses several methods of ignoring doubt in a once made-up belief, namely the method of tenacity, the method of authority, and the method of the a-priori.

12 See Dewey 1922, 10.

sibility, division of labor, and the necessity for cooperative endeavor, we have an institution.¹³

So, the first layer of social environment, the custom, is woven from the background noise of the cumulative habits of a given group. We often do not even recognize these shared habits, such as, for example, shaking hands in greeting each other. But as soon as we meet someone who has another form of greeting habitualized, we might get confused. The next layer, that of tradition, is of bigger complexity than customs. Traditions are consciously upheld and passed on, but also easier to address and made subject to change. Most traditions are not based on single habits, but, rather, on systematized sets of habits. Institutions are, at least, highly complex social formations that primarily serve a narrower function than traditions.

As the habit is understood by Dewey as necessary for reducing complexity in an individual's life, the same applies for the habit's social dimensions, as, he writes, "[c]ivilized activity is too complex to be carried on without smoothed roads."¹⁴ Customs, traditions, and institutions perform an important role in societal complexity reduction. Furthermore, it is of utmost importance to note that the enumeration of social dimensions in no way expresses the direction of their impact: Institutions can shape habits, while, at the same time, traditions shape institutions, and an individual habit can form a custom if adopted by others. Just as the natural environment forms our habits, so, too, do social environments. Every single human being is born into a society, a group with established customs, traditions, and institutions, and is, therefore, embedded in a specific social environment with great influence on the formation of their habits.

Individual Independency, Social Freedom

We start our investigation with the igniting spark of the historical events—the beliefs of the European colonists of Northern America, and their corresponding practices. Schuck, based on Crèvecoeur's *Letters from an American Farmer*, shines a light on European settler-colonial perspectives in this vol-

¹³ Dewey 1973, 85.

¹⁴ Dewey 1922, 20.

ume. In his work, Crèvecoeur depicted his idea of an agrarian ‘utopia’ for European colonizers in Northern America. The core element of it was the individual freedom of its European inhabitants, granted by “the essential experience of what it means to work one’s own lands.”¹⁵ To keep this ‘utopia’ intact, however, Crèvecoeur advocated for Northern America to stay under the control of the British Empire. This seems to be a rather paradoxical claim: Individual independence is to be upheld by the abandonment of political independence in order to grant freedom for the European farmers.

How can we interpret Crèvecoeur’s seemingly conflicting claims? We argue that these develop from flaws in liberal principles. Therefore, we will apply Dewey’s critique of liberalism to Crèvecoeur’s assumptions and show how it reflects such contradictions. This reconstruction leads the path to Dewey’s pragmatistic conception of freedom, involving thoughts about the social and about experience that Crèvecoeur misses.

The Pragmatistic Critique of Liberalism

Dewey advances a critique regarding the liberalism of his time in his essays *Philosophies of Freedom* from 1928 and *Liberalism and Social Action* from 1930.¹⁶ The starting assumption of this subchapter is that we can understand Crèvecoeur’s claim for individual independence as coherent with Dewey’s reconstruction of the assumptions of classical liberalism. To show this, we will characterize this critique along the ideas of Crèvecoeur, as presented in Schuck’s contribution to this volume.

As Schuck explains, the central idea of Crèvecoeur’s agrarian ‘utopia’ is that “ownership of land is synonymous with economic independence, and, therefore, individual freedom.”¹⁷ The historical context of this assumption lies within the serfdom common in Europe at the time. What is meant is that most of the land was property of ‘noble’ landlords who leased it to tenants who worked the land without ever owning it. Coming to North America gave those tenants a chance to own land and not be dependent on landlords any

15 Schuck in this volume.

16 See Dewey 1931; 1987.

17 Schuck in this volume.

longer. Crèvecoeur opposes this rule of aristocratic European landlords and the resulting dependencies of white European tenants.

Dewey observes classical liberalism for exactly the critique of and emancipation from such rule. By postulating natural rights, liberalism served, in his interpretation, as an argument against the power of the nobility over the lowborn.¹⁸ But Dewey claims that the principles liberalism invoked to overcome this specific oppression “were themselves historically conditioned and were relevant only to their own time.”¹⁹ Therefore, their implementation becomes problematic, he asserts, after the conditions they were directed against changed. Dewey’s central argument for the hindering effects of the contemporary liberalism of his time is directed against its construction of isolated subjects. Dewey points out that liberalism postulated the equality of people to claim equal and natural rights, regardless of one’s birth. To do so, liberalism needed to claim a specific but universal quality of human beings to justify these rights.²⁰ This quality was freedom, understood as the ability of free choice. So, the central claim of liberalism is that of natural rights, protecting the individual’s actions from obstruction, even from a government, as long as they did not themselves obstruct anyone else’s actions. Dewey does not problematize the emancipatory intent of claiming individual freedom as a goal of political action. His critique is, rather, directed against the way freedom is reasoned here. If freedom was “equipment of fixed and readymade capacities,” every individual at all times would be fully capable of this freedom. In that case, the social environment would be “thought of as purely external to an individual, and as irrelevant to freedom.”²¹ This dichotomy of isolated subjects, completely divided from their social and natural environment, is the focal point of Dewey’s criticism of liberalism.

18 See Dewey 1931, 279–280.

19 Dewey 1987, 26.

20 It is of utmost importance to note that although being claimed as universal, people were excluded from these rights for various reasons. In case of this volume, the most obvious examples are Indigenous people and enslaved people, neither of whom were granted the same rights as the white European colonizers. Otherwise, neither enslavement nor expulsion could have been considered lawful in any way.

21 Dewey 1931, 279.

Freedom and Experience

How are isolated subjects a problem to freedom? We want to examine Dewey's critique further from within Crèvecoeur's 'utopia' and the way his idea of freedom is connected to land. Crèvecoeur interprets the emancipatory effect of land ownership as the result of a learning process set in motion by working one's own land. Neither the pure fact of owning land nor only the working of land is sufficient for this process. This becomes evident in two of Crèvecoeur's assertions. He claims that not every European settler-colonist is able to learn from the experience of owning land, as some "degenerate into a life of vice and idleness."²² On the other hand, Crèvecoeur understands enslaved people, although working land, as being unable to make freedom-enhancing experiences, due to them not owning the land. For him, it is the combination of both of these factors that counts: "the essential experience of what it means to work one's *own* lands."²³ Crèvecoeur is, therefore, not arguing from the standpoint of a ready-made isolated individual, but, rather, for freedom as something that is gained procedurally, in interaction. Nevertheless, the linkage of property, experience, and freedom in his agrarian 'utopia' stays deficient for various reasons.

Dewey, in his critique of reasoning freedom as a natural and readymade quality of humans, also claims a connection between experience and freedom. When criticizing the idea of freedom as choice, he is not opposing the notion that humans are able to show selective behavior. But he rejects the idea that the reason for doing so is fundamentally separated from our environment. He distinguishes between random choice and intelligent choice. Making an intelligent choice means considering the consequences of the actions one is about to take. As the consequences of one's actions depend on interaction with a given environment, insight into these consequences enables an intelligent choice with more options. Instead of relying on an already existing, inherent quality that 'naturally' renders our actions free, this notion of choice inspires us "to seek freedom in something which comes to be, in a certain kind of growth; in consequences rather than in antecedents."²⁴

Therefore, the fact that Crèvecoeur has basic insight into freedom as a process of experiences can be criticized from a pragmatistic standpoint as

²² Schuck in this volume.

²³ Schuck in this volume.

²⁴ Dewey 1931, 286–291.

being too shortsighted. The pragmatistic conception of freedom as intelligent choice enables us to understand very different experiences as a means to freedom, while Crèvecoeur has in mind only one specific experience—having private property in land—as promoting freedom. The difference between these two conceptions implies far-reaching consequences for thinking the social and the political. Not only the inconsistent positions of Crèvecoeur, but also the implications his ideas have for Indigenous and enslaved people, bear witness to this. His ‘utopia’ not only sacrifices political freedom for individual freedom, but also accepts the violent expulsion of the Indigenous and the abduction and enslavement of millions without protest. Besides, this conception of property as the ultimately necessary mean for freedom is not able to ensure emancipation of people without any chance of gaining property. For enslaved people, who were not only banned from owning land, but treated as property themselves as well, this concept of property and freedom only conceives of them as being freed—not emancipated by themselves—rendering them passive. We will subsequently try to counter the fatal shortcomings of Crèvecoeur’s thought, first by reconstructing a pragmatistic take on Indigenous practices of experience in relation to land, and later with respect to emancipatory rituals of enslaved people.

Experience, Nature, and Learning

In this subchapter, we want to develop a better understanding of the relation between experience and freedom. We acknowledge the contribution of Möllers in this volume regarding the insight of the intervening of freedom and experience, as she examines Indigenous practices of experience in relation to land. To embed these theoretically, we will first introduce the specific pragmatistic conception of experience. After that, we will show its relationship to learning in the following subchapter. Lastly, we will explicate ways of relating to land that Indigenous people of North America practice in the examples that are given in Möllers’ text.

Classing Experience

In the first chapter of this contribution, we rejected Crèvecoeur's linkage of experience and freedom, i.e., his narrow idea of the experience of working one's own land being the only way to learn freedom. We did so by reconstructing the pragmatistic concept of intelligent choice. Intelligent choice can draw from a broad share of experiences if they provide insight into the consequences of our actions. But nearly everything can be an experience, as Dewey recognizes. Therefore, he states: "the interaction of live creature and environing conditions is involved in the very process of living."²⁵ But, he claims, not every interaction necessarily results in a choice-enhancing experience. This begs the question of what pragmatism sees as an experience regarding freedom.

The ubiquitous stream of consciousness is not what Dewey grasps as "*an* experience,"²⁶ which is distinguished precisely by its closure and singularity from the permanent stream of experience. Such an experience can be named, and it can be referred to. To achieve said closure, Dewey recognizes a distinct experience as consisting of two elements: action and suffering. 'Suffering' might sound a bit drastic, but Dewey refers to this term in its "large sense."²⁷ What he has in mind is a passive element, the undergoing of a process not performed by oneself. Dewey makes clear that neither of these two parts alone conditions experience. Moreover, even the mere succession of the two moments is not yet an experience, unless there is a relationship between the two. So, if one acts without perceiving any consequences, one is not able to forge any meaningful connection towards one's action. At the same time, one who only perceives events, without any action of their own, is also not able to build this relationship. Without this relation of action and suffering, Dewey asserts, no real experience happens.

25 Dewey 1981, 42.

26 Dewey 1981, 42.

27 Dewey 1981, 48.

Environment and Learning

Dewey mentions “the organic connection between education and personal experience”²⁸ in his work *Experience and Education*. We want to explore this link between learning and experience further in the following subchapter to get a better understanding of Indigenous practices relating to land. We will start with an old acquaintance we met in the first chapter: the central pragmatic idea of habit. Dewey writes,

The basic characteristic of habit is that every experience enacted and undergone modifies the one who acts and undergoes, while this modification affects, whether we wish it or not, the quality of subsequent experiences.²⁹

The quality of a meaningful experience, to modify habits and subsequent experiences, was differentiated in the last subchapter: Such an experience needs to consist of the relationship between action and suffering. If one acts, undergoing the consequences of one’s action, and realizing the relationship between action and suffering, people can link their actions with underlying consequences. One might then modify one’s behavior based on intelligent choice. But even if people do not modify their action, knowledge of the consequences will affect subsequent experiences. As we can anticipate possible consequences of our action beforehand, we will not passively suffer them, but, rather, conceive our action as a cause for specific consequences. Learning something new is dependent on distinct experiences, consisting of the previously described active and passive elements.

Singular experiences may be distinct, but experiencing is continuous. Every experience conditions vast experiences. So even if we can now differentiate between experience as a permanent stream and experience as singular, meaningful experiences, their continuity still lacks normative direction. Not every change of our habits and/or experiences is unrestrainedly desirable. As Dewey is aware of this normative need, he determines two normative criteria for judging an experience’s usefulness for learning.

The first of these criteria is *growth*: “[T]he educative process can be identified with growth when that is understood in terms of the active participle, growing.”³⁰ This criterium is not only to be applied with the current direction

28 Dewey 1997, 25.

29 Dewey 1997, 35.

30 Dewey 1997, 36.

of one's learning. As Dewey points out, one could perfect the abilities needed to grow in the direction of a skilled burglar. But this would most probably hinder growth in several other directions.³¹ However, we can see that this is a very broad criterium, as in most cases we cannot see the full impact of an experience for growth.

The second criterium that Dewey applies to experience in the quest for their usefulness for learning is *interaction*. This is due to the fact that environments play a huge role in learning. Environment is understood as "whatever conditions interact with personal needs, desires, purposes, and capacities to create the experience which is had." The assumption that no experience happens isolated inside an individual is already introduced via the condition of the relationship of action to passive suffering. Being passive makes an external actor necessary. But the notion of interaction goes further, Dewey writes: "It assigns equal rights to both factors in experience—objective and internal conditions." The role a person's environment plays in the process of learning is not to be underestimated, and different environments can result in different experiences.³² As with the idea of growth, interaction is more of a broad criterium. Very different situations might be highly interactive between persons and their environments. Significantly, these two principles are not to be understood as being applied separately: "They intercept and unite."³³ A learning situation should enable interaction, as in the sense stated above, and be perceived as a basis for further growth. But how do we grasp such a situation? What are the conditions for that? To clarify this, we will now turn to a real-world example of such a situation, presented in Indigenous practices of relating to land.

Indigenous Practices of Relating to Land

The role of land in Indigenous practices can be approached from a pragmatic perspective via the now-unfolded ideas on learning. We go back to the children's story related by Leanne Simpson and mentioned by Möllers:

31 See Dewey 1997, 36.

32 See Dewey 1997, 40.

33 Dewey 1997, 40.

She [the Nishnaabe girl] sees a little squirrel and, with careful observation and imitation of the behavior of the squirrel, [the little girl] learns how to get to the sweet maple syrup inside the tree. Later, the girl comes back with her whole family to show them what she learned and to enjoy the maple syrup together.³⁴

Land is presented here as the environment of a learning experience. What is described is an openness to processes in the environment that opens up the possibility of an experience. This is a very clear interaction between the Nishnaabe girl and nature. Her practice is even encouraged and celebrated, paving the way for continuity of her curiosity and openness to learning from her environment. Considering the fact that the girl shares her learning experience with others, the text also offers an example of growth on an interpersonal level. When the Nishnaabe girl shares her learning experience with her family, she provides growth to a whole social group. This can lead to a chain of mutual interactions between her social and natural environment in which the learning experience can be imparted. She prompts others to interact with nature to engender other experiences by emulating the girl and observe natural phenomena to learn something using the same method she does.

But there is more to this story. It depicts not only the importance of interaction, but also the necessary fabric between land and people to enable those interactions. To reconstruct this in pragmatistic vocabulary, we need to remember the layers of the social discussed in the very first chapter of this text. Dewey states: "We live from birth to death in a world of persons and things which in large measure is what it is because of what has been done and transmitted from previous human activities."³⁵ As our habits are changed by experience, human beings do not start from a completely blank slate, but are, rather, enclosed in various experiences that have been made before them and turned into customs, traditions, and institutions. So, how we interact with our environment is partially due to the environment itself, but also to our social environment—the things we learn from the people surrounding us. How one grows up provides us with beliefs about our way of interacting with the environment.

This connection is visible in the relationship between land and ancestors for the Indigenous people whose culture Möllers describes. Becoming inseparable from the land as they die is the condensation of the fundamental mu-

34 Möllers in this volume.

35 Dewey 1997, 41.

tuality of land and people. With the pragmatistic idea of social layers, it is possible to understand this as a traditional preservation of a specific interaction with land. The idea of ancestors being and oneself becoming an inseparable part of land is the basis for this. The relation between people and land is not that of subjects who own and control an object, but of people *belonging* to the land. Regarding the story of the Nishnaabe girl, it becomes clear that this practice of relating to nature is the result of a learning process as well. It is mentioned later in the story that the girl offers tobacco leaves to the land in exchange for her learning experience.³⁶ This is an action that is addressed directly to the land, treating it as a mutual other. The assumption of being part of the land, instead of being its possessor, needs to precede the will to learn from nature by observing it as an equivalent partner in interaction. Without the generalized belief of the cultural context that preformed the interaction of the girl and her environment, the specific learning experience of gathering maple syrup would not have been possible. Hence, the beliefs of a social group and the way an individual person interacts with their environment only exist in a relation of interdependence. Indigenous practices of land keep it an open place for experience and learning by traditionalizing a mutual relationship between land and people. This relationship is formed by the specific connection one has to the land of their family and group, and it is rendered obsolete by displacement from said land.

Freedom as a Social Task

In reflecting Indigenous practices from a pragmatistic perspective, we not only gained a new angle of understanding these practices but can now also address the shortcomings of Crèvecoeur's conception. His call for North America to stay a part of the British empire, and therefore the political subordination of the freeholder, is, on one hand, a consequence of him reducing freedom-enabling experience to the static relationship between the active subject (the liberal individual) and the passive object (the land) and therefore neglecting any other relationship as important for freedom. But

³⁶ See Möllers in this volume.

it is also the product of him considering his 'utopia' precarious to economic development. We will unfold this aspect in the following chapter.

The Connection between Economy and Freedom

Crèvecoeur fundamentally assumes a progress of four productive modes for human development. The first mode is hunting and gathering, the second is pastoral productivity, followed by the practice of agriculture, and fourth, the mode of growing commercialization. Unsurprisingly, his freeholder 'utopia' is best realized in an agricultural mode of production, as in that case the most people can own land as freeholders and work it. Crèvecoeur considers Indigenous people's practices expressions of the first productive mode. He 'excuses' them for allegedly not having left this mode, as he supposes they did not know better. Perfidiously, this even works as an argument for the presence of European settler-colonists, as they now can 'teach' Indigenous people the 'right' way to live.

But the progress of productive modes would not stop at the mode of agriculture. As Crèvecoeur assumes that the growing wealth of the agricultural colonists will most likely shift the general productive mode in North America towards the stage of commercialization, he wants to avoid this shift to preserve his agrarian 'utopia.' He fears that the resulting division of labor would lead to many settler-colonists losing their freeholder lifestyle. As the British empire hindered American colonists taking part in international trade and blocked industrial development, he believes the preservation of this British control to be the only way to sustain his agrarian 'utopia.' Therefore, Crèvecoeur, seemingly paradoxically, calls for political unfreedom to preserve individual freedom.

Recalling the pragmatistic conception of the connection of freedom and experience, we already understand how this intuitive contradiction seems to be fine for Crèvecoeur: The incrustation of political action he calls for takes away a certain social space of experience. But that is not a problem for him. His concept of freedom and experience draws mainly from the isolated subject-object-relation of individual (landed) property and its owners, and not from social fabric. As long as the freeholders stay freeholders, Crèvecoeur is not really bothered with the social structure upholding their status as such. Nevertheless, he can be understood as an early critic of the society-trans-

forming forces of economy. If one is not to neglect the reality of an influence of economic processes in shaping the social, the question remains how we can apply the knowledge we have won without running the risk of losing sight of these effects.

Conveniently, for our inquiry, the forces of economic development are also acknowledged by Dewey as potentially disruptive. In contrast to Crèvecoeur, Dewey does not perceive their progress as the predetermined course of historical evolution. Instead, he reconstructs the development of the productive forces as inherent to liberalism. Dewey acknowledges that classical liberalism played an important role in 'overcoming' the old European order of the reign of nobility. This development left societies in need of being remodeled. But at the same time, by placing the individual rights of persons as a ready-made quality, liberalism implicitly declared any intervention by society a possible infringement on personal freedom. Therefore, the same principles that had made some people's emancipation from oppressive political systems possible were also directed against creating a new, top-down social order.

At this point in history, the ideas of political liberalism united with economist ideas, resulting in the conviction that individual needs are an expression of free will and their realization the ultimate expression of freedom. By neglecting the possible social origins of needs, they were naturalized. This led to the belief that the as-unhindered-as-possible realization of individual needs, ergo unobstructed markets, would create a bottom-up natural order.³⁷ Dewey argues against this belief. As we have discussed, the importance of experience and the role which active action and passive suffering play in freedom-enhancing experience, understanding freedom as the unhindered fulfillment of whatever need seems quite contradictory. For Dewey, simply equating freedom with the satisfaction of individual needs creates a societal order that ignores the social entanglements in which those needs are ultimately formed and that need to be considered as a part of human interaction:

[A]s economic relations became dominantly controlling forces in setting the pattern of human relations, the necessity of liberty for individuals which they proclaimed will require social control of economic forces in the interest of the great mass of individuals.³⁸

³⁷ See Dewey 1987, 22–32.

³⁸ Dewey 1987, 27.

The social control Dewey envisions here is neither an authoritarian, top-down nor a laissez-faire, bottom-up control, but a sort of social organization that minds the inescapable interaction between individuals and their (social) environment for the process of growing chances for intelligent choice. How can such control be envisioned? We will look at Dewey's concept of social conflict to get a better understanding of his political philosophy.

Social Conflict and Society

How does Dewey envision the societal order that leaves room for these processes? Rather than arguing for a rigid political system, his solution is to argue for a perception of the political as a process aligned with social conflict as the driving force of its development. Dewey summarizes this conception in the lectures he held in China. The notion of social conflict he presents to his listeners there shows similarities to Peirce's conception of doubt and belief we reconstructed in the first chapter. While Peirce argues that it is impossible to permanently avoid doubt in our knowledge and opts for a method of reasoning that can productively include it, Dewey understands conflict as an inevitable event in social structures and argues for its integration in societal organization. Both solutions are procedural in nature.

How can social conflict be comprehended as a creative power? At first glance, it seems to have rather destructive consequences, at least hindering 'normal' conduct of public affairs. To get Dewey's twist on conflict, it is first important to know that he considers the emergence of social conflict as something that is never possible to completely contain.³⁹ Conflict arises along the needs and interests of the members of a society. And as society is a rather complex construct, the potential for such conflict is ubiquitous. Secondly, Dewey defines social conflict as "disparity among the interests sought by *groups* of people." These groups are "constituted on the basis of at least one interest held in common by its members".⁴⁰ The meaning of interest here is rather broad, and people are members of many different groups in this sense. Over time, Dewey assumes, some groups come to occupy a privileged position. In this case, their interests are taken for the general interests of society,

³⁹ See Dewey 1973, 64–66.

⁴⁰ Dewey 1973, 64–73 (emphasis added by the authors).

thereby neglecting, or even suppressing, the interests of other groups. It is this structural relationship that sets the basis for social conflict, even though it does not necessarily break out immediately.⁴¹ But this relationship is also the starting point for possible social reform, which Dewey understands to be divided into three phases:

At first, the *status quo* is not questioned, i.e., the interests of the dominant group are accepted as the general interests in society, or their validity is naturalized, respectively. The second phase is one of challenge. Seemingly objective assumptions about the social order or the roles of certain groups are increasingly questioned. The members of the oppressed group try to make their voices heard more and more. At the same time, the established customs and institutions react to this development with more rigidity. More and more members of suppressed groups perceive themselves to be part of a social group with the aim of fighting the oppressive regime. The third phase changes the narrative of the conflict. In the second phase, both groups claim the highest validity of their causes and thus negate each other. Now the interests of the suppressed group are increasingly acknowledged as social matters of importance for the whole society. Therefore, even people not part of the suppressed groups join their fight and support their cases.⁴² Even if the described process is successful and the suppressed group is no longer suppressed in the interest it constitutes itself upon, social reform has not come to an end. New conflicts may arise in the new social order, or already existing oppression may become visible to more people than before. Social reform is, therefore, a never-ending process for Dewey.

But the question remains as to why social reform is necessary at all, and why the oppressors do not simply retain their privileged status. Dewey argues for his concept of social reform against both rigid conservatism and a certain image of revolution:

Each side sticks to its guns the more determinedly, the one opting to defend to the death the status quo, the other advocating violence and revolution. Victory for the former results in further ossification of custom and tradition; victory for the latter in 'reformation' of that which does not need to be reformed, in discarding that which should be retained, and in rejection of much that is essential. Either of these results, as history demonstrates to us over and over, is wasteful to the point of tragedy.⁴³

41 See Dewey 1973, 66.

42 See Dewey 1973, 77–78.

43 Dewey 1973, 80.

Dewey's main argument for necessity of change is the impending collapse of society as a whole and the danger of the radical destruction of its institutions. As his social theory is based on the pragmatist concept of habits, a society without institutions is still a society with the before-established habits. Sustainable social change is, therefore, more likely for Dewey by social reform, as he envisions it. But in the light of the situation of Indigenous and enslaved people, Dewey's idea of social conflict and his claim appears to be shortsighted from an emancipatory standpoint. Although he states that the suppression of one group by another is the reason for conflict, he seems to be thinking of different political attitudes rather than the cruel oppression that a system of enslavement entails. Therefore, his concept of a social order presupposes a certain basis, which consists of the mutual recognition of all members of society as at least possible participants in social conflict. When people are completely dehumanized, and that's clearly the case with the dehumanizing institution of slavery, Dewey's approach seems to struggle on the explanation of how these people could even form a group that is able to act politically.

We want to address this deficiency in Dewey's theory by examining a practice of spiritual appropriation that Gibson describes in her contribution to this volume: the walking of the Bakongo cosmogram by enslaved granny midwives.

Commodified People

The system of slavery in North America displaced tens of millions of people from their homelands, tore them from their social fabric, and isolated and scattered family members throughout the 'New World.' While the *idea* of slavery was criticized by some liberals of the time, they often missed a crucial point: Crèvecoeur, for example, condemned slavery as a parallel to European feudal rule. But as Schuck points out, this comparison lacks by a lot, even more so, as Crèvecoeur himself was an enslaver. Enslaved people were not only brutally forced to work agricultural land. They were abducted from their homelands and torn from their social environment. And while they were denied property and, especially, landed property, slavery meant, above all, that enslaved people themselves were treated as property. So not only did the violence of the Middle Passage dissect the social fabric of customs and tra-

ditions, being treated as property objects also continuously hampered the weaving of new traditions and customs. It gave enslavers power over almost every aspect of the lives of enslaved people, discounting them as subjects of liberal property orders while relying on and discounting their agricultural and reproductive labor and upholding commitments to their 'sale' without any consideration of enslaved people's will or social ties.

The inhumanity of this system is crystallized in Gibson's contribution to this volume, in which she describes a practice performed by granny midwives. Granny midwifery is the historical practice, performed by Black and Indigenous midwives, of supporting birthing people in processes of birth and death. Supporting the birthing of enslaved people meant that "[f]rom a juridical perspective, granny midwives brought commodified people into the world."⁴⁴ But Gibson focuses on the practice of invoking the Bakongo cosmogram, a spiritual sign that was drawn "around the homes of enslaved birthing people", as well as on granny midwives walking "around the outside of a house in a cosmogram with a newborn baby."⁴⁵ The question Gibson discusses regarding the cosmogram is what function it had in the liberation of enslaved people.

We want to pick up this question of the emancipatory function of the cosmogram and examine it from a pragmatistic point of view. While the practice did not change any juridical fact about the situation of enslaved people or the land it was performed on, we understand it as a deeply emancipatory practice, appropriating the land in a way classical liberalism cannot describe.

Emancipatory Practice and Symbols

The emancipatory aspect of the cosmogram can be recognized when we look at its function as a sign in social interaction. In order to portray its emancipatory function, we look at the semiotics of Peirce. Simplified, Peirce distinguishes between three different types of signs: Every sign is an icon, an index, or a symbol. These types of signs are defined by their specific type of reference to their object. An icon is related to its object by a qualitative relation of resemblance, which is not necessarily connected to a specific object, because

⁴⁴ Gibson in this volume, 220.

⁴⁵ Gibson in this volume, 223.

every icon stands in relation to its object in terms of possible, not mandatory, resemblance. If we look at the different forms represented in the cosmogram Gibson refers to, we can see that there are many elements that could be classified as icons. For example, the cosmogram depicts four circles resembling the sun moving over the course of the day. This linkage between circle and sun is only a possible one of likeness. There are many other objects possible to think of as fitting to the specific quality of the circle (the planet earth, the moon, etc.).

In contrast, an index always refers to a specific object of existence and is linked to this object by causal connection. We can find an index in the act of using the cosmogram, which is specifically used as a method of communicating with ancestors and thus always indicates the presence of different generations interacting with each other.⁴⁶

Furthermore, according to Peirce, a sign can only be named a symbol if the linkage to its object is based on convention. In comparison to an icon or index, the link between the sign and its object is arbitrary. Accordingly, a symbol is a sign that receives its meaning via the traditionalized usage in interaction of a certain social group. Dewey follows this concept of the symbol and stresses its specific social task:

Symbols [...] depend upon and promote communication. The results of conjoint experience are considered and transmitted. Events cannot be passed from one to another, but meanings may be shared by means of signs.⁴⁷

Therefore, a symbol can pervade a specific function in terms of communication: It abstracts from individual experiences and connects many people through a universal meaning that is able to express a mutual life experience of a group and, therefore, create a basis of communication in spite of the variety of different individual implementations regarding this experience. To put it in a nutshell, one could say: Its usage is necessary to forming or to becoming part of a community.

In addition, a symbol can contain elements that can function as icons, or indexes, or both, without losing its essential bonding to the cultural and social characteristics of a specific group. According to this illustration, the Bakongo cosmogram must be classified as a symbol with elements which can function as icons and indexes. Despite some elements resembling a possible

46 See Peirce 1998c, 369.

47 Dewey 2016, 179.

object (like the sun), the act of using it is bound to the community using it by traditionalized agreement of its meaning as a whole.

But this is not the only aspect worth mentioning about the usage of the *otherwise* cosmogram, because, according to the description of Gibson, the meaning of the symbol seems to change in the new environment of captivity. The act of using the cosmogram was conceived before as an index for the presence of at least three generations and as an opportunity for the community to communicate inside a cultural circle. The usage of the cosmogram in a new environment indicates the same as before for the Indigenous people (community, new life, the connection of all generations), but the act itself receives another meaning, because with the new environment, a new possible partner in interaction occurs: the group of settler-colonists or oppressors. The fact that granny midwives were kidnapped from their homeland makes it more probable that the sign is no longer used only to address people of their own culture. It can now also be seen as directed towards oppressors, giving the cosmogram a new emancipatory function in the environment of captivity.

As mentioned previously, understanding and being able to refer to the meaning of a symbol is a primary requirement for participating in communication. Matching this, Dewey writes: "We are born organic beings associated with others, but we are not born members of a community."⁴⁸ Members of a community always interact according to their traditions. The icons and indexes included within the symbol of the cosmogram, in this case, are only legible by the community of the Indigenous and enslaved. As already implied, icons do not refer directly to a specific object but can show an likeness to many different possible objects. Therefore, identifying a circle as the sun is only possible when informed about the culture in which the cosmogram is invoked. Enslavers' missing cultural background excluded them from the process of identifying its meaning. The same can be said for the indicating function of the cosmogram, because the index is based on a spiritual practice that is not accessible for the settler-colonists anyway. Granny midwives use a system of symbols in which the oppressors cannot express themselves or read the signs of the others.

Therefore, the cosmogram is used in captivity in its old symbolic meaning as a medium to communicate and link the ancestors and the living. But at the same time, the community fostered by granny midwives can establish a new

48 Dewey 2016, 180.

symbolic meaning of its usage directed against the oppressors. A message which could be derived from this excluding function is: There is something left that cannot be destroyed or taken over by strangers. Hence, the cosmogram is used in captivity because it offers an opportunity to interact with a selected group of people and to show resistance without responding to violence with another form of violence. In this case, it resembles the part of the (Indigenous) community which cannot be destroyed or taken away by any oppressor: cultural identity itself.

Conclusion

What can we conclude from our pragmatistic examination of practices relating to land in the historical context of North America? Starting with an examination of the ideas of landownership and freedom in Crèvecoeur's 'utopia', we unfolded a pragmatistic critique of liberalism and its concept of the practical value of land. Crèvecoeur understands freedom as the result of experiencing working one's own land. Freedom is then not only unfolded as individual independence, but is only to be achieved individually as well. Pragmatism argues against this point of view, pointing out the resulting problematic dichotomy of individual and society. Pragmatism, therefore, opts for a different notion of freedom, namely defining freedom as the result of processual interaction between individuals and their environment, both natural and social. Classical liberalism lacks this insight because it assumes (private) property in land as the sole *conditio sine qua non* for the realization of individual freedom. This shortcoming ultimately leads to Crèvecoeur's paradoxical argument against the political self-determination of his freeholders *in favor of their freedom*.

But apart from the arising of contradictions, the history of North America shows much bigger flaws of liberalism's ideas in the consequences for the groups who suffered from the European grip on the North American continent. We turned, therefore, from a merely theoretically motivated critique towards the reconstruction of practices that were devalued by classical liberalism and violently brushed aside.

What did we learn by doing so? The closer view on an example of Indigenous practices of relating to land unveiled a broader understanding of the role experience plays for freedom. Dewey's pragmatistic social philosophy

highlights the interplay of activity and passivity for meaningful experience, which drives learning. And as learning widens the range of actions to choose from, it is an important source of freedom. This idea can be set in relation with Indigenous practices of relating to land: As they are not based on a hierarchical relation between subject and object, land is treated as an equal other, a source of unforeseeable experience and interaction. This stance towards reciprocal experience is passed on between generations, as the knowledge of the connection of the ancestors' spirits with the land they lived on is an important component of Indigenous traditions. This insight also gives a broader insight into the devastating nature of the displacement of the Indigenous people in the name of land grabbing. In addition to profound individual suffering, European settler-colonists' efforts to destroy Indigenous communities' social fabric, integral to upholding an essential element of the continuous practice of freedom-enhancing experiences, was depicted as an act of liberation within the liberal tradition.

Grasping an understanding of the destructive results regarding the practices of the European settlers led us to the question of whether there is a way to restore or regain what was lost. The lives of enslaved people, who were not only abducted from their homeland, but also treated as property, begged the question of how to redress enslavement and rebuild social fabric under these limitations. The pragmatistic interpretation of the practice of walking and drawing the Bakongo cosmogram painted the picture of a social dimension of this practice, connecting it with empowerment and emancipation. Not only does this practice reestablish the group consciousness important for processes of social transmutation, but it also creates a delimitation and exclusion of enslavers, adding a specific quality in *their* land not being accessible for them. And while the road to liberation and redress was and still is a long one, this example shows how its beginning could be established by the oppressed people themselves even under the most adverse conditions.

We can conclude that a pragmatistic critique of liberalism and its implementations carried out on the practices of land delivers a coherent mediation between the conflicting perspectives present in the history of North America. In doing so, a bigger picture of freedom and property emerges that is more complex than the simple idea of individual independence. While the liberal idea of property sees property as the fundamental condition of freedom, the perspectives of both Indigenous and enslaved people allow us to motivate a different thinking. While the perspective of enslaved people helps us to understand that emancipation is possible without having property, by

weaving a social framework, Indigenous perspectives give us greater insight in the nature of this framework. If freedom can be gained from much different experiences than just working one's own land, we need to look out for more freedom enhancing interaction in society, not in fortifying individualistic property relations.

Nevertheless, the accordance and interlocking of pragmatistic concepts and Indigenous practices is not based on coincidence. As pointed out at the beginning of this contribution, many authors before us have stressed the importance of Indigenous communities' thinking for Dewey's philosophy in particular and pragmatism in general, and have pointed to the similarities between pragmatism and Indigenous theories. At the end of this text, we want to emphasize the limits of our research. While we have gained new insight, we do not assume to have understood the perspectives of Indigenous and enslaved people better than they themselves. Matthew Villeneuve, for example, speaks of a violent appropriation of Indigenous knowledge in Dewey's texts: "I found that Dewey instrumentalized Indians in the pursuit of defining his own philosophy of experience, thus rendering them as evidence, rather than a contemporary constituency who might benefit from its application."⁴⁹

Instead of appropriating the practices we studied as objectively, inherently pragmatistic, we rather see our findings as a step for mediating various perspectives in building a conceptual bridge in terms of the various points of critique against a liberal conception of freedom and property rights. In doing so, we want to prevent the assumption that these practices are just disparate historical events, making it easy to dismiss them as stories from the past without any relevance for the present and future. We perceive embedded in them intertwined elements of human living and, therefore, we grasp them as important sources of knowledge to avoid repeating the mistakes of the past. In this text, we relied strongly on the application of the pragmatistic theory on historical practices. But in doing so, one needs to be open to the unexpected insights these practices bear. In our case, Indigenous practices are far more aware of the precarious balance between human interference and nature. While Dewey's approach also recognizes the importance of keeping oneself aware in order for unexpected events to make experiences, the Indigenous notion of belonging to the land, switching the classical assumption of a subject-object relation, seems to hold more relevance in the face of

49 Villeneuve 2021, 17.

a looming global climate catastrophe. And the devastating situation of enslaved people opens up space for reconsidering and discussing the implications of Dewey's social reform and the role of forceful resistance to overcoming injustice. Unfortunately, we could only follow these traces in this text. Maybe the most important part of pragmatistic thinking is the insight in the inevitable emergence of the need for further inquiry.

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Representations of Landed Property in Statistics and State Data Architectures: (Family) Relation Versus (Business) Ratio

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Abstract

In this article, I argue that the representation of farms as traditional, local and rooted in family is reinforced by, and reinforcing a, privilege of the current land ownership regime: public intransparency and consequently unaccountability of agricultural land ownership structures. It is maintained not only with laws, but with its ‘other’ – the state bureaucracy and its data architectures. By investigating the technical infrastructures and practices of the land registers, statistics and land market regulation, I show how administrative units, document formats and register structures are mutually produced with imaginations of desirable social orders.

From this, I conclude for my theoretical concept of property that in order to understand property regimes, it is not only necessary to understand the bundle of rights (i.e., use, sale, lease), but also how the rights of access, representation, control and protection of property information are organized and distributed. In analyzing embedded values and norms in the data infrastructures of land registers as a meta-level of property governance, I use Luc Boltanski and Laurent Thévenot’s concept of orders of worth.

However, family and traditional concepts of land ownership are increasingly colliding with new statistical methods and scientific studies that inform the public awareness of agribusinesses and land concentration. The property-individualistic idea of isolated, evenly distributed “property freedoms” is becoming less and less tenable.

Keywords: State Data Infrastructures, Representations of the Person, History of Agricultural Statistics in Germany, Family Farm, Corporate Structures, Property Theory

Rural Romanticism and the Legal Person

Land is so spatial, physical, so tangible that it is difficult to imagine land ownership rights in connection with land as immaterial, globally dispersed relations. Nevertheless, land was a security—and thereby financialized—before it was property. In Germany and Austria, mortgage records were established before the land registries.¹ Today, the majority of farmers in Germany do not own their land. Furthermore, 11 percent of agricultural land is operated by corporate groups. Still, the idea of land belonging to a family farm passed on from generation to generation is strongly fixed, not only in the mind of the public, but also in agricultural law and in land market policy. This gap between public imagination and social actuality requires explanation. In what follows, I will show how, even today, it is possible to depict a sector as a sea of small, independent farms, even if ownership of agricultural land and farms is strongly shaped by agricultural corporations, non-agricultural and supra-regional owners and investors. This contribution discusses classifications of the farmer and the farms in state registries and statistics and argues that they reinforce the legitimacy not only for the status quo of agriculture, but also of the state and private property. The status of a person or a family entails personal rights. The status as a farmer entails privileges and support, that is legitimized by imaginations on desirable personhood and desirable agricultural structures. I argue that corporations and large-scale owners would be unlikely to enjoy the same rights and privileges if it was not for their personification. Thus, we will focus on a form of misleading ‘identity politics’ for the legal person and the question of how agricultural businesses are classified administratively and presented as ‘natural’ and ‘traditional’ owners not only of farms, but of other rights and privileges associated with the family or the farmer. Here, registry systems legitimize and structure the continuation of lived systems by connecting categories with objects in the real world. They become *performative* representations, embedded in bureaucracies, that set laws in motion.

If these registry systems do not recognize property entanglements, all parts of these property configurations, be they subsidiaries of a corporation or fiduciaries and fund managers, are seen as nuclear (natural) persons. They do not, however – in contrast to natural persons – act autonomously and independently. Subsidiaries are embedded in financial flows and decision-

1 See Ogris–Wudarski–Barański 2016, 481.

making hierarchies and group together protections and privileges that are otherwise granted to individual persons. The legal constructs thus become covers or *legal clothing* of capital, while their actual frameworks remain undetected in administrative processes and escape the control and accountability of a natural person.²

The concept of legal clothing as a ‘vestment’ of asset interests can be easily connected to the notion, coined by Bernhard Rudden, of feudal calculus that describes the transfer of old capital privileges to new instruments.³ Privileged access today is no longer secured by the clothing of the aristocratic family, but rather by financial assets and their *juridical packaging*.⁴ This does not affect the significance of land: Even though Rudden states that the habitat of the feudal calculus today is no longer land but wealth, his final example is of home mortgages.⁵ Land rent is thus also calculated, but now by corporations and fund managers. This ‘clothing’ originates, however, not only through law, but also through data infrastructures that tend toward certain representations and complicate others.

This is in no way a critique of the legal person as a legal entity.⁶ Rather, it concerns the administrative confusion of natural persons with legal ones through the establishment of a vanishing idealized picture, based on the family farm, in agricultural and land market policy. This ideal image associates individuals with the independent farming family—sedentary and rooted. Farming takes place in a direct, unmediated land relation of the nuclear farmer with the local farmland, which represents the private sphere for the lives of an individual and his family. This representation resonates also with the idea of private property as an immovable, fixed, spatially delimitable, excludable space, which was created by the owner-subject of the productive farmer and the property-object of the delimitable area. This is reciprocally supported by the state that, also in a sovereign territory, maintains order.

2 The term “legal clothing” or “group of rights” is also used by the anthropologist and lawyer Henry S. Maine (1861, 159) meaning the property of a family head that could be passed on as a whole to a descendant.

3 Rudden 1994, 83.

4 Katharina Pistor used this concept in a lecture in 2020, but she also speaks in *Code of Capital* of a “re-package” (Pistor 2019, 85) or “packaging” (Pistor 2019, 99).

5 Rudden 1994, 83.

6 See Gindis 2016.

Using colonial debates, other chapters in this volume yield a far better picture of how fundamental categories of personhood are actually recognized, defended, or restored via land relations—subversively,⁷ by promises,⁸ or by other narratives.⁹ Anna Möllers argues that the systematic colonization of the USA was spearheaded by the image of the sedentary family, in contrast to the nomadic, incalculable indigenous peoples: Only the “self-sufficient farmer” was perceived as someone “who could acquire wealth and prestige with honest work.”¹⁰ Each of these contributions points to the importance the idea of the sedentary family had for their colonial and exclusive seizure of the land. In his contribution, Markus Vinzent analyzes the significance of inheritance-oriented family genealogy for the transfer or acquisition of land in both Judaism and Christianity.

Using the struggle for recognition as persons and landowners, these contributions illustrate that the question of one’s status *as a person* precedes the question of the relative position of the person in relation to other persons: A value system first chooses the persons who may participate in the system before it assigns relative status and rights. The present contribution shows how an existing, privileged personal status is justified and how administrative registry designs contribute to stabilizing it or changing it.

By means of the classification of (medium-sized) family farms in agricultural statistics and land market policy, I will trace how the agricultural survey in Germany has, in recent years, abandoned the practice of counting the total of family farms of different sizes only and instead also included concentration measures and business links¹¹. This is not a negligible step. The former approach prioritized a knowledge goal that monitors the continuity and stability of the existing individual businesses and cuts across the second perspective, which looks at the financial entanglements and relations. Valuing something because of the duration of its existence and tradition is isolated in temporal continuity (first perspective) – it is opposed to forms of evaluation that assess the position and relation towards other parts of a whole (second perspective).

7 Gibson in this volume.

8 Packo in this volume.

9 Schuck in this volume.

10 Möllers in this volume, 170.

11 Destatis (20 July 2021).

Statistics are political artifacts.¹² They are produced in social processes of negotiation and infrastructural feats. The purpose of this contribution therefore is to show (1) how knowledge of land ownership depends on technological aspects and, in particular, proprietary data (or data property records) and how they and basic images of property are mutually dependent. (2) Second, that there is a tendency toward individualism regarding ownership in the registration and securing of information of business and land ownership in registries that obscures wealth, corporate structures, and the distribution of land rights. (3) Third, this makes agricultural statistics exemplary for the connection between representations of property and data governance.

The structure of this contribution is as follows: Firstly, the method and conceptual approach are presented. In the main section, I demonstrate parallels between the historical analysis of the emergence of statistics as political artifacts and my own analysis of the restructuring and discussion of agricultural statistics in Germany that I researched as part of a field study. I analyze data practices and infrastructures that shape statistics necessary for analysis of agricultural structures. Thus, I show how sociotechnical developments regarding the statistical unit of farms change *with* new imaginations of agricultural structures. The farm unit plays a central role in defining “the healthy distribution of land” and the “improvement of the agricultural structures”¹³ in land market regulation. Obscuring consolidated property structures by administrative practices and data infrastructures impedes the ability to publicly reconsider the threat landed wealth poses to desired accessibility to land and food production and evaluate it by existing concepts of justice. This little-noticed privilege of landed wealth is not only reproduced by the law, but also via its ‘other’¹⁴: the data infrastructures of state knowledge and private knowledge.

Methodology

I studied documents and statistics as artefacts by using participatory observation, interviews, and document analysis. I discuss in particular the results

12 Mügge 2022.

13 § 9, Grundstückverkehrsgesetz – GrdstVG

14 Vismann 2011.

of the agricultural structures survey, conducted by the Statistical Offices of the federal states and analyzed by Destatis for the entire country, and contributions by the journal WISTA that Destatis publishes.

The methodology, data sources, classifications, and results of the 2011 and 2020 surveys of agricultural structures in Germany were researched as to the definition of business units, types, and size categories. Subsequently, the results of the methodological decisions, such as the classifications used and the aesthetic arrangement of the elements were related to the institutional and technical infrastructures of the survey and analysis. I analyzed, how the formats, classifications, and data structures of administrative documents and statistics shape which and how objects can be arranged, linked, and used. In addition to the discussion in various knowledge communities by practitioners and agronomists, I invoked data from interviews and participatory observation. Historical works on (agricultural) statistics in Germany complete this work.

The Data Infrastructures of Representation

How do classifications and/or categories shape ideas of what is natural and right? How do the notions of 'healthy' agricultural structures and negative consequences for those structures change with knowledge of new agricultural actors? It is impossible to develop the design of a statistical analysis without building on knowledge of previous results and their relevance.¹⁵ Important volumes of data have to overcome organizational, social, and spatial barriers to be produced, collated, analyzed, and processed in the most formalized way possible. Technical innovations have facilitated the completion of this task— not only computers, but especially the fine-tuning of administrative units, division of labor, professionalization, and centralization have made the implementation of statistics possible.¹⁶ As symbols of efficiency and automation, computers have been driving factors in the idea of centralized, computing (state) devices, as Adam J. Tooze shows via the emergence of German statistics. But just as in the case of technical innovations, it has

¹⁵ Porter 1995.

¹⁶ Tooze 2001, 26.

been necessary to build relationships of trust with the respondents in order to manage government surveys successfully.¹⁷

In addition to sophisticated data management systems, censuses need a social arrangement between statisticians and respondents.¹⁸ Statistics exist because of the mutual ascription of significance and trust between statisticians as state representatives and society. The shape of this relationship is, thus, a relevant factor influencing the end result: "From the description of society as a premise for administrative action, statistics in the service of the state has become a social and reciprocating channel of self-perception between the bureaucratic subjects and the social objects of enquiry."¹⁹ Thus, the generation of and need for knowledge is a political question that shapes the relation between social groups via the state. Not the collected details themselves, but, rather, the allocation of individuals to statistical units that divide into desirable versus problematized relations influence the social status of individuals by a statistical representation.

A Theory of the Value System

In *On Justification: Economies of Worth*, Luc Boltanski and Laurent Thévenot formulate a model that explains how persons can reach agreement on the establishment and maintenance of appropriate and just orders.²⁰ An organized unity is achieved by rules that determine the "relative worth"²¹ of the people and their position in comparison with others in a value system by establishing a relation of the parts to the whole. Boltanski and Thévenot distill various forms of order from political philosophy. There are various explanatory approaches, but none with final interpretative authority; the overarching principle and foundation for all other models lies in the principle of common humanity in a community of members who are able to agree.²² The political philosophies Boltanski and Thévenot research are theories in which there is tension between the principle of a common humanity and the distribution

17 Tooze 2001, 59.

18 See Tooze 2001.

19 Woolf 1989, 604.

20 Boltanski-Thévenot 2006.

21 Boltanski-Thévenot 2006, 19.

22 Boltanski-Thévenot 2006, 74-75.

of goods and benefits: The tension between the equality of people and the unequal distribution of goods. Arrangements of objects clarify the positions of people in a value system. Given the plurality of value systems, people have the possibility of choosing the world(s) according to which they can justify their actions and their position in a certain situation or pass tests.²³

The model Thévenot and Boltanski propose allows us to understand the structure and categories of statistics and state registries. Bureaucracies and statistics link persons to administrative and scientific categories and connect them with objects and characteristics.²⁴ This linking legitimizes, controls, and therefore creates access to specific objects.

The selection of objects and persons that are appropriate in their respective situations precedes the question of the right classification of sizes and positions. Here, people rely on objects to establish a system and, thereby, again consolidate these objects by connecting them to already constituted orders.²⁵ Consequently, the position of entities and the compatibility of the objects are mutually established in a coherent situation. Such a situation is one in which there is a coherence of an arrangement of entities that support each other and in which the entities belonging to the one and the same world “are arrayed in natural relations compatible with their states of worth.”²⁶ The idea of the family farm is strongly connected to the domestic world, which Boltanski and Thévenot describe as oriented to traditional society, with values being rooted in time, place, and family. The central yardsticks here are belonging to a certain household or a certain region as a “territory.”²⁷ The value of the individual is found in his or her position in generational ties. Everyone who moves within depictions of traditional agricultural society that correspond to this model is surrounded by the aura of the “history of his patrimonial lineage, the space, time, and memory [...]. His house is a second skin, and even if he has the opportunity to prove his strength as an individual, he ultimately remains defined by his rank and family status.”²⁸

23 Boltanski–Thévenot 2006, 15.

24 See also Hull 2012, 5.

25 Boltanski–Thévenot 2006, 17.

26 Boltanski–Thévenot 2006, 133.

27 Boltanski–Thévenot 2006, 90.

28 Claverie and Lamaison 1982, 84; cited in Boltanski–Thévenot 2006, 90.

Statistics as Reflections of Value Systems

Data infrastructures produce state-legitimized systems of objects that are controlled, secured, and protected by authorities. The definition of objects, such as a company like a family business or a corporation, also determines the interactions. It makes a difference whether the corporate headquarters or the place of business is viewed as the actor since both have completely different modes of acting and deciding. Thus, administrative categories stamp interactions, values, and (performative) representations—and, in turn, which value systems, principles, and criteria are implemented in administrative practices. This presupposes that legitimate value systems from which these criteria can be derived must exist.

Categories and systems in statistics are also *inscribed* in data infrastructures via which statistics develop or become stabilized.²⁹ To change a statistic, the data infrastructure and the allocation of rights to knowledge have to change as well. Units and definitions of business associations do not arise in a vacuum, but are produced by the material and social conditions of databases and the prior processes of collection and classification that are inscribed in the images of a desirable society. Units are produced by data setups. Which objects are linked and can be recognized as units and which cannot also depends on technical, legal, and administrative aspects.

Systems are supported by statistical data infrastructures that have a biography. Thus, to understand how we perceive and problematize things today, we also have to observe the historical course that has been set. Problematization and change are also stamped by what is available and exists. That is why the biographies of these infrastructures are relevant to understanding how existing representations are characterized by past target images that have settled in data infrastructures. The recognition of new phenomena often leads to epistemological conflicts.³⁰ New statistical representations are, after all, always a joint production of knowledge infrastructures and perspectives that mutually influence and renew each other.³¹ The concept of knowledge infrastructures includes the cognitive concepts as well as social practices, codes, programs, legal data requirements as well as the formats, the physical and spatially materialized infrastructures.

²⁹ See Akrich 1992.

³⁰ Jasanoff 2004, 19.

³¹ See Jasanoff 2004.

Concepts of Property and Images of Agricultural Structures

It is not only the legal “coding”³² of property by law that is relevant but also the state bureaucratic design of the registries; this design is determined by data rights, formats, and use processes. Registries *code* owners. If corporate financial relations are not representable because the link to the relevant registries has not been established, supra-regional assets— which are in many cases dispersed among many shareholders— are not representable. Because of the technically and administratively predetermined (im)possibilities of classification, linking, and use of property knowledge, an information model tends, for example, toward facilitating certain representations and forms of regulation for the distribution of land property and to making others more difficult. Before we take up the question of what the definition of distribution is, I would like to explain the analytical model of property to be used here as a complex bundle. The concept of a bundle of rights sees property as a complex set of legal relations to rights in which individual persons relate to each other. According to this concept, property cannot be defined as an object of complete exclusion from the outside world because legal aspects on both sides define the relations between the respective persons. As Denise R. Johnson states: “Because ownership is relational, no person can enjoy complete freedom to use, possess, enjoy, or transfer.”³³

Private ownership is, accordingly, a regime of principles of allocation and management of rights to goods and regulates the relations between people with respect to a good.³⁴ Whereas possession merely represents physical control, ownership is the comprehensive group of rights of use, consumption, and transfer, among other things, which are supported by social institutions and physical infrastructures. By itself, the individual freedom justifies “neither the assumption of an exclusive right nor a specific, particularly comprehensive form of its extent of protection. Rights in rem cannot therefore be defined conclusively as a ‘bundle’ of obligatory rights but represent a ‘bundle’ of concrete individual powers that are restricted in many ways with respect to content,” so Marietta Auer.³⁵

32 See Pistor 2019.

33 Johnson 2007, 251.

34 Canfield 2020, 1.

35 Auer 2014.

In 1960, Anthony M. Honoré concretized eight general events into which property relations can be broken down: the right to possession and the exclusive physical control of property, the right to use and consume, the right to manage and make decisions about the property as to by whom and how it will be used, the right to purchase, the right to income, the right to capital, i.e., the power to alienate property, immunity from expropriation, the power of transferability, the indefinite duration of ownership rights, the prohibition against harmful exploitation, and the existence of rules that take effect when the obligations associated with property are not carried out.³⁶ These events can be divided into freedoms, immunities, and powers.³⁷ Each demands correlative behavior on the part of its counterpart. The bundle of rights is thus an analytical concept that makes it possible to describe rights relations in a granular way—it is, however, not a normative, universalist justification. Precisely because ownership is relational, it is fluid and the exertion of any single right within this bundle is in need of justification.

According to the German Civil Code § 903, an owner can, “unless the law or the rights of third parties conflict therewith, [...] proceed with the thing as they see fit and to exclude others from any interference”. Here, the central elements are the possibility of exclusion and the owner’s discretion, which suggests the definition of property as an isolable object and the owner as an individual person. The definition also thus refers to the relationship between an individual person and a commercial good. The (by 49 years) younger Article 14 of the German Constitution incorporates the social obligation of property, which, according to Auer, reinforces a clear understanding of property as a bundle of rights in the context of the famous *Nassauskiesungsbeschluss*³⁸ (“Wet Gravel Extraction Decision”) by parrying the “Sphärentheorie” (“sphere theory”) of the Federal Court of Justice (BGH).³⁹

This decision denied the owner the right to extract gravel on her land because that extraction could endanger the supply of groundwater. Even though her rights of use were thus restricted, the Federal Constitutional Court decided that no compensation would be paid to her because, according to said Article 14 of the Constitution, the content and limits of ownership were determined by the law.

36 Johnson 2007, 254.

37 Auer 2014.

38 *BVerfGE* 58, 300.

39 Auer 2014, 141.

The conception of a bundle of rights still only takes into account the legal relations between persons regarding a single good. But social relations are also enacted by means of wealth and the respective property rights bundled in corporations, funds and groups of ultimate owners—in other words, bundles of goods and bundles of persons.

For the exercise of rights and duties of an owner out against others concerning a property, the principles of data management (such as the Land Registry Regulations) represent a further dimension of the property regime that has an effect on the representation, control, and securing of property. The exercise of property rights and duties are shaped by data infrastructures and their classification of legitimate or natural subjects (e.g., the farmer) and objects (e.g., agricultural plots) as well as the classification of non-legitimized land purchasers (in the Land Transactions Act). Statistics are based on administrative data and their classifications and, in turn, generate the legitimization of the laws on which the administrative processes are subsequently built. Registries thus constitute the *perception of the state* in multiple senses.

The History of Units and Subjects in Germany: The Idea of a Family Farm

The statistical representation of businesses in industry and agriculture has been debated for 100 years and has been adapted to the changing political conditions. In what follows, I would like to show how questions of social order were linked to the idea of the farm—as an autonomous economic unit—and how statistical categories were also the subject of negotiations by representations of the state and the distribution of property. Statistics have an ambivalent task between control and representation. They are needed to understand developments and to respond to them in political and regulatory ways as well as to justify political action and inaction.

The historical conflicts concerning the subject of the farm owner allow conclusions about how the production of a people's economy and the allocation of its parts, agricultural land or resources, to people was seen as justifiable and at the same time justified the political order. The focus on individual persons and individual objects instead of consolidation and network struc-

tures is not only found in legal theory. In what follows, I will show by means of a few historical examples how heterogeneous groups were turned into uniform subjects and consolidated corporations into individual enterprises to create desirable imaginations of society.

Tooze describes how, in the Weimar Republic at the end of the nineteenth century, the statistical representation of economic activity initially did not mention industry at all, but emphasized small and medium-sized businesses. The ideal image on which the Wilhelminian statistics were built was criticized by contemporaries; the statistical image concealed the power positions of a few larger actors on the market through quantities of small producers. According to Tooze, a recipient “sees only the fleet of small fishing smacks and overlooks the great fleet of German ocean-going ships.”⁴⁰ The economic historian Werner Sombart has criticized the production of insufficient data. Whereas, in his view, trades and craftsmanship were pushed out by profit-oriented capitalism, statistics still emphasized millions of independent entrepreneurs, even if they were actually subcontractors—“small cogs in the giant clockwork of capitalist commerce.”⁴¹ Merely adding up the nominally independent producers says nothing about the actual economic structures, because legal independence has no significance. The facts “as presented and authorised by social statistics served only to obscure the central dynamic of contemporary social development.”⁴² Statisticians saw not only the workers but also the factories as independent technical production units and their integration into the industrial corporations was ignored, according to Tooze. The dependence of the statistical offices on industry meant that representatives of industry had some influence on which statistics were actually compiled.⁴³

As Rudolf Meerwarth has shown, the archaic image of the German economy presented by the Statistical Office [...] was no accident, nor was it merely ideological window-dressing. It reflected the fundamentally artisanal conception of economic activity that had informed German statistics of trade and industry since their emergence in the mid-nineteenth century.⁴⁴

It was only when a positive narrative of industrialization and a counternarrative to the strengthening proletariat was discovered in the category

40 Tooze 2001, 49.

41 Tooze 2001, 49.

42 Tooze 2001, 49 ff.

43 Tooze 2001, 65.

44 Tooze 2001, 51.

of the new middle class that, according to Tooze, ways were found to make this statistically visible.⁴⁵ Fear of igniting a class struggle paralyzed Prussian statistics from applying new survey methods, but when the distance of the statistics from the rapidly developing industrial reality could no longer be denied, the perspective on the social group as a ‘new middle class’ gave a boost to further methodological development, which was implemented in 1907.⁴⁶ When corporatism finally appeared in the statistics in 1926, the advance of capitalism was already so commonplace that the results were no longer actually noted.⁴⁷

During the period of National Socialism, ‘farming’ was the exemplary connection between blood and soil, and thus the heart of National Socialist racial ideology. The Reich Minister of Food, Richard W. Darré, wrote: “Farming means protecting the generations on the land under family law; this fundamental idea of farming originates in the Germanic myth [...]”⁴⁸ This coincided with the widespread ideology that agriculture should be represented in agricultural statistics as “Lebender Organismus” (“living organism”)⁴⁹. Agricultural statistics, according to Ernst Langthaler, “did not simply depict the ‘national farm’ but designed it so the whole and its parts could be surveyed and controlled.”⁵⁰ Because farm censuses and accounting results were not sufficient for that goal, the National Socialist agricultural apparatus introduced decentralized, constantly updated data collections: Farm maps and district economic folders.

In various years from 1939 on, accounting statistics, land size classes and farm map statistics were presented, Langthaler writes, “to construct combinations of characteristics of farms and households.”⁵¹ The representation of average farm sizes was not sufficient—the distribution of specifics of intra-farm dynamics needed to be recorded as well.⁵² Nevertheless, “Whereas the National Socialist ideal represented the full-farm family business with ‘farm food’ securitized by inheritance law,” Langthaler asserts, in practice, farms were a “conglomerate of entrepreneurial and wage-dependent, agricultural

45 Tooze 2001, 51.

46 Tooze 2001, 45.

47 Tooze 2001, 97.

48 Darré cited in Langthaler 2016, 155.

49 Langthaler 2016, 37.

50 Langthaler 2016, 44.

51 Langthaler 2016, 149.

52 Langthaler 2016, 149.

and non-agricultural, permanent and occasional commercial branches.”⁵³ At the same time, the results of the farm census of 1939 were presented only according to size classes in tabular form: less than two hectares, 2 to 5, 5 to 20, and 20 to 100. According to Langthaler, the statisticians themselves admitted that this type of definition did not actually do justice to the living organism.⁵⁴ But, because the results were shown according to administrative units, they could be linked to a considerable amount of other information. These considerations show the tension between statistics as a representation of the racial system through the farmer and statistics as control instrument that could best assess the economic conditions in the best way possible for preparations for the war.

Agricultural Statistics and Land Market Regulation

Today’s agricultural statistics in Germany are released from nationalist and racist symbolic relevance but until recently, the isolated family farm was still the dominant entity. In the following I elaborate how legal initiatives and scientific research challenged the basic classification of the farm. The system of agricultural statistics is intended to provide a comprehensive overall picture of the structure and development of animal and crop production. The greater part out of the survey program in agricultural statistics is based on European Union (EU) directives.⁵⁵ The agricultural census is carried out about every ten years by the Statistical Offices of the federal and state governments. It is part of the agricultural census of the EU as well as of the worldwide agricultural census conducted by the Food and Agriculture Organization of the United Nations (FAO). The agricultural census is part of a reporting system of agricultural statistics that is intended to depict the economic situation in the agricultural sector. It is viewed as the “most important foundation of the policy assessments by the EU in the area of the Common Agricultural Policy,” in part because it provides information about structural change and its

53 Langthaler 2016, 97.

54 Langthaler 2016, 49.

55 Hausschild–Weber–Seewald 2017, 67.

causes.⁵⁶ The Federal Statistics Act (BstatG) governs the principles of organizational and procedural law as well as the material law of federal statistics.

Agricultural statistics and the survey of agricultural structures are important instruments for ascertaining the developments of as well as the risks to the agricultural structure. The results could support the adjustment of the land market regulations in Germany. The Land Transactions Act states that the registration of a change of ownership regarding one to two hectares is subject to authorization in the land registry for agricultural land depending on the federal state. Up to now, the separation of connecting fields and their sale to non-agricultural and hobby farmers have been blocked to strengthen ‘economic’ farms.⁵⁷ The individual farm was until recently considered the central unit, the local land market the frame of reference, and the goal of the economic farm the guarantor of food production and, thus, the common good. According to a study by the Thünen Institute in 2017, the “methodology of official agricultural statistics [could] cover only some of the units relevant for policy analysis and advice in terms of farm and enterprise structures.”⁵⁸ In particular, the (not necessarily new) developments of supra-regional, complex enterprise and land ownership are difficult to measure.⁵⁹

The fifth law amending the Agricultural Statistics Act took effect in November 2022.⁶⁰ A reform of the integrated farm statistics on the EU level in 2018 provided that farms had to indicate whether or not they belonged to a business group.⁶¹ The Agricultural Statistics Act supplemented this question by indicating the business group in question. Because of that, it is possible to determine how individual farms are embedded in corporate structures.

With the 2021 agriculture structure survey, business groups were surveyed for the first time. For that, the agricultural holding registries were linked to the registries used in other sectors and agricultural business became an economic enterprise for the first time, from a statistical perspective. Altogether, 14 percent of all farms cultivated 62 percent of the entire agricultural land in Germany, with the average size of the farm increasing from 56 to 63.2 hectares. Much more relevant, however, is that corporate groups were included in the survey for the first time. This revealed that

56 Hausschild–Weber–Seewald 2017, 67; Blumöhr–Teichmann–Noack 2017.

57 Bremer 2018, 391.

58 Forstner–Zavyalova 2017, i.

59 Forstner et al. 2011.

60 Bundesanzeiger (14 November 2022).

61 Official Journal of the European Union (18 July 2028).

business groups cultivate on average 490.8 hectares, whereas single farms cultivated only 63.2 hectares on average.⁶² Business groups thus already farm 11 percent of agricultural land.⁶³ Furthermore, a survey of ownership structures using case municipalities in Germany was carried out (beyond the agricultural survey within the scope of a study by the Thünen Institute) and determined that only 39.6 percent of the land is owned by farmers, and, depending on the region, indirect investors play a significant role in farms.⁶⁴ This means that non-agricultural landowners and business groups own an important share of agricultural land, even if they do not represent a large share of farms.

As in agricultural statistics, business groups are increasingly being included in land market policy and agricultural law. Proposals for reforming the Land Transactions Act were developed in several federal states, such as the Brandenburg Agricultural Structure Act.⁶⁵ The condition for the effective date of the right of first refusal in favor of a willing farmer and to the disadvantage of an existing purchaser is no longer only being classified as a non-farmer. The new draft laws also include market power in the local land market of a purchaser as well as his shareholding in other holdings and thus ownership relations.

The current draft legislation in Brandenburg now provides, for the first time, that the “refusal or restriction of approval in the case of direct land transactions”⁶⁶ is also possible if “an accumulation of agricultural land that is detrimental to the agricultural structure” can be assumed “because the sum of the land that would be owned by the purchaser upon completion of the purchase and the land cultivated by the purchaser on the basis of lease agreements and other use relations exceeds 2600 hectares.”⁶⁷ The threshold of 2600 hectares was derived from the average size of the 10 percent (decile) of Brandenburg farms with the most land, which is 1302.8 hectares.⁶⁸

At the same time, the Brandenburg Higher Regional Court ruled that, in addition to farmers, public welfare-oriented institutions (for example, foun-

62 Destatis (20 July 2021).

63 Destatis (20 July 2021).

64 Tietz–Neumann–Volkenand 2021, 61.

65 Ministerium für Landwirtschaft, Umwelt und Klimaschutz (17 April 2023).

66 Ministerium für Landwirtschaft, Umwelt und Klimaschutz (17 April 2023), 11.

67 Ministerium für Landwirtschaft, Umwelt und Klimaschutz (17 April 2023).

68 Ministerium für Landwirtschaft, Umwelt und Klimaschutz (17 April 2023), 31.

dations) are also eligible for the right of first refusal⁶⁹. This shifts the assessment system from the categorization of the individual farm to the assessment of its embeddedness and importance for the achievement of social (public welfare orientation, avoidance of concentration) and ecological (sustainability) goals. This change in the classification of farms and of desirable and undesirable agricultural structures and land purchasers, in conjunction with new scientific knowledge, is an appropriate occasion to examine more closely the value systems of agricultural structures inscribed in registries and statistics and their representation of agricultural entities.

While categorizing farms as enterprise groups has now found its way into statistics (and their embedding in local markets into legislation), many other conventions of representing agricultural statistics remain untouched. In the next section, I will discuss characteristics and forms of the representation of farm structures and then relate this to the construction of the data infrastructures that manage these very classifications or the identifiers, unique designations through which information becomes linkable.

Representation

Deutschland		in 2010							in 2010	
Lfd. Nr.	Farms with agricultural land from ... to ... ha	under 5	5 - 10	10 - 20	20 - 50	50 - 100	100 - 200	200 - 500	500 - 1 000	1 000 and more
		Number of Farms								
		1	2	3	4	5	6	7	8	9
In 2007										
01	unter 5	22 705	2 691	3 385	84	27	13	12	-	-
02	5 - 10	1 358	37 047	3 064	241	28	12	5	-	-
03	10 - 20	496	4 413	53 215	3 135	108	30	9	-	-
04	20 - 50	340	740	4 521	68 539	4 250	133	24	4	-
05	50 - 100	47	154	263	2 739	45 156	3 175	80	6	-
06	100 - 200	19	30	39	111	1 241	18 584	1 078	-	-
07	200 - 500	6	3	10	20	46	371	5 701	228	5
08	500 - 1 000	-	-	-	-	-	-	122	1 656	65
09	### and more	-	-	-	-	-	-	5	112	1 419
10	in total	24 973	45 078	61 498	74 869	50 862	22 328	6 986	2 013	1 491

Table 1: Selected Figures from the Agricultural Census 2010 (own translation).

Source: Destatis (2010): *Land- und Forstwirtschaft, Fischerei. Ausgewählte Zahlen der Landwirtschaftszählung/ Agrarstrukturerhebung 2010*. Wiesbaden: Statistisches Bundesamt.

69 OLG Frankfurt, Beschluss vom 12. Juli 2022 – 15 W 9/22 (Lw), juris.

Family Farms. The representation of agriculture as an agglomerate of thousands of individual farms has long been criticized by agronomists. Lutz Laschewski, Andreas Tietz and Ekaterina Zavyalova of the Thünen Institute write: “Agricultural statistics in Germany [Europe] are built on the assumption of single farm units as independent entities. They are rooted in the Western model of agriculture in which the family farm is the predominant organizational model in agricultural production.”⁷⁰ Thus, not only are investors and non-agricultural holdings not in view, but agricultural corporations like KTG-Agrar or groups from the downstream area, like Südzucker or BayWA, which own agricultural businesses, are also excluded.

The published statistical representations of farm sizes with regard to land use previously consisted of charts showing the number of individual farms, differentiated by legal form, in the respective size classes of farmed agricultural land. Structural change is thus measured by the total number of agricultural holdings and the number of individual farms in a particular size class of land cultivation and subdivided according to the additional categories ‘single proprietorships,’ ‘natural persons,’ and ‘businesses of the legal forms of partnerships’ into GbR, OHG, GmbH & Co.KG, GmbH, and unregistered association.⁷¹ A uniform scheme was then used for the federal states. Given that agricultural subsidies represent the largest item of EU subsidies, this is not exactly a multifaceted presentation.

Continuity. The representation suggests a continuous stock of farms that is reduced over successive survey years. This representation visually supports the idea of a natural, steady, and unstoppable change in agricultural structure as a natural process. Neither specialization trends nor new start-ups of individual farms or subsidiaries are shown. It is unclear how many new entrants, takeovers, and spin-offs are included in the figures, and a central component of the dynamics of structural change is therefore concealed. The extent to which farm sizes and legal forms are dependent on funding policy conditions rather than actual circumstances cannot be determined. This question has additional significance in the new federal states, because today’s farm structures and their initial situation are connected. The development of agricultural structures in eastern Germany, however, and their differences are not reflected in the agricultural statistics.⁷²

70 Laschewski–Tietz–Zavyalova 2019, 3.

71 Destatis (10 April 2012).

72 See also Küster 2002, 141.

Spatial rooting. In both the old and the new agricultural statistics, farms can be assigned to federal states. Even if the new statistics indicate how many farms are part of business groups, the spatial distribution of supra-regional business groups, as conceivable in a Sankey diagram, for example, is not shown. It remains unclear as to how the areas of supra-regional groups are distributed among federal states. While the agricultural statistics allow a statement to be made about the distribution of land in the totality of agricultural businesses based in Germany, nothing can be said about the distribution of agricultural businesses among different federal states and the relation between states with company headquarters and states with cultivated land. Nor is it possible to say anything about the proportion of agricultural service companies that manage and cultivate land belonging to owners on a supra-regional basis. The unity of farmer, farm, and land thus continues to be an implicit assumption of statistics, even if reality is sometimes different. Diversification into areas that are not related to food production, new management services, management of land scattered across several federal states—all these aspects are excluded from the statistical representation.

Median size. The agricultural statistics up to 2020 depicted in particular regional, medium-sized individual farms (up to 1000 hectares). The latest agricultural census of 2020 also analyzed business groups—but only in size classes up to 2000 hectares. This means that it is precisely the large outliers upwards or high concentration that are not visible. This does not come close to the actual size dimensions of existing agricultural businesses. Despite very large differences in agricultural structure, the state tables are not adjusted. As a result, in some federal states, two thirds of the farmed areas are in the last size category of 1000 hectares and more. Concentration dynamics on large farms cannot be reconstructed in this way. The sizes of the largest farms also remain invisible.

One reason why size and developments cannot be represented for farm sizes above 1000 hectares is the Agricultural Statistics Ordinance and the interpretation of the Federal Statistics Act, which prescribes a confidentiality procedure to ensure data protection: The number of hectares in a certain size class is replaced by one point if there are at most three farms in this class.⁷³ To prevent being left with a table with many points, these size classes are not included. This weakens the data on very large farms in particular. For aes-

⁷³ Federal Statistical Office (Destatis) 2017, 31.

thetic reasons then, concentration peaks in particular are neglected, even if they are of public and political interest. Overall, it is not possible to depict a concentration in land use by large, complex corporate structures operating on a supra-regional scale.

Lfd. Nr.	Number of agricultural businesses ----- Agricultural land from ... to under ... ha	Business groups with agricultural subsidiaries (legal persons) in Germany			
		UG	agricultural businesses	area	livestock
		Anzahl		ha	GV
		1	2	3	4
According to number of agricultural businesses					
01	1	1.501	1.501	589.846	319.994
02	2	469	938	646.569	327.531
03	3	121	363	247.064	128.588
04	4	44	176	114.915	53.896
05	5	25	125	62.299	26.448
06	more than 5	50	638	175.294	206.638
07	in total	2.210	3.741	1.835.987	1.063.095
According to amount of agricultural land					
08	until 500	1.307	1.824	105.321	392.714
09	500 - 2000	596	1.002	718.572	300.045
10	2000 and more	307	915	1.012.094	370.336
11	in total	2.210	3.741	1.835.987	1.063.095

Table 2: Agricultural Consensus 2020

Source: Destatis 2021

Data Infrastructures

What technical conditions paved the way for a survey of business groups in the agricultural statistics of the Federal Republic of Germany? I will explain this in what follows and address how various classifications of the interrelationships of business groups also give rise to technical obscurity.

The Farm Registry for Agriculture: The data infrastructure that guides the reporting system of agricultural statistics and integrates the individual statistics is the central Farm Registry for Agriculture (ZeBRA) which had been introduced (based on § 97, Agrarstatistikgesetz (AgrStatG), before the 2010 agricultural census and therefore had recourse to a quantity of

administrative data.⁷⁴ A central step for the introduction of the system had been to compare and harmonize the farm data from the statistical farm registry and the administration.⁷⁵ The link between BRL farm units (Farm Registry of Agriculture) and the first administrative data delivery had to be made by hand and with automatic address matching because administration and statistics did not use any unique identifiers.⁷⁶ As early as 2007, the possibility of harmonizing the units between the business registry and the farm registry was also discussed, and it was pointed out that there were no fundamental contradictions. In agricultural statistics, the following criteria are used: an “agricultural or forestry holding is always managed a) for the account of one holder, b) by one or more managers and c) consists of at least one place of farming activity (farm buildings, agricultural land, yard area).”⁷⁷ This is consistent with the legal unit used in the business registry. It consists of a), an economic unit with b) business premises and c) usually constitutes a branch.⁷⁸ Nevertheless, this was not pursued further for several years.

The Business Registry: “The statistical business registry system (*Unternehmensregister*, or URS for short), is a regularly updated database of companies and businesses from almost all economic sectors with turnover and/or employees”.⁷⁹ According to the Research Data Center, the business registry is not only “a central steering and support tool for business statistics, but also enables extensive evaluations of economic structural data.”⁸⁰ The statistical business registry is already being updated by some countries with data from the electronic, commercial, trade, cooperative, partnerships, and association registries.⁸¹ In official statistics in Germany until 2015, businesses were defined as *the smallest bookkeeping unit*. In official German business statistics, the legal units, every GmbH, every AG, every KG, i.e., were recorded as independent enterprises.⁸² This embedding of economic units in business associations and the control structures of the legal units were not recorded in the business registry – neither through surveys nor administrative data.

74 Freier–Görnert–Schreiner 2019.

75 Freier–Görnert–Schreiner 2019.

76 Schirmmacher 2007, 1213.

77 Schirmmacher 2017, 1214.

78 Schirmmacher 2017, 1215.

79 Not to be confused with the business registry of the Federal Gazette.

80 Statistische Ämter des Bundes und der Länder, 2024.

81 Statistische Ämter des Bundes und der Länder, 2024.

82 Sturm–Redecker 2016.

So far, it has not been possible to map (especially international) interrelations, control relations between companies, and to quantify the economic activities of foreign-controlled companies. Business statistics in Germany have not been able to *trace* what economic journals call a corporation. A corporation or business group combines businesses that have legal-financial relations with each other. The headquarters of corporations, taxation, and financial management may be located in different countries and jurisdictions. Nevertheless, the corporation forms an economic unit “that can make decisions that concern the interrelated entities that it consists of.”⁸³ While corporations are required to report on their “segments”⁸⁴ and to publish consolidated financial statements, these are not synonymous with economic activities in a national territory.

Therefore, the definition of corporation must *be translated* into a statistical identification and survey procedure: The individual legal *group-dependent* entities, their control relations with each other and with a group head – a parent company – must be clarified. The group head is the last member not controlled by other businesses. Eurostat “described the unit enterprise group” and “developed a methodology for delimiting it” as early as the 1990s, and in 2008, this regulation became mandatory.⁸⁵ In the regulation, the definition of “business group” was used as *the unit of account*. This is based on the consolidated accounts of related legal entities.⁸⁶ The Federal Statistical Offices then developed a procedure to record complex corporate entanglements.⁸⁷ To adhere to the EU definition of businesses, a business group database also had to be included in the statistical business registry in Germany. To do so, “the Statistical Offices had to take a new approach to data acquisition: since 2005, they have been acquiring data from a commercial data provider annually.”⁸⁸

Land registry: Whereas the substantive definition of land rights is regulated by the German Civil Code (BGB), the land registry regulations govern the creation of land registries and the formal processes of securing land

83 EUR-Lex 1993. EUR-Lex (1993). Verordnung (EWG) Nr. 696/93 des Rates vom 15. März 1993 betreffend die statistischen Einheiten für die Beobachtung und Analyse der Wirtschaft in der Gemeinschaft. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31993R0696:DE:HTML> (accessed 8 January 2024)

84 International Financial Reporting Standards (IFRS) 2023, Principle 8 – Operating Segments.

85 Sturm–Tümmler–Opfermann 2009, 765.

86 Sturm–Tümmler–Opfermann 2009, 766, also defined by § 290 of the Commercial Code (Handelsgesetzbuch, HGB) as well as the International Financial Reporting Standards (IFRS).

87 Sturm–Tümmler–Opfermann 2009, 769 ff.

88 Sturm–Tümmler–Opfermann 2009, 769.

rights at the local courts. Land registry pages are created for plots of land and include the registered full owner, physical rights of third parties (e.g., access, use) and immaterial rights (land charges) of third parties in three successive sections. The registry is thus clearly structured according to the concept of a bundle of rights.

The classification system of the land register identifies property with a *Grundbuchblattnummer* (“land register folio number”) and with the *Flurstücksnummer* (“parcel number”) of the cadastre according to the time of creation or division of these parcels. Owners are given no identification number. Consequently, the information architecture does not allow to clearly identify and directly link the total of properties, the wealth, to the respective owner. Spelling errors and the occurrence of similar names impedes the legally secure identification of owners. Furthermore, the registry only records the direct owners in one column, irrespective if they are natural and legal persons (companies). But while natural persons cannot be “owned” and represent the ultimate beneficial owner, legal persons can be embedded in financial entanglements thereby obscuring the ultimate beneficial owner. If businesses/farms having the legal form of a limited liability company or public limited company are indirectly controlled by a parent company, this bundle of (legal) persons is not traceable. It would only be possible to do so via a link to the commercial or transparency registry, but certain trustees and partnerships and changes of indirect financial control over landed property would still not be recorded in a sufficiently transparent fashion. Finally, it is also difficult to identify the total amounts of apartments of an owner. If the ownership of the house is not subdivided into individually owned apartments and these are consequently registered in the *Wohnungsgrundbuch* (“apartment register”), the number of individual apartments in a house has to be obtained from other sources and files. In other words, the bundle of assets of a property can only be analyzed in an automated way, by making data machine readable, cleaning and classifying data, giving identification numbers to owners and integrating other data records and registers. The coalition agreement of 2022 in Germany announced that the land registry and the transparency registry would be linked, making it possible to determine the ultimate owner of an area. But the total assets of an ultimate owner would still be concealed.

The separation between state statistics and administration is crucial to ensure that companies provide truthful information without taking the risk that financial administrations or other state institutions could, for example,

identify violations of the law or wrongfully exploit the information disclosed in the statistical surveys. But limiting the possibilities of analyzing commercial register data has led to a knowledge monopoly of the private sector. Private companies like Van Dijk develop sophisticated and globally harmonized data sets by collecting and processing register data. If state authorities want a clear understanding of today's economic structures, they are forced to buy the expensive and exclusive data sets despite being based on the states' commercial registry data. Thereby, statistical representations are dependent on the technical infrastructures of private corporations. The prices for company data are high—which can only be justified by the fact that it is expensive to compile data sets from poorly prepared state data sources, given that these are technically organized on a per-document basis and have to be restructured at great expense. With the technical, legal, administrative limitation of focus on the individual company in state registries, information on company entanglements and ultimate beneficial owners has been impeded, expensive, and exclusive and thus removed from publicly available knowledge and debate. Keeping state registry infrastructures as they are entails continuing dependence on information services of private corporations.

Discussion – Ownership and Agricultural Statistics

By looking at the development of land registries, and agricultural statistics, as well as regulation, I have shown fundamental change in classifications and representations of the farm and the farmer. The default representation of farm and land owners cannot be the isolated, natural individual any more. Instead, state authorities enhance statistics and registers to incorporate the legal and financial entanglements of agricultural businesses within corporations, trusts and funds. However, the development of classifications also entails changes in administrative and technical practices and opens questions regarding the governance of data rights.

In agriculture in particular, as the example of agricultural statistics shows, this development was and is protracted. I attributed this to the *design* of the registries and statistics, in which the ideal type of the family farm and the natural individual person are inscribed. The legitimation narrative of property and the family farm on the one hand and agricultural statistics on the other correspond to and support one another.

Agricultural statistics, until recently, solely counted the number of farms: They thus created the totality of entities that can be related to a whole. The farmers—like the businesses in the Weimar statistics—were depicted as autonomous persons to whom land was assigned as an object. Items listed where locality, size class, legal form, and unique (legal) person. In the case of agricultural statistics, individual farms were evaluated over time by size classes of the agricultural areas that are farmed. The number of new entries, the integration of farms into corporations, and the farm exits were and still are not indicated, but rather, only the total number of farms. This suggests that the number of farms is naturally decreasing. The classification of the farmer as owner-subject and the agricultural land as property-object is stabilized by forms of representation in which parts of a whole are represented. Thus, land ownership in a familial value system is part of the family genealogy and has no spatial relation outside the continuity of the farm—not with the non-owners, the local residents, or potential newcomers.

Statistics establish systems and verify them. By defining categories and questions, they set in advance the legitimacy and relevance of the connections they represent. This determines what is seen to be a natural connection (a local farmer, a single plot of land) in contrast to an unnatural connection (multiple dispersed plots of lands, property rights, a global trust). The example of agricultural statistics shows the interaction between representations of objects and persons and the technological, bureaucratic infrastructures of statistics and administrative acts. These infrastructures do not only stabilize public representations of farm structures, but also demonstrate the established property and state systems as being feasible to secure these desired structures. Consequently, they promote the corresponding system as being in line with imaginations of natural and ‘right’ distribution. Introducing information on non-agricultural investors and ownership distribution, especially by the research of the Thünen Institute⁸⁹ disrupted the domestic imagination of the agricultural sector in Germany. The consideration for this element developed in parallel in statistics and in legislation. Since, under the Land Transactions Act, the classification ‘farmer’ is no longer sufficient to judge a purchaser of agricultural land as desirable, the tacitly assumed continuity and rootedness of the farmer can no longer serve as a yardstick for agricultural structures oriented to the common good. Thus, I argue, the availability of land ownership statistics since 2020 means that new bench-

89 Forstner et al. 2011; Forstner–Tietz 2013; Tietz 2017.

marks for desirable and undesirable agricultural structures must be found. One of the new benchmarks is the market power position in local land markets, which is now a relational one. It depends on the assets of an owner-subject compared to other market participants in a certain framing.

This model remains attached to the old value system in that only local market power is considered a problem, whereas supra-regional concentration is not. But the Brandenburg Agricultural Structure Act emphasizes the special role of public welfare-oriented actors: Public welfare-oriented buyers are also regarded as desirable landowners. Even if they own an above-average amount of agricultural land in several regions, their voluntary self-restraint with regard to profits and their aiming for ecological and social goals through statutes and legal forms is desirable. As some of these foundations and cooperatives have a broad non-farming membership base from the regional environment, they support the connection between the countryside and the city, producers and consumers, land users and those affected by land use. In addition, low rental prices enable new entrants into agriculture and facilitate solutions for the transfer of farms to outside the family. The common good is, thus, not defined by the protection of existing farms that have been in the same family for generations, but, rather, by sustainable land use and freedom of occupation.

Conclusion: The Hybrid Data Constellations for Statistics

In *Seeing like a State*, James C. Scott explains the emergence of state central data infrastructures and uniform categories by the motive of control over citizens.⁹⁰ If this is so, with regard to (agricultural) land we can conclude that wealth and corporations enjoy more freedom from state control than individuals. Above all, this contribution has shown that state databases serve not only to control subjects but, also, to represent them. They represent and secure property structures and reinforce the public believe in their legitimacy. With new representations of the farmer, the legitimization and allocation of privileged access to agricultural property also changes. Ownership is not a stable entity, but one that requires persuasion and permanent social pro-

⁹⁰ Scott 2009.

duction.⁹¹ This also occurs in state registries and data infrastructures. The contents and limits of land ownership are shaped not only by the German Constitution and the Civil Code, but also by the technical governance of data and the production of knowledge about the distribution of agricultural land.

Agricultural structures represent how access to land and food production is distributed. They are the basis for assessing whether agricultural land, as the foundation of the common good and food security, is distributed in an ecologically sustainable and socially equitable way. The farmer and his land have always been a point of reference for romantic ideas of the countryside⁹² and ideologies of 'right' distribution. How would we think about private property if agricultural land was not exclusively associated with the family farmer, but rather with building corporations, family firms, and joint stock companies? Would we understand land as a space for personal fulfillment and the protection of privacy? In developing new concepts of ownership, it should be kept in mind that our views are influenced by our current possibilities to mirror reality. I argue that wherever the possessive individualist promise of ownership is challenged by the visibility of wealth concentration and distant owners, new concepts of the meaning of democratic land governance can emerge.

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⁹¹ Keenan 2017; Rose 1994.

⁹² Maschke–Mießner–Naumann 2020.

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