

Field Guide 04 |

Beyond Property

Sarah Kanouse

BEYOND PROPERTY

Sarah Kanouse

2019

CONTENTS

SARAH KANOUSE

Thinking Beyond Property | 2040

MARGARET DAVIES

The Proper: Discourses of Purity | 2000

THEODORE STEINBERG

Slide Mountain, or the Folly of Owning Nature | 1980

ROBIN WALL KIMMERER

Braiding Sweetgrass | 1960

NICHOLAS BLOMLEY

Unsettling the City | 1940

BRENNA BHANDAR

The Colonial Lives of Property | 1919

WILBUR ARMS

More and More a Color Thing | 1899

CHERYL I. HARRIS

Whiteness as Property | 1879

ALYOSHA GOLDSTEIN

Beneath the Heartland Imaginary | 1859

ROBERT NICHOLS

Theft is Property! | 1820

HO-CHUNK HERITAGE PRESERVATION DEPARTMENT

The Ho-Chunk Removal Period | 1800

STUART BANNER

From Ownership to Occupancy | 1780

ZOLTÁN GROSSMAN

Unlikely Alliances | 1760

CHRISTOPHER D. STONE

Should Trees Have Standing? | 1740

WILLIAM N.R. LUCY AND CATHERINE MITCHELL

Replacing Private Property | 1720

BETH ROSE MIDDLETON MANNING

A Covenant to Place | 1700

ERIC T. FREYFOGEL

Goodbye to the Public-Private Divide | 1680

WORLD PEOPLE'S CONGRESS

Declaration of the Rights of Mother Earth | 1660

PETER LINEBAUGH

Some Principles of the Commons | 1640

EVE TUCK AND K. WAYNE YANG

Decolonization is Not a Metaphor | 1620



THINKING BEYOND PROPERTY

Sarah Kanouse

The slim volume in your hand is trying to do too much. At one level, it is a field guide to the concept of property. As an “extradisciplinary” reader, it explores a slippery and highly complex topic that appears in its pages as variously an object of philosophical inquiry; a tool for dispossession, extraction, and accumulation; and an analytic frame to understand the intersections of capital, race, gender, and nature in a moment of crisis. That moment is the long now: the Anthropocene, a proposed geologic era in which “humans” have become the dominant geological force on the planet. The term has been rightly criticized for universalizing and de-politicizing responsibility for the ecological transformations that coincide with the intensification of European colonization and the transatlantic slave trade in the early 17th century. Imperialism manifests in the geologic record as the Orbis Spike: a sudden drop in atmospheric carbon dioxide attributable to genocide that Simon Lewis and Mark Maslin propose as an Anthropocene start date.

It is no accident that the development of modern European property theories also coincide with colonization and chattel slavery; indeed, they functioned both to justify and to motivate these practices, further driving geoplanetary transformations. These ideas undergird the everyday, Gramscian “common sense” of property: exclusive ownership by a self-possessive individual, legitimated by acts of “improvement” in terms legible to capital. This same ideology animates both the transformation of working-class apartments into luxury condos and right-wing opposition to the regulations that might mitigate climate catastrophe. In many ways, surviving the Anthropocene demands coming to grips with property, and fast.

More concretely, this book also orients readers to the landscapes of property in a particular place—the hilly, unglaciated or “Driftless” area of southwest Wisconsin—for a particular

occasion: an experimental seminar offered in September 2019 as part of the Haus der Kulturen der Welt's *Mississippi: An Anthropocene River*. It therefore interleaves more theoretical or (trans)national historical essays with accounts of how property has been practiced—and where it breaks down—in this corner of the rural Midwest. For example, it is illuminating to examine, with Cheryl Harris, how whiteness operates politically and culturally as a type of property. Applying this analysis to the racial violence faced by the Arms family and their white “race traitor” neighbor in 1960s Wisconsin allows us to grasp the lived textures of the race-property-nature nexus in an entirely different way. The varied, local experiences of what Eli Elinoff and Tyson Vaughan dub the “quotidian Anthropocene” highlight both the unevenness and relationality of planetary ecological transformations that the universalizing term tends to obscure.

Finally, and most intimately, this book has allowed me to grapple with my own evolving relationship to property and place. Even as we negotiate the instability of renting in one of the United States's most expensive and climate-threatened cities, my family stands to inherit a large tract of land in Wisconsin, just one township over from where a cross was burned in the Arms's front yard and a few miles from the reclaimed Ho-Chunk land at the Kickapoo Valley Reserve. The land is nothing like the hereditary family farm of a mythic and fetishized “heartland”. It was purchased for recreation and as an investment in the 1970s—barely a century after President Grant signed land patents to the first settler-occupiers. For decades the family did nothing that could be considered an “improvement” in the Lockean sense. More recently, my partner, his mother, and I have been talking about ways of holding the land “beyond property,” even as we build rustic shelters, host gatherings, and pull invasive thistle by hand. These conversations move slowly, at the pace of trust and our busy lives. This book is in many ways an extension of that ongoing exchange

In asking you to think beyond property, this book employs strategies of de-familiarization. It is numbered not by page but

by decade, in reverse, beginning at the present and running back 400 years. The year 1619 famously marks the first time a person from Africa became a settler's property in the territory now known as the United States—the ignominious end of a decade kicked off by the Orbis Spike. The graphic on the foot of each page—rendered in the patterns of bank security envelopes—tracks the atmospheric carbon dioxide levels of each decade. Collaged drawings are assembled from sketches of rocks and minerals found in the Driftless; field notes from the 1846 platting of Wisconsin; and re-interpreted illustrations from the geological survey completed in advance of the state's settlement under the Homestead Act. A running footer recounts the purchase history and legal lineage of title to “our” property, which is built upon a colonial framework of treaties and proclamations that reaches back just two and a half thin centuries out of more than 10,000 years of human history on the land.

I selected the texts idiosyncratically, reflecting my status as an artist and trespasser into the “proper” disciplines of property. Inclusion of an excerpt is not an endorsement, nor is omission a slight. Rather than yet another deconstruction of canonical philosophical texts, I offer a constellation of largely contemporary voices who seek to do something different with property and invite us, in varied ways, to think beyond it. The political and stylistic tensions between the texts—liberal legal analysis rubbing up against Indigenist critique, personal essay giving way to political philosophy—reflect both real epistemic incommensurabilities under settler colonialism and the profound ambivalence with which many of us negotiate this definitional feature of life within capitalism. Through non-deterministic relationships among graphics, drawings, and texts, I seek to explore how land that might now be property is also so much more: an assemblage of (in)animate matter, living beings, affective attachments, violent entanglements, and real abstractions.

~410 ppm



2019

THE PROPER: DISCOURSES OF PURITY

Margaret Davies

Property is not only theft, it is not only fraud, and it is not only a legal fiction, although in one way or another it is all of these things. Property is a way of thinking extending far beyond the limited sphere of title to goods, land or intellectual creations. Property-thought, or thought of the proper, regulates not only the distribution of resources in society, it regulates our conceptions of self, knowledge, group identity, sexual identity, law, and language. Property is no longer a thing, a relationship between a person and a thing, or a network of relationships between persons with respect to a thing. Property is not even a bundle of rights. It is a metaphor for an array of concepts centered on hierarchy, purity and limitedness: exclusivity-property-sovereignty-self-identity-law-territory-boundaries-title-limits-unity.

369.12

The following short quotation from Derrida's *Of Grammatology* provides an initial insight into some of the dimensions of the proper:

The horizon of absolute knowledge is...the reappropriation of difference, the accomplishment of what I have called elsewhere the metaphysics of the proper [le propre—self-possession, propriety, property, cleanliness].

The “metaphysics of the proper” and the corresponding characteristics, thoughtfully listed by the translator, of self-possession, propriety, property, and cleanliness, are a pattern of thought which underlies the very process of conceptualization and which is in continual conflict with countervailing tendencies toward the different and unstable elements of the improper and the common. ...The proper then, describes a certain set of family resemblances which are associated closely with notions of property, of propriety, of sovereignty, of immediacy, and of

purity. It is the proper which separates law as the territory of legislators and Parliaments, from social, moral, and cultural norms.

From "The Proper: Discourses of Purity," by Margaret Davies, *Law and Critique* IX no. 2 (1998): 147-173. Reprinted with permission from Springer Nature.

367.8

SLIDE MOUNTAIN, OR THE FOLLY OF OWNING NATURE

Theodore Steinberg

In 1955, Robert Coles, president of the Interplanetary Development Corporation, offered investors quit-claim deeds to one-acre plots of prime bottomland. Location: Copernicus Crater, northeast quadrant, the moon. Mary Pierce, for one, admitted being rather shocked by the whole idea. She was the Glen Cove city clerk when Coles walked into her Long Island office and filed papers incorporating his new company. In those papers Coles swore that since no one had ever claimed the moon, he was doing so for real estate purposes.

...To be fair, Coles was only offering to sell the side of the moon that faced the earth. "We wouldn't sell land we'd never seen," he said. And sell he did to, among others, Howard Brandy of New York City, who sent for five acres so long as the land would allow him to park his "Ford Thunderbird on an even surface." Sarah Morton of St. Louis took the moon rush more seriously: "It will really make me enjoy our lovely moon 10 times more if I know I own two acres up there," she remarked. At one point there were more than four thousand such investors in Coles's scheme.

Was Coles kidding or not? For his part, Coles was clear about his intentions: "We are not trying to put anything over on anybody. Anybody who's half-intelligent who reads the deed will realize it's a joke." But the state attorney general's office was not so sure. Assistant Attorney General Leonard E. Russack told a reporter, "I really can't judge this situation...but from what you tell me it sounds very grotesque, indeed. You may rest assured that I am going to look into it." According to one report, 90 percent of the letters sent to Coles indicated that buyers realized he was jesting. Of course, such a joke was only funny to a culture willing to go to almost any length to own land. ...It was

also the perfect scheme for a culture that, given the opportunity, wanted to own everything.

...[Over time], the idea of property evolved toward an ever-greater level of abstraction. It did so...partly to encompass the new forms of wealth created by corporate capitalism. Property, which was once considered simply a thing, evolved to take into account stocks, bonds, trademarks, and business goodwill. It was a claim on the market value of something that defined one's property interest in it. "Property," wrote Justice Noah H. Swayne in the famous Slaughterhouse Cases of 1873, "is everything which has exchangeable value." So as the twentieth century progressed and additional sources of value—newly created land, underground water, air—were uncovered through technological change, property law evolved to help bring these new resources into the world of market relations. The concept of property became more abstract, and it became so in order to reduce the earth, in all its complexity, into a set of ownable things. Put simply, property law evolved in a way that helped turn more and more of the planet into less and less, benefiting fewer and fewer.

From *Slide Mountain, or the Folly of Owning Nature* by Theodore Steinberg (Berkeley, CA: University of California Press, 1995). Copyright © by Theodore Steinberg. Reprinted with permission from the author.

BRAIDING SWEETGRASS

Robin Wall Kimmerer

It's funny how the nature of an object—let's say a strawberry or a pair of socks—is so changed by the way it has come into your hands, as a gift or as a commodity. The pair of wool socks that I buy at the store, red and gray striped, are warm and cozy. I might feel grateful for the sheep that made the wool and the worker who ran the knitting machine. I hope so. But I have no inherent obligation to those socks as a commodity, as private property. There is no bond beyond the politely exchanged “thank yous” with the clerk. I have paid for them and the reciprocity ended the minute I handed her the money. The exchange ends once parity has been established, an equal exchange. They become my property. I don't write a thank-you note to JCPenney.

But what if those very same socks, red and gray striped, were knitted by my grandmother and given to me as a gift? That changes everything. A gift creates ongoing relationships. I will write a thank-you note. I will take good care of them and if I am a very gracious grandchild I'll wear them when she visits even if I don't like them. When it's her birthday, I will surely make her a gift in return. As the scholar and writer Lewis Hyde notes, “It is the cardinal difference between gift and commodity exchange that gift establishes a feeling-bond between two people.”

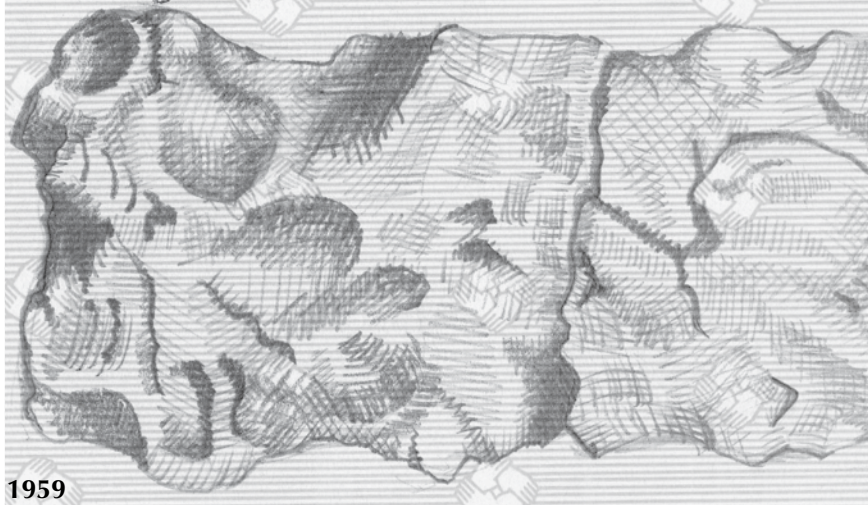
316.6

...That is the fundamental nature of gifts: they move, and their value increases with their passage. ...The more something is shared, the greater its value becomes. This is hard to grasp for societies steeped in notions of private property where others are, by definition, excluded from sharing. Practices such as posting land against trespass, for example, are expected and accepted in a property economy but are unacceptable in an economy where land is seen as a gift to all.

From *Braiding Sweetgrass: Indigenous Wisdom, Scientific Knowledge, and the Teachings of Plants* by Robin Wall Kimmerer (Minneapolis: Milkweed Editions, 2013). Copyright © by Robin Wall Kimmerer. Reprinted with permission from Milkweed Editions. milkweed.org

315.8

Township N. 13 North,
Range N. 2 West, 4th Pri



UNSETTLING THE CITY

Nicholas Blomley

One meaning of the infinitive “to settle” is the definitive fixing of the unstable. Settle is defined, variously, as “to put in order, arrange;” “to make stable or permanent, establish;” “to fix definitely;” or “to become more stable or composed, stop fluctuating or changing.” In this sense, we shall see that the meaning of property also appears settled. What has been termed the “ownership model” presumes clarity and determinacy in the definition of what property is, and tells us which relationships between people and scarce resources are to be valued as such, and which are not. There is a lot at stake here. The ownership model encourages us to think of property in a particular way, neatly summarized long ago by Felix Cohen: “That is property to which the following can be attached: To the world: Keep off X unless you have my permission, which I may grant or withhold. Signed: Private citizen. Endorsed: The state.” Property is imagined here as private property, with the solitary owner exercising exclusionary rights over a bounded space. While property may be public (that is, held by a state), it is rarely imagined as collective.

...Settlement has a second meaning: “to free from disturbance; calm or quiet;” “to prevent from creating a disturbance or interfering;” and “to end.” Thus, we talk of “settling” a dispute. And the definitional clarity of the ownership model is deemed valuable, in part, because it “quiets” title, promising secure and uncontested relations with others with respect to the use and disposition of things. The enactment of property not only presumes a definitional certainty (this is property, that isn’t), but also invites us to imagine that property and settlement are synonymous. ...The clear markers of ownership and the “established expectations” of property are supposed to work

311.4

to ensure the “quiet enjoyment” of the land. Property brings certainty. Certainty brings peace and prosperity...

On several counts, it may be that property is more definitionally, politically, and empirically heterogeneous than the ownership model supposes. For if we look more closely, we can find a striking diversity of relationships between people and land that appear property-like, even if they do not fit within the prevailing definitions of property. Although many of these relationships are collective, it also appears that private property itself may be a good deal more complicated. Property claims can also overlap; thus it is, for example, that supposedly private or state property can be claimed in the name of a community. ...If property appears settled, perhaps this is more a “reality effect” of the ownership model, than an accurate mapping of property in the world.

But settle has a third meaning that I wish to challenge in relation to property. To settle can also denote stability after a period of flux. Thus, we talk of settlers as those who, like me, migrate and then “settle down.” Similarly, dominant treatments of property assume that ownership rights are created at one moment in time and immutable thereafter. However, it seems useful to recognize that property is not a static, pregiven entity, but depends on a continual, active “doing.” As settle is a verb, so property is an enactment. ... Bodies, technologies, and things must be enrolled and mobilized into organized and disciplined practices. Real property, more generally, must be enacted upon material spaces and real people, including owners and those who are to be excluded. Police officers must enforce the law. Legal contracts must be inscribed, signed, and witnessed. Citizens must physically respect the spatial markers of property. Similarly, I shall suggest, the definitional boundaries of property must also be policed. Thus it is that certain types of property relation (almost exclusively private) are acknowledged and sanc-

tioned, while others (almost exclusively state or communal) are derided. Property, in that sense, must be continually "settled."

From *Unsettling the City: Urban Land and the Politics of Property* by Nicholas Blomley (New York: Routledge, 2004). Copyright © by Nicholas Blomley. Reprinted with permission from the author.



304.2

COLONIAL LIVES OF PROPERTY

Brenna Bhandar

Modern concepts of race and modern laws of property share conceptual logics and are articulated in conjunction with one another. ..The violence of abstraction that transformed land more fully into a commodity over the course of a long transition (from feudal land relations to forms of ownership that facilitated agrarian capitalism and market capitalism) has a counterpart in racial thinking that figured entire populations in a hierarchy of value with whiteness at its apex. ...This is certainly not to suggest that all logics of abstraction are the same, but I argue that the commodity logic of abstraction that underlies modern forms of private property shares conceptual similarities with the taxonomization and deracination of human life based on racial categorizations, the early traces of which are evident in the work of natural historians such as Linnaeus.

...[R]acial subjects and modern property laws are produced through one another in the colonial context. ...[T]he types of use and possession of land that justified ownership were determined by an ideology of improvement. Those communities who lived as rational, productive economic actors, evidenced by particular forms of cultivation, were deemed to be proper subjects of law and history; those who did not were deemed to be in need of improvement as much as their waste lands were. Prevailing ideas about racial superiority were forged through nascent capitalist ideologies that rendered race contingent on specific forms of labor and property relations. Property ownership was not just contingent on race and notions of white supremacy; race too, in the settler colonial context, was and remains subtended by property logics that cast certain groups of people, ways of living, producing, and relating to land as having value worthy of legal protection and force.

...[T]he continual renewal of racial regimes of ownership is not an inevitability, as political imaginaries that exceed the

confines of this juridical formation demonstrate. The more immediate focus here, however, is on the specific processes of colonial land appropriation and the historical emergence and contemporary dominance of markets in land-as-commodity that work to articulate a racial concept of the human in conjunction with modern laws of property. This conjuncture is continually renewed through the persistent but differentiated reiteration of a racial concept of humanity defined in relation to logics of abstraction, ideologies of improvement, and an identity-property nexus encapsulated in legal status.

From *Colonial Lives of Property* by Brenna Bhandar (Durham: Duke University Press, 2018). Copyright © by Duke University Press. Reprinted with permission from the author.



MORE AND MORE A COLOR THING

Interview with Wilbur Arms

Well, my great-grandfather, Samuel Arms, was a run-away slave. He was a signal drummer for Sherman's army when they went through the south. After the war was over, he returned to Chicago and then came to Wisconsin, where he broke horses for a while. He had a very large family. He moved it to what was called...Cheyenne Valley. ...He was my great-grandfather, and I spent time as a youngster spending my summers up on my great-uncle's farm, which was one of Samuel's older sons. He asked me a question one day. Well, actually he told me that, you know, it's a sad thing when a man can't show that he's ever existed on this earth, when he's got nothing to show that he's been here. And that touched me, so I then started to try to find out about my family heritage in the Cheyenne Valley and in this part of the state.

I wanted all of the African Americans in this area to be recognized, so they'd be remembered for something. ...We would involve the state Historical Society to see if we could get markers up. It took us a while, and a lot of trials and tribulations, because certain people in the area were convinced that if certain names were on the marker, then they would tear the marker down. They didn't want certain people on the marker. ...The mayor and administrator weren't around during the dedication. My family's names were omitted from the plaque and I was promised that, "Well, give it time." And so three years later, my family's names were added to the plaque. Other family's names were added to the plaques. Now we have a long list of them. Also, the state donated land in the city of Hillsboro to make a five-acre park in honor of the early African American separatists of Cheyenne Valley.

When I was younger, it was a very friendly community. I could play and socialize with just about any kid in the area. But as I got older, it became more and more a color thing, you

know. I expressed that you could feel the prejudice in people, the way that people treated you.

I spent a summer working on a farm a little south of here. First, it was minor things. We were going to combine wheat, and we had to check the field beforehand, and we found barbed wire strung through it. So we removed it that day. Then the next morning we got up. We were going to get ready to do the field again. So as we walked through the field, we had barbed wire again. So we gave it up. So we said, "Well, we'll go fishing." We went fishing, and while we were on the riverbanks, a car drove past playing beautiful music. It was playing "Tennessee Waltz." I'll never forget it. I think I was about sixteen at the time, and I said, "Oh wow, I like that song." It was by Sam Cooke. Then about five minutes behind that, there was a carload came by, and it was teenagers throwing rocks at us on the river bank and hollering out slurs and stuff. Me being a little energetic, I jumped up, and ran across the bridge, and I started throwing rocks back at them. But later that night, while we were eating dinner, somebody shut out the outside light, and then we found a cross burning in the front yard. So we were up all night. The Sheriff said that the Ku Klux Klan were indoctrinating young teenagers into their clan and that they had arrested several of them in that area, how they were harassing black fishermen on the riverbanks and that. But the following morning, I was told I had to leave, and my father came and got me and took me back home. Later I found out that farmer ended up losing his farm because the community turned against him, because they called him a blank lover. So they ended up losing their farm, and we haven't been in touch with him since.

Interview from the film by David Macasaet and Shahin Izadi, "The Round Barns of Vernon County," 2014. Reprinted with permission from the filmmakers.

WHITENESS AS PROPERTY

Cheryl Harris

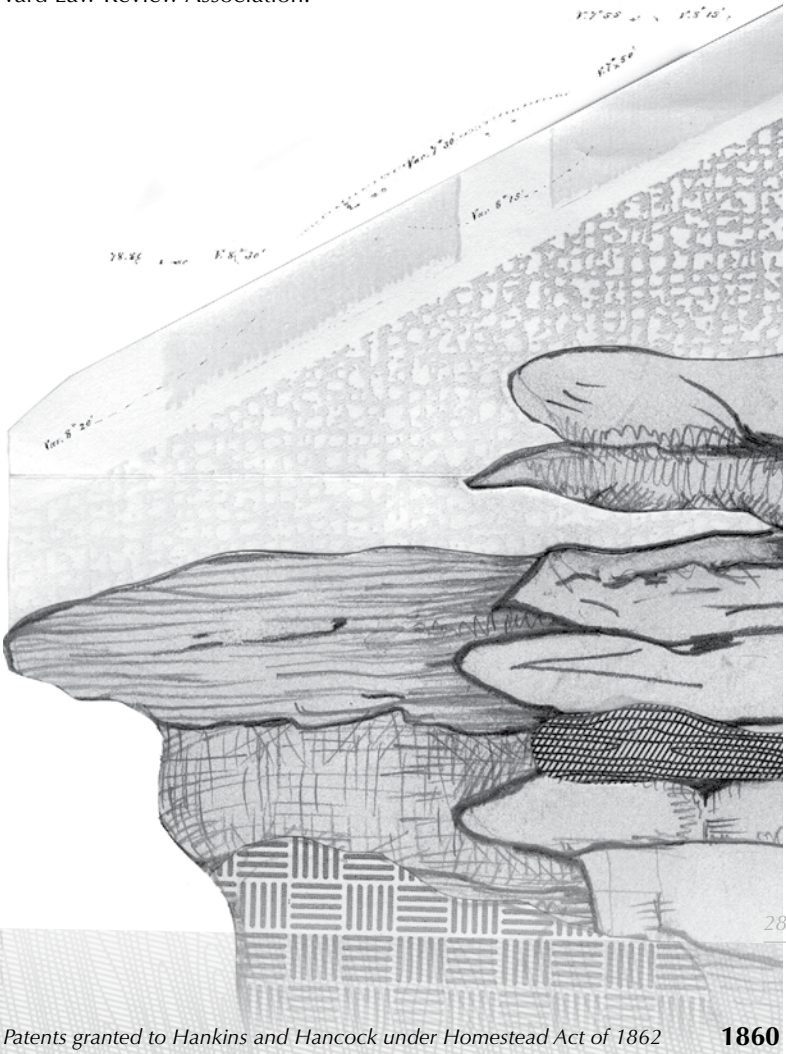
Although the existence of certain property rights may seem self-evident and the protection of certain expectations may seem essential for social stability, property is a legal construct by which selected private interests are protected and upheld. In creating property “rights,” the law draws boundaries and enforces or reorders existing regimes of power. The inequalities that are produced and reproduced are not givens or inevitabilities, but rather are conscious selections regarding the structuring of social relations. In this sense, it is contended that property rights and interests are not “natural,” but are “creation[s] of law.” In a society structured on racial subordination, white privilege became an expectation and...whiteness became the quintessential property for personhood. The law constructed “whiteness” as an objective fact, although in reality it is an ideological proposition imposed through subordination. This move is the central feature of “reification:” “Its basis is that a relation between people takes on the character of a thing and thus acquires a ‘phantom objectivity,’ an autonomy that seems so strictly rational and all-embracing as to conceal every trace of its fundamental nature: the relation between people.” Whiteness was an “object” over which continued control was—and is—expected.

Many theorists have traditionally conceptualized property as including the exclusive rights of use, disposition, and possession, with possession embracing the absolute right to exclude. The right to exclude was the central principle, too, of whiteness as identity, for whiteness in large part has been characterized not by an inherent unifying characteristic, but by the exclusion of others deemed to be “not white.” The possessors of whiteness were granted the legal right to exclude others from the privileges inhering in whiteness; whiteness became an exclusive club whose membership was closely and grudgingly guarded. The

289.2

courts played an active role in enforcing this right to exclude—determining who was or was not white enough to enjoy the privileges accompanying whiteness. In that sense, the courts protected whiteness as any other form of property.

From “Whiteness as Property” by Cheryl I. Harris, *Harvard Law Review* 106, no. 8 (1993): 1707-1791. Reprinted with permission from the Harvard Law Review Association.



BENEATH THE HEARTLAND IMAGINARY

Interview with Alyosha Goldstein

The “heartland” imaginary, especially as it is attached to something called the Midwest, evokes the idea of an authentic national essence at the core of the United States. It serves to cohere the idea of bounded national interiority, as well as envisioning a place that is distinct from the coasts and borders and, as such, is somehow more purely American, less corrupted with outside foreign influence. This goes hand in hand with this notion of a coherent, self-evident geopolitical totality of the United States that erases the legacies of colonization, the various forms of imperial overlay that make up a more fractured, contested, and fluid sense of place and belonging. It denies any history and ongoing present of colonization, of the ways in which everything about the so-called United States has been dependent upon violent conquests, the taking of lands, and the traffic in people and exploitation of their labor. So, the idea of the “heartland” really is a way to evoke something that is pure and apart, a more homogenous, less embattled place. This fantasy supposedly justifies what must be defended from the standpoint of white nationalism and such slogans as “we will not be replaced” (the coming white minority of the “great replacement”) that itself seeks to erase and replace in order to cast white Americans as under siege. Yet the peoples most extensively targeted by violence, such as in the 1832 Black Hawk War, removal policies and ongoing Native dispossession in the area, lynching of people of color in the region, attacks against transnational migrants, and unrelenting antiblack police violence find no place in the heartland imaginary.

The heartland imaginary is deeply tied to the notion of agrarian democracy and limited government closely associated with Thomas Jefferson. In his vision of an “empire for liberty,” Jefferson combined multiple colonial projects. He hoped to create a white farm-based republic, where land would be available

285.5

for settlers and would give them the capacity to realize the authentic personhood, economic independence, and patriarchal family order that small farm-holding supposedly allowed. But this was directly linked to two specific forms of removal: moving people of African descent “back” to Africa and forcing Native peoples in the Southeast into what would become Indian territory and present-day Oklahoma and ultimately other places west of the Mississippi. The Louisiana Purchase enabled the violent displacement that followed with Indian removal during the 1830s. Jefferson was also a proponent of so-called gradual emancipation and African colonization projects that sought to relocate free people of African descent to Liberia and other parts of Western Africa. Patrick Wolfe’s notion of settler colonialism as a project of elimination and replacement is really at the core of Jefferson’s ideas.

Serving to further naturalize and obscure this violent past and ongoing conditions of contestation, the history of the so-called Midwest is oftentimes told as different waves of immigrant settlement from Scandinavia or Germany in the wake of the so-called middle ground of the French fur trade, and it becomes a story of the transition from a European heritage to a truly American form of white identity that is always over and against indigenous peoples, but rarely acknowledged as such unless to center the industrious “pioneer” spirit of white people. In Europe during the nineteenth century, the peasantry was being displaced by the industrialization of agriculture. This feeds into the prevailing myth of the United States being a nation of immigrants and rewrites the material history of migration, which is driven by the proletarianization, suffering, and misery of poor people who come to the United States on the promise of an economic mobility that’s not available to them in Europe. A less commonly addressed aspect of this process is that property ownership comes at the expense of those whose land has been taken but do not simply disappear. It relies on *terra nullius*, the notion that there’s somehow “empty” land that’s available.

283.3

Immigrants take up the role of settlers, underwritten by the U.S. government in the forms of homesteading and various incentives for westward settlement. Those people who are most poor and most desperate serve as the front line of violent colonization, although the wealth that's generated mostly benefits financial elites. And this story gets subsumed under the national investment in pioneer mythology, serving as both the promise and evidence of the American dream of property ownership. Somehow the very challenges, the hardships faced, and the very difficult conditions become a further, retroactive justification for the taking and continued possession of the land. Occupation, use, and improvement through farming become a logic for why the land is rightfully a settler inheritance. This same mythology for people who could become white now is used to deny belonging and livelihood for the migrant agricultural workers today (as well as those who work in other kinds of hyper-exploited labor contexts) from Mexico, Central American, and elsewhere.

In contrast, attending to the multiple histories of place and power provides a way of understanding shared struggle. The history of black dispossession is not the same history as native dispossession, which is not the same history as the exploitation and disposability of a white working class, which is not the same as the structures that set in motion migrant labor. They're not the same, but they have to be understood in relation to one another, as made in relation and historically entangled with each other in ways that matter today. This fraught intersectionality is what lived reality is, and it is absolutely at the core of a coalitional politics of anti-capitalism and anti-colonialism, of working collectively toward other possible futures.

From interview with Sarah Kanouse conducted August 7, 2019.

THEFT IS PROPERTY!

Robert Nichols

Indigenous scholars and activists—particularly in Anglophone settler societies such as Australia, Canada, New Zealand, and the United States—tend to employ the term dispossession to denote the fact that in these sections of the globe, Indigenous peoples have not only been subjugated and oppressed by imperial elites, they have also been divested of their lands, that is, the territorial foundation of their societies, which in turn have become the territorial foundations for the creation of new, European-style, settler-colonial societies. So dispossession is thought of as a broad macro-historical process related to the specific territorial acquisition logic of settler colonization. As a result, within these parts of the world, Indigenous scholars such as Glen Coulthard (Yellowknives Dene) and Audra Simpson (Kahnawake Mohawk) frequently define their peoples' experience of colonialism as a "form of structured dispossession."

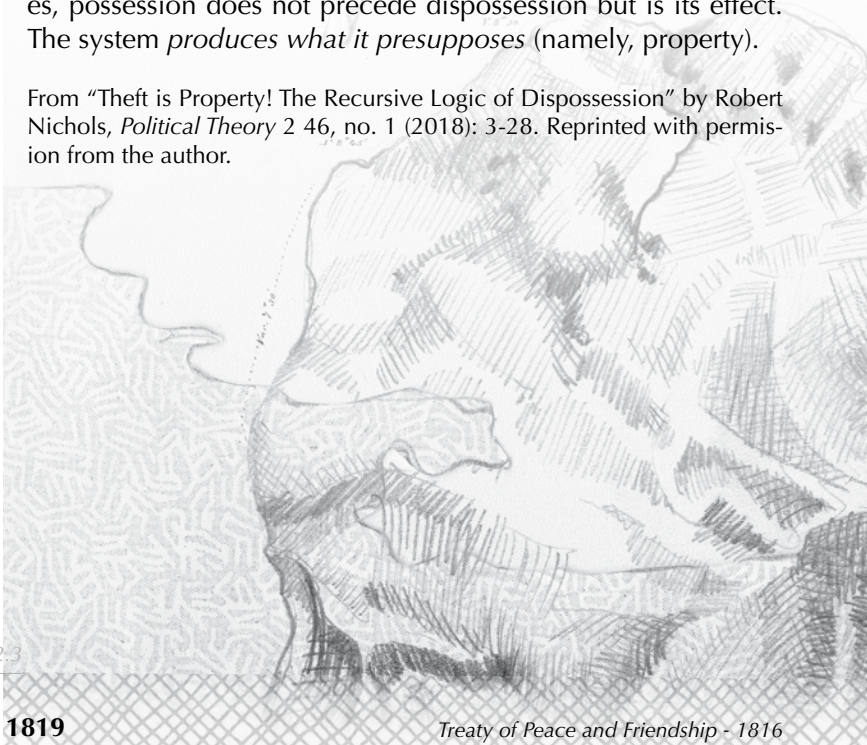
...Colonization entails the large-scale transfer of land that simultaneously *recodes* the object of exchange in question such that it appears *retrospectively* to be a form of theft in the ordinary sense. It is thus not (only) about the *transfer of property*, but the transformation *into property*. In this context then dispossession may refer to a process by which new proprietary relations are generated, but under structural conditions that demand their simultaneous negation. Those impacted by this process—the dispossessed—may even come to attach to these new relations, experiencing them (or elements of them) as effects of a positive development in the sense that the process entails a nominal expansion of their proprietary rights, i.e., a new form of property. However, they can also come to experience a deep conflict between the *abstract* form of the proprietary right and the *concrete conditions* of its realization. The reason for this is that the dispossessive process has also changed background

282.3

social conditions such that the actualization of the proprietary right in question is necessarily mediated in such a way as to effectively negate it. In effect, the dispossessed may come to “have” something they cannot use, except by alienating it to another.

...Although the standard form of a property right is a tripartite conjunction of exclusive rights to (a) acquisition, (b) use and enjoyment, and (c) alienation, within the context of settler-colonial capitalism, “Indigenous property” often appears as an already paradoxical conjunction, a truncated form of property that can only be fully expressed in the third moment, that is, alienation. In other words, *it is fully realized only in its negation*. Indigenous propertied interests are only rendered cognizable in a retrospective moment, viewed backward and refracted through the process of generating a distinct form of “structurally negated” property right in land. Paradoxically then, in such cases, possession does not precede dispossession but is its effect. The system *produces what it presupposes* (namely, property).

From “Theft is Property! The Recursive Logic of Dispossession” by Robert Nichols, *Political Theory* 2 46, no. 1 (2018): 3-28. Reprinted with permission from the author.



THE HO-CHUNK REMOVAL PERIOD

Ho-Chunk Heritage Preservation Department

While much has been written about the Cherokee “Trail of Tears” and the famous Mari Sandoz novel *Cheyenne Autumn* chronicles the equivalent experience of the Cheyenne tribe in Nebraska, little has been mentioned of the Ho-Chunk (Wisconsin Winnebago) removals.

The Ho-Chunk had lived in Wisconsin for a very long time and had no plans to leave and no reason to believe they would eventually be forced to do just that. The early treaties of friendship with the United States quickly led to treaties of land cessions and the Ho-Chunk found themselves crowded into an ever smaller section of their once large homeland.

White lead miners were moving into the southeastern part of what is now Wisconsin encroaching upon even the small land base that remained. The government pressed the Ho-Chunk to sell more land and a delegation went to Washington, D.C. to plead their case.

The Treaty of 1832 provided for a reservation in Iowa and signaled the beginning of the Removal Period. In 1837, a treaty offered the Ho-Chunk more desirable land than the Iowa tract and they were assured that they had eight years before they must leave their beloved homeland. The treaty actually read “eight months,” and their first removal was underway.

No one thought that the so-called “Neutral Ground” near the Turkey River in northeastern Iowa sounded like a great place to live. The new reserve was a contested plot of land sandwiched between the Sauk and the Sioux. Ho-Chunk who settled there found themselves in the midst of Sauk hostilities. Although required to leave Wisconsin in 1838, the remaining Ho-Chunk had no intention of joining the others on the dangerous reservation. A permanent split in the tribe resulted when one faction

decided to make the best of things and move while the other chose to remain in Wisconsin as fugitives.

...The defiant Ho-Chunk managed to hide in central Wisconsin for many years. The last effort to remove them occurred in 1874. This hardy group stayed in their homeland even when the government refused to grant them the annuities that were due them.

Special legislation in 1881 granted the Wisconsin Ho-Chunk the right to homestead land. Denied a Wisconsin reservation, their villages and small settlements remained scattered throughout the state. Finally recognized by the federal government as a tribe in 1963, they never did receive any reservation lands in Wisconsin and to this day are still a “non-reservation” tribe.

From “The Ho-Chunk Removal Period,” an pamphlet by the Ho-Chunk Heritage Preservation Department pamphlet. Reprinted with permission from the Ho-Chunk Heritage Preservation Department.

FROM OWNERSHIP TO OCCUPANCY

Stuart Banner

For nearly two centuries now, lawyers have understood *Johnson v. M'Intosh* as the source of the foundational principle of American property law—that some government, whether state or federal, is at the root of all land titles in the United States, because the original fee simple owner of all the country's land was the government, not the Indians. That principle was already the conventional wisdom among American lawyers by 1823, when the Supreme Court decided *Johnson*. *Johnson* was the Court's first detailed discussion of the subject, however, so it...is remembered as the origin of the right of occupancy.

John Marshall's opinion for the Court claimed that the Indian right of occupancy had been part of English law since the earliest days of colonization. That claim was generally accepted as true by lawyers at the time and has continued to be so accepted by lawyers and historians ever since. Marshall's claim, however, was not true. The idea that the Indians possessed only a right of occupancy in their unsold land was a concept that was only three decades old in 1823. ...Unsold Indian land had once been thought to be owned by the Indians. But in *Johnson v. M'Intosh*, the Supreme Court put the final nail in the coffin of the older view of Indian property rights.

...By the early 1820s, states had been granting preemption rights—the right to own particular parcels of unsold Indian land once they had been purchased from the Indians—to settlers and to speculators for forty years. Preemption rights circulated in a thriving market. Whether the states had the authority to grant land still occupied by Indians, however, had been doubted by some prominent lawyers and had been challenged in lower courts. Did the recipient of a grant of unsold Indian land acquire fee simple ownership of the land, subject to an Indian right of occupancy? Or did the recipient of such a grant acquire

only a right to become the fee simple owner in the future, once the Indians' fee simple title had been purchased by the government? ...There was still some room, even if not a lot, for the argument that the Indians, not the government, were the fee simple owners of their unsold land. And if that argument were to prevail, thousands of land titles in the west would suddenly be thrown into question, and many westerners would be plunged into bankruptcy. ...The Supreme Court would be doing them a service if it could unambiguously declare them the fee simple owners of their land.

...To arrive at the conclusion that the Indians had merely a right of occupancy, Marshall pulled together several strands of early nineteenth-century legal thought, some old and some of relatively recent invention. He began with some historical propositions. The first was that during the era of European colonization, the European countries had in practice tacitly agreed to a principle for dividing the western hemisphere among them. The principle, as Marshall characterized it, was that the "discovery" of a particular area gave the discovering nation certain rights to that area, exclusive of all other European nations. ...Among the rights acquired by discovery, Marshall asserted, was the "ultimate dominion" of the land, the "power to grant the soil, while yet in possession of the natives." The Indians "were admitted to be the rightful occupants of the soil, with a legal as well as just claim to retain possession of it," he explained, but they were not the land's owners. Ownership was instead vested in the European nation by right of discovery, and when European nations granted land to settlers, the settlers became the owners. "These grants have been understood by all," Marshall reasoned, "to convey a title to the grantees, subject only to the Indian right of occupancy."

From *How the Indians Lost Their Land* by Stuart Banner (Cambridge, Harvard University Press, 2005). Copyright © by Harvard University Press. Reprinted with permission from the author.

UNLIKELY ALLIANCES

Zoltán Grossman

The Ho-Chunk experience of land dispossession in the 1820s and 1830s began to be reversed only at the very end of the twentieth century, notably in the Kickapoo Valley of Vernon County. ...In 1961, the U.S. Army Corps of Engineers had proposed a flood control dam on the Kickapoo River near La Farge. The dam proposal jeopardized the picturesque river, popular among canoeists who transformed the issue into one of the state's first major conservation battles. In 1975, the U.S. Senate withdrew support for the dam, but after local white residents had been displaced for its construction. After the removal of the white landowners from a fourteen mile stretch of the river, the 8,600-acre evacuated area grew over into an almost wild state.

After years of conflict over the land along the river, the federal government in 1997 agreed to give the land to the state of Wisconsin to establish the Kickapoo Valley Reserve. The state in turn agreed in a memorandum of understanding to give back twelve hundred acres to the Ho-Chunk, who have sacred archeological sites in the area and had a historic presence before their forced removal. Under the 1997 agreement, the state and tribal parcels together would be jointly managed by the Ho-Chunk Nation and the Kickapoo Reserve Management Board (it would directly control an additional seventy-four hundred acres).

...The state-tribal land negotiations aroused both support and resentment among some former white landowners... Some white valley residents resented the planned return of lands in their area to the Ho-Chunk and viewed the tribe as not "local" to the area. Although only eight Ho-Chunk tribal members lived in Vernon County, tribal members had maintained contact with the ancient rock art sites near the river. Other valley residents,

however, backed the return of the former private parcels to their previous Native owners.

...Ho-Chunk representatives sought dialogue with white residents on both sides of the land dispute, seeking common ground based on historical analogies. As Susan Lampert Smith noted: "Interestingly, say tribal representatives, today's valley residents and the Ho-Chunk share a bitter story with the federal government. In the 1960s, federal land agents scoured the valley, evicting dozens of farmers from the land for a dam. More than a century earlier, HoChunk... were evicted from their Wisconsin homeland, including the Valley."

...The Ho-Chunk cases point to a possible future direction for tribal relations with non-Indian communities. Tribes can build closer ties with rural neighbors not by surrendering their land claims but by asserting these claims in tandem with the environmental/economic concerns of local non-Indians. A successful return of tribal land transforms a temporary environmental alliance into a more permanent and irreversible process of justice, based on the power of land. Joint tribal/non-tribal management of environmentally and culturally sensitive sites demonstrates that their interests need not be mutually exclusive. In a larger sense, joint management prioritizes the place itself and begins to undermine white privilege in the name of place.

From *Unlikely Alliances: Native Nations and White Communities Join to Defend Rural Lands* by Zoltán Grossman (Seattle: University of Washington Press, 2017). Copyright © by University of Washington Press. Reprinted with permission from the author.

SHOULD TREES HAVE STANDING?

Christopher D. Stone

A radical new conception of man's relationship to the rest of nature would not only be a step toward solving the material planetary problems: there are strong reasons for such a changed consciousness from the point of making us far better humans. If we only stop for a moment and look at the underlying human qualities that our present attitudes toward property and nature draw upon and reinforce, we have to be struck by how stultifying of our own personal growth and satisfaction they can become when they take rein of us. G. Hegel, in "justifying" private property, unwittingly reflects the tone and quality of some of the needs that are played upon:

A person has as his substantive end the right of putting his will into any and everything and thereby making it his, because it has no such end in itself and derives its destiny and soul from his will. This is the absolute right of appropriation which man has over all "things."

What is it within us that gives us this need not just to satisfy basic biological wants, but to extend our wills over things, to objectify them, to make them ours, to manipulate them, to keep them at a psychic distance? Can it all be explained on "rational" bases? Should we not be suspect of such needs within us, cautious as to why we wish to gratify them? When I first read that passage of Hegel, I immediately thought not only of the emotional contrast with Spinoza, but of the passage in Carson McCullers' *A Tree, A Rock, A Cloud*, in which an old derelict has collared a twelve-year-old boy in a streetcar cafe. The old man asks whether the boy knows "how love should be begun?"

The old man leaned closer and whispered: "A tree. A rock. A cloud."

...*"The weather was like this in Portland," he said. "At the time my science was begun. I meditated and I started very cautious. I would pick up something from the street and take it home with me. I bought a goldfish and I concentrated on the goldfish and loved it. I graduated from one thing to another. Day by day I was getting this technique..."*

"For six years now I have gone around by myself and built up my science. And now I am a master, Son. I can love anything. No longer do I have to think about it even. I see a street full of people and a beautiful light comes in me. I watch a bird in the sky. Or I meet a traveler on the road. Everything, Son. And anybody. All stranger and all loved! Do you realize what a science like mine can mean?"

To be able to get away from the view that Nature is a collection of useful senseless objects is, as McCullers' "madman" suggests, deeply involved in the development of our abilities to love—or, if that is putting it too strongly, to be able to reach a heightened awareness of our own, and others', capacities in their mutual interplay. To do so, we have to give up some psychic investment in our sense of separateness and specialness in the universe. And this, in turn, is hard giving indeed, because it involves us in a flight backwards, into earlier stages of civilization and childhood in which we had to trust (and perhaps fear) our environment, for we had not then the power to master it.

From Should trees have standing? law, morality, and the environment by Christopher D. Stone (New York, N.Y. : Oxford University Press, 2010). Copyright © by Oxford University Press. Reprinted with permission from Oxford University Press. Originally published 1972.

REPLACING PRIVATE PROPERTY

William N.R. Lucy and Catherine Mitchell

The concept of stewardship has a long pedigree. It originally served as an interpretation of Biblical sources dealing with the relationship between man and God in relation to the earth. Traditionally, man is seen as the master and conqueror of the natural environment with a mandate from God to exploit scarce and finite resources, such as land, in order to advance his own interests. The book of Genesis, for example tells us that God instructed man to: "Be fruitful and multiply, and replenish the earth, and subdue it: and have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth." In contrast, the notion of stewardship sees man not as despotic in his relationship with the natural environment but rather as a "farm manager, actively responsible as God's deputy for the care of the world." The recent scholarship on stewardship has dissociated the concept from this theological basis and placed it upon a more secular foundation. The original concept has been enlarged to incorporate the notion that man's responsibility as custodian of the natural environment is not necessarily a duty owed to God but to the wider human community, perhaps including future generations. The concept has proved particularly attractive to environmentalists, who denounce what they take to be uncontrolled private property in scarce and vital natural resources as one of the sources of our environmental ills. In particular, unrestricted private property in land has encouraged the view that land is merely a commodity, whose best use is measured by financial return.

...Stewardship is a relationship between agents in respect to particular scarce and material resources, such as land. The concept requires that control over these resources be exercised with due regard to interest that other persons, apart from the holder or steward, may have in the resource. The hallmark of

stewardship is land holding subject to the responsibilities of careful use, rather than the extensive rights to exclude, control, and alienate that are characteristic of private property. ... An analogous concept that captures the relationship between duties and rights in something like the right way is that of the trust. ... The trustee is the nominal owner of the trust property, and has control over it, but holds the trust property on behalf of the beneficiary, who is entitled to benefit from the property. In a similar way, an abstract account of stewardship maintains that the holder, or steward, has some control and rights over the resource, but that control must in the main be exercised for the benefit of specific others.

From "Replacing Private Property: the case for stewardship" by William N.R. Lucy and Catherine Mitchell, *Cambridge Law Journal* 55 (1996): 566-603. Reprinted with permission from the authors.



A COVENANT TO PLACE

Interview with Beth Rose Middleton Manning

A land trust is typically a non-profit organization that holds land for the purpose of conserving it, of not developing it, of enhancing it ecologically. Land trusts have also been used to manage the land in a way that it supports or enhances the ecology but also produces some outcome for humans, which might be something you consume, or it might be another type of value, a place to be and to connect. Land trusts protect those spaces and find a way to assign some monetary value to incentivize people to [conserve] instead of subdividing their land and making a lot more money from selling off individual parcels. A landowner might agree to a conservation easement with the land trust and that will enable the land to stay in the family's ownership, but with a restriction on development and a lower tax status because of the reduced value of the property. The land trust uses tools around assigning land a capitalist value in order to protect land for other values.

It is certainly possible for a land trust to enclose land. It can be a neo-colonial activity: initially settlers seized land and developed it, and now settlers are seizing land and enclosing it for conservation. It takes some commitment and communication to change this because sometimes even requirements for public benefit can be interpreted pretty broadly. You might say the public benefit is maintaining the health of the watershed so that people have water downstream. That still means nobody can access the land—particularly Indigenous people who might be from that place, who have sacred places there on that land. It can still be enclosed for them.

Land trust organizations have been dealing with the fact that they are not very diverse for the last decade. How can this movement—which on the whole is largely positive in dealing with conservation, public benefit, public access and protecting lands that people care about—be more inclusive, more diverse,

and engage more people? Specifically, Native land trusts are a really exciting area. I currently work with a group of five that have collaborated to form the Native Land Trust Council to provide a hub for information sharing and sharing resources and tools, support for emerging organizations, and mutual education.

From what I've observed from working with and participating in dialogues between Native and non-Native land trusts, for Native organizations the mechanisms of the trust and the conservation easement are just tools that can be used to advance a central goal of continuing to carry out responsibilities to the land. It's a covenant that many people talk about, a covenant to the place, a responsibility to care for the place in a particular way, to be able to steward it, and to play the role of human beings in that ecosystem of many other beings. Sometimes for the non-Native land trusts the tools are the end. The preserve, that's the end. How do you create communication whereby the Native values for the land are respected? It's a cultural, spiritual lens and it stretches back in time and stretches forward in the future. From my perspective that relationship is unfettered by this grid of private property that's been placed atop it. The land trust and easement are just tools to navigate that grid, but the relationship between people and the place is unchanged and long-standing.

From interview with Sarah Kanouse conducted July 2, 2019.

GOODBYE TO THE PUBLIC-PRIVATE DIVIDE

Eric T. Freyfogle

The public-private divide as an intellectual framework, as a way of thinking about our current land-use regime, is distinctly unhelpful today. It implies that some lands can be used solely for an owner's benefit while others are used for the good of everyone. Yet that division makes little sense. The public has a legitimate interest in how all lands are used. No land use takes place in isolation. As for public lands, many are needed to serve distinctly public purposes, but most are not. Or rather, most publicly owned lands would not be needed to serve public activities if we could be confident that, when the land is placed into private hands, private uses would comport with the common good.

We find ourselves today, I think, burdened with several lousy ideas that we would do well to alter or discard.

The first and most pressing of these lousy ideas is that private property includes the right to use the land any way an owner wants, without regard for public implications. This is not an accurate statement of law or history, nor is it remotely good public policy.

A second lousy idea in need of change is that the only way to promote healthy lands is to keep them in public hands. Neither is this true, however understandable the idea was when it first arose about a century ago.

A third lousy idea is that we can sensibly define the property rights a landowner possesses without taking nature into account. The idea here is that property rights in a tract of land—in the hypothetical Blackacre or Greenacre, as law students would label it—can be defined in the abstract without regard for the land's natural features. Land parcels in fact differ greatly, and the differences in their natural features affect how we can safely

use them. In defining land-use rights we need to take nature into account. And we are doing so, albeit slowly and in ways that arouse controversy. The private rights of landowners are now much different in wetlands and floodplains, on barrier islands and beaches, on sloping hills subject to erosion, in forests and critical wildlife habitat, and along riparian corridors. ...

...If we want, then, a simple image of land, it should be this: The land is owned ultimately by the sovereign people collectively, the *demos*, and managed for the common good. But private parties have use rights in this land. We thus have two items to discuss for nearly all lands: What should private use rights look like, and what mechanisms should we develop to ensure that these use rights and the management of lands generally promote the common good—use rights and collective management regimes. Those are our topics and our challenges for all lands. The possibilities are countless; the room for improvement is vast. We need to get to work.

From “Goodbye to the Public-Private Divide” by Eric T. Freyfogel, *Environmental Law* 7 (2006): 7-24. Reprinted with permission from the author.

UNIVERSAL DECLARATION OF THE RIGHTS OF MOTHER EARTH

World People's Conference on Climate Change and the Rights of Mother Earth

We, the peoples and nations of Earth: Considering that we are all part of Mother Earth, an indivisible, living community of interrelated and interdependent beings with a common destiny;

Gratefully acknowledging that Mother Earth is the source of life, nourishment and learning and provides everything we need to live well;

Recognizing that the capitalist system and all forms of depredation, exploitation, abuse and contamination have caused great destruction, degradation and disruption of Mother Earth, putting life as we know it today at risk through phenomena such as climate change;

Convinced that in an interdependent living community it is not possible to recognize the rights of only human beings without causing an imbalance within Mother Earth;

Affirming that to guarantee human rights it is necessary to recognize and defend the rights of Mother Earth and all beings in her and that there are existing cultures, practices and laws that do so;

Conscious of the urgency of taking decisive, collective action to transform structures and systems that cause climate change and other threats to Mother Earth;

Proclaim this Universal Declaration of the Rights of Mother Earth, and call on the General Assembly of the United Nation to adopt it, as a common standard of achievement for all peoples and all nations of the world, and to the end that every individual and institution takes responsibility for promoting through teaching, education, and consciousness raising, respect for the rights recognized in this Declaration and ensure through prompt and

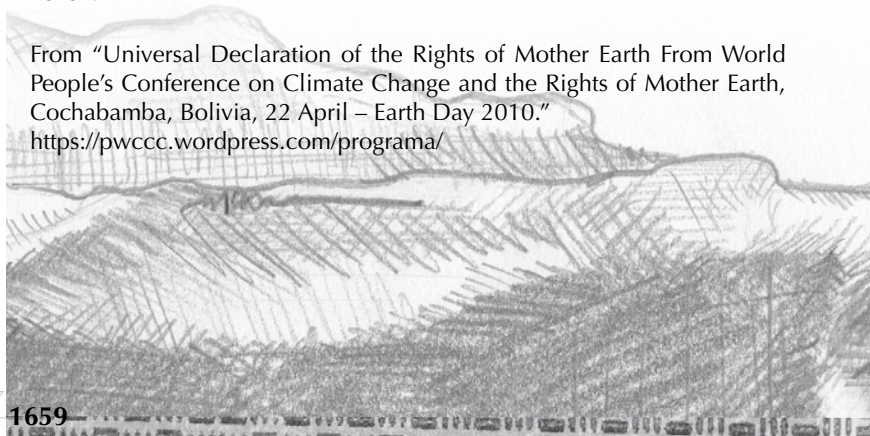
progressive measures and mechanisms, national and international, their universal and effective recognition and observance among all peoples and States in the world.

Article 1. Mother Earth

1. Mother Earth is a living being.
2. Mother Earth is a unique, indivisible, self-regulating community of interrelated beings that sustains, contains and reproduces all beings.
3. Each being is defined by its relationships as an integral part of Mother Earth.
4. The inherent rights of Mother Earth are inalienable in that they arise from the same source as existence.
5. Mother Earth and all beings are entitled to all the inherent rights recognized in this Declaration without distinction of any kind, such as may be made between organic and inorganic beings, species, origin, use to human beings, or any other status.
6. Just as human beings have human rights, all other beings also have rights which are specific to their species or kind and appropriate for their role and function within the communities within which they exist.
7. The rights of each being are limited by the rights of other beings and any conflict between their rights must be resolved in a way that maintains the integrity, balance and health of Mother Earth.

From "Universal Declaration of the Rights of Mother Earth From World People's Conference on Climate Change and the Rights of Mother Earth, Cochabamba, Bolivia, 22 April – Earth Day 2010."

<https://pwccc.wordpress.com/programa/>



SOME PRINCIPLES OF THE COMMONS

Peter Linebaugh

The activity of commoning is conducted through labor with other resources; it does not make a division between “labor” and “natural resources.” As an action it is thus best understood as a verb rather than as a “common pool resource.”

Commoning is primary to human life. ...Scarcely a society has existed on the face of the earth which has not had at its heart the commons; the commodity with its individualism and privatization was strictly confined to the margins of the community where severe regulations punished violators.

Commoning begins in the family. The kitchen where production and reproduction meet, and the energies of the day between genders and between generations are negotiated. The momentous decisions in the sharing of tasks, in the distribution of product, in the creation of desire, and in sustaining health are first made here.

Commoning is historic. The “village commons” of English heritage or the “French commune” of the revolutionary past are remnants from this history, reminding us that despite stages of destruction parts have survived, though often in distorted fashion as in welfare systems, or even as their opposite as in the realtor’s gated community or the retailer’s mall.

Commoning has always had a spiritual significance expressed as sharing a meal or a drink, in archaic uses derived from monastic practices, in recognition of the sacred habitus. Theophany, or the appearance of the divine principle, is apprehended in the physical world and its creatures. In North America (“Turtle Island”) this principle is maintained by indigenous people.

...Commoning has always been local. It depends on custom, memory, and oral transmission for the maintenance of its norms rather than law, police, and media. Closely associated

with this is the independence of the commons from government or state authority. The centralized state was built upon it. It is, as it were, “the pre-existing condition.”

The commons is invisible until it is lost. Water, air, earth, fire—these were the historic substances of subsistence. They were the archaic physics upon which metaphysics was built. Even after land began to be commodified during English Middle Ages it was written,

*But to buy water or wind or wit or fire the fourth,
These four the Father of Heaven formed for this earth in
common;
These are Truth's treasures to help true folk*

We distinguish “the common” from “the public.” We understand the public in contrast to the private, and we understand common solidarity in contrast to individual egotism. The commons has always been an element in human production even when capitalism acquired the hoard or laid down the law. The boss might “mean business” but nothing gets done without respect...

Commoning is exclusive inasmuch as it requires participation. It must be entered into. Whether on the high pastures for the flock or the light of the computer screen for the data, the wealth of knowledge, or the real good of hand and brain, requires the posture and attitude of working alongside, shoulder to shoulder. This is why we speak neither of rights nor obligations separately.

Human thought cannot flourish without the intercourse of the commons. Hence, the first amendment linking the rights of speech, assembly, and petition. A moment's thought reveals the interaction among these three activities which proceed from lonely muttering to poetic eloquence to world changing...

From *Stop, Thief! The Commons, Enclosures, and Resistance* by Peter Linebaugh (Oakland, CA: PM Press, 2014). Copyright © by Peter Linebaugh. Reprinted with permission from the author.

DECOLONIZATION IS NOT A METAPHOR

Eve Tuck and K. Wayne Yang

//If U.S. land were divided like U.S. wealth"...is a popular graphic that was electronically circulated on the Internet in late 2011 in connection with the Occupy movement. The image reveals inherent assumptions about land, including: land is property; land is/belongs to the United States; land should be distributed democratically. The beliefs that land can be owned by people, and that occupation is a right, reflect a profoundly settling, anthropocentric, colonial view of the world. ...Land is already wealth; it is already divided; and its distribution is the greatest indicator of racial inequality. Indeed the current wealth crisis facing the 99% spiraled with the crash in home/land ownership. Land (not money) is actually the basis for U.S. wealth. If we took away land, there would be little wealth left to redistribute.

Settler colonization can be visually understood as the unbroken pace of invasion, and settler occupation, into Native lands... Decolonization, as a process, would repatriate land to Indigenous peoples. As detailed by public intellectuals/bloggers such as Tequila Sovereign (Lenape scholar Joanne Barker), some Occupy sites, including Boston, Denver, Austin, and Albuquerque tried to engage in discussions about the problematic and colonial overtones of occupation. Barker blogs about a first-hand experience in bringing a proposal for a Memorandum of Solidarity with Indigenous Peoples, to the General Assembly in Occupy Oakland. The memorandum, signed by Corrina Gould, (Chochenyo Ohlone—the first peoples of Oakland/Ohlone), Barker, and numerous other Indigenous and non-Indigenous activist-scholars, called for the acknowledgement of Oakland as already occupied and on stolen land; of the ongoing defiance by Indigenous peoples in the U.S. and around the globe

against imperialism, colonialism, and oppression; the need for genuine and respectful involvement of Indigenous peoples in the Occupy Oakland movement; and the aspiration to “Decolonize Oakland,” rather than re-occupy it. From Barker’s account of the responses from settler individuals to the memorandum,

Ultimately, what they [settler participants in Occupy Oakland] were asking is whether or not we were asking them, as non-indigenous people, the impossible? Would their solidarity with us require them to give up their lands, their resources, their ways of life, so that we—who numbered so few, after all—could have more? Could have it all?

These responses, resistances by settler participants to the aspiration of decolonization in Occupy Oakland, illustrate the reluctance of some settlers to engage the prospect of decolonization beyond the metaphorical or figurative level. Further, they reveal the limitations to “solidarity,” without the willingness to acknowledge stolen land and how stolen land benefits settlers. “Genuine solidarity with indigenous peoples,” Barker continues, “assumes a basic understanding of how histories of colonization and imperialism have produced and still produce the legal and economic possibility for Oakland.” For social justice movements, like Occupy, to truly aspire to decolonization non-metaphorically, they would impoverish, not enrich, the 99%+ settler population of the United States. Decolonization eliminates settler property rights and settler sovereignty. It requires the abolition of land as property and upholds the sovereignty of Native land and people. ...It is incommensurable with the redistribution of Native land/life as common-wealth.

From “Decolonization is Not a Metaphor” by Eve Tuck and K. Wayne Yang, *Decolonization: Indigeneity, Education & Society* 1 no. 1 (2012): 1-40. Reprinted under the terms of the Creative Commons Attribution Noncommercial 3.0 Unported License.
<https://creativecommons.org/licenses/by-nc/3.0/>

FIELD GUIDES TO THE ANTHROPOCENE DRIFT

The Field Guides are a series of publications released in conjunction with Mississippi: An Anthropocene River, a research-creation platform exploring the Anthropocene's changing spatio-temporal formations in the vast but patchy region around the Mississippi: a constantly shifting ecosystem, a catchment of cultures, a dividing line, a water highway for resources and goods, a sink for pollutants, and both symptom and product of the radical transformation of the Earth.

Grounded in the history of a parcel of family land in Wisconsin's Driftless region, this experimental reader and artist's book explores conflicting ideas of land ownership and occupancy in North America since the Orbis Spike of 1610. Framing property as a technology and key driver of the Anthropocene, this book considers its centuries-long rise and the many "other-wises" to the ownership model that were never extinguished by colonization and that form the basis of emerging frameworks that center the land as agent, rather than object.