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Introduction

On Nature and Property

by

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Introduction

On Nature and Property *

Rodrigo Míguez Núñez **

The essays presented in this section start with an essential premise: the ideas we employ to characterize our interactions with the outside world are not neutral. Since 'nature' and 'property' are abstract concepts and mental constructions, every attempt at individualization should consider historical and geographical factors. Through a combination of empirical, historical, and theoretical approaches, the authors of this special issue examine the differing ideas of how 'nature' informs property rights, and the impact that legal, economic, or political choices have on the ethics of nature. Bringing together a diverse spectrum of disciplinary, geographic, and ideological perspectives, this special issue seeks to provide a sophisticated, interdisciplinary analysis of the rules that govern people's access to and control over land and its natural resources to confront governance today in addressing unprecedented global crises related to climate change.



This special issue aims to advance a thorough comprehension of the link between nature and property. The essays in this section are not meant to be a comprehensive discussion of either concept; rather, they are intended to shed light

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on the different ways that nature and property are related, enhancing the cultural and historical significance of both concepts and providing valuable tools for the development of conservation strategies that are more suited to the contexts in which they are implemented.

The essays presented in this section start with an essential premise: the ideas we employ to characterize our interactions with the outside world are not neutral. Since ‘nature’ and ‘property’ are abstract concepts and mental constructions, every attempt at individualization should consider historical and geographical factors. In the words of the anthropologist Claude Lévi-Strauss, “The scientist never interacts with ‘pure’ nature, but with a particular aspect of the interaction between nature and culture, characterized by his civilization, by his historical lifetime, and by his material means”.¹

There is no nature other than the one created by the scientist,² and the same observation can be formulated for the word ‘property’. Considering that property is ingrained in the cultural framework of society, and that exclusive and compact appropriation represents just a portion of human contact with the material world, terminological relativity is a common point of discussion surrounding this term as well.³ Furthermore, the fact that every discipline—or collection of disciplines, insisting on the separation of social and natural sciences—has adopted its ‘own’ understanding of nature and property, using the conceptual tools most familiar to its theoretical framework, further introduces con-

¹ Claude Lévi-Strauss, *La pensée sauvage* (Paris: Plon 1962), 29. From this perspective, which reasons in terms of ‘cultural determinism’, the instituted nature is a ‘meta-concept’—a notion that expresses a collection of representations rather than a genuine reality. For fuller analysis of this view see William Cronon, “The Trouble with Wilderness; Or, Getting Back to the Wrong Nature”, in *Uncommon Ground: Rethinking the Human Place in Nature*, ed. William Cronon (New York: W.W. Norton & Co., 1995): 69-90; Arturo Escobar, “After Nature: Steps to an Anti-Essentialist Political Ecology”, *Curr. Anthropol.* 40, no. 1 (1999): 1-30; Dan Brockington, Rosaleen Duffy, and Jim Igoe, *Nature Unbound: Conservation, Capitalism and the Future of Protected Areas* (London: Earthscan, 2008); Gerald Hess, *Éthiques de la nature* (Paris: PUF, 2013).

² Yan Thomas, “L’institution juridique de la nature. Remarques sur la casuistique du droit naturel à Rome”, *Revue d’histoire des Facultés de droit et de la science juridique* 6 (1988): 27-48.

³ Antonio Gambaro, *I beni*, Trattato di diritto civile e commerciale Cicu e Messineo (Milano: Giuffrè 2012), 90; Mikhaïl Xifatas, *La propriété: étude de philosophie du droit* (Paris: PUF, 2004) 8, 9. For a more in-depth discussion on the complexity of property in its diverse contexts and disciplines, see Michele Graziadei and Lionel Smith, eds. *Comparative Property Law. Global Perspectives* (Cheltenham-Northampton: Edward Elgar, 2017).

ceptual ambiguity to such terms.¹ The disciplinary autarchy or isolation that characterizes highly specialized technical contexts and the relative weight that each discipline assigns to one notion over another—which universalizes a specific view of their connection—are glaring instances of this phenomenon.²

Although nature and property are open to numerous interpretations, it is important to note that a single element unifies all perspectives: property is the primary way we institutionalize our interactions with the material world. Property represents the contact point between humans and nature. It symbolizes the pervasive control and impact that humans have had on the environment. Through the logic of occupation, appropriation, and the value assigned to the land and its resources, property creates spaces and shapes the idea of ‘nature’, endowing it with historicity.

Furthermore, property is central to modernity since it is the main tool by which the subject asserts his authority and profits from the outside world.



The historical origins of this domain are very well documented. Beyond the impact of the epistemological representation of the world in ancient Greece, Roman rationalism, and the Judeo-Christian tradition (a convergence that would be sufficient to explain the division between man and nature and the domineering logic),³ it is worth recalling that the dualistic and mechanistic view of nature, which typified the classical period in Europe through philosophers such

¹ Pierre Charbonnier, *La fin d'un grand partage. Nature et société, de Durkheim à Descola* (Paris: CNRS Éditions, 2015).

² Which can also be understood in terms of autopoietic or ‘self-referential’ nature of systems, cf. Richard Nobles and David Schif, *Observing the Law through Systems Theory* (Oxford: Hart, 2013). See also, with specific emphasis on the property law, Frédéric Zenati-Castaing, “Le crépuscule de la propriété moderne. Essai de synthèse des modèles propriétaires”, in *Les modèles propriétaires, Actes du colloque international organisé en hommage à Henri-Jacques Lucas des 10-11 décembre 2009* (Paris: LGDJ, 2012), 230.

³ Jean Carbone, *Droit civil. Les biens* (Paris: PUF, 2000), 85.

as Bacon or Descartes, has radicalized the idea of the Earth as being subject to human power.¹ The natural world, thus discovered and divided into sections, was left exposed to appropriation and exploitation through the fundamental revolution of the sciences that launched the “infinite universe”²—a scenario to which Protestant capitalism would contribute decisively.³ Within the context of a market wherein everything has been reduced to the status of “fictitious commodities”,⁴ nature’s portions have been deprived of any moral value and reduced to the simple image of an “object relative to a human subject”⁵ or even to a “mute piece of the universe”.⁶

Legal discourse plays a crucial role in defining this portrayal of reality.⁷ Property law presumes and reinforces relations of superiority, being, at the same time, “foundational in enabling the objectification and despoiling of the earth and in structuring relations of inequality”.⁸ In light of this, the paradigm of liberal, absolute, compact, and exclusive property, which was upheld by orthodox economics and sanctioned by the French civil code, has led to extreme abstraction and simplification in our interactions with the external world.⁹ Such a design, transmitted from antiquity and then in the notion of the Roman *dominium* in its version driven by medieval common law, had been successfully used in colonial contexts where the construction of a ‘common juridical space’ that

¹ Carolyn Merchant, *The Death of Nature. Women, Ecology and the Scientific Revolution* (London: Wildwood House, 1980).

² Alexandre Koyré, *From the Closed World to the Infinite Universe* (Baltimore: The Johns Hopkins Press, 1957).

³ Frédéric Ducarme and Fabrice Flipo, “What Does ‘Nature’ Mean?”, *Palgrave Communications* 6, no. 14 (2020).

⁴ Karl Polanyi, *The Great Transformation* (New York: Holt, Rinehart & Winston, 1944).

⁵ Marcel Wissenburg, “The Concept of Nature in Libertarianism”, *Ethics, Policy & Environment* 22, no. 3 (2019): 287-302.

⁶ Paolo Grossi, *Beni: itinerari fra ‘moderno’ e ‘post-modern’*, *Rivista trimestrale di diritto e procedura civile* 4 (2012), 1070.

⁷ Fritjof Capra and Ugo Mattei, *The Ecology of Law. Toward a Legal System in Tune with Nature and Community* (Oakland, CA: Berrett-Koehler, 2015).

⁸ Jennifer Nedelsky, “A Relational Approach to Property”, in *The Routledge Handbook of Property, Law and Society*, eds. Nicole Graham, Margaret Davies and Lee Godden (New York-Abingdon: Routledge, 2023), 330, 333.

⁹ Zenati-Castaing, “Le crépuscule de la propriété moderne. Essai de synthèse des modèles propriétaires”, 227.

would lay the foundations for the distribution and production of conquered territories, needed to make the unlimited extensibility of the logic of occupation, appropriation and improvement of land the central axis for organizing expanding societies. Likewise, the advent of capitalism and the Industrial Revolution ushered in an unparalleled era of commercial relations, which have spawned a second proprietary expansion aimed at ‘colonizing’ entities that were formerly common or unappropriated, including air, water, space, minerals, the human body, and living organisms—which are patentable subjects.¹ Thus, by instituting land, its fruits, portions of nature, and aspects of the person himself as appropriable things in exclusive terms, the liberal conception of property has formulated a legal notion of space that channels into the autonomy of the individual the central claim of progress and modernity.²

Because of these factors, the crisis of modernity, linked to human habitation and capitalism’s global destructive capacity,³ is primarily reflected in the crisis of the abstract and universal model of individual property, whose irresponsible and egoist exercise to external interests is considered the primary source of the ecological crisis in the Anthropocene context.⁴ Hence, the necessity of ‘deconstructing’ the hegemonic property model⁵ and embracing pluralism, which

¹ On this phenomenon see Theodore Steinberg, *Slide Mountain: or, the Folly of Owning Nature* (Berkeley, CA: University of California Press, 1995); Margaret Jane Radin, *Contested Commodities* (Cambridge, MA: Harvard UP, 1996). For an updated exploration furthering the many dimensions of the proprietaryization see Michael Heller and James Salzman, *Mine! How the Hidden Rules of Ownership Control Our Lives* (New York: Doubleday, 2021).

² Pierre Charbonnier, (Paris: La Découverte, 2021), 63, 169.

³ Piero Bevilacqua, *La terra è finita. Breve storia dell’ambiente* (Roma-Bari: Laterza, 2009), 27. This discourse concerns the extractive economic model, developed “on the mechanical exploitation of the planet in its entirety throughout its geobiological systems”. Thomas Berry, *The Great Work: Our Way into the Future* (New York: Bell Tower, 1999), 102.

⁴ Lynn White jr., “The Historical Roots of Our Ecological Crisis”, *Science* 155 (1967): 1203-1207; Simon L. Lewis and Mark A. Maslin, “Defining the Anthropocene”, *Nature* 519 (2015): 171-180. From the purely legal perspective see Martine Rémond-Gouilloud, *Du droit de détruire. Essai sur le droit de l’environnement* (Paris: PUF, 1989), 12-13; John Laitos, “Rules of Law for Use and Nonuse of Nature”, in *Rule of Law for Nature: New Dimensions and Ideas in Environmental Law*, ed. Christina Voigt (Cambridge, MA: Cambridge UP, 2013), 209.

⁵ Rodrigo Míguez Núñez, “Pour une déconstruction du concept de propriété dans les Andes centrales”, *Revue internationale de droit comparé*, 4 (2010): 981-1006; Frédéric Graber and Fabien Locher, “Jouir et posséder. Environnement et propriété dans l’histoire”, in *Posséder la nature. Environnement et propriété dans l’histoire*, eds. Frédéric Graber and Fabien Locher (Paris: Éditions Amsterdam,

refers to the wide range of rights and obligations, privileges, and restrictions that govern the dealings of humans concerning resources and objects of value.¹ Theoretical proposal of this type redefines property, focusing on its material and contextual relationship with society's objects, bringing it closer to nature's needs and rethinking the role and function of man in the world.

The new scientific rationality rooted in ecology (and hence on the interdependence of the living and the inert, on the complexity of socio-ecological systems, and on the hybridization of knowledge) has substantially impacted the reinterpretation of property². Clear proof of this is the "pluralism of truths"³ that led to an interdisciplinary reading of the relationship between nature and property, even promoting the hybridization between nature and culture.⁴

In a milieu where all elements are, in fact, interrelated, property in its plural dimension refers to property in pursuit of different regulatory statutes that acknowledge the intricacy of the interaction between humans and ecosystems. Property in its plural form is an inherently 'exogenous' concept; as such, it is generated and modified by forces extrinsic to the legal phenomenon. Plural property is an undeniable post-modern event since it describes the progressive relinquishment of the notion of absolute and exclusive power over an object, advocating for a 'contextualized' understanding that characterizes it as a "local right of a particular location".⁵ In short, the plural form of property refers to

2022), 10 ff.; Marjorie Kelly, *Owning Our Future. The Emergence of Ownership Revolution* (San Francisco: Berrett-Koehler, 2012).

¹ Bertram Turner, "The Anthropology of Property", in *Comparative Property Law. Global Perspectives*, eds. Michele Graziadei and Lionel Smith (Cheltenham-Northampton: Edward Elgar, 2017), 26.

² As Viola states, "The whole ecological issue represents an irruption of nature into morality and law", Francesco Viola, *Dalla natura ai diritti. I luoghi dell'etica contemporanea* (Bari-Roma: Laterza, 1997), 7.

³ Eric Naim-Gesbert, *Les dimensions scientifiques du droit de l'environnement. Contribution à l'étude des rapports de la sciences et du droit* (Bruxelles: Bruylant, 1999), 29, 31; Serge Gutwirth and Eric Naim-Gesbert, "Science et droit de l'environnement: réflexions pour le cadre conceptuel du pluralisme de verites", *Revue interdisciplinaire d'études juridiques*, 34 (1995): 33 ff.

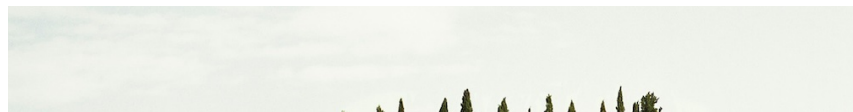
⁴ Gianfranco Pellegrino, "The Traces of Nature; or: The Value of Hybrid Nature", in *The Philosophy of Geography*, eds. Timothy Tambassi and Marcello Tanca (New York: Springer, 2021), 211-239.

⁵ Nicole Graham, *Landscape: Property, Environment and Law* (Abingdon-Oxfordshire: Routledge 2011), 16. See also Benjamin Cooke and Ruth Lane, *Making Ecologies on Private Land Conservation Practice in Rural-Amenity Landscapes* (Cham: Springer, 2020), 31.

diversified statutes of relationship with things as manifestations of our various modalities of interacting and inhabiting the Earth.¹

The analysis so far leads to the deployment of historicity to rediscover the richness of human and non-human interaction in a context that demands alternative ways of understanding our place in the world to overcome the global crisis we are undergoing. Given the central role that property plays in the human interaction and conception of nature, it is crucial to grasp its inherent ethical content in understanding the current environmental challenge's economic, legal and political spheres. These issues relate to economics, law, philosophy, anthropology, geography, and ecology. The invitation is then to reintegrate nature and property into history, employing a less anthropocentric perspective and a cross-disciplinary approach.²

The selection of the topics and approaches included in this special issue fulfills such aim.



The special issue concerns how the discussion of the relationship between nature and property emerged and developed in the history of political, economic, and legal thought. The aim is to provide an analysis at both local and global levels, along with various perspectives, including legal aspects, the market, the state, and, more generally, society. The essays included in this section adopt a self-reflective approach and consider the relationship between 'social conditions' and 'arrangements' to be genuinely constitutive in the making of economic, political, and legal regimes to provide a sophisticated analysis of how social forces shape our relationship with natural resources such as soil, water, fruits of the earth and dwelling spaces, and what changes took place. Thereby,

¹ Margaret Davies, "Habitat and Home", in *The Routledge Handbook of Property, Law and Society*, ed. Nicole Graham, Margaret Davies and Lee Godden (New York-Abingdon: Routledge, 2023), 203-214; Sarah Vanuxem, *La propriété de la terre* (Marseille: Wildproject Editions, 2018).

² Christophe Bonneuil and Jean Baptiste Fressoz, *L'événement Anthropocène. La Terre, l'histoire et nous* (Paris: Éditions du Seuil, 2016), 52 ff.

authors use the historical dimensions as a common thread for theorizing the evolution of our relationship with non-human nature in social sciences.

The crucial point for the purposes of this section is to incorporate theoretical and practical expertise to provide an overview of the various approaches used in social sciences to place nature and property in the modern imagination through a genuinely interdisciplinary and comprehensive treatment.

Focusing on a critical analysis of the simplification and universalization of the concepts of nature and property, Michele Graziadei illustrates how the market has influenced conceptual homogenization. Individual, exclusive, and compact, the bourgeois property imaginary has imposed a stationary and categorized view of the interaction with nature, producing a geographical, cadastral representation of our way of being on Earth. Introduced initially and disseminated from Europe to the colonies, this notion has established immutable boundaries—arbitrary divisions that fail to account for the ecological demands or the aboriginal peoples' way of life. The use of etymology, language diversity, and macro-comparative analysis reveals cultural limitations in universalization efforts and deficiencies in Western law production zones.

The study of the Andean world provides an exceptional illustration of how these premises can be applied. By utilizing the framework of legal anthropology, Patricia Urteaga-Crovetto highlights the significance of alternative methodologies for conceptual universalization, emphasizing the necessity of engaging in historical and cultural discourse to comprehend territory as an intricate web of social interactions among both human beings and nature. Examining elements such as time, space, culture, and power in the high Andean regions contributes to comprehending the material and spiritual interdependence between indigenous communities and their lands, and challenges property models based on Western cartography. Analogously, Manuel Bastias Saavedra and Alina Rodríguez Sanchez analyze the Spanish colonial era to elucidate the diverse manifestations of the identity bond that indigenous groups forge with their territories. Their research emphasizes the significant diversity of discourse associated with the occupation of physical space. Furthermore, this diversity reflects a multifaceted society where land functions as 'soil', 'home', and 'community' while connecting the various collective bodies that establish several degrees of normative regulation.

Through historiographic examination of the legal stigmatization of the 'vag-

abond', Sarah Vanuxem integrates the critical picture of the imposition of a social order based on static and individual property. In the imagination of modern property and the political order that underpins it, itinerant humans and animals are perceived as potentially harmful agents that pose a threat to the goods, security, and hygiene standards of the bourgeoisie. The human vagabonds are, as Foucault states, 'out of nature' and consequently 'out of the law'; hence, they must be coerced back into the mold of the sedentary modern citizen. Animals—including domestic, rural, and wild—will face similar fates due to protection requirements of bourgeois bastions, which have recently shifted to ensuring some degree of free circulation to protected species. Through this lens, her research shows how the 'hostile nature' results from the requirements of a civilized and organized society.

It is worth noting that many authors have perceived the lack of property rights over natural resources as an inherent condition detrimental to the stability of social interactions and the conservation of the environment. In examining this premise, Pierre Crétois critiques the propositions Harold Demsetz and Garrett Hardin put forth. These proposals have incorporated negative externalities of ownership, specifically pollution, into the market logic, intensifying "the environmental disorder". Understanding that natural resources are life-sustaining and, as such, their utilization impacts the entire biotic community is equivalent to the 'co-possession of the Earth'. To comprehend 'the proper' as a modality of the 'common', it is sufficient to reframe the concept of ownership as 'commons' and change the *dominus* into a guardian, a citizen endowed with eco-civic virtue. In line with this, Irene Ortiz Gala and Carmen Madorrán Ayerra argue that safeguarding the human-nature bond requires applying the 'inappropriate' concept intrinsic in the commons. This standpoint enables us to comprehend nature, that is, the biosphere, as an indivisible community of interdependent and interrelated beings united by a common destiny. By advocating for local governance and co-utilization of resources to protect intergenerational interests, the authors posit a relationship with nature less predicated on property and sovereignty.

To sum up, through a combination of empirical, historical, and theoretical approaches, the authors of this special issue examine the differing ideas of how 'nature' informs property rights, and the impact that legal, economic, or political choices have on the ethics of nature. Bringing together a diverse spectrum of

disciplinary, geographic, and ideological perspectives, this special issue seeks to provide a sophisticated, interdisciplinary analysis of the rules that govern people's access to and control over land and its natural resources to confront governance today in addressing unprecedented global crises related to climate change.



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