

**THE LONG JOURNEY HOME:
DOMESTIC LAND TENURE
THROUGH INTERNATIONAL LENSES**

by
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All views, interpretations, recommendations, and conclusions expressed in this paper are those of the author and not necessarily those of the supporting or cooperating organizations.

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Property as a Cultural Touchstone

I promised John Bruce that I would call this "the long journey home", in part to evoke the journey of ideas garnered in LTC's three decades of overseas research back home to be used in the United States. But the real title is "Bonanza! The Unasked Questions". Readers over forty will remember that no one on "Bonanza!" ever asked, let alone answered, questions such as:

So, how much land did the Cartwrights have in that ranch anyhow
and

Just how did they get this land? Who used to own it and use it?

"Forty acres and a mule" and a "man's home is his castle" have long been American¹ watchwords, reflecting property's role as a cultural touchstone. This is not to deny for a minute that American culture involves anything other than a tangle of contradictory views of property.

On the one hand, property is viewed as flat and generally unproblematic lines on a map. Such tidy and two-dimensional property is to be encountered in the offices of tax assessors and title companies. But a moment's flipping of the dial will get you:

"I'm goin through the Big D and don't mean Dallas,
I can't believe what the judge had to tell us
I got the Jeep and she got the palace
I'm going through the Big D and don't mean Dallas."
"Goin' Through the Big D" Mark Chesnutt

and

¹ When I say American, I mean United States the inhabitants of which unfortunately have appropriated the more inclusive word, American, as their adjectival form of their name.

"That's my house and that's my car,
 That's my dog in my backyard,...
 There's my kids and that's my wife--
 But who's that man runnin' my life?"²
 "Who's That Man?" Toby Keith

In these lyrics, property of many sorts plays prominently in individual identity and social drama.

Property dramas are played out at the collective level as well. John Nichols' book, *The Milagro Beanfield War*, paints vivid pictures of community struggles over access to, control of, and meanings of water, land and forest. These struggles are pictured in literally more sharp-edged terms in Clover's (1992) exploration of land seizure as a major theme in horror films. At a symbolic level she points out that "A remarkable number of horror films turn on 'title disputes' between present living owners and past dead ones", representing perhaps the original "land seizure of fantastic dimensions" from the Native Americans (Clover 1992: 134). More concretely, she makes the extraordinarily perceptive point that city-revenge films such as *Deliverance*, *Hunter's Blood*, *The Hills Have Eyes*, and *Prophecy* (in which urban/suburban characters on a foray into the country have truly nasty experiences and respond in equally nasty ways), readily admit "urban crimes against the country (dammed rivers, stripped forests, dirt-biked and snowmobiled wilderness, mercury-filled lakes, irradiated rangeland) and by extension against those who have been economically dispossessed in the process (Clover 1992: 134)."

The unasked questions of "Bonanza!" are, thus, asked in other far less comfortable genres. And the struggles set off by the destruction of property, livelihoods, and culture that they describe have no place in the tidy settings of the tax assessor's office or the title company. Indeed, that is the whole point of these films (Clover 1992).

I have deliberately begun with a television show, country and western lyrics, and horror films to make the point that although the official discourse about property may seem clear cut, a simple matter of contract, the popular discourse gives a far more fluid, up-for-grabs picture. Popular culture expresses the "common" knowledge that property is mutable: stealable, destructible, and convertible³. And it poses the question that is the flip side of the title of this conference, "Who Lost America?" and what are they doing about it? If we turn to the international literature, we will see that it has much to offer in illuminating property relationships in the United States and the questions that popular culture raises.

² Thanks to Mark DeWitt, Department of Music, University of California at Berkeley who dragged these refrains up out of his memory and provided the discography.

³ My thanks to Carol Clover for giving me the words to say this more clearly.

To begin, Shipton and Goheen (1992:3) note in their survey of land holding in Africa, that people use land "for many purposes: not just to produce the material conditions of survival and enrichment, but also to gain control over others and to define personal and social identities."

Some of the more general scholarship on property in the US. has been cognizant of these issues. For example, Morris Cohen (1978) enunciated the principle of property as sovereignty in a speech at Cornell University in 1927 and Post (1991) explores issues of privacy, personality and property. But domestic land tenure scholarship has not always been as successful as the popular culture or even journalism (see Trillin 1976) in getting to the guts of the social relationships of property. In contrast, the international experience in studying land tenure has brought home to us the diversity of property arrangements, the diversity of ways in which struggles over property are conducted and the diversity of ways we can look at property.

I am going to focus on six particularly important lenses that emerge from international scholarship. While some of these have been addressed in domestic work, they often appear more consistently and in clearer relief in international work. These six are: property as social process, customary tenures, common property and community management of resources, gender, the complexity of tenancy relationships, and land concentration.

Property as Social Process

Perhaps the most important lens that has emerged from the international experience and which is just beginning to be rediscovered domestically is the understanding that property is in a real sense process and that therefore, to understand it one must focus on the social processes through which people define and struggle over access to and control of property. Through this lens we can view three inter-related images of property: social networks, definitions, and narratives.

Social Networks

Not all land and resources can be purchased with cash. Rather, access sometimes depends on social relationships. Perhaps the scholar best known for focusing on investment in social networks as a means through which both groups and individuals jockey for rights to resources including land, water and trees is the African economic historian, Sara Berry. She points out (1988 : 67) that instead of investing in direct increases in productive capacity, individuals may invest in social relationships in the form of ceremonies, the careers of their children, or cattle for bridewealth in order to establish or reaffirm advantageous identities for themselves--identities that strengthen their claims to land and other natural resources. In addition, in some recent work on Ghana (1995), she has explored the concept of the "political economy of indecision", in which she has

argued that some land disputes are not meant to be resolved, there will always be a way to open another round of contestation. These are concepts that might profitably be applied to a number of on-going "big screen" land disputes in the US.

Definitions

Another part of the social process lens is the importance of definitions- the definition of resources, the definition of control and the definition of a claimant group itself⁴(Shipton and Goheen 1992) Peters (1987: 193) has highlighted the importance of the "power to define, to attribute meaning, and to assign labels" in the context of struggles over water points and grazing land in Botswana.

Orlove (1991) extends Peter's point into the visual sphere in his study of maps of reed beds in Lake Titicaca which were the object of a struggle for control between peasant communities and the Peruvian state. Maps drawn by the peasants detail communities and their territories, communities which are presented as jointly controlling the whole region and its reed beds. Urban centers are omitted from the maps altogether. The state is visible only in the form of flags in certain community centers. In contrast, the state maps depict only communities which are inside the Titicaca National Reserve or which are incorporated into a state administrative structure. The area which resisted establishment of the Reserve and state control of reed harvesting most fiercely is not even identified on the government map. These maps represent the state as controlling the reed beds. As Orlove (1991: 31) points out in the terms of Anderson's (1983) concepts of imagined communities, these are two "very different imagined countrysides" co-existing on two different sets of maps and in the minds of two different sets of people- resident peasants and urban government officials. From the Buffalo Commons to the Oregon rainforest, it is clear that we have many contested places and resources that might benefit from Orlove's understandings of definition and the presentation of place and control.

The international literature also tells us that "who" is making the claim to control property is crucial and that a group can make itself into a more influential "who". Moore (1994) demonstrates how the Tangwena people consciously nurtured their group identity as a strategy to regain control over ancestral land in post-Independence Zimbabwe. In doing so, they played heavily on the enormous

⁴ Justice (1994) provides a wonderful example of the definition of both the human population of a community and its geographic boundaries through performance in medieval England. The three days before Ascension were the days on which villagers paraded around the village boundaries with the village priest holding aloft the host at the back of the procession. As Justice notes "the festivities were a communal mnemonic, preserving the precise definition of locality from year to year against insensible encroachments. The procession made visible the community as a population-displayed the village to itself-while recalling and making visible the community as a locality, a place and a unit of production...."

service their chief did for the now-President of Zimbabwe during the War of Liberation.

The relevance of the importance of the creation and utilization of identity to Native American struggles for tribal recognition and control over land, to the nurturing of "cowboy" identity and culture in the struggle over federal grazing lands, and to the endless struggle over "who is local" is obvious.

Property and Narrative

A third part of social process lens is narrative. Narrative is not altogether missing from the domestic literature. In her exquisite essay, "Property as Story Telling", Carol Rose (1990) points out the reliance of the Grand Old Men of Property Theory on stories to hold the awkward bits of their theories together. Then she describes (1990:55) how a

storyteller, by structuring the audience's experience and imagination, helps to turn her audience into a moral community.

Moreover, by structuring our experience of events, the storyteller in effect constructs our memories and consciousness, so that we can draw on this new stock to act in the future.

She concludes triumphantly that in such stories we might find the roots of common property.

While Rose is concerned in that particular piece with the role of narrative in an alternative theory of how property regimes arise, the scholarship from Asia, Africa and Latin America opens a window onto the role of property in the nitty gritty of every day struggles over land, water and forest. This scholarship illuminates the critical importance of the power to interpret or reinterpret historical events in order to legitimate claims to land (see Shipton and Goheen 1992). (Or in Rose's (1994) terms- to persuade others that a property right is there.) It portrays everybody- the state, the elites and the local residents- as constructing, reconstructing and selectively using history and custom in struggles over property.

For example, Berry (1992:335) details how local residents in West Africa used British colonial officers' interest in "tradition" to further their own interests and quotes an exasperated official's comment, "knowledge of ancient traditions is, in fact, small, but the manufacture of new ones has been raised...to the status of a rural industry." In Zimbabwe Cheater (1990) traces the construction and reconstruction of varying myths of communal landholding by the government to buttress changing government policy and objectives over time. Peel (1984, pp. 113,115,128) describes the role of stories of the past in Ijesha land disputes, noting the tendency to "rework the past so as to make it appear that past practice has governed present practice." And in my own work in Zimbabwe, I have found the stories told by villagers and neighboring white commercial farmers varied

both in their telling of the same events and in the moral principles those stories presented to buttress claims to the same land (Fortmann 1995).

In short, international scholarship has taught us to look not just at statute and the common law but at the stories that are told about property--by governments, by lawyers, by ordinary people, by novelists and film makers and song writers. It tells us to look at stories about more general "property themes"- what does property mean and at different versions of specific events told by different people. It tells us to look at the stories told by the poor and dispossessed and also at the stories told by the powerful to pre-empt the discourse of the powerless (Scott 1990, pp. 18, 45-47).

Such stories have to date often been the purview of the folklorist or the historian. A classic example is Ives' (1988) renditions of stories that swirl about the Downeast poacher George Magoon, stories that retained their emotive power to enunciate outraged property claims many decades after the event. The clear message of international property scholarship is to borrow the folklorist's lens and take a good hard look at property and land tenure.

Customary Tenures

A major concept we have brought home from overseas is that of customary tenures. International scholars have long known that the state is not the author of all law and that long-standing local practice can establish a customary law. And customary law, Bruce (1988) has pointed out, is dynamic and rapidly changing, especially in regards to land.

Although it is common to think that all US. property law is state-based, in fact customary tenures are common --the law of the open range (see Ellickson 1986 and Hahn 1982), poaching (which can be understood as the exercise of customary usufructuary rights to wildlife), the allocation of lobster fishing grounds by lobster fisherman (Acheson 1987) and so on.

If we want to know how resources are managed and what the likely outcomes of that management are, then we need to learn to identify customary claims to rights.

I stumbled upon this in a mountain community in California in the mid 80s. The town, normally a placid conservative sort of place, was the site of three public protests in three years. One was a straight forward protest over the imposition of fees for cutting fuelwood on national forest land. The second was a straight forward environmental protest. The third was a straight forward anti-environmental protest. Most of the town was involved in all three protests.

Obviously there's a puzzle here. (Or else the town had a real mental health problem.) The solution to the puzzle was not psychiatrists, it was understanding

the protests not as struggles over environment but using the lens from my African experience to understand them as struggles over customary claims to property rights--the right to use forest resources for the good of community residents. Once that was understood, it was clear that in each protest the community was defending customary claims to forest resources against outsiders. (See Fortmann 1990.)

This is hardly an isolated example. It is clear that customary claims and other "non-standard" forms of property should become a more prominent part of our land scholarship.

Common Property

In his introduction to readings on property theory, C.B. Macpherson (1978: 3) identifies a major difficulty with the concept of property, that is, the treatment of property as being identical with private property. And indeed, if we return to the unproblematic, two dimensional property in the tax assessors' office posited at the beginning, we will find that it is usually private property or state property. The notions of a commons (although it was a fine old New England custom) just didn't raise its head in US. property literature for years.

But numerous international empirical studies such as Cordell's (1989) study of the intricate and sophisticated fishing commons in the Bahia, Brazil; Gilles and Jamtgaard's (1981) descriptions of real pastoralists' management of their commons (stunningly different from Hardin's (1968) imaginary ones); Leach's (1994) detailing of the use of forest and bushland resources in Sierra Leone; and Wade's (1985) research on grazing and irrigation commons in India have shown the wide variety of successful institutional arrangements for the management of common pool resources.

This has opened the door to a wider recognition of existing and possible commons in the United States. And in its wake have come the international examples of new community-based resource management regimes. Perhaps the best known of these are the Zimbabwean Campfire program in which villages have been given proprietary rights to wildlife with the result that poaching has dropped dramatically and local livelihoods have benefited from a new source of cash (Murphree 1991) and forest co-management in West Bengal (Arnold and Stewart 1991). Much could be learned from the international experience by those involved in emerging efforts in the US to manage natural resources across property boundaries such as community management of watersheds, community co-management of natural resources with federal agencies, and cross-resource industry endeavors such as salmon fishers and timber operators cooperating to restore and preserve salmon habitat. I keep trying to get people to call this, meta-tenure, a tenure superseding the formal property rights attached to the properties comprising the management area. Whatever we call them, we have much to learn about them from their predecessors in Asia and Africa.

Gender

Work overseas has demonstrated that both space and tenure are often gendered and that women are often the losers in these systems, particularly when their status changes as in the case of divorce and widowhood. While specific circumstances vary widely, in general, women have repeatedly been shown to be less likely to own or control land, to own smaller amounts of land, to have less security of tenure and to feel less secure in their tenure (Hardy 1989, Davison 1988). Women often have to rely on the good graces of a male relative, a husband, father or brother, to get access to land and other resources. They often use specialized spaces including what Dianne Rocheleau calls the "spaces in between" for their production (Rocheleau and Fortmann 1988, Moore 1994). Poor women in particular have frequently been shown to have to rely on the commons for their livelihoods. "Household" has been shown to be a problematic concept (Guyer and Peters 1987) and the intra-household distribution of property rights to be a major arena of struggle (Carney and Watts 1990, Schroeder 1993).

If we return to our country and western lyrics for a moment, both the similarities and the questions we should be asking should be striking. Just how often does she actually get "the palace"? How often does she inherit it or the farm? And, I am sure the equation of property in cars, backyards, dogs, women and kids in the second song did not pass any of you by.

There is domestic work on gender and property. Frances Hill's (personal communication) early work in the US. found that women were being excluded from family farming corporations because of the apparent belief that if they were to inherit, they would run off with the assets of the family farm to take up life with a lounge lizard in Florida. The overweening attraction of lounge lizards escapes me, but they certainly seem to have loomed large in the nightmares of male farmers. ^ Hill 1981

Recent work has revealed that an increasing percentage of people who rent out farm land are now women, often widows (Rogers and Vandeman 1993). We must continue to look at such questions as: do women and men manage their rental property with different economic or ecological outcomes as their goals? Do women and men get comparable rents from their tenants? And we need to look at the role of women in creating and managing the meta-tenures I spoke of earlier.

The Complexity of Landlord/Tenant Relations

Most of us probably associate tenancy with poor share croppers falling farther and farther into debt to the land owner. But international scholarship provides a more complex view. Krisnawati Suryanata's (1994) study of the apple industry of Indonesia has shown that ownership of working capital can be more

important than land ownership. Her research has shown that over time the institutional arrangements involved in tree sharecropping have come to favor the tenant capital owners. She points out (1994:1574) that "...many fields have effectively turned into monoculture apple orchards and deprive the land owners of access to their land. Tree leasing contracts effectively become land leasing contracts as contract amendments buy out the residual rights of land owners."

This has already been shown to be relevant in California's agricultural Salinas Valley, where, as Margaret FitzSimmons (1983:320) tartly puts it, large agricultural tenant farmers have freed themselves of "the costs and impediments of land ownership". Up to the end of World War II, land owners were able to require their tenants (who had long leases) to practice crop rotation and green manuring. But as leases began to shift from shares of the crop to cash rents, the balance of power shifted and with it environmentally friendly agricultural practices disappeared (FitzSimmons 1983: 259-261).

Clearly, we need to look carefully at the meaning and practice of tenancy.

Land Concentration

Table 1 shows three international and one domestic example of concentrated farm land distribution.

Table 1. Land Concentration in Four Countries

Place	Date	This % of	Owens this % of farm land	This % of	Owens this % of farm land
Morocco	early 1960s	households 4%	33%	households 48%	16%
Guatemala	1950	farms 2.1	72.2	farms 88.4	14.3
Ecuador	1968	farms 4%	61	farms 74.3	10.2
California	1970	25 owners	58	commercial farmers 0.01%	61

Sources: Griffin (1976: 85, 162, 189), Fellmeth (1971:6)

Why should we care about these sorts of land distribution? Again, the international literature is illuminating.

In a case study of six countries Griffin (1976) found that when the distribution of agricultural land is highly skewed, even if overall incomes (including agricultural incomes) are rising, the incomes of the majority of farmers either stagnate or fall, driving them into agricultural wage labor or share-cropping arrangements which in turn drives down wage rates.

Similarly, in a 14 country study using 1973-83 data, El-Ghonemy (1990) found first, that the lower the concentration of land ownership/ holdings, the lower the level of absolute poverty in rural areas (irrespective of the level of a country's average income per head) and second, that realizing high rates of agricultural growth is not conditional upon high land concentration and the dominance of large estates.

LTC's own Peter Dorner and Bill Thiesenhusen (1992) relate the quality and quantity of land held as well as security of tenure to out migration.

These findings are clearly relevant to local economies and the dynamics of out-migration from rural US. counties. There are numerous examples. Some scholars argue that the Sagebrush Rebellion was as much a protest over the fact that private owners have locked up most western land as over the extent of federal land holding (Geisler 1993). Another example--the people of Plumas County California refer to their area as Plumas Colony--the natural resources are controlled by outsiders--big timber companies, the utility company, the US Forest Service and urban vacation home owners. They voice frustration over their inability to protect the natural resources around them or to earn a sustainable living from them. Brown (1995:12) describes a steady out migration of blue and pink collar residents from Josephine County, Oregon at the very time that wealthier in-migrants were streaming in and eventually putting in place zoning that affected the ability of the poor to stay in the area. One of her respondents sums it up with the comments, "I have one feeling is that our town got bought without us selling it" (Brown 1995:58).

In other words, concentrated and/or absentee land ownership and land use controls affect local ability to earn a livelihood and to find a place to live and local quality of life here, just as they do overseas. This is an issue we really need to look at. There have been a few studies done, often by political activists such as the one on this chart or the famous Appalachian land study that John Gaventa mobilized (Appalachian Land Ownership Task Force 1981). We clearly need more. And we need to look too at the social, economic and ecological consequences of national and international patterns of land and resource control by trans-global corporations.

Conclusion

My conclusion is simple-- at the end of the long intellectual journey home, a journey that I have taken myself--California and Oregon and Tennessee and Pennsylvania look a lot like Zimbabwe and India and Guatemala and Indonesia. In a globalized political economy, the need to use international property scholarship to illuminate our own issues and problems should be obvious. And, the similarities should tell us we may need to join hands across international borders to solve some of the problems we have created with our own set of property arrangements.

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