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Nicholas Blomley

ABSTRACT

To understand the crucial work of property in land in enforcing and sustaining relationships of power between people, it is necessary to analyse the particular manner in which property became territorialized. I focus here on one crucial moment in which this occurred – the reconception of the space of landed property in seventeenth century rural England – tracing three domains of practice – surveying, husbandry and law. These forms of expert knowledge did not simply record changes in property's reterritorialization, I suggest, but actively participated in its remaking. As an 'interaction device', territory helped reconstitute changing property relations. While drawing from previous geographies of property, these practices placed an increased importance upon a territorial exclusivity that centred on individual rights, most particularly the right of the individual to exclude others. As such, the legal and practical defence of territory became of more pressing importance. This shift relied on and helped sustain a particular logic of visualization and spatialization, I shall suggest. Increasingly, property became disentangled from a localized nexus of collectively organized relations, and became situated within wider networks of calculation and commodification. The geographies of property forged in this period continue to be important to contemporary life, framing power relations in particular ways. As such, they demand our attention.

KEYWORDS

Property; territory; surveying; husbandry; trespass

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[T]here can be few enormous subjects more often dodged than the space we occupy on the surface of the earth. Land ownership – its many modes, its distribution, its history – is the great ignored in politics today. (Mount, 2014, p. 11)

INTRODUCTION

John Locke's famous essay on property is both a history, tracing how the earth has moved from the divine commons to a world of private property, and a geography, that celebrates the transition from the modest and egalitarian world of the ancients, who 'wandered with their flocks, and their herds ... freely up and down' (§. 37), to a sharply territorial geography of individualized title:

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[A]s families increased, and industry enlarged their stocks, their possessions enlarged with the need of them; but yet it was commonly without any fixed property in the ground they made use of, till they incorporated, settled themselves together, and built cities; and then, by consent, they came in time, *to set out the bounds of their distinct territories*, and agree on *limits* between them and their neighbours; and by laws within themselves, *settled the properties* of those of the same society ... And thus ... we see how labour could make *men distinct titles to several parcels of it, for their private uses*; wherein there could be no doubt of right, no room for quarrel. (§. 38, 39, my emphasis)

It is tempting to read Locke's account as ushering in a now familiar territorial configuration of property, predicated on individualist and exclusionary claims to land and its affordances, driven by the logic of commodification and colonialism. While this would be entirely appropriate, we need also to note the ways in which Locke's 'distinct territories' also drew from older and well-established understandings of how rights to land were to be spatially organized and expressed (Seed, 1995). Locke drew from these preexistent geographies of property, but extended them to fit the intensifying social hierarchies, individualism and commodification of early modern capitalism. In so doing, he echoed and advanced the sharpening territorialization of property in land, unfolding during the seventeenth century.

It is this that is my focus here, on the principle that the territorial dimensions of property demand our attention (Blomley, 2016a, 2016b; Ojalampi & Blomley, 2015). There is a vital, recursive, complex and consequential relationship between property and territory. That contemporary property relations are territorialized in particular ways, I argue, make a difference to how these relations are experienced, practiced and taken up. However, the tendency of geographers to tie territory to the state, combined with the resistance of most property scholars to engage with territory at all, means that there is little scholarship that focus on the territorial dimensions of property in land. So, for example, the wide ranging work of Elden (2013b) on territory places greater emphasis on its relationship to statecraft than on property (McDonagh, 2015; Valverde, 2015, p. 65). My paper seeks to address this remedy.

TERRITORY AND PROPERTY

In general terms, I treat both landed property and territory as social institutions that organize a set of relations between people, institutions and resources. As property polices access and control of designated resources, it organizes relations between people, in more or less exclusive ways, drawing from the institutional resources of the state. In so doing, property allocates social power, creating positions of relative protection and vulnerability (Anonymous, 1994). Property relations can be configured in many ways, prioritizing not only individuals, but also collectives, or the state. Private property rights organize power relations in particular ways:

If ... somebody else wants to use the food, the house, the land, or the plough that the law calls my own, he has to get my consent. To the extent that these things are necessary to the life of my neighbour, the law thus confers on me a power, limited but real, to make him do what I want Dominion over things is also *imperium* over our fellow human beings (Cohen, 1927, pp. 12–13).

While power relations can be expressed in many ways, their territorial manifestation is of significance, especially in relation to property in land. For present purposes, a territory is a unit of bounded, meaningful space governed so as to organize and regulate access. Territory serves as a consequential communicative marker, particularly through the meanings attached to the spatial boundary. As Sack (1983, p. 58) notes, the boundary 'may be the only symbolic form that combines direction in space and a statement about possession or exclusion'. Territory also serves as a powerfully encoded container, organizing and grounding legal identity in particular ways. As law is diverse, so legal territory

takes different forms. Property law is one crucial site in which territory is made and put to work, although in complex and dynamic ways. Property law regulates and distributes the complex relations of rights and duties that attach to land and its affordances. Territory in this sense can be usefully seen as an ‘interaction device’ (Brighenti, 2010, p. 224) or ‘political technology’ (Elden, 2010) that helps organize property relations, establishing a particular ‘economy of objects and places’ (Brighenti, 2006, p. 75). Territorialization helps to define, communicate and enforce a set of relations (of access and exclusion, in particular) through the deployment of spatial arrangements (boundaries, zones, inside/outside distinctions etc.) (Brighenti, 2010, p. 223; Ojalampi & Blomley, 2015). Territory, in this sense, is not simply an outcome of property relations, but serves as a significant means for its realization, legitimation and enforcement (Sack, 1983).

Property relations can be territorialized in ways, with different degrees of exclusivity, temporal permanence and boundedness (see, for example, Peluso, 1996). Defined in this broad sense, there is no necessary relationship between property and territory. Rather, the two combine in many culturally and historically conditioned manifestations (Fisher, 2016; Ingold, 1987; Thom, 2009). For example, land tenure in the pre-modern English rural commons was highly territorialized, but in ways that differ from modern forms. A ‘close’ represented an area over which individual property rights applied. It need not be surrounded by a physical obstacle – a trespass could be perpetrated by farm animals transgressing an imaginary boundary line (Manning, 1988, p. 26). Under certain conditions (notably, the consent of other members of a manorial community, compensated with an equivalent piece of former enclosures) land could be ‘enclosed’ by individuals. Bounded strips of arable land in the ‘open field’ were also made available for the exclusive rights of individual commoners. However, territorial rights were qualified in important ways. Most importantly, rights to land would be collectively regulated, via custom and the manorial court, and would be temporally contingent. So for example, arable land would be returned to collective grazing use after harvest. Crucially, commoners had rights to access and use designated common land, the title for which was vested in the manorial lord. Commoners also had the right to use designated paths, tracks and bridleways that traversed the land of others, or to go upon the lord’s land after harvest to glean leftover grain. While boundary markers were often used, some were temporary, protecting areas of land from grazing animals at certain times, for example.

Contemporary Western liberal forms of property are territorialized in a different way, with a greater emphasis placed upon generalized individual rights to land, with less regard to the consent and regulation of others. Functionally, the presumption is that the rights of the owner (to use, occupy, alienate and so on) applies uniformly across and exclusively within a defined space, and are operative at all times, unlike, say, gleaning.¹ It is also presumed that these rights attach to an individual owner who therefore is assumed to command all the resources within this designated space. Unlike traditional notions of common right, the owner is also assumed to have the right to govern the access of others to this territory, allowing conditional access or denying it entirely. As such, the owner is assumed to have a territorial ‘gatekeeping function’ that is not unduly constrained by the wishes and needs of others:

... [W]hat we mean when we say that ownership is exclusive is that owners have a right to exclude and that the right to exclude has a certain effect: the indirect creation of the space within which the owner’s liberty to pursue projects of her choosing is preserved ... The owner controls access to the attributes of the resource within the boundaries, which are hers in virtue of the exclusion of others. An owner has, in effect, a gate-keeping function. (Katz, 2008, p. 281)

The centrality placed upon the owner’s gatekeeping function relies from, and helps sustain, a particular trope or way of seeing (Brighenti, 2006), famously distilled in the maxim that ‘every man’s home is his castle’. This metaphor rests upon the principle that the autonomy of the owner depends on the designation and defence of boundaries, both spatial and conceptual

(Nedelsky, 1989). Autonomy is to be achieved by radical separation, rather than communal connection.

Such characteristics can be said to play an important role in certain qualities of property. Most immediately, the effect of such forms of territorialization, reliant upon an abstracted conception of space, is to facilitate reification, whereby property, as a complex bundle of rights and relations between people, is reduced to a relation between owner and land, as is evidenced by the claims of the title-holder that ‘it’s my property’, as opposed to the more socialized relationality of property evident in pre-modern rural society.²

RETERRITORIALIZED PROPERTY

Elden notes that ‘[t]erritory is a historical question: produced, mutable and fluid’ (2010, p. 812). It becomes interesting to ask, then, how property became re-territorialized in this particular fashion. An historical inquiry may be useful here, providing a history of the present through a temporal excavation of its conditions of possibility, tracing the ways in which actors have approached and analysed the territory of property, with an emphasis on the contingent emergence of such ideas. I offer here a few preliminary observations, focusing on late sixteenth/early seventeenth century rural England as a particularly significant moment in which property and territory were reassembled. I focus on a set of a calculative, economic and political-legal practices (cf. Elden, 2010) – surveying, husbandry and law – on the assumption that ‘[t]erritory doesn’t just happen: it has to be worked’ (Painter, 2010, p. 1105). These practices, I suggest, played an important role in remaking the territorial dimensions of rights to land. Their practitioners placed an increased importance upon territorial exclusivity, centred on individual rights, most particularly the right of the individual to exclude others. As such, the legal and practical defence of territory became of more pressing importance. These practices relied on and helped sustain a particular type of visualization and spatialization, I shall suggest. Increasingly, property became disentangled from a localized nexus of collectively organized and policed relations, and was inserted within wider networks of calculation and commodification.

Some quick qualifiers are in order, however. First, it is clear these practices, while important, did not stand alone. Johnson (1996) reminds us that agrarian enclosure must be situated within wider processes of material closure, evidenced in cultural practices such as house design and the organization of documents. Changing conceptions of territory and state power during this era (Elden, 2013a; Henry, 2014; Kain & Baigent, 1992) also need to be considered. Second, we also need to note that the forms of territorialization described below were often qualified, ambivalent and non-linear. McDonagh and Griffin (2016, p. 2) point to a ‘testing and teasing out of rights and access through which the modern concretized version of exclusive property in land emerges’. As we shall see, the practices of reterritorialization were often contested, and thus hard to realize on the ground. Thirdly, as Locke reveals, this process entailed a *remaking* of property’s territory. In other words, these practices drew from and reworked older geographies of property, although often in new ways. Fourthly, these three areas of practice were not discrete. Although a response to particular issues, and reliant on distinct forms of knowledge, there are technical and rhetorical overlaps between them. Finally, the novelty of the changes documented here is far from uncertain. Although English estate mapping, for example, was deemed somewhat ‘precocious’ (Kain & Baigent, 1992, p. 262), the production of surveys and maps by landowners as a tool of management and control was taken up elsewhere in Europe and beyond during this era (Edney, 2007). An adequate history of the territory of property will require research pitched at a wider geographic and temporal scale.

LAW

To trace the work of law in the territorialization of property is far from straightforward. For example, the very category of ‘law’ is at issue, given the crucial role of ‘custom’ and the degree

to which it is recognized by the judiciary as authoritative (Loux, 1993). The range of law effecting property is also multiple, including land law, torts and contract. For present purposes, therefore, I have chosen to focus on two realms of law that begin to shift during the seventeenth century: first, the very meaning of 'property' itself, and second, the manner in which legal conceptions of property were territorialized on the ground via the action of trespass.

It may surprise us moderns that property was not given legal definition until relatively recently (Aylmer 1980). This is not because English people of the early middle ages did not have a well-defined sense of the things that they owned. However, they would use 'property' to refer to 'one's name, spouse, children, parents, servants, friends, country, king, lord, body, soul, sins, debts, thoughts, death and a lot of other possessive uses that stretch far beyond the legal pigeonhole that lawyers later labelled "property"' (Seipp, 1994, p. 32). However, it is clear that from around 1290 to 1490, English lawyers did not have a term that had the scope and explanatory power that later lawyers found in the words 'property' or 'ownership': 'they lacked a word for legally protected interests in both land and goods, one that would assimilate these interests to some degree, and separate them from other legally protected relations' (Seipp, 1994, p. 31). Those designations that were available tended to be assigned to personal goods, rather than land. This perhaps was because that while goods and animals could be stolen or strayed, land stayed put. The identity of the rightful holder of land was common knowledge, while goods and animals required legal nametags via ascriptions of 'property' to some person.

Although changes to English property can be traced to slow shifts in earlier centuries (Baker, 1971, pp. 121–175; Elden, 2013a, pp. 213–241), early modern rural England began to see a sharpening shift in its meaning. We see a hardening and concretion of the notion of property in land, with a slow, tentative and contested movement away from feudal entitlements, where land was held 'of others, to a more recognizably modern conception of property as a basis for individualized entitlements to land that could be rented, used, sold and willed (Overton, 1996). By the early seventeenth century, 'property' had been installed 'as a fundamental concept applying to land', from which it begins to be possible to designate a single person as an 'owner' (Seipp, 1994, p. 80).³

But this was a far from straightforward process (Sampson 1990). Crucial was the role of the jurist St German, whose *Doctor and Student* in the 1520s was the first work on English common law in wide circulation to delineate a general law of property, applicable to land as well as goods, identifying an abstract and universal 'law of property' (*lex proprietatis*). St German refers to 'that generall lawe or generall custome of propetye wherby goods movable and unmovable be brought in to a certayne propetye so that every man may knowe his owne thinge' (Aylmer 1980 at 87). However, as Aylmer notes, St German failed to provide a definition of property itself. Only until 1607 did Cowell provide the first definition: 'Propertie signifieth the highest right that a man can have in anything; which is in no way depending on any other mans courtesie' (quoted in Aylmer 1980 at 89). However, Cowell immediately qualified this, by noting that no one can have a property in their lands, defined thus. Other than the Crown, all hold land mediately. Some later sixteenth century definitions, moreover, applied the term only in relation to personal goods.

Edward Coke, the early seventeenth century jurist, made an important distinction, disentangling absolute property rights from 'qualified' or 'special' property rights, arguing that whoever held the 'absolute' property in a thing could assert their claim against the world, whereas he or she who held the 'special' interest could assert it against everyone but the 'absolute' owner. Later lawyers began to make a stronger hierarchical distinction between the two. If the former was characterized as 'absolute', 'principal', 'true', or 'greater', the latter was 'qualified', 'conditional', 'mere' and 'a kind of property' (Seipp, 1994, p. 84).

A grand rule was emerging: whoever had the 'general' or 'absolute' property in a thing could assert that interest against everyone in the world, and whoever had the 'special' property could assert it against everyone but the 'general' or 'absolute' owner. (Seipp, 1994, 84)

The effect was significant. While multiple people could have different sorts or degrees of property interest in the same land, the lawyer's lexicon began to only allow for one 'owner', who was free to do with a thing as the law allowed.

Crucially, land itself also became an object of property. As noted, in mediaeval England, it was goods and animals, not land, that came closest to some conception of absolute property. From the sixteenth century onwards, lawyers began to extend their model of ownership of goods and animals to landholding such that it was conceptually possible to imagine 'property in land' and 'owners of land'. Given the sharpening distinction between 'absolute' and 'special' property interests, noted above, land began to be conceived of as a thing from which others were to be presumptively excluded: 'As land became more "property-like", the newly named "owner" acquired more freedom to alienate, to extract value in new ways, and to exclude others, while the long-recognized rights of other persons over the same land was diminished' (Seipp, 1994, 89). The effect was to reconceptualize the relationality at issue in property disputes: 'Conflicts were no longer between holders of rights of common and "the lord of the manor" or "he who has the freehold". Now the protagonists were the commoner and the "owner of the soil" or "owner of the land"' (Seipp, 1994, 85).

The effect was to inaugurate a new set of imaginative geographies. Lawyers increasingly invoked 'a stark mental imagine of one solitary person alone in complete and exclusive possession of one tract of land' (Seipp, 1994, 87). Exclusive possession thus required a legal remedy for those who might enter into the freehold of another without consent or other authority. For us moderns, the action of trespass, brought against the unauthorized and unjustifiable entry upon land in another's possession, is the obvious choice. Trespass to land, strikingly, is actionable regardless of the extent of the incursion, without any necessary showing of injury or damage to the claimant. It is, in other words, quintessentially territorial: merely to cross the boundary is to commit a trespass. As Blackstone noted:

every man's land is in the eye of the law enclosed and set apart from his neighbour's; and that either by a visible and material fence, as one field is divided from another by a hedge; or by an in ideal invisible boundary, existing only in the contemplation of the law, as when one man's Land adjoins to another's in the same field. (1768/1979, p. 209)

For mediaeval lawyers, trespass was used to refer to many wrongs, from murder to diverting water onto someone's land (Seipp, 1996). While trespass to land was one of those wrongs, it would have been viewed in a different light, however. In particular, it would have been of less consequence, given the way in which land itself was routinely used and accessed by many. As such, only a limited set of 'entries' upon land were deemed a threat that deserved a remedy. Given the overlapping nature of rights in land:

... many persons other than the 'tenant in possession' would work and live on a given parcel of land, and derive benefit from it. Many others would take some of its produce, or simply make their way across it on the way to somewhere else ... The image of one individual owner, or even one family, excluding all others and taking all increase from a parcel of land would have been a vast oversimplification, and probably an unrecognizable image for holders of large or small parcels. (Seipp, 1994, pp. 45–46)⁴

In the older model, the value of landholding rested not on its exclusivity, Crucially, the primary relation of an individual to a parcel of land 'could be maintained without physically excluding others. Indeed, land had little value to the rightful holder if others were entirely excluded' (Seipp, 1994, 87). Even in the case of urban land, governed by forms of tenure that were less encumbered by feudal obligations, property was 'more conditional and less exclusive and individualistic than it is now. Contemporaries recognized the simultaneous existence of a plurality of interests in one space – some of them deferred, some contingent, and some barely enforceable'

(Harding, 2002, p. 558). While contemporaries ‘were highly sensitive to spatial divisions and boundaries’ (Harding, 2002, 552), their understandings did not necessarily parallel modern conceptions of trespass. If a single tenement ‘belonged’ to multiple parties, the occupier’s rights to bar entry to others was often compromised: ‘The right physically to enter a property figured largely in these cases: literally to bar the door to a legitimate claimant was to deprive or disseize him of a right and could lead to long litigation’ (Harding, 2002, 555). Rather than the boundary being a bulwark against others, legal practice ensured that controls in the public interest were strongest at the interface between properties, the guiding principle being that ‘the territorial integrity of the individual property was modified by increased obligations and restrictions at the margin’ (Harding, 2002, 560).⁵

However, as property became understood in more singular, exclusive terms, the ancient action of trespass was applied more generally to defend landed property, now imagined in more sharply territorialized terms (Linklater, 2013, p. 37). Thus McDonagh and Griffin (2016) point to a ‘progressive spatialization’ of the term, so that ‘the generalized medieval concept was increasingly used in early modern England to discipline those who passed beyond a limit’ (p. 3). Edward Coke characterized customary agrarian law as ‘snares that might have lien heavy on the subject’ (in McRae, 1996, p. 163). As property is freed of such snares, and owners ‘set out the bounds of their distinct territories’ (Locke), property is imagined as an exclusive right. As such:

... the owner may retain to himself the sole use and occupation of his soil: every entry therefore thereon without the owner’s leave ... is a trespass or transgression. (Blackstone, 1768/1979, p. 209)

SURVEYING

To change property is to reconstitute its geographies. This is evident in the changing conception of land surveying. Traditionally, the surveying of manorial lands was undertaken at the ‘court of survey’. Largely non-cartographic, this entailed an enumeration and valuation of assets and use-rights, with little emphasis given to the location or areal extent of lands (Beresford, 1998; Smail, 1999). It was conducted not by an outside expert, but by a manorial official, with the help of those tenants whose memories went back the furthest (Taylor, 1947, p. 122).

By the early seventeenth century, this form of performance cartography (Woodward & Lewis, 1998, p. 4) began to give way to a new conception of surveying, now reframed as a technical endeavour, engaged in by experts in geometry, accurate measurement and cartography, the outcome of which was a map, drawn to scale (Blomley, 2014). The survey was no longer a description of the use-rights that inhered in a particular site, but a rendering of land as a bounded parcel of space. The survey, in other words, became spatialized, as the concept of landed property ‘as a bundle of assorted rights over different bits of territory gave way to the idea that property lay in definable pieces of soil’ (Thompson, 1968, p. 10). The latter entailed a remarkable cognitive shift. So, for example, Love advised the surveyor to first imagine the manor as an abstract space, walking or riding around the manor once or twice so ‘*that you may have as it were a Map of it in your head*’ (1623/1687, p. 142, my emphasis).

If we assume, as we must, that mapping is performative rather than simply representational (Kitchin & Dodge, 2007), it becomes interesting to ask how emergent conceptions of surveying were implicated in changing conceptions of property’s spatiality. Two points are worth noting. First, the modern survey may be said to assist in encouraging a view of property as an actionable space, rather than a bundle of localized relationships. Crucially, emergent forms of surveying relied heavily on a geometric conception of space. In so doing, space emerged in Western thought as something ‘extensible and calculable, extended in three dimensions, and grounded on the geometric point’ (Elden, 2005, p. 8). This is an important point. The surveyed map did not simply

reposition property within an existing spatial imaginary. In an important sense, it helped produce the very idea of space – and, by extension, a particular conception of territory – itself.

Geometry, in this sense, is more than an instrument for representation. As Elden (2005) notes, early moderns such as Descartes saw it as a site of calculation. Secondly, as geometry helped reduce space to a manipulable form, it became easier to conceive of property as a territorialized zone of action and calculation. As Sack (1983, p. 63) notes: ‘to think of territory as emptiable and fillable is easier when a society possesses writing and especially a metrical geometry to represent space independently of events The coordinate system of the modern map is ideally suited’. The early modern surveying manuals sought to educate and inculcate such a geometric sensibility, echoing the vigorous advocacy of mathematical practitioners in related fields in sixteenth century England, keen to demonstrate the utility of geometry and arithmetic to practical economic and political projects (Bennett, 1991; Johnston, 1991). The injunction, more generally, was to:

reduce what you are trying to think about to the minimum required by its definition; visualize it on paper, or at least in your mind, be it the fluctuation of wool prices at the Champagne fairs or the course of Mars through the heavens, and divide it, either in fact or in imagination into quanta. Then you can measure it, that is, count the quanta. (Crosby, 1997, p. 228)⁶

By counting the quanta, the survey made possible a view of land as that which could be differently appraised and evaluated. Surveyors (as well as kindred writers on husbandry, as we shall see) increasingly characterized the estate as an object of ‘improvement’ (that is, both an object of appropriation and a site for individual betterment), the effect of which was to reconstitute rights to land as something that could be:

[c]learly and objectively ... determined, in a manner which precludes competing or loosely held customary claims. Land ownership is thus figured as reducible to facts and figures, a conception that inevitably undermines the matrix of duties and responsibilities that had previously been seen to define the manorial community. In the perception of the surveyor, the land is defined as property, as the landlord’s ‘own’. (McRae, 1993, p. 341)

While the results of the court of survey were to be assessed and evaluated by members of the manorial community, the data generated by the modern survey were to be plugged into wider circuits of calculation, appraisal and comparison. For example, the modern surveyor insisted on the measurement of land through the use of universal metrics, such as the standard chain, tables of calculation and instruments. Such metrological moves made possible a conception of the land as a resource which can begin to be plugged into wider circuits of comparison and economic calculation. I discuss this important point more fully elsewhere (Blomley, 2014).

Further, the modern survey worked in a different register. If the traditional surveyor relied on oral memory, the modern surveyor traded in visuality. One of the practical qualities of the modern map, it was said, was that it promised to open up a space of clarity and certainty, and ‘retrieve and beat out all decaied, concealed and hidden parcels [of land]’ (Agas, in McRae, 1993, p. 341). The surveyor participates in creating the world ‘as exhibition’, whereby space is set before the viewer (Mitchell, 1995). In Norden’s *Surveyor’s Dialogue*, a farmer queries why their lands needed to be portrayed on a map, asking ‘is not the field it selfe a goodly Map for the Lord to look upon?’ Norden’s surveyor replies that the map enables the Lord ‘sitting in his chayre, [to] see what he hath, where and how it lyeth, and in whose use and occupation every particular is, upon the suddaine view’ (Norden, 1618/1979, pp. 15–16). The advantage of the ‘suddaine view’ in allowing the landowner to ‘know his own’ reoccurs in surveying manuals, Delano-Smith and Kain (1999, p. 117) note. Now the Lord, ‘sitting in his chayre at home, may justly knowe, how many miles his Manor is in circuite, and the circuit of any particular grounds, and

wasts' (Worsop, quoted in Brückner & Poole, 2002, p. 624). Estate management increasingly became premised on the management of territory, best realized through visual surveillance and organization. Land became an object of distanced calculation, a departure from the more conservative tradition of estate management in which 'the best dung for the field is the master's foot' (McRae, 1993, p. 351; cf. Cosgrove, 1985). Initially referring to a parcel of land, the word 'plot' was increasingly used to refer to a map. The map, in other words, begins to become a substitute for the land itself, and 'a reduction of land and tenantry to their graphic and written representations takes on the status of truth' (Sullivan, 1994, p. 239).

HUSBANDRY

Practical primers extolling modern forms of surveying, targeted at the ingenious and active landowner, were part of a larger corpus of texts. Husbandry manuals, offering practical advice on estate management, also became widespread in the sixteenth century. In the early seventeenth century, however, these books began to use a new rhetoric of improvement, productivity and profit (McRae, 1996; Slack, 2015; Thirsk, 1983). But to achieve these ends, it was felt, required that property relations be rearranged in a more exclusive and singular fashion. Manorial property was seen, too often, as deeply entangled and excessively relational, with multiple use-rights attached to the same parcel of land. Customary forms of tenure, including common right, were deemed an obstacle to 'improvement' (Thirsk, 1967). The freehold estate was thus to be preferred because it allowed the owner to make the most of what was now increasingly deemed his own (cf. McRae, 1993). It is for this reason that many of the husbandry manuals advocated forms of territorialized enclosure. Moore (1653, pp. 12–13) argued that waste cannot be brought to productive use through the 'common husbandry' of the 'vulgar'. The only solution was distribution of land to 'private owners, which being appropriated to their particular uses, will then be cleansed and purged of the former deformities, and so fully improved ...' Is it better, Moore asks rhetorically, for you to 'have no particular property in [land] ... [o]r to say this is *mine*, I can let, sell, or dispose it at my pleasure, and so assure me a certain means and estate (out of nothing) *wherein others have not to do?*' (my emphasis).

Such a territorial strategy seems to both reflect and inculcate a form of possessive individualism (Macpherson, 1962): 'Doth not every man covet to have his alone?', asks Moore, rhetorically (1653, no page). Such a sensibility rests on a relation to land, now conceptually mapped as a discrete territory. Blith (1652) argues that when 'men know their own', 'improvement' will surely follow: 'Were every mans part proportioned out to himself, and laid severall [i.e., enclosed], it would so quicken and incline his spirits, that he would be greedy in searching out all opportunities of Improvement whatsoever the Land is capable of ...' (86). Put more bluntly, 'now that mens lands ... is their owne, they may do with them what they list' (Standish, 1613, B1).

For men to do 'what they list', it seems, required a spatial reconceptualization of property. Property was imagined not just as a thing ('this is mine'), but also as a territory from which others are to be excluded. One striking example comes from Cressy Dymock's proposal for the 'division or setting out of land', designed to prevent the 'unremediable intanglements or intermixtures of interest of severall persons in the same Common, in the same field, in the same Close, nay sometimes in the same Acre ... [and] the inconvenient passages made or allowed between divers grounds' (in Hartlib, 1653, pp. 3–4).

Such 'intanglements' are seen not as the interpersonal obligations and socialized property relations associated with manorial life, but as the predatory incursions of those lurking 'outside' the boundary. Dymock worries at the poor who will let their pigs loose and 'on set purpose drive them thither by which means they will sometimes get a haunt of a piece of corn, and go into it so cunningly' (Hartlib, 1653, 7). The 'evill contrivance and inter-mixture of wayes and interests' (Hartlib, 1653, 8), Dymock fears, is the reason why many are unwilling to 'improve',

for they 'have no place secure enough, but may every day one before the other expect, that the carelessness or wickedness of their Neighbours' may let in animals to 'destroy all their labours and charges in an instant'.

The solution was to territorialize property through a remarkable set of geometric arrangements that severed the overlapping, relational ties of the commoning economy, placing the manor house at the centre of a series of enclosures (Figure 1). Both the subject (the owner) and the object (the land) are to be detached. For Dymock, such a plan fostered the separative self: 'here your house stands alone in the middle of all your little world' with your land, animals and outhouses spread before you, as if it were a girdle or cape, ensuring a form of territorial purity, with 'no one ground to passe through into another, no probability of being trespassed upon by others ... but the most perfect right and ample use of every foot of ground inclosed entire' (Hartlib, 1653, pp. 10–11). Such a panoptic territorial arrangement, allowing for efficient use, movement and surveillance, was to be defended by a 'double hedge', with access only through a bridge or gate 'strong and stanch that I might let in what I would; but that nothing might get in without my leave' (Hartlib, 1653, p. 20, my emphasis)

Dymock's reference to a hedge speaks to the enforcement of territoriality. Practically speaking, the expansion of enclosure required the imposition of new forms of spatial discipline and control. As the 'gatekeeping function' of the singular owner began to be foregrounded, so access to space had to be differently organized, through forms of territorial classification, communication and, crucially, enforcement, including the enrolment of resources. For example, husbandry manuals encouraged the planting of thorn hedges along boundary lines. While hedges had long been used, they were to take on a different significance in this period, territorializing a new set of controversial discourses around land and property rights. In so doing, the hedge aimed to prevent the forms of spatial movement associated with the commoning economy. This territorial discipline

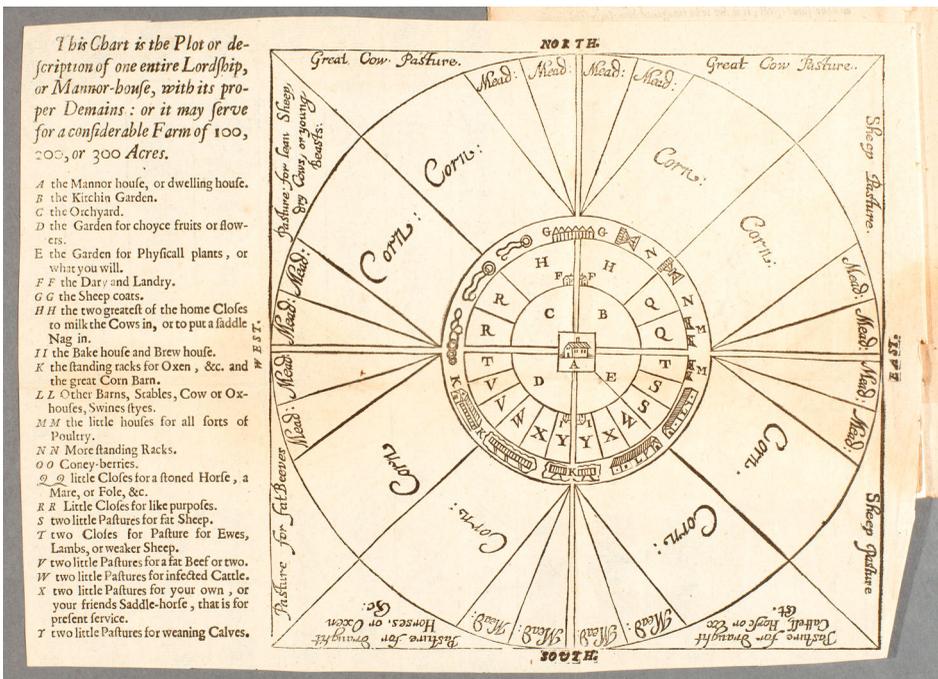


Figure 1. Dymock's 'little world', from Hartlib, Samuel, 1653, *A discoverie for division or setting out of land, as to the best form* (The Huntington Library, San Marino, California, USA).

was socially directive: the body, notably that of the commoner, and his or her beasts, became the site upon which new forms of discipline, materialized in the hedge, were to be realized (Blomley, 2007).

The hedge served two territorial purposes – it communicated and enforced. As noted, the enclosure hedge had long signalled the creation of a ‘close’, a space of exclusive use and entitlement. Thus, ‘the appearance of the enclosing hedge in the landscape served notice that henceforth the commodity of one individual was to preferred’ (Manning, 1988, p. 25). This traditional semantic marker was mobilized on a larger scale to advance ‘improvement’. The hedge also did practical work, enforcing an emergent form of class discipline. The manuals of the day recommend the creation of the ‘double hedges’ that secured Dymock’s geometric utopia. These were redoubtable defences, including ditches, that were to be ‘plashed’, or woven together, so as to be impenetrable to man or beast, using hawthorn, the organic barbed wire of the day.

Thomas Tusser’s widely read husbandry manual, reportedly the biggest-selling book of poetry published during the reign of Elizabeth I (Bending & McRae, 2003, p. 124) encouraged the use of the hedge to enforce the new territories of property. Tusser extolled personal advancement, urging his reader to ‘folow profit earnestlie’ (1580/1873, p. 13). To do this, he repeatedly claimed, requires a stout, maintained hedge: ‘Keepe safely and warely thine uttermost fence/with ope gap and breake hedge do seldome dispence’ (1580/1873, p. 42). The hedge provides protection from the commoner, who now figures not as a holder of legitimate use-rights (to graze, glean and so on), but as a predatory and threatening violator of the exclusive territorialized rights of the husbandman.⁷ Tusser harped on this theme in his eulogy to enclosure, which begins ‘[t]he countrie enclosed I praise,/the tother delighteth not me’ (1580/1873, p. 140), frequently cited by later proponents of enclosure, such as Worlidge (1669, p. 11) and Blith (1652, pp. 87–92). The commoner and his cow threatens your grass, corn and peas, he warns, echoing later securitized notions of ‘target hardening’: ‘More profit is quieter found’, he concluded, ‘where pastures in severall [enclosed] bee ... [W]hat joie is it knowne/When men may be bold [confident, certain] of their owne!’ (1580/1873, pp. 143–145). But for men to be ‘bold’ requires that that which is now ‘their owne’ be well guarded: ‘keep safe thy fence’, he counselled, ‘scare breakhedge thence./A drab and a knave/will prowle to have’ (1580/1873, p. 33).

ALTERNATIVE GEOGRAPHIES OF PROPERTY

Tania Li reminds us that exclusion from land always raises the question: ‘Why do your arguments and forms of inscription (lines on a map, or words on paper) prevail against my arguments, my modes of inscription (the axe, the plough, the presence of spirits) and my need to sustain myself?’ (2014, p. 592, my emphasis). Such a question can also be asked in the negative, for such arguments and inscriptions do not always prevail. Similarly, the early modern re-territorialization of property in land was far from clear, uncontested and non-ambivalent. Attempts at reformatting property’s geographies frequently collided with different spatialities of property.

So, for example, the surveyor’s new enthusiasm for geometric territory rubbed up against residual moral economies, including a ‘discourse of Calvinist asceticism, associating practical art and economic development with moral corruption’ (Edwards, 2006, p. 13). As a result, ‘for every passage in a seventeenth century surveying manual which promotes fantasies of mathematical reduction and discipline there is another which insists upon the legal and social complexity of customary landscapes’ (Edwards, 2006, p. 13). Mathematics in seventeenth cartography oscillated between virtue and profit, or ‘manor’ and ‘market’. English geography was ‘ambivalent: overdetermined by shifting, overlapping determinations of what was true and what was virtuous in the use and representation of space’ (Edwards, 2006, p. 80).

Similarly early modern estate surveyors faced criticism, being seen as instruments of enclosure and avarice, and thus disruptive of a traditional order. John Norden's dialogue imagines such an encounter between the surveyor and the tenant farmer, who fears that:

you [the surveyor] are the cause that men loose their Land: and sometimes they are abridged of such liberties as they have long held in Mannors: and customes are altered, broken, and sometimes perverted or taken away by your means: And above all, you looked into the values of men's Lands, whereby the Lords of Mannors doe racke their Tennants to a higher rent and rate than ever before. (1618/1979, p. 3)

Reflecting these anxieties, Norden's account ricochets between damning condemnations of avarice and enclosure, and avaricious celebrations of the Lord's 'own'.⁸

Similarly, those who sought to recover traditional geographies of access and use often targeted new forms of material territorialization. Not surprisingly, the enclosure hedge of the enterprising husbandman was a frequent target. Indeed, hedge-levelling, as it was known, became 'something of a national pastime' at the turn of the sixteenth century (Manning, 1988, p. 316). In 1596, protestors in Oxfordshire called for a rising of the people 'to pulle downe the enclosures, whereby waies were stopped up, and arable lands inclosed, and to laie the same open againe' (Walter, 1985, p. 100). Importantly, there are suggestions that for every one organized protest there were a dozen cases of people 'throwing a gate off its hinges [or] uprooting some quicksets' (Thompson, 1993, p. 115).

Such acts, of course, could be seen as a form of trespass. Such territorial affronts, including the 'depasturing' of animals (i.e., grazing commoner's animals on enclosed land), were thus often aggressively punished. By 1600, hedge breakers at Ingatestone, Essex, were to be whipped until they 'bleed well' (Rackham, 1986, p. 190). However, the opponents of enclosure often read the territory of property differently. For the commoner the breaking of an enclosure 'carried a symbolism of its own' (Blomley, 2007; Manning, 1988, p. 27). For the encloser, a hedge was a protective barrier: for the commoner it was an illegitimate divider. For the former, the hedge materialised the private property owner's right to exclude. For the latter, it was an affront to the commoner's right to *not* be excluded (Blomley, 2016c). The breaking of a hedge, McDonagh and Griffin (2016) point out, was not simply directed at the boundary. It was also intended to open the space enclosed by the boundary, in order to let commoner's livestock in. Such enactments also served to 'perform' common right (McDonagh, 2013, p. 40), providing a physical means 'by which title and ownership could be inscribed on the land through use and daily practice' (McDonagh 2009, p. 199).⁹

However, as such customary territorial enactments of property rights became reimaged as assaults on absolute property, so we see a hardening of exclusive territorialized property rights in land. Yet the record also reveals that the practice of commoning was not so easily suppressed: 'It would take many years, if it happened at all, before [the] idea of right ... was worn down into a privilege, and before commoners would accept that privileges could be taken away' (Neeson, 1993, p. 163). Locke's confident claims that 'there could be no doubt of right, no room for quarrel' (§. 39) regarding the unequal and individualized geographies of property that he celebrated need to be qualified.

One striking example is the practice of gleaning, the custom that permitted poor cottagers to enter onto harvested land to collect leftover grain. For example, an action for trespass was brought against Mary Houghton for gleaning in closes at Timworth in Suffolk. At the Court of Common Pleas in 1788 Lord Loughborough rejected her defence on the grounds of common right, arguing that 'the nature of property ... imports exclusive enjoyment' (quoted in Thompson, 1993, p. 139). Mr Justice Wilson concurred:

No right can exist at common law, unless both the subject of it, and they who claim it, are certain. In this case, both are uncertain ... The soil is his [the farmer's], the seed is his, and in natural justice his also are the profits. (Thompson, 1993, p. 140)

However, as King (1989) notes, the legal attacks mounted against gleaners in the 18th and 19th Centuries were often unsuccessful. Indeed, in one case, a farmer who seized a gleaner's bag was charged with theft. Gleaners (nearly all women) acted collectively to defend what they regarded as their right, often successfully arguing that they enjoyed local customary rights. So even though courts tended to find for the farmers, 'the continued strength of the gleaner's rights in practice largely prevented the actualization of Lord Loughborough's absolute conception of property rights' (King, 1989, p. 147; Shakesheff, 2002).

CONCLUSIONS

Property is a system of relationships between people, which derive from, enforce, and sustain a set of relationships of power. When we organize and distribute property rights, we organize and distribute social privileges and powers. In that sense, property rights are not self-defining:

Rather, the legal system makes constant choices about which interests to define as property. It also determines how to allocate power between competing claimants when interests conflict. And the pattern of protection and vulnerability is a result of a historical and social context which has created different opportunities based on such factors as race, sex, sexual orientation, disability and class. (Singer, 1991, p. 46)

The 'historical and social context' of seventeenth century rural England is important in that it allows us to trace the emergence of the property system with which we still live, and the particular power relations it enforces and legitimates.

Tracing the work of landed property is a vital analytical and ethical task. To understand the relational work of property, I suggest, it helps to understand its territoriality. Territory is not just an outcome of the power relations operative in property, but a means through which such relations are realized. Territory and property can be configured in multiple ways. That they were brought together in a particular relational geography in seventeenth century England, shaping and curtailing alternative territories of property in the present, is surely significant. In particular, a particular conception of private property helped generate a distinctive territorial logic, predicated on sharp boundaries that carve out a domain of individual exclusivity and distinction. This has had both practical and conceptual effects, organizing a particular 'economy of objects and places' (Brighenti, 2006, p. 75). The precursors of many taken-for-granted territorial dimensions of private property within Western liberal societies – the boundary as a defensive edge that protects a secured territory; the visualization of property as an abstract space; the model of possessive individualism that frames the conception of the owner; the foreshortened ethical relationality of property; the temporal permanence of territory – all can be seen in the claims and practices of the early modern surveyors, lawyers and estate managers. For some, property's territory protects, sustains identity, and frames conceptions of rights. For others, it serves to generate precarity, denial and harm. Four centuries later, territorialized exclusion still 'hedges in some to be heirs of Life, and hedges out others', as the seventeenth Digger Winstanley put it (Manning, 1988, p. 30). History also reminds us of the contingent character of our present territorial arrangements: the 'hedges' of property, and the work they do are neither natural nor inevitable. Just as the convergence of state power and territory has a history, so too does the changing conjunction of property and territory. A product of social processes and social struggle, it can be remade differently.

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NOTES

1. It is important to recognize the way in which territory organizes time in particular ways, as well as space, as Fisher (2016) notes, establishing varying degrees of permanence.
2. In earlier usage '[o]ne did not say "this is my property," as we use the term now. Rather, one said "I have property in it" or "the property of it is to (or with) me"'. (Seipp, 1994, p. 33; cf. Macpherson, 1975, pp. 110–111)
3. Conversely

medieval lawyers never spoke of a person *owning* an estate in lands ... Freeholders are all tenants, so they *hold* the Manor of Dale (or whatever the property is called). Their interests are measured by time; they hold the manor for an estate in fee tail, of for life, or whatever, either *in possession*, or *in remainder*, or *in reversion*. Nothing further need be said about anyone owning anything for the legal position to have been fully stated. (Simpson, 1986, pp. 88–89)

4. Grotius (1583–1645) affirmed a right of innocent use to those things which can be shared without loss to the private property holder, including free passage across private land (Pierson, 2013, p. 171).
5. Rural conceptions of the property boundary appear similar. While the enclosure of land was permissible within the common field system, it was regulated. As such, illegitimate enclosures were seen as an affront to others.
6. Euclid's *Elements of Geometry* was first translated in English in 1570. In the preface, John Dee notes the connection between geometry and 'land-measuring', and praises '[t]he perfect science of Lines, Plaines, and Solides [which] (like a divine Justicier,) gave unto every man his owne' (McRae, 1993, p. 345)
7. McRae (1996) notes the manner in which the new generation of husbandry manuals characterized 'any of the traditional claims that impinge upon the farmer's sovereignty ... a form of theft' (p. 151)
8. Interestingly, those fighting to protect their common rights sometimes had maps drawn up for use in the courts (Mitchell, 2006, pp. 212–219).
9. 'In a world in which occupation was equated with ownership, (dis)possession was an important means of asserting legal title and defendants knew that by occupying land or houses in dispute they might force the court to decide title' (McDonagh, 2013, p. 36) Possession was 'an important way of resisting the extension of private property rights, even whilst it was also property's ultimate aim' (McDonagh, 2013, p. 52). Occupation became 'an embodying of possession', that was spatially inscribed (McDonagh, 2013, p. 52). McDonagh and Griffin (2016) refer to the increasingly spatialized concept of 'occupation' (originally used to refer to the holding of an office) in relation to the possession of real property, including common property. To occupy was to take back, but it was one that also 'mimetic of the spatial logic of private property' (p. 9)

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