

## On the origins of possession and property

**Abstract:** In texts about property, a consistent distinction is rarely made between possession and property. Therefore occupation of land during the development of agriculture is usually seen as the birth of property. However, this original occupation initially only gave rise to communal possession. Property came into being much later through purchase.

This is an attempt to explain how the first land purchase came about and why the property rights resulting from it were recognized and protected by the state.

It also explains why, in the discussion of property, a distinction must be made between possession property (property where property rights and possession rights are in one hand) and capital property (property that generates capital income through renting or leasing).

**Keywords:** possession, property, creation of property, possession property, capital property, capital income

### 1. In the beginning there was Possession

Land suitable for farming was plentiful, and within a few centuries, agriculture had spread throughout Southeastern Europe.

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Background to this attempt to reconstruct the emergence of land ownership is the fact that all archaic cultures agree:

Basically, land [...] is not for sale; one can only acquire permission to cultivate it temporarily.<sup>2</sup>

In all agricultural cultures that did not yet have a monetary economy, but only a gift or barter economy, land was communally owned. Land was inhabited and cultivated communally. The idea that a person could buy a piece of land and thus privatize it was met with complete incomprehension in such communities. Humans had not created land. Who would have the right to sell it? Who would accept a sale? For what should money be paid, when purchasing land for the first time? How much was a piece of land worth? What does land ownership even mean? And how can a person acquire ownership rights to land beyond their death?

Over a process spanning several thousand years, a property right has developed in all societies operating on land and a monetary economy that no longer makes us asking these questions, because we consider property not only self-evident but necessary. But that is no reason not to seek answers to these questions. In fact, these questions arose when property-based cultures encountered nomadic or semi-nomadic cultures.

In Australia and America, the natives considered outrageous the division of land into private property, was introduced by Europeans in the 15th and 16th centuries.<sup>3</sup>

However, studies on the origins of property often suffer from a lack of consistent distinction between possession and property. For example, Heinsohn and Steiger, referring to Roman law,

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<sup>1</sup> Haarmann (2017), 37f.

<sup>2</sup> Hoffmann (2001), 312.

<sup>3</sup> Heinsohn/Steiger (1996), 135.

define possession very clearly as

possessio in facto non in iure consistit, that means: possession consists in facts, but not in legal titles.<sup>4</sup>

A page earlier, however, they quote Jean Jacques Rousseau

with his famous attack on private property [...] "The first person who thought of enclosing a piece of land and claiming 'This is mine,' and who found people simple enough to believe him, was the true founder of civil society."<sup>5</sup>

This sentence is often understood as a criticism of private property.<sup>6</sup> What Rousseau describes here, however, is merely the emergence of possession. Fencing land alone does not create a legal title; the mere fact of taking physical possession through enclosing merely establishes a right of possession over the land.

The extensive literature on property also includes Leibigers *Eigentum im 21. Jahrhundert* (Property in the 21st Century). He too does not consistently distinguish between possession and property, and puts forward the thesis:

Property is inextricably linked to labor as the appropriation of nature by humans, because this always occurs socially.<sup>7</sup>

I do not share this thesis. Leibiger, like Rousseau, seems to consider the acquisition of land through the appropriation of nature as the birth of property. However, the right of property, the absolute control over something, only arises through purchase. Money is essential to the acquisition of property. The following will examine the connection between money and property in more detail.

Possession rights can still be established today simply by taking possession. For example, when I sit down at a table in a restaurant, I take possession of a chair. Through the act of sitting, I establish my right of possession. This right is not lost by going to the restroom, but it ends after I have paid my bill and left the restaurant. Regardless of changing, temporary possession rights, the restaurant has property rights to the chair.

Possession rights are established through physical (real) possession. Possession rights differ from territorial claims already known from animals, through this, that they like territorial claims are asserted through concrete possession, but unlike territorial claims, they do not need to be continually defended through physical presence. While territorial claims can become vacant immediately without defense, the right of possession developed over time as a right that does not need to be constantly defended. Those who cultivate a field do not have to stay there until the harvest to secure their right to the soil's produce.

Thus, a new idea was born. A mobile group of people demanded general recognition of their rights to an immobile field, which were limited until the harvest. However, the right of possession established through occupation and tillage (i.e., through labor) by no means gave rise to a civil society founded on property rights. It merely laid the foundation for the settledness of mankind.

With the right of possession, a material bond emerged for the first time alongside the personal bonds familiar to nomadic groups. This was radically new and justifies calling the very long process of transition from nomadism to settledness the Neolithic Revolution.

The origin, sense and need of possession rights are obvious. Family groups will only cultivate the soil and sow seeds if their resulting right to the harvest is generally recognized (even without constant presence in the field). Essentially, property rights asserted expanded territorial claims. Because territorial fights between animals sometimes end fatally, bloody disputes over possession rights are not a human privilege. Resolving such claims peacefully in the future would elevate us humans above the animal world.

Since the beginning, however, we humans have defended our claims far more mercilessly than any other species. We alone strive to assert our property rights with deadly brutality, not only against our fellow species, but against all other living beings. This development began with Adam,

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4 Ibid., 97.

5 Ibid., 96. Civil society means a society founded on property rights.

6 See, among others, Russell (1997), 696 – Both Russell and Heinsohn/Steiger understand this sentence as Rousseau's criticism of private property.

7 Leibiger (2022), 29.

who was formed by God from *the soil of fields* and *placed in the Garden of Eden*. His *helpmate* Eve seduced him into eating those fruits through which they hoped to become *like God*, knowing *whats good and evil*, in order to defend *all the bushes in the field* and *all the herbs in the field* against "pests" of every kind.<sup>8</sup> The biblical paradise story by no means describes the creation of the first humans – that occurs short beforehand – but rather the emergence of agriculture and animal husbandry. Our fall from grace is our struggle against nature, with the goal of defending our crops against all evil (all foreign living beings: animals, plants, fungi). Today, this struggle is waged with all available technical and chemical weapons. Our absolute claims to possession have set in motion a spiral of violence that now threatens us.

As necessary as the enforcement of possession rights was for settling down, the new possession law painfully destroyed the old personal law of nomadic cultures. The Bible proves nothing but illustrates this upheaval in the social structure with the story of fratricide. Brothers are not only among primates,<sup>9</sup> often the closest allies.<sup>10</sup> Men sometimes call their best friends "brother." Against this background, the murder of the *shepherd Abel* by his brother, the *farmer Cain*, must have profoundly shaken the foundations of people living together in family groups. This act of violence symbolizes the categorically new nature of the right to possession of arable land.

With the fratricide,<sup>11</sup> an epochal break with the nomadic social order based on kinship relationships was accomplished, shaking the religious order to its core. God was angry and cursed Cain. But Cain protested against God's punishment, and indeed, the Lord saw himself compelled to protect Cain from punishment. He said:

... whoever slays Cain, vengeance shall be taken sevenfold." And the Lord set a sign on Cain that no one who found him would kill him.<sup>12</sup>

The new law created by fratricide prohibited shepherds, under penalty of death, from driving their animals into the fields. This new right had been forcibly confirmed by the highest authority.

This marked the beginning of our settledness. The Bible reports immediately after the report about Cain's dispute with God, that Cain's son built a city. Gaining general acceptance of possession rights was a long, bloody process. However, the occupation, cultivation, and defense of land were evolutionarily necessary. Fratricide was the price humanity paid for becoming settledness.<sup>13</sup> It was necessary, and despite all subsequent criticisms of property, I uncompromisingly agree with Proudhon

that landed property, because its idea is somewhat contradictory, is a problem whose solution still lies with us, not an institution that we must suppress.<sup>14</sup>

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8 Italicized text parts are translations of German Bible quotations from the Book of Genesis.

9 Waal (1991)

10 In myths, legends and religions there are important pairs of brothers who are worshipped as gods, heroes and bearers of culture, see among others Ström/Biezais (1975), 52f., 87-89, 346-349 and Nevermann et al. (1968), 257, 268.

11 Fratricides are recorded in many cultures. Seth kills Osiris in Egypt, Cain Abel in Palestine, Romulus Remus in Rome, the Pandavas kill the Kauravas in India, Hengist kills Hors in Scotland, Hædcyn Herebald in Scandinavia, Erich Alrek in the Baltics, and Tyit his brother Mbū in Australia. Against the background of the veneration of many pairs of brothers and brotherly love as a symbol of peace (see previous footnote and Heiler (1979), 92, 95, 393, 451f., 498), the remembered fratricides, in my opinion, document significant cultural upheavals. See Gonda (1978), 219, and Ström/Biezais (1975), pp. 105, 109, 141, 162, or Nevermann et al. (1968), 245.

12 Genesis, 4: 15.

13 Kämmerer et al. (2013), 50.

14 Proudhon (um 1975), XI.

## 2. Possessive property combines possession and property rights

In any case, it was not private property. [...] It played no role in the temple and domain economy, which in Mesopotamia and Egypt marked the beginning of the emergence of the state and then continued westward through the Minoan and Mycenaean cultures.

Uwe Wesel

The causes and consequences of the emergence of possession rights have been reconstructed above, but no explanation has yet been found for how land could become a commodity. Thus, the question remains as to how family possession, created through joint occupation and land cultivation, could become that "tremendous paradox"<sup>15</sup> that Walther Rathenau still found highly worthy of criticism thousands of years later, asking himself: Why does

the state of every civilized country use its power and prestige to ensure that a deceased person retains his rights against the living [...], so that no title to stored treasures and rights, whose accumulation was precarious enough, is lost to any heirs protected by tradition and destiny.<sup>16</sup>

For Heinsohn and Steiger, property originated with the founding of Rome (according to legend, in 753 BCE).<sup>17</sup> However, our history of property begins much earlier, as land ownership existed in Mesopotamia a millennium earlier. In the first half of the 2nd millennium BCE (during the time of Hammurabi) reigned there

...still an extensive palace economy, but alongside it also a lively private economy. One finds private property of arable land...<sup>18</sup>

The birth of property thus struck about a thousand years before the founding of Rome. To explain how property came into being, we must therefore look further back. Let us try to put ourselves in the shoes of our semi-nomadic ancestors. Today's property law, which transforms the dead into legal entities, so that every one of their "legally permissible whims is valid,"<sup>19</sup> was certainly just as incomprehensible to the peoples living in barter economies from whom European colonial rulers wanted to buy land thousands of years later. While semi-settled peoples certainly already knew forms of land possession, a conflict comparable to fratricide probably only arose when settled agricultural cultures came into conflict with livestock farming nomadic cultures.<sup>20</sup>

Until then, people in Europe probably lived mostly in egalitarian family clans and larger egalitarian settlements.<sup>21</sup> For Europe, this can be proven by settlement findings from the "late 8th millennium BC in Thessaly."<sup>22</sup> Land was communally possession, and communities were, in a certain way, immortal organisms, at least as long as newborns essentially replaced the deceased. Possession rights to land were therefore always the rights of the living.

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15 Rathenau (um 1929), 137.

16 Ibid., 137f.

17 They ignore the earlier development of property in Mesopotamia. In support of their thesis, Heinsohn/Steiger (1996, 107) also cite Gunnar Heinsohn's *The Sumerians Didn't Exist* and Heribert Illig's *The Invented Middle Ages: The Greatest Falsification of Time in History*. These two books challenge the generally accepted chronology and deny periods of regressive development, known as the Dark Ages. This leads to historical conflicts and chronological contradictions. Therefore I can't agree.

18 Wesel (1997), 82.

19 Rathenau (um 1929), 138.

20 Gimbutas (1994) and Haarmann (2017) support the thesis that there was a "subjugation of peaceful farmers by warlike livestock farming peoples" (Wesel (1997), 55). Indeed, it seems that the shepherds murdered the farmers. However, as the shepherds at least settled, they abandoned their own culture and became farmers. "Livestock farming was familiar to the people from the steppe, and they quickly adapted to the foreign cultivation of crops." Haarmann (2017), 232. These *new farmers* replaced the more or less peaceful, egalitarian social order with a more or less warlike, patriarchal one. I therefore see the fratricide myth not as a historical account, but as a highly condensed illustration of a long, very complex upheaval.

21 Such settlements were documented in Europe "in the late 8th millennium BC in Thessaly." Haarmann (2017), 91.

22 Haarmann (2017), 91.

Grain cultivation then appears to have profoundly changed the social order. Where women still predominantly work the soil with hoe and grow vegetables, egalitarian social orders have partly survived to the present day.<sup>23</sup> Where grain became the most important food source, men, using oxen-drawn plows, displaced women from their leading role in fieldwork. As a result, men took control of the economic foundations of society. On this basis, worldwide they began to establish a patriarchal social order.

It is certainly no coincidence that in Europe, during the period of transition from egalitarian to patriarchal social orders, an image frequently appeared depicting a man driving a oxen pulled by two bulls.<sup>24</sup> Haarmann's settlement findings (footnote 21) suggest that it was not the acquisition of land, but probably the cultivation of the land by means of oxen harnessed to a plow, that led to the establishment of patriarchal social structures.

Clearly, this seizure of power was not a military conquest, but rather a deliberate positioning of an elite accustomed to hierarchical social structures in a new environment.<sup>25</sup>

However, Gimbutas already describes the social order of livestock farming peoples as patrilineal.<sup>26</sup> Evidently, in these cultures too control over the economic foundations (here, livestock instead of grain) led to the patriarchal transformation of the egalitarian social orders of gathering and hunting societies. Therefor only in the *Garden of Eden*, Eve became Adam's *helpmate* (i.e., as a woman subject to man), but not solely as a result of the transition from an appropriative (gathering and hunting) to a producing (farming and livestock farming) economic system, but only where livestock became an important economic factor as food (among livestock farming peoples) or as working animals (in grain-growing cultures).

In such communities, patriarchal clan leaders displaced formerly egalitarian matriarchs.<sup>27</sup> This is evident in Europe in a system that developed around 4600 BCE changing settlement architecture.<sup>28</sup> It can be argued that land cultivation gave rise to a new land law, and animal use and the type of land cultivation gave rise to a new social order. Social order seems to fundamentally follow from the control of economic resources. This connection appears to hold for all sociopolitical orders to this day.

Over time, the elites will have emancipated themselves from direct field work through the division of labor. This gradual alienation will also have changed ideas about possession rights. While that rights initially derived from the occupation and cultivation of a field, they will gradually have been based solely on clan membership. Over the millennia of the Neolithic Revolution, they were thus able to free themselves from these original obligations.

But clan chieftains certainly had the right (and the duty) to distribute the produce of the land. They could also use income to, for example, form or maintain alliances. Patriarchal dominance and economic power could thus be converted into political power. Differences between family groups could thus be increased, and inferior family clans could be enlisted as vassals to expand their own power. With the hierarchical stratification of society, the size of the communities grew.

Information about the beginnings of settledness is (still) largely lacking from Mesopotamia. This process probably occurred more quickly in Asia than in Europe because "the need of a central irrigation system"<sup>29</sup> often existed. The organization of field irrigation therefore probably led to the emergence of the first city-states throughout Asia by the 3rd millennium BCE at the latest.<sup>30</sup> These city-states were ruled by clan chieftains who had risen to the rank of city chieftains and who

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23 However, in such cultures, the takeover of trade by men may have led to the establishment of a patriarchal social order. But that's a new topic.

24 Gimbutas (1994), 54, 108, 112.

25 Haarmann (2017), 228.

26 Gimbutas (1994), 118.

27 Gimbutas speaks of a civilization of the goddess. I associate the word goddess with an all-powerful being, which seems out of place in an egalitarian social order. I therefore see the numerous female figurines found by Gimbutas as ancestral women rather than goddess symbols.

28 Haarmann (2017), 230ff.

29 Wesel (1997), 57 – According to Wesel, Karl August Wittfogel developed this "hydraulic theory".

30 Wesel (1997), 55f. and 61f. sees this connection in Mesopotamia.

established a palace or temple economy based on taxes. In the palaces or temples, all produced goods converged and could be redistributed without the use of money. This economic supremacy will have contributed to the rise of city-princes to god-kings, and the land holdings of family clans step by step became royal property. In any case, Wesel describes the changes that likely took place in Mesopotamia in the 3rd millennium BCE as follows:

Household management was based on patrilineal kinship groups and their land ownership<sup>31</sup>, which, however, increasingly passed to the temple, which slowly developed into a large-scale enterprise employing a large portion of the urban population. By the end of this Sumerian millennium, the temple owned all the land; there were no more private<sup>32</sup> fields.<sup>33</sup>

Significantly, we have no word for this process. "Expropriation" is not appropriate, in my view, because there was no transfer yet of property rights here, only a transfer of possession rights. I suggest the term "unbinding."

The process of transferring possession from the family clans to the temple was crucial for state formation. It led to the disempowerment of family associations. The weakening of family ties was an essential prerequisite for the emergence of a national identity. Where this process has only taken place incompletely, stable states can hardly emerge to this day.

The disempowerment of the family clans most likely occurred through clever temple management. In my opinion, the biblical story of Joseph illustrates this process. It by no means provides historical evidence, but merely illustrates a historical change. Like the entire Book of Genesis, this story is not part of actual Jewish history. It belongs to the myths collected by the Jews of that time. Just as Christian history only begins with Christ, Jewish history only begins with the founder of the religion, Moses, i.e., with the Book of Exodus.

The myth tells that Joseph, as the Pharaoh's steward, used the grain reserves he had stored up over the years to negotiate the people's land and personal freedom during a famine lasting several years following a series of crop failures. After the agricultural population had first given up their money and then their livestock for grain to feed themselves, in the second year of famine,

...they had nothing left before our Lord but our bodies and our land. ... So Joseph bought all of Egypt for the Pharaoh. All the Egyptians were each selling their land because the famine was so severe. And so the land became the Pharaoh's. And he made the people serfs from one end of Egypt to the other.<sup>34</sup>

Temple economy and the long famine made it possible to wrest direct control over their land from the family clans, effectively disempowering them. However, this still did not create property in the Roman sense.

Roman law defines property as: *jus utendi et abutendi re sua, quatenus juris ratio partitur*, as the right to use and abuse one's property...<sup>35</sup>

For the Pharaoh and other god-kings, a number of obligations were attached to land possession. While they could charge rent for land use, in return they had to maintain irrigation systems, preserve and distribute food supplies, administer justice, defend the land against enemies and in short, maintain state order. The transition from family to royal possession further increased the alienation between possession rights and management obligations. However, the link between rights and obligations had not yet been completely severed, and the principle of equivalence had not yet been completely abolished. With the development of royal possession, a kind of possession property had emerged. Possession, because the rights to the land were still tied to obligations. Property, since it was now under the absolute control of god-kings who, as descendants of the Creator of the world, considered themselves authorized to sell land.

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31 This refers to family group possession. Initially, there was no property right, but rather land that was cultivated and managed communally by kinship groups (clans).

32 "Private" refers to the former kinship possession of the family clans. Wesel describes a process as a result of which there were no longer any fields belonging to anyone other than the temple.

33 Wesel (1997), 73.

34 Genesis, 47: 18, 20, 21.

35 Proudhon (um 1975), 27.

### 3. Capital property enables capital income

Hammurabi is me, the shepherd, the chosen one of Enlil, who accumulated abundance and plenty, who did everything possible for Nippur, "the bond of heaven and earth" [I am, ed.]

Hammurabi<sup>36</sup>

By seeing themselves the *bond of heaven and earth*<sup>37</sup>, the city princes, who had elevated themselves to the rank of god-kings, arrogated to themselves the right to sell the land created by their divine fathers. They considered all royal land to be their own. A similar image can be found in the Bible. In Genesis 28:10-22, Jacob is recounted seeing in a dream the ladder to heaven, on which angels ascend and descend, thus creating a connection between heaven and earth. The Lord stands at the top and proclaims:

... the land on which you lie I will give to you and your descendants after you."<sup>38</sup>

In a time when laws were enacted by gods, it makes sense to call upon the highest authority as a witness to a land acquisition.

Thus legitimized as the owner of the land, it was now possible to sell it. The necessity for this arose from a lack of money in the royal coffers. Money was needed to finance wars and to purchase luxury goods imported from abroad. While the transfer of goods within the country could often be handled without money through temple or palace economies, long-distance trade required money. The origin of money lies in long-distance trade between strangers who did not expect to see each other again, so that – as was common in kinship groups – gifts received could not later be repaid with gifts. Here universally sought-after bronze implements developed into implement money, the first form of metal money (Kenawi 2021: 34-37). Later, gold and silver became important means of payment in international trade. When the ore mines dried up, the god-kings could not create new money for their needs. However, imperishable metal money created earlier had not disappeared, but had either migrated abroad – primarily to China and India – or entered the coffers of local merchants. To obtain this money, the god-kings had to offer these merchants, who already possessed all earthly goods obtainable for money, something previously unsaleable for sale. Due to a lack of money, the god-kings began to convert land into a commodity.

*The first sale of land by a god-king to a private individual marked the birth of civil (property rights) society. With the first such sale, private property of land arose.*

We know of documents concerning land purchases from Mesopotamia as early as the 2nd millennium BCE.<sup>39</sup> The enormity of this process would hardly have occurred to a god-king. In his godlikeness, the world that God had created had been entrusted to him. Wesel comments:

The development proceeded in such a way that the kinship possession of the agnatic<sup>40</sup> groups in Sumerian times gradually passed to the temple, and from this, private property of individuals now partially emerged, through resale.<sup>41</sup>

What Wesel calls resale was something completely new. The king had once extorted communal possession from family clans in exchange for grain. Now he sold royal possession and created private property. Now the link between rights and obligations was severed, for a one-time payment of money released the purchaser and all their descendants from all obligations originally associated with land possession. The purchase of land resulted in a comprehensive release of obligations.

36 Zitiert nach Wesel (1997), 84.

37 A similar image with – in my opinion – a similar function can be found in the Bible. Genesis 28:10-22 tells how Jacob, in a dream, sees the ladder to heaven, on which angels ascend and descend, thus creating a connection between heaven and earth. The Lord himself stands at the very top and proclaims: "...the land on which you lie I will give to you and your descendants after you." (28:13) Here, a legal claim to land is affirmed through a covenant with heaven. In a time when laws were enacted by gods, it makes sense to call upon the highest authority as a witness to a land acquisition.

38 Genesis 28:13

39 Wesel (1997), 82.

40 Family groups in which kinship is derived only through the father or only through the mother.

41 Wesel (1997), 85.

Only now, thousands of years after the emergence of land possession, did land property emerge in the Roman sense – a legal claim without obligations, a right to use and abuse. Property of a piece of land no longer arose from the cultivation of the soil by a family clan or from the maintenance of irrigation systems by the king, but solely from the title of property acquired through purchase. This new form of ownership not only released one from all obligations, it also enabled capital income. If private land was leased, the one-time purchase price generated a perpetual cash flow in the form of rent payments. That's why I call leased private property, freed from all obligations, capital property. It differs from older possession ownership in that rights and obligations are no longer held in one hand. Capital income arises when property is not used by owners themselves, but leased out.

Since the one-time purchase price permanently deprived the state of revenue needed to maintain publicly used infrastructure such as roads, irrigation systems, state administration, etc., the sale of state land led to the long-term impoverishment of the states and ultimately to their collapse.

#### **4. Decline of property rights and return to possession**

...Collapse of the Bronze Age cultures in the Aegean, the Eastern Mediterranean, and the Middle East shortly after 1200 BC...

...Disappearance of the traditional elite...

...Collapse of administrative bodies...

...Transition to a lower level of political and social integration...

Eric H. Cline<sup>42</sup>

A state is never founded solely on violence. It derives its legitimacy and acceptance from its function as a regulatory authority. If a state can no longer fulfill this function, it threatens to collapse. Of course, there were other reasons besides empty treasury that led to the collapse of states. Natural disasters such as earthquakes or volcanic eruptions, as well as climate change or wars, have led to the collapse of states. Here, we limit ourselves to outlining the consequences of the collapse of a state for property.

In the 2nd millennium BC, the Hittite Empire stretched east of the Mediterranean. Around 1200 BCE, it suddenly disappeared from the map and from records following an invasion by foreign peoples. With the fall of the state, documented property rights lost their effectiveness. Just as a state had created property rights through land sales and thus also guaranteed protection, these rights disappeared along with the state. With the disappearance of money, property titles also lost their economic significance as capital ownership, since rent was generally demanded in cash rather than in kind.

Further south, at about the same time, upheavals occurred in the Babylonian Empire. The cause there appeared to be not the invasion of foreign masses, but a monetary crisis. Wesel reports:

Now the king's palace alone again determined the country's economy. It was a centralized palace economy with an extensive bureaucratic administrative apparatus. ...

Private ownership of land no longer existed, and accordingly, there were no documents regulating land sales.<sup>43</sup>

Around 1200 BCE the entire bronze age world of Eurasia was gripped by a monetary crisis. Utensil money, which had been in use for over a thousand years, seemed to be becoming scarce; at least, bronze scrap was frequently found in hoards from that period. Old utensil money had clearly been broken. Small forms emerged, reminiscent of ancient utensil money, and probably now symbolically represented its value.<sup>44</sup> Babylon appears not to have been spared this decline of the monetary economy, which forced a return to a palace economy based on barter. With the disappearance of money from the local and regional economy, private property also disappeared. Without money, capital income could hardly be generated.

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42 Cline (2021), 231.

43 Wesel (1997), 82.

44 Kenawi (2021), 34-44.



Egypt did not survive the crises of the period unscathed, but it did so better than its neighboring kingdoms. Presumably, the Nubian gold veins were so abundant that privatization of state land was unnecessary. The domestic economy also suffered little from a lack of money, as local and regional trade was often paid for with grain receipts rather than metal money. However, the Minoan and later the Mycenaean cultures disappeared without a trace, just as the Hittite Empire did. A significant decline in settlement traces demonstrates that these people returned from a palace economy to a subsistence economy.

This development demonstrates that states were able to survive a crisis in the monetary economy by returning to a temple or palace economy. However, if the state itself collapsed, property rights disappeared along with the monetary economy. If property had already arisen as a result of poor money distribution, it further intensified and accelerated the further concentration of wealth, thereby provoking the collapse of the entire economy. With the failure of the monetary system, however, property rights disappeared again. The monetary economy reverted to a barter economy, and property reverted to possession. This connection should be considered when considering reform of property rights.

## 5. The return of property rights

For the true friend of the people and democrat must ensure that the masses are not too poor; that is where the blame lies if democracy declines.

Aristotle<sup>45</sup>

In the 8th century BCE, a new cultural upswing slowly emerged. Remnants of ancient European egalitarian social orders probably lingered in the democratic or republican beginnings of the Etruscan, Greek, and Roman cultures. Monarchies may not have yet emerged in Europe because European agriculture – unlike Asian agriculture – was not dependent on irrigation systems. As a result, there was little need to develop central administrative structures. However, the idea of land property was already known in Europe.

According to legend, the founding of the city of Rome began with a kind of land reform. Heinsohn and Steiger interestingly illustrate this act with a Roman version of the fratricide story. Here, Romulus, the legendary founder of Rome, killed his younger brother Remus after he

...jumped over the land boundaries that hadn't existed before.<sup>46</sup>

For Heinsohn and Steiger, this is the birth of property.<sup>47</sup> But at that time, land was neither occupied – which, as explained above, does not create property but possession – nor sold for the first time. The Romans by no means invented property rights, but they were

...the first to define property legally.<sup>48</sup>

Romulus distributed communal land. As a kind of communal representative (not as king), he allocated arable land to all families for self-sufficiency. This effectively created possession

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45 Zitiert nach Hönn (1948), 137.

46 Heinsohn/Steiger (1996), 113.

47 They attempt to prove through their chronology that property was the prerequisite for the emergence of money. The fact that today, in the credit money system, money is created, among other things, through mortgage lending, explains neither the original emergence of money nor the emergence of property. The Romans invented neither property nor money, and certainly not modern credit money. Heinsohn and Steiger's attempt to predate the emergence of property (actually, land possession) before the emergence of money leads them to the thesis that the three dark centuries following the invasion of the Sea Peoples around 1200 BCE (Cline 2021) – dark because, as a result of the cultural collapse, there were hardly any traces of settlement for a long time – are explained as an error in the chronology. According to their understanding, the decline of the Mycenaean culture was seamlessly followed by the Greek and Roman cultures. At the beginning of these, they see the distribution of land associated with the founding of Rome as a prerequisite for the emergence of money, Heinsohn/Steiger (1996), 111f.

48 Wesel (1997), 185.

ownership. Since the idea of land property had already emerged in Mesopotamia a thousand years earlier, this ownership was a possession property, salable after the revival of the monetary economy. The internal dynamics of the monetary economy led, then as now, to a widening gap between rich and poor. As a result, impoverished Romans soon found themselves forced to sell their land. Wesel notes:

The economic development [of the Roman Empire, ed.] was initially similar to that of Greece. The monetary economy, which soon emerged, changed household management. Private ownership of land emerges, which can be freely disposed of very early on.<sup>49</sup>

In other words: land possession enables agriculture, agriculture increases productivity, and this promotes the spread of a monetary economy, which until now had always led to the unequal distribution of money and forced the sale of land. Emerging private property then drives further concentration of wealth and assets.<sup>50</sup> Increasing wealth concentration ultimately leads to the collapse of the monetary system and property rights. To break this major cycle of crisis, the concentration of financial assets and the conversion of possession into capital property must be structurally prevented.

Like Roman culture, Greek culture slowly emerged from the mists of history. About 100 years after the legendary founding of Rome, Greece suffered a massive debt crisis in the 7th century BCE. A large portion of the rural population had likely fallen into debt slavery due to high interest in kind on borrowed seed grain. Fields lay fallow, productivity declined, and the economy plunged into crisis. Around 600 BCE, Solon succeeded in implementing a reform that largely curbed debt slavery. This didn't prevent the concentration of wealth and property, but it did slow it down somewhat, which gave democracy a chance for a while.

## 6. Money and property disappear again

Especially on the fringes of the Frankish Empire, such as in Spain or Friesland, as well as in remote clearing and mountainous areas, personally free peasants constituted the majority of the peasantry.

Thomas Ertl<sup>51</sup>

Turning point – the Roman Republic became an empire. The Greek democracy had already been incorporated into the Roman Empire. A monetary economy had once again led big merchants who had become rich through trade determining the social order.

Although Aristotle challenged Solon's statement: "...there is no fixed limit to human wealth," he had to admit that wealth derived from trade can multiply infinitely.<sup>52</sup>

On both sides of the Ionian Sea, the gap between rich and poor began to widen again. It should therefore not surprise, that the cultural flowering that followed the dark centuries in Greece and Rome was short-lived. Once again – as had already happened around 1200 BCE – states collapsed, and with them their monetary systems and property rights. Then, as now, the wealth of some forced the poverty of others, and people, lacking money, were forced to sell their land to those with more money. This exacerbated the unequal distribution of wealth.

Latifundia emerged with uncanny speed following the concentration of mobile capital...<sup>53</sup>

As a result, the Roman economy plunged into a permanent crisis in the 3rd century. Emperor Diocletian's price edict issued in 301 failed to end this crisis. Loans were again available

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49 Wesel (1997), 152.

50 The concentration of wealth ultimately leads to the collapse of the monetary system and property rights. To break this major cycle of crisis, the concentration of financial assets and the conversion of possession property into capital property must be structurally prevented.

51 Ertl (2021), 36.

52 Salvioli (1922), 33.

53 Ibid., 53.

...not only in money, but also in other fungible assets, such as grain loans.<sup>54</sup>

With the advent of the monetary system, property rights also declined once again. Since land use rights were no longer purchased,

...distinctions between purchase and transfer, or property and possession, no longer had to be made...<sup>55</sup>

After the collapse of the Western Roman Empire, private property, especially far from the cities, once again became communal possession, because land rights now again required a local presence. Once again, the failure of the monetary economy led to a comprehensive cultural collapse and a return to possession rights and a barter economy.<sup>56</sup> Land now had to be defended with the sword instead of the legal code.

After establishing their empires on Roman soil, the barbarian kings and military leaders saw themselves as successors to the Roman emperors and appropriated the imperial lands. [...] At the same time, the kings, who often faced an influential and self-confident ruling class, transferred more and more crown lands to the church and the nobility in order to secure their loyalty. The permanent alienation of these lands could not be stopped...<sup>57</sup>

The king's land ownership, which had been inherited from the Roman Empire, subsequently became possession of the feudal lords. Due to the lack of a monetary economy, the resulting rent claims could only be collected in kind. Property became possession again. In order to collect rent, people were naturally needed to lease land. To prevent these people from cultivating vacant land far from the centers of power, they were chained to the land as serfs. Jacques Sapir clearly illustrates the dependence of the owners on the tenants:

Before Friday sets foot on the island, Robinson owns everything, meaning nothing. For those who live alone, property rights have no meaning.<sup>58</sup>

As soon as rent could only be collected personally in kind, people lived more freely the farther they settled from a sword-wielding hand. Thus, free village communities could once again develop, far from the feudal centers of power that had been scattered after the fall of Rome.

The spread of agriculture in southern France and Catalonia occurred in the 9th and 10th centuries through such free farmers living together in small settlements.<sup>59</sup>

A free rural population created the basis for the economic prosperity of the late Middle Ages.

However, their communal land gradually became private property again through feudal occupation. Unbridled accumulation of money by the big merchants then forced the sale of this property once again. This led to a renewed concentration of wealth in the hands of a few and ultimately to the collapse of the feudal states that had emerged after the turmoil of the Migration Period.

## 7. The renaissance of property law in modern times

The beginning or end of the Frankish period or the Middle Ages are not the milestones by which its development is oriented. The turning point is the 12th century. This is where the modern world emerged, not with the discovery of America. This is also clearly evident in law.

Uwe Wesel<sup>60</sup>

With the revival of the monetary economy around the turn of the medieval millennium, long-distance trade once again gained importance. The 12th century finally saw the rise of the Italian

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54 Wesel (1997), 225.

55 Ibid., 233.

56 Dopsch (1930).

57 Ertl (2021), 33.

58 In: Dürmeier et al. (2006), 270.

59 Ertl (2021), 36.

60 Wesel (1997), 341.

merchant dynasties, a small elite of big merchants. Once again, there was a large accumulation of money in the hands of a few. This was followed by the gradual privatization of land. With the spread of the monetary economy, the decline of the feudal system began, as a lack of money again forced the commodification of land. Soil became a commodity again and piece by piece, the nobility sold what previous generations had acquired with the sword. By the 19th century, the sell-off had progressed so far that the bourgeoisie was able to wrest the scepter from the nobility's almost empty hands.

The fact that property rights always follow money, never precede it, is demonstrated by the two major legal upheavals following the fall of the Roman Empire. Wesel dates them to the 12th and 19th centuries.<sup>61</sup> From the 12th century onwards, property transfers through purchase resumed. The resulting gradual expropriation of the nobility culminated in the Napoleonic Code, the Civil Code, at the beginning of the 19th century. The monetary economy, which prospered again from the 12th century onwards, led to the revival of Roman property law. The gradual implementation of credit money as a modern, universal means of payment from the 18th century onwards was followed in the 19th century by the Civil Code. One could provocatively say: it is not law that defines money, but money that enforces its law.

The Napoleonic Code restored the Roman concept of property by eliminating remnants of feudal restrictions on the purchase and sale of land. Property rights were once again understood as absolute domination of property. Maximilien de Robespierre's attempt to restrict property rights

...like any other right by the obligation to respect the rights of one's neighbor...<sup>62</sup>

was guillotined along with him on July 28, 1794, at the latest. His attempt to restrict property rights also failed, because it was not accompanied by a limit on the hoarding of money.

This short history of development of property<sup>63</sup> has attempted to show that the emergence of private property was always preceded by the private accumulation of large amounts of financial wealth. Today, financial assets are being created on the financial markets on an unprecedented scale and at an unprecedented speed. This purchasing power, which arises independently of real value creation, makes it all the easier to purchase property the greater the shortage of money in the real economy. If the state lacks money to pay for necessary labor, it is forced to sell land and other property rights to precisely those who have acquired money largely without providing real services. States thus expropriate their populations and, through the sell-off, promote their own downfall.

History shows that property is not a prerequisite for the creation of money, but rather arises as a result of poor money distribution. Property accelerates the process of wealth concentration until the monetary economy and property rights collapse due to growing misallocation. After a subsequent regressive natural economic phase, a renaissance of the monetary economy occurs. Since the advantage provided by equity promotes the renewed unequal distribution of money, the fatal crisis cycle repeats itself with increasingly disastrous consequences for the entire eco-social system. To escape this historical vicious circle, the causes of unbridled wealth accumulation must be resolved. A radical reorganization of distribution relations is likely more likely in the regressive phase of this cycle, during the renaissance of the monetary economy. The difficulty of rethinking property rights arises from its long tradition. The idea of property is so old that it is deeply rooted in our intellectual genetic code, but to quote Ernst Bloch:

A thousand years of injustice does not make a single hour of right.<sup>64</sup>

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61 Ibid., 342.

62 From his speech of April 24, 1793 – Quoted in Däubler et al. (1976), 38.

63 This means capital property in the narrower sense.

64 Bloch (1972), 12f.

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