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# Collective Property in the Modern State: Émile de Laveleye's *Primitive Property* in its Global Context

## Kollektives Eigentum im modernen Staat: Émile de Laveleyes „Ureigentum“ in seinem globalen Kontext

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**Abstract:** The article discusses normative approaches to the commons and argues that similar perspectives emerged in the late nineteenth century, closely linked to claims of social and ecological justice. It posits its subject in the framework of nineteenth-century territorialization, more precisely the exercise of state power as a convergence of normative representations of the space and legislative and administrative practices. Analyzing the theoretical and political dimensions of a representative scholarly work, titled *De la propriété et de ses forms primitives* by the Belgian professor Émile de Laveleye (1822–1892), it formulates the thesis that Laveleye's book is indicative of the renegotiation of the status of collective property in land as state territory. The article shows first how the book was shaping a universalist model of common land ownership by waving together European and colonial debates on the topic. Second, by following the English and German translations of the book, it shows how this model was linked to transnational agendas of social politics and land reform. These two aspects draw attention to the crucial role of the state as a historical and present stakeholder in shaping the status of commons as territories.

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**Keywords:** Commons, Collective versus Private Property, Land Reform, Social Question, Transnational History, Territoriality

**Zusammenfassung:** Der Aufsatz wirft eine historische Perspektive auf gegenwärtige normative Diskussionen über Gemeingüter. Bereits im 19. Jahrhundert verbanden Wissenschaftler ländliche Gemeingüter mit Forderungen nach sozialer und ökologischer Gerechtigkeit. Der Aufsatz ordnet die zeitgenössischen Diskussionen außerdem in den Rahmen der Territorialisierungsprozesse des 19. Jahrhunderts ein, d. h. die Ausübung staatlicher Macht im Raum als Verbindung normativer räumlicher Vorstellungen und legislativ-administrativer Praktiken. Mittels der Analyse der theoretischen und politischen Dimensionen des einflussreichen und repräsentativen wissenschaftlichen Werks *De la propriété et de ses formes primitives* des belgischen Professors für Politische Ökonomie Émile de Laveleye (1822–1892) stellt der Artikel die These auf, dass Laveleyes Buch einen entscheidenden Moment in der Neuverhandlung des Status des kollektiven Eigentums an Grund und Boden als Territorien des Staates darstellt. Er zeigt erstens, wie das Buch ein universalistisches Modell der ländlichen Gemeingüter formte, indem es europäische und koloniale Debatten über das Thema verknüpfte. Zweitens wird anhand der englischen und deutschen Übersetzungen des Buches demonstriert, wie dieses Modell mit transnationalen Agenden der Sozialpolitik und der Landreform verbunden war. Diese beiden Aspekte verweisen auf die entscheidende Rolle des Staates als historischer und gegenwärtiger Akteur bei der Gestaltung des Status von „Allmenden“ als Territorien.

**Keywords:** Gemeingüter, kollektives versus privates Eigentum, Bodenreform, soziale Frage, transnationale Geschichte, Territorialität

“Commons are again a hot topic. After their rapid elimination in most parts of (continental) Europe, they disappeared from the collective European memory. But recently the term has again appeared, although in very different contexts. It is now applied to all types of resources and even services that are collective, including water, the Internet, and the air we breathe, which are regularly referred to as ‘commons.’ This conceptual evolution from commons as small-scale, local resources to large-scale, global resources has taken place over the past half century and is now leading to a new era in commons studies, but also to some additional confusion on what commons really are, and what they could mean for future societies.”

Tine de Moor, *The Dilemma of the Commoners: Understanding the Use of Common-Pool Resources in Long-Term Perspective* (2015:161).

“Land, for our purpose, may be defined as that part of the globe’s surface habitable by man – not merely his habitation, but the storehouse upon which he must draw for all his needs, and the material to which his labor must be applied for the supply of all his desires, for even the products of the sea cannot be taken, or any of the forces of nature utilized without the aid of land or its products. On the land we are born, from it we live, to it we return again – children of the soil as truly as is the blade of grass or the flower of the field.”

Henry George, *Our Land and Land Policy*. National and State (1871: 27).

The citations above indicate how the commons have become a token of new social imaginaries. They signify normative visions of property through rediscovering pre-capitalist norms of ownership and accompany conceptions of social, economic and more recently, ecological justice (Baxter 2005, Davis et al. 2019, Yaka 2019, Wulforth & Haugstad 2006). Attempts to define practices of *commoning* have made part of a critique of unhinged global resource extraction and a search for more sustainable forms of land-human relationship. Historians see them as cooperative strategies of local communities to enable their members access to scarce resources over long time, while sociologists and political economists study them to establish rules and regulations for the sustainable management of what is today called the global commons: the oceans, the biosphere, the space (Schläppi 2019: 24–5).

After the economic crisis of 2009, the interest in alternatives to the capitalist property regime intensified and the commons have become also a conceptual platform to think about alternatives to its resource management. Inspired by the work of Nobel Prize-winning Elinor Ostrom, the enfolding debates combined approaches from different disciplinary backgrounds in the pursuit of the functional traits of the commons, to distill new rules and regulations of their use, often in reference to the “rights of future generations” (Schläppi 2019: 12, 24–5).

My paper argues that such analytical and normative debates are not new, and neither is the study of local historical forms as an inspiration for social norm-setting at a global scale. Historical interest in the most ancient form of commons, the collective property in land, has been anchored in continental European scholarship since the early nineteenth century. The global crises of liberal economy from the mid-century in the 1870s prompted already politically motivated interest in the institution of *Allmende*. Neither was the thought of sustainable management of resources foreign to these scholars and political activists. On the contrary, constructing and comparing the social historical models of commoning in Europe, Asia, America and Africa, these individuals legitimated alternatives to private property exactly by reference to the rights of future generations.

If the historical village communities served as a laboratory for perspectives at the global scale, newer conceptual models of the global commons may be beneficial for theoretical debates about their local counterparts. Particularly fruitful are

spatial perspectives that discuss the subject in the framework of territorialization, that is, the exercise of power along spatial criteria as a convergence of normative representations and administrative practices (Maier 2017, Lambach & Diehl 2021). They highlight the role of states as stakeholders in the territorial appropriation and control of both local and global commons in the modern era. As my paper argues, the integration of these pre-modern legal spaces in the territorial regime of the state provided a challenge for nineteenth century scholarship, political activism and public administration.

My case study addresses the nascent research on the commons in comparative legal and sociological research in the last quarter of the nineteenth century. It traces the accumulation of knowledge about common land ownership and the mobilization of this knowledge for legal reforms by focusing on the work of Émile de Laveleye (1822–1892). The Belgian professor of economy wrote the book *De la propriété et de ses forms primitives*, a compilation of contemporary legal anthropological and historical scholarship on ancient and contemporary practices of collective property worldwide. Published in 1874, the book championed a universalist model of collective property by joining the efforts of other experts, like the British professor of law and high colonial bureaucrat Henry Sumner Maine (1822–1888), the German legal historians Georg Ludwig von Maurer (1832–1872) and Otto von Gierke (1841–1921). The bibliographical apparatus of Laveleye's book reflects the wide European interest in collectively owned land from Scandinavia to the Russian Empire and from Ancient Rome to contemporary Egypt. Building on the theoretical innovations of contemporary legal scholarship, Laveleye's compilation of examples from all continents of the world legitimized common property as a universal form of possession and used this knowledge to forward land reform.

Territories are stable as long as there is a consensus about the legitimacy of the prevailing territorial arrangement. However, in the course of technological and socio-political change, the consensus may break up and a phase of renegotiation begins. The thesis of my paper is that Laveleye's book is indicative of a critical moment in the dynamics of territorialization of commons in the last quarter of the nineteenth century. The publication of the book in French in 1874, its English translation four years later and its reception took place at the onset of the institutionalization of comparative indigenous law in European universities (van der Linden 2016, Echterhölter 2021) during the new phase of colonial expansion in Africa, confronted by land reform movements in the British Commonwealth and the United States. By legitimizing collectively owned land as a primordial property form, the book makes part of a broader contestation of hitherto practices of territoriality based on private property, enclosure and colonial land-grabbing. The state was called to duty as the debate paired up with deliberations about social politics. The expectation of a more active role of the state in the just distribution of property

has been forgotten in twentieth-century scholarship, which had long considered the commons in antagonism or in isolation from the state.<sup>1</sup>

It is instructive to uncover the comparative and transnational dimension of this knowledge production and the connection of the scholarly elaboration to political reform movements in the last quarter of the nineteenth century. Being both an erudite book and one of popularization of political and scientific ideas, *Primitive Property* (I shall refer to the book by using the title of the English translation) was reprinted four times until 1891 and was also translated into German, Danish, Russian and Hungarian. Laveleye had contacts to the German *Kathedersozialisten* and his arguments became “a weapon” in the hands of the American reformer Henry George (1839–1897), engaged in a reform of private land monopoly in the United States and Australia, and whose critique of land grabbing had been formulated in exchange with the historical arguments formulated by Laveleye (Grossi 1981: 57, 71–72, 76; Heavey 2008).

The paper will show how these arguments connected to contemporary critique of private property and how they became the basis for land reforms in the United States, Ireland and New Zealand. I discuss the transnational intellectual and political dimensions of the book in four sections. The first one situates the nineteenth-century conceptualization of collective property into its historiographical and political context, while the juxtaposition of scholarship and political activism in the work of Laveleye, the topic of section two, is seen as an attempt to popularize a universal model of collective property, transcending the European-colonial divide. Section three shows the connection of the academic argument to political agendas with a social political aim. The conclusion will reflect on the topic as an intersection of European and colonial historical writing on property and its significance in today's theoretical approaches. Laveleye's work is seen as part of the discursive renegotiation of the status of collectively owned land in relation to their territoriality, that is, their status in the legal and administrative framework of the state.

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<sup>1</sup> For a nuanced analysis about the distribution of tasks between the commons and the public administration over the nineteenth-twentieth centuries see Haller et al 2021.

## Situating the commons in nineteenth-century debates: Critique of capitalism and the social question

Émile de Laveleye was a professor of political and industrial economy at the university of Liège, whose ideas on property had developed in exchange with the “liberal socialism” of François Huet (Cunliffe & Erreygers 1999, Grossi 1981: 256). He was an influential public intellectual, whose international connections in politics and journalism were coveted even by the Belgian King Leopold II (Vandermissen 2011: 7–57). The Belgian professor was a vocal critic of economic inequality, which he regarded as one of the main social evils of his time. He was convinced that inequalities in wealth mobilized both colonial subjects and European laborers to lean up against the political system (Laveleye 1878: xxvi). Drawing on historical examples, he castigated the modern liberal economic regime built on the opposition of rich and poor and considered the contemporary accumulation of property a “privilege without obligations, without hindrances, without reservations” (Laveleye 1878: xxxiv).

His book was a compilation of ethnographic and historical descriptions of common land ownership practices from all continents. It opened with a contemplation on the Paris Commune in 1871 as the manifestation of the disruptive potential of economic inequalities in an age of the enfranchisement of the poor:

“Caste and its privileges are abolished; the principle of the equality of all in the eye of the law is everywhere proclaimed; the suffrage is bestowed on all; and still there is a cry for equality of conditions. We thought we had but the difficulties of the political order to solve, and now the social question rises with its gloomy abysses” (Laveleye 1878: xxv–xxvi).

How to maintain social order in these circumstances, when “(u)nder the empire of existing institutions, those who labour have no property and with difficulty gain the bare means of existence, while those who do not labour live in opulence and own the soil” (Laveleye 1878: xxvii)? The answer lay in the reform of the property regime based on redistribution. All political systems extending suffrage rights had to provide a “more equitable division of property and produce, or the fatal end of democracy will be despotism and decadence, after a series of social struggles of which the horrors committed in Paris in 1871 may serve as a foretaste” (Laveleye 1878: xxvii).

The dramatic opening provided a sharp political angle to his description of past and present practices of collective land ownership. Laveleye was joining here a debate of his time on the legal theory of property by emphasizing the “present lessons to be drawn from the fact that all nations had in primitive times an organization which secured to every man a share in the productive capital” (Laveleye

1878: xxxiii). The ancient and contemporary forms of common land ownership were presented not for their own sake, but as a source of inspiration for what the author considered as the socially just distribution of property. The future of “modern democracies” hinged on creating a “general equality of conditions,” and history could teach the present through examples of failed and successful examples of equity (Laveleye 1878: xxxiv, Grossi 1981: 57).

Laveleye's book was a contribution to contemporary efforts to debunk the myth of the private property regime as timeless and God-given institution. The debate had been initiated by the German legal historical school, which reshaped the philosophical foundation of European legal scholarship in the first half of the nineteenth century (Haferkamp 2018, Rückert 2022, Mecke & Meder 2016). Members of the historicist school regarded law no longer as a “practical need” outside history, but an institution anchored in collective principles of geographically situated human communities, grown over time. The task of the historian was to uncover the legal consciousness of nations, manifested in past and present *Volksgeist* (Akamatsu & Rückert 2000: 8, Mecke & Meder 2016, Haferkamp 2018). Civil law was a prominent field of scholarly work, which affected also conceptualizations of property, the main scholarly concern of Laveleye, who relied on the historical accounts about the ancient forms of collective land practices and their recent interpretation by Henry Sumner Maine.

Maine was a British legal historian who served as Law Member in the Viceroy's Council in India from 1862 to 1869, during the period of consolidation after the Indian Insurrection of 1857. Here, he contributed to the codification of civil law and gained influence in training generations of future bureaucrats in the Indian and later, African colonial administration. His office coincided with a turning point in British colonial history under the influence of the uprisings in its most important colonies and dependent territories: Ireland, Jamaica, and India (Mantena 2010). Maine had been known for his universal evolutionary model of property, based on the combination of European and colonial sources. This model, described in several monographs, such as *Ancient Law: Its Connection with the Early History of Society, and Its Relation to Modern Ideas*, 1861; *Village-Communities in the East and West*, 1871; *Lectures on the Early History of Institutions*, 1875, discussed what Maine saw as the gradual transformation of ancient property regimes, characterized by collective ownership, into modern individual private property. Considering this transformation as a universal rule affecting all societies, Maine challenged the accepted view among Western jurists since the Scottish Enlightenment, according to which private property stood at the origins of human civilization. He particularly opposed the conjecture of the occupation of empty land by the first single proprietor and his family emerging from the state of nature. Maine criticized this idea of “occupancy” as a historically unfounded speculation and confronted it with new evidence about col-

lective property as a “more primitive” and primordial legal institution: “The Village Community is known to be of immense antiquity. In whatever direction research has been pushed into Indian history, general or local, it has always found the Community in existence at the farthest point of its progress” (Maine 1861/2012: 260).

Maine’s definition of the primordial village communities rested on the achievements of the German historical school. Historians like Georg Ludwig von Maurer, a legal historian and statesman in Bavaria, wrote extensive treatises about the historical origins of ancient German village communities (*Markgenossenschaft*) and their encounter with Roman imperial rule. Von Maurer considered the collectively owned lands, forests and pastures as belonging to the oldest “national” legal institutions, whose knowledge had not only scholarly, but contemporary political relevance in the codification of private property rights. His goal was to show that “the initial cultivation of the land was not practiced individually, but by entire families and tribes, a fact misrepresented and falsified by later scholarship, that emphasized the primacy and anciennity of the private property of Roman origins (trans. mine, TZS)” (von Maurer 1854: i–vi, iii, von Maurer 1856: 3). In the interpretation of von Maurer, the land-owning practices of the ancient Germanic village communities had been preserved on the territories inhabited by them. These could be documented in the Alpine regions of nineteenth-century Germany, Austria, Italy and Switzerland. Moreover, similar practices existed in the rural environments of the Western and Eastern Slavs.

The historical transformation of the German Mark in exchange with the Roman legal world provided a model for Maine and later for Laveleye, for capturing the dissolution of the Indian village communities and the historical emergence of private property. Maine regarded this process of dissolution and transformation of the ancient society of “status” into a modern one based on “contract.” In this process of differentiation, colonial Britain played a catalytic role similar to that of the Roman Empire for the Germanic tribes.

The British scholar attacked the epistemological basis of exclusive private property as hitherto institutionalized by legal scholarship, based on natural law, and triggered a controversy. Maine did not intend to overturn the capitalist/colonial property regime, since he regarded it as the pinnacle of a teleological historical development. What he criticized was only the “pathological development” it took under the British colonial rule. Since British administrators educated along the precepts of classical political economy “misrepresented” Indian society and its legal customs, the result was a revenue policy that allegedly destroyed the social tissue of native society. The crisis manifested itself in impoverishment, social disintegration, *anemie* and eventually social unrest against the British (Mantena 2010: 2261).

During the time of the publication of *Primitive Property*, the debate on the historical legitimization of collective property had been going on in full force and



Laveleye joined the side of the critics by leaning on the historical model developed by Maine and the German legal historical school. Maine's historical concern for the crisis of Indian society under British rule resonated with Laveleye's concern with the social question, triggered by the capitalist transformation of the countryside and the emergence of landless and indebted peasants (Castel (2000) 1995, Case 2018). In Central- and Eastern Europe, this transformation involved the liberation of serfs and the change of the feudal property regime into a modern, private one. What linked Maine and Laveleye with liberal social reformers of their time was the search for ways of meliorating the socio-economic inequalities of the new economic order. Also, there was a close link to debates on land reforms to both enhance modern ways of capitalist production and to compensate for peasants' older rights of use of manorial forests and pastures, now removed or changed by the liberal property legislation. The historical scholarship on the commons, first in German-speaking Central Europe and Scandinavia, then across and beyond the continent, went hand in hand with initiatives to integrate them in the new liberal civil legal systems (cf. Brakensiek 2000).

Laveleye's book was soon translated in English and published with an additional introduction by another adept of Maine, the Irish Thomas Edward Cliffe Leslie (1825–1882). The professor of jurisprudence and political economy in Queen's College, Belfast, shared Laveleye's enthusiasm for German historical scholarship on "the original co-ownership and common cultivation of the soil" by "village communities" (Laveleye 1878: xiii).<sup>2</sup> His interest in the early Irish common property laws, the so-called Brehon law, which became known in the mid-19<sup>th</sup> century, and his own comparative inquiry in the transformation of the Western European rural economy, sat well with the ambitious scope of the monograph by Laveleye. Leslie's work, titled *Land Systems and Industrial Economy of Ireland, England and Continental Countries*, 1860, compared the recently documented historical traditions of collective land ownership in Ireland with those of England and the economies of Germany and Belgium. The contrast of the past and present property regimes inquired into the differentiated effects of enclosure, particularly labor migration to the industrialized centers the impoverishment of the countryside. In his introduction to Laveleye's book, Leslie criticized the institution of private property from the vantage point of the dependent territories of the British Empire: like India, Ireland too witnessed the negative social consequences of land privatization, that is, peasant indebtedness, impoverishment and famine, which channeled into the Fenian Rising in 1867.

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2 Leslie mentioned by name some of the "celebrated researches" of the German scholars, including August von Haxthausen, Georg L. von Maurer and Erwin Nasse.

## Towards global comparisons: Creating the historical model of common land ownership

Legal historians saw the interaction of the “originally free” German Mark with the Roman legal sphere that set the historical transformation of the village community in motion. According to von Maurer, this meant the gradual dissolution of the commonly owned land and the emergence of private (manorial) property in the framework of a novel political institution, the feudal state (von Maurer 1854). Maine adapted the theory of legal evolution to traditional Indian society (regulated by “status”) and saw the mechanisms of change as similar in kind as those driving the transformation of the German Mark. Only in this case the specific environment of the change was the British Empire. Similar to his German colleagues, who corroborated historical scholarship with contemporary ethnographic observations, Maine too contrasted historical data with present observations in India and Ireland for developing his own dynamic model of property (Stein 1991: 205, Grossi 1981: 29–32, also 43). The empirical evidence served as the basis of a historical conjuncture: “that private property, in the shape in which we know it, was chiefly formed by the gradual disentanglement of the separate rights of individuals from the blended rights of a community” (Maine 1861: 252. Repeated also by Leslie and Laveleye, cf. Laveleye 1878: XVI–XVII, 136).

The scope of ethnographic and historical comparison became even more global and encyclopedic with Laveleye, who intended to demonstrate the empirical validity of Maine’s speculative argument. The selection of evidence from all the continents and epochs by a large number of authors was to prove that if “similar institutions are to be found in all ages, in all climates, and among the most distinct nations and races, we must see in their prevalence a necessary phase of social development and a universal law, as it were, presiding over the evolutions of the forms of landed property” (Laveleye 1878: xv–xvi).

Laveleye’s compilation of cases was bare of a systematic source criticism. Carrying a large bibliographical apparatus, the book however can be read as a documentation of contemporary historical and ethnographic interest in collective property in land, which swelled to include cases from the Russian *mir* and the Southern Slav *zadruga* to American and African indigenous collective land ownership. The author selected cases from various historical stages and geographic contexts to fill Maine’s speculative universal historical model with empirical evidence: descriptions of indigenous common land in colonial contexts alternated with instances of their European counterparts in federal states and constitutional monarchies, historical and contemporary evidence was juxtaposed next to each other. The vast array of village communities included examples from the British and Dutch col-

onies, the agrarian communities of the “Arabs and other nations,” in South- and North America, Italy, England, China, among the “South Slavs” (Serbs, Croats, Dalmatians, Bosnian Christians, inhabitants of the historic Habsburg Military Frontier, Bulgarians, Herzegovinians and Montenegrins) and “Western Slavs” (Poles, Czechs, Slavonians). Next to ethnographic presentations, historical studies about Holland, France, Belgium, Russia, Egypt, Turkey and India were included. There was a separate section on indigenous populations in South- and North America in comparison to the ancient Germans and Celts. Finally, the book included a chapter on the history of collective property in ancient Greece and Rome and its transformation into village communities by the Middle Ages. Karl Bücher (1847–1930), who became later known for his theoretical work on the stages of economic history at the University of Leipzig, extended his translation of Laveleye’s book with further chapters, including German, Italian, Scandinavian and North-American indigenous common land ownerships.

For Maine the specific frame of discussion had been the British empire and the search for a more equitable revenue politics. For Laveleye the main lesson about the institution of collective land ownership was also its alternative social ethics. He contemplated the land holding communities as moral economic microcosms and possible role models for future political economies based both on efficient management and a socially just distribution of wealth. However, this did not mean an idealization as Laveleye emphasized the contextual character of the commons. A good example was the contrasting comparison of the Russian collective land, the *obshchina* or *mir* with the Swiss *Almend*. The *obshchina*, formally reinstated after the serf emancipation in 1861, had become internationally known by the 1870s. Contemporary political debates in Russia demonstrated its centrality to domestic social and economic policies, as represented by the main political factions of the land. Laveleye accorded great attention to these debates as he found them essential for the future of the Russian Empire:

“First, there are the conservatives, such as the Baron von Haxthausen, who would protect the patriarchal system and the ancient institutions. Then come the numerous group of Slavophiles, such as Aksakof (sic), Byellyayef (sic), Koschelyef (sic), Samarine (sic), and Prince Tscherkasski (sic), followed by many persons in high society, and distinguished women who take very exalted views of the great destiny reserved for the Slavonic race. Finally, there are the socialist-democrats of the school of Herzen and Bakunin, such as Tschernischewski (sic) and Panaeff (sic), who maintain that the agrarian organization of the *mir* contains the solution of the social problem, sought in vain by Saint-Simon, Owen and Proudhon” (Laveleye 1878: 27).

The description underlines the social significance of the commons by presenting their centrality to contemporary debates on Russian politics and culture (cf. Schmidt 1992, Nafziger 2016). Advocates of modernization based on Russian histor-

ical traditions, the so-called Slavophiles, praised the *mir* as a venerable primordial institution of the Russian people. Others, inclined to reforming the empire along Western European models, found it despotic and economically defunct, an opinion also shared by Laveleye. In line with the Westernizers' account, the *obshchina* appears in the book as an institution, which incorporated "the habit of submission to the despotic authority of the father, which has given the Russian people the spirit of obedience, of self-denial, and gentleness" (Laveleye 1878: 13–20). Laveleye highlighted how socioeconomic and political factors shaped the commons, drawing a vivid contrast with the 'democratic' and economically efficient Swiss *Allmend*. He also noted that German colonists in the Russian Empire retained their common land practices, illustrating the adaptability and endurance of the commons across different regions and eras. His work can thus be seen as contributing to a general theoretical model of collective land ownership, one shaped by the political framework and cultural identities of the societies that developed it.

## From collective land ownership to the right of future generations

The abundance of evidence on traditional forms of commonly owned land worldwide at different historical stages represented an attack on the prestige of private property. Laveleye and his contemporaries drew attention to the widespread mixed property regimes in Europe since ancient Roman rule. For instance, they highlighted how Germanic village communities combined exclusive possession of movable goods and common land ownership.<sup>3</sup> Others, like Maine, whose scholarship developed in the colonial context, criticized the right of *res nullius* (occupying allegedly "empty things"), translated as the rights of the first single colonial proprietors to land, as baseless historical fabrications.

The historically founded critique of private property did not remain a purely academic concern, but became a reference point in political debates on land reform. Laveleye's book was an example, meant as a source of knowledge about alternative forms to "quiritary property," that is, the strict and severe right of property which we have borrowed from Rome, and which is leading us to social strife" (Laveleye 1878: Xlii–xliii). It was regarded not only as a model of a fairer distribution of resources based on labor. Even more fundamentally, the historical examples had

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<sup>3</sup> As in the case of Germanic and Islandic peoples: see von Maurer 1854: 158. Others, like Le Play, recognized the right of occupancy only in the case of movable objects, cf. Laveleye 1878: 22, 339.

shown that the institution of property was flexible and therefore capable of reform: “the object of this book is not to advocate a return to the primitive agrarian community; but to establish historically the natural right of property as proclaimed by philosophers, as well as to shew that ownership has assumed very various forms, and is consequently susceptible of progressive reform” (Laveleye 1878: xlv).

It is no coincidence that the translator of Laveleye’s book into English, Thomas E. C. Leslie, was engaged in the land reform movement. His preface to the translation channeled the academic and political argument of Maine and Laveleye into an advocacy of land reforms in the British colonies in Australia and New Zealand. Karl Bücher, who carried out the German adaptation in 1879, was then professor at a *Realgymnasium* and editor of the social and economic political section of the *Frankfurter Zeitung*. Not least, he was member of the *Verein für Socialpolitik*, whose founding meeting in 1872 hosted also Laveleye, and whose historical, statistical and ethnographic scholarship constituted an indispensable basis of later Bismarckian social politics (Wagner-Hasel 2011: 37–39). Like Leslie, Bücher had connections to the land reform movements connected to the activity of Henry George, represented in Germany by the circles around the politician and pedagogue Adolf Damaschke (Hugler et al. 2005, Bücher 1902).

Laveleye emphasized the economic benefit of village communities to provide “public services on a magnificent scale,” which he recommended widely and internationally (Laveleye 1878: 324). To enhance its effect, the English translation of the book was published together with a personal letter from John Stuart Mill, contemplating Laveleye’s proposal to put the “system of *Allmend*” in practice in England (Laveleye 1878: 352). At the same time, Laveleye and Leslie recommended the study of commonly owned lands to the attention of colonial administrators in Australia and New Zealand, while condemning the practice of contemporary land grabbing in these “new colonies” (Laveleye 1878: xxi–xxii).

The choice of the place was not accidental, since both British colonies witnessed movements to reform land tenure legislation at the time of the publication of the book. The oldest of these initiatives in Australia had been the Land Tenure Reform League at Victoria, founded in 1872, which campaigned for declaring the soil a common good under the stewardship of the state. Members of the League advocated that the state should stop selling land, but only grant lease. The last chapter *Primitive Property* dedicated to the theory of property emphasized the role of the state in the modern management of common lands and cited the political “principles” of the League in detail. The latter propagated a definition of land ownership, which did not recognize collective property in itself, but emphasized the right of access to land as a collective resource: “The land is the inalienable property of the inhabitants of every country throughout all generations” (Laveleye 1878: 322. About the League see Jordan 2022). Land was the “primary source of food and wealth,”

whose legitimate manager was not the private owner, but the state. Instead of exclusive individual land ownership, the state was to be empowered with the capacity to distribute life-long land leases: “With an absolute freedom from taxation, and full and unfettered scope for industry, every inhabitant of the country would enjoy a beneficial interest from his share in the state lands, whether occupying a portion of these or not” (Laveleye 1878: 323).

As previously shown, Laveleye started his book with the advocacy of the equitable distribution of (private) wealth: “modern democracies will only escape the destiny of ancient democracies by adopting laws such as shall secure the distribution of property among a large number of holders, and shall establish a very general equality of conditions” (Laveleye 1878: xxxiii). This claim resonated with the land ownership program of the League that regarded the invested labor the only just basis of private property. “The lofty maxim of justice, *To every one according to his work*, must be realised, so that property may actually be the result of labour, and that the well-being of each may be proportional to the co-operation which he gives to production” (Laveleye 1878: xxxiii). Moreover, in his focus on land, Laveleye embraced the idea of a “right of posterity to enjoy the revenues” and aligned himself with advocates for land nationalization as a solution to dispossession (Laveleye 1878: 320, 324).

Here he drew not only on the initiatives of the Land Tenure Reform League. There was a convergence with similar political claims of other activists too, including the popular US American journalist, politician and progressive economic thinker Henry George. George and Laveleye appreciated each other’s work and shared a common concern for the unequal distribution of wealth. Politically more vocal than Laveleye, George considered it a great injustice that private profit was amassed by land monopolists, who restricted access to natural resources, while productive activity was burdened with heavy income taxes. George’s ideas on solving the land question became popular in the United States, from where he attempted to influence land reforms in Ireland, Scotland and Australia. He was also a committed and prominent supporter of the Land Tenure Reform League (Heavey 2008, Jordan 2022). In his best-seller on social reform titled *Progress and Poverty*, George radicalized the critique on land property based on occupancy:

“Our rights to take and possess cannot be exclusive; they must be bounded everywhere by the equal rights of others. Just as the passenger in a railway carriage may spread his baggage over as many seats as he pleases, until other passengers come in, so may a settler take and use as much land as he chooses, until it is needed by others – a fact that is shown by the land acquiring a value – when his right must be curtailed by the equal rights of the others, and no priority of appropriation can give a right that will bar these equal rights of others” (George 1879).

He acknowledged collective land rights, which he saw in no contradiction with “individual rights to improvements or produce” (George 1879, cf. George & Subramaniam 2022). But his main goal was the safeguarding of access to this resource as a universal right over successive generations:

“As for the deduction of a complete and exclusive individual right to land from priority of occupation, that is, if possible, the most absurd ground on which land ownership can be defended. Priority of occupation give exclusive and perpetual title to the surface of a globe on which, in the order of nature, countless generations succeed each other! Had the men of the last generation any better right to the use of this world than we of this? Or the men of a hundred years ago? Or of a thousand years ago? Or the moundbuilders, or the cave-dwellers, the contemporaries of the mastodon and the three-toed horse, or the generations still further back who, in dimensions that we can only think of as geologic periods, followed each other on the earth we now tenant for our little day?” (George 1879)

The ideas of Henry George and Laveleye resonated in Australia and New Zealand, but also among European social reformers (Hugler et al 2005, Repp 2000). Here the labor movement and socialists rejected his ideas for being too capital-friendly; he was more influential in the left-leaning liberal circles in England, Ireland, Denmark and Hungary, which attempted to reform the capitalist economic system from within (Onken 1997). They also had a following in Germany, which can be partly identified by following the trajectories of the individuals associated with the translation of Laveleye’s books, like Karl Bücher (cf. Hugler et al. 2005). After his tenure at the University of Leipzig in 1882, Bücher dedicated himself to other themes. But in later stages in his life he returned to the theme of common lands as an economic model that legitimated social political measures in reforming land legislation. One of his lectures on the social and economic significance of the *Allmende*, which was basically a repetition of his contribution to the German translation of Laveleye’s book, was held at the twelfth Assembly of the Federation of German Land Reformers (*Bund der Deutschen Bodenreformer*, see Bücher 1902). As mentioned before, the Federation at that time presided by Adolph Damaschke, an adept of the Georgist ideas on land reforms in Germany.

Nearly hundred years after the publication of Laveleye’s book, the Italian legal scholar Paolo Grossi showed its genealogy in the contemporary critique of nineteenth century global capitalism and its central institution, modern private property. He dissected the controversies about the “alternatives to private property” in mid-century Western juridical science, hailing them as the beginning of a “new dialectic between individual and collective forms of property” in Europe and British India (Grossi 1981: 5). Grossi recorded the international character of the debates on collective property and also showed their effect on land reforms in late nineteenth-century Italy, which reinstalled the commons in some localities.

Grossi saw these debates as a “small doctrinal current” that ran against the European legal mainstream, but ebbed in the 1890s (Grossi 1981: 5–6). This is surprising, given the fact that the connection of these debates to land reform movements in the last decades of the nineteenth century shows the flexibility of the concept of the commons and its adaptation to novel ideas of land reform across nation-states and continents. The encyclopedic documentation of “primitive property” across time and space took place parallel with the forming of a network of university professors and political activists, who used the historical evidence on common land and the village communities owning them, to formulate new political claims. The geographic scope of the debate and the spaces of knowledge from which it emerged indicates emerging venues of “global publics” (Huber & Osterhammel 2000) connected to activism on land reforms, whose archipelago is still to be fully charted.

For long time intellectuals like Émile de Laveleye or his main intellectual reference person, Henry Sumner Maine, were seen as part of the political mainstream of their time, who nevertheless played a progressive role by shaking the legitimacy of the colonial and European regimes built on the cult of private property. Particularly the legacy of Maine was incorporated in the environmental economical writing of Elinor Ostrom, who adopted Grossi’s assessment of his legal scholarship as a contribution to a “tidal change” in public thinking about the commons in the nineteenth century (Ostrom & Hess 2008: 333).

In the past decade’s post- and decolonial research, the criticism of the private property regime has become more radical and historians much more attentive to the responsibility of European intellectuals like Maine and Laveleye in sustaining colonial authority and its social and ecological injustice (Pistor 2020, Linklater 2013, Bhannar 2018, Mantena 2010, Vandermissen 2011, George & Subramaniam 2022). It has become a lot harder to speak about their merit, whose work is situated on the intersection of European and colonial knowledge production. During the 1870s and 1880s, empirical knowledge was increasingly shaped into broad sociological models of economic and legal cultures, often carrying implicit or explicit political agendas. Laveleye’s critique of private property exemplifies this trend (Meyer 2002: 215).

The debates about collective property speak for the public effervescence of this topic in the final decades of the nineteenth century. Its comparative exploration as a putative model for solving global conflicts of resource distribution and reducing social inequalities, is comparable in many respects to today’s debates. Proto-sociologists, legal anthropologists and political activists construed the commons as a primordial property form predating private property as defined in Roman law and modern natural law. Collective property figured for them as a laboratory of future norms for a fairer regulation of access to land, one of the most precious material resources of that time.



Emerging in national frameworks in the first decades of the century, the historical documentation of rural common property transformed into a comparative historical inquiry of property systems. The paper captured the international turn of these debates in the closing decades of the nineteenth century. Already in the legal historical scholarship of the 1850s, they were subject of broad comparisons. This aspect became more accentuated in the world historical legal inquiries of Henry Sumner Maine and Laveleye. They placed the commons in a Europe-wide debate on property in land, which operated with examples at a global scale and addressed its colonial dimensions.

## Conclusion

The documentation of common property in the nineteenth century had not appeared as a purely academic interest, but was connected to ideas of reforming the individual property regime based on Roman Law and the *Code Civil*.<sup>4</sup> The activity of Laveleye and his contemporaries like Thomas C. E. Leslie and Karl Bücher, but also the briefly mentioned example of the Russian *obshchina* is illustrative of the links between the political and academic construction of common property in the second half of the nineteenth century. A merit of the Belgian professor was to take account of these debates in his book. Some of them, like those about Georgist land reforms, crossed national boundaries, and connected with questions about social politics, which can be traced to today's discussions of the commons.

Laveleye's book created a platform for the international scholarship on common property in land and the political ideas and land reform movements connected to them. His model of the commons became a focal point for a transnational critique of private property and demands for more equitable distribution of wealth. Progressive intellectuals were hoping for economic and political empowerment through universal access to land. Common property became for them the basis of reflections on more just social policies and modi of agricultural self-organization, which allowed the "small capitalists" to compete with the large latifundia (Laveleye: 268).

Not all land reform movements regarded common property in land a solution to social and economic evils. I mentioned briefly the skepticism of socialists, who advocated the eradication of private property altogether. More research is needed to uncover the voices in this polyphonic debate. Some of them, like Laveleye, advanced the universal recognition of the individual right to property, while Henry

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<sup>4</sup> This political interest was particularly strong in Laveleye's book and observed by many of his contemporaries, who found fault in his academic analysis.

George and his followers were more radical. In the formulation of the Land Tenure Reform League at Victoria, land was to be excluded from private ownership: “the soil, similar to water and air, cannot be possessed by a single person (cited by Laveleye 1878: 340).”

It is important to notice the limitations in the liberal theory of the commons as shaped by Laveleye and his contemporaries. They did not go so far as to recommend a return to collective property practice *per se*, but rather as a model to reflect on reforms. Thus, Laveleye paid his respect to Māori activism for common land ownership in contemporary New Zealand, but expressed his preference for state-supervised individual land lease (Laveleye 1878: 326). Another example was Henry George and his documentation of the dispossession of indigenous peoples in the British and American regimes: “To the Anglo-Saxon of the frontier, as a rule, the aborigine has no rights which the white man is bound to respect. He is impoverished, misunderstood, cheated, and abused. He dies out, as, under similar conditions, we should die out” (George 1879, cf. George & Subramaniam 2022: 629). This account presents the dispossession of indigenous institutions as a historically irreversible act. Their claims and ideas of social justice, formulated in terms of property redistribution (see Yaka 2018), remained subordinated to the modern territorial state.

Laveleye used ethnographic and historical evidence of rural collective property to construct the commons as ideal spaces of social and economic justice. Doing this, he shared the attitude of other reform-leaning liberal academics and political activists, who chastised the social injustices of capitalist economy, while rejecting its overturn from the left – yet another feature shared with the advocates of the commons today. His book also reflects a socially elitist attitude to popular revolutionary movements, which also characterized Maine, who also introduced his writings on ancient collective property by referring to the social crisis, which channeled into a revolution.

Paolo Grossi showed how, in post-Unification Italy, strenuous parliamentary fights that took more than a decade for the recognition of landholding collectives were triggered by the debates accompanying the historical rediscovery of collective property. In 1894 in the Pontifical states the commons were accorded the status of juridical persons to protect fragile communities holding them. In the Habsburg Monarchy, state bureaucracies at the turn of the twentieth century started reassessing the commons with social political considerations. In Britain and the US social political measures targeted the alleviation of the economic status of smallholders. The scholarly construction of the commons, the political debates and movements induced by these are signs of the renegotiation of their status as state territories at the end of the nineteenth century. Motivated by political and ethical reasons, Laveleye’s book was a part of this process.

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