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ULRIKE BERGERMANN

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Property

Property: Colonial Histories and Messages to the Future

Ulrike Bergermann



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KONFIGURATIONEN DES FILMS

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meson press eG, Salzstraße 1, 21335 Lüneburg, Germany
info@meson.press

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Ulrike Bergermann

Configurations of Film: Series Foreword

Scalable across a variety of formats and standardized in view of global circulation, the moving image has always been both an image of movement and an image on the move. Over the last three decades, digital production technologies, communication networks, and distribution platforms have taken the scalability and mobility of film to a new level. Beyond the classical *dispositif* of the cinema, new forms and knowledges of cinema and film have emerged, challenging the established approaches to the study of film. The conceptual framework of index, *dispositif*, and canon, which defined cinema as photochemical image technology with a privileged bond to reality, a site of public projection, and a set of works from auteurs from specific national origins, can no longer account for the current multitude of moving images and the trajectories of their global movements. The term “post-cinema condition,” which was first proposed by film theorists more than a decade ago to describe the new cultural and technological order of moving images, retained an almost melancholic attachment to that which the cinema no longer was. Moving beyond such attachments, the concept of “configurations of film” aims to account for moving images in terms of their operations, forms and formats, locations and infrastructures, expanding the field of cinematic knowledges beyond the arts and the aesthetic, while retaining a focus on film as privileged site for the production of cultural meaning, for social action, and for political conflict.

The series “Configurations of Film” presents pointed interventions in this field of debate by emerging and established international scholars associated with the DFG-funded Graduate Research Training Program (Graduiertenkolleg) “Konfigurationen des Films” at Goethe University Frankfurt. The contributions to the series aim to explore and expand our understanding of configurations of film in both a contemporary and historical perspective, combining film and media theory with media history to address key problems in the development of new analytical frameworks for the moving image on the move.

Introduction

Sema Çakmak and Fadekemi Olawoye

Malın mı var, derdin var goes an old Turkish saying. It literally translates into *If you have property, you have problems*. Against the dominant narrative of Western capitalism, in which property, at the expense of collective freedom, is constructed as the warrant of individual freedom, here property is quite the opposite. Owning things means being responsible for them, taking care of them. Maintenance, repair, protection—mental and financial distress at all times. Ownership means a life of constant paranoia. Something might happen to the property, it could be stolen or destroyed by someone or something. Fear of economic and emotional devastation. Insurance is a must. This paranoia of loss, or as Ulrike Bergermann conceptualizes it with von Redecker, Harney, and Moten, becomes a phantom possession which, like phantom pain, reflects a sense of having lost something “that in fact is not only not there (anymore) and that perhaps has never or never rightfully belonged to the person feeling the loss” (47). Looking at the concept of phantom possession, she reveals the deeply ingrained feelings of loss and entitlement associated with ownership and how these feelings can lead to aggressive and authoritarian responses, no matter how those things had been colonially appropriated in the first place. This anxiety of becoming deprived, which motivates the rise of right-winged ideologies in contemporary Europe that shun asylum-seekers mainly from African and Middle Eastern countries to keep them from profiting from “their” privileges, seems strongly ironic. The practice was *taking* from colonized people, not *giving back*. Financially, the implementation of genuine reparations for the formerly colonized countries, as Bergermann points out, would mean the end of Europe. One of the takeaways of the following book is that there can never be 100 % reparations for looted goods, land, people,

- 10 social and economic structures and for recognizing indigenous and collective rights.

Bergermann offers a relevant theoretical framework for dismantling naturalized colonialist concepts and for enhancing reflection on the decolonization of media and film cultures. Her research aligns with the interdisciplinary approach of “Configurations of Film.” She draws from the fields of law, philosophy, cultural studies, and post-colonialist discourse to elucidate the conceptual interconnections between property and a multitude of sociocultural phenomena, as well as the potential of audiovisual media to contribute to decolonization. However, she also highlights the particular challenges and limitations that decolonizing social and legal practices and processes confront, demonstrating how pervasively colonial structures are intertwined with and embedded in ideological, cultural, legal, and philosophical tenets and conceptualizations.

The concept of “Configurations of Film” considers moving images outside of their classical settings or *dispositifs* and functionalities, and aims to deconstruct the prevailing power dynamics of (Western) canonization through decolonial approaches and perspectives that differ from dominant Western ways of seeing, thinking, and practicing culture, film, and media. The research collective is predicated on a constant process of questioning and challenging institutionalized academic and cultural perspectives as well as rigid ontologies. This approach allows for an investigation of the decolonizing potential of audiovisual media and related practices in terms of their capacity to generate cultural value and meaning, as well as facilitating political endeavors aimed at fostering awareness and agency. This publication therefore enables us to consider moving images as multifaceted instruments of decolonization practices, as well as modes of expression that challenge dominant conceptualizations, historiographies, and cultural appropriation. It offers a critical perspective on naturalized but outdated norms and ideologies that continue to perpetuate injustices in the postcolonial world,

providing a timely and pertinent discussion of decolonization that offers a methodological and theoretical framework. 11

In her first section "Primal Scenes of Property," she makes an initial differentiation between *dispossession*, which has a long history, and *propertization*, which is a rather modern and complex socio-political form tied to capitalist ideology. Bergermann discusses the development of modern property laws in Europe, which arose simultaneously with colonial appropriation, by referring to the theories of John Locke and Thomas Hobbes, whose thoughts about natural law, ownership, and the definition of a citizen-subjecthood were foundational in shaping Western culture and concepts of property and remain so even today. These notions were predicated on racist assumptions and served as the rationale for colonialism, the consequence of which was more than the mere dispossession of land. It also led to the destruction of the practice of communal land use and the further establishment of the capitalist world order of accumulation. Bergermann demonstrates how the colonizers appropriated the property of the colonized, which had been subsumed under different forms of collective ownership that left them with no legal ground to protect their property. The land in question was thus considered unowned due to the absence of Western property laws, while indigenous conceptualizations of land were dismissed as pre-modern and uncivilized. The ability to own was defined in accordance with the European narrative of progress, which aimed to bring civilization to non-white people by possessing their lands and imposing on them European individualistic philosophies of ownership. "Property functions as an indicator of which racialized and gendered identity is ascribed to a citizen-subject" (38). To own is to be (a civilized subject).

Bergermann continues with the aforementioned capitalist myth of property being the path to freedom. However, this does not only mean the freedom that comes through external material ownership but above all the use of one's own body (its money-making labor force), the possession of the self. "We have seen

- 12 that subjects themselves are subjects precisely when they can take possession of themselves, when they can conceive of and improve themselves as capital, as a form of self-ownership that is a nexus of racialized, classicist, and sexist lines" (112). She reveals the inherently destructive nature of the etymological origin of the term property as opposed to possession, which, beyond the right to use, includes consumption and *abuse*, easily recalling the treatment of enslaved people as disposable objects. Furthermore, drawing on Brenna Bhandar, she notes how property as a concept was not only tied to white male subjecthood, but that doing so also defined how to own "correctly."

The second section, entitled "Cultural Property and Postcolonial Copyright," turns its attention to the intangible concepts of intellectual property. Bergermann considers the protective laws of artistic and/or cultural creations, exemplified by copyright laws, which are a distinctly Western concept that has, however, been imposed globally. Copyright can be seen as a product of the individualistic ideologies of Western identity: the author, the genius whose work must be protected from copying. At the same time indigenous cultural forms of expression are dismissed as folklore, connoting pre-modern (collective) practices, in contrast to civilized modernity/progress, which are not worth protecting by "white copyright law" but are nonetheless exposed in various ways to Western commercialization through cultural appropriation. Bergermann ties the concept of intellectual property and copyright back to the European Enlightenment and Liberalism by drawing on Alpina Roy and Angela Riley. It was an extension of these liberal, individualistic, and racist thinking processes that produced and naturalized the concept of private property, which could then be transferred to intangible things by means of copyright law, turning them into commodities as well. How can cultural expressions, especially those of indigenous communities, be protected from commercial exploitation without forcing them into the Western property system? This is a question that Bergermann poses in the book and one that is particularly

important for the preservation of cultural expressions that differ from Western cultures, such as oral practices. Bergermann points out that this kind of cultural heritage faces enormous challenges when forced to adapt to European jurisprudence. Copyright is a money-making avenue for the Global North, one that often does not operate effectively in other countries. In decolonized African countries such as Nigeria, copyright law related to cultural products in the media of film hardly applies. A work that is of significance to this is that of Brian Larkin (2008). Larkin emphasizes that many films produced and distributed in Nigeria are confronted with piracy issues despite the federal law, which is against it. What is significant here is that copyright law appears to operate successfully in the Global North but not in the Global South.

Bergermann also reflects on how the concept of intellectual property makes little sense in some indigenous contexts, where cultural productions are treated collectively. At the same time, the bold examination of copyright law as a continuation of colonial claims to ownership in the context of audiovisual production demands a nuanced approach. We must ask: how can we protect artists and cultural workers from exploitation without reproducing colonialist thought patterns and structures that are hidden in copyright, both ideologically and pragmatically? How can audiovisual cultural productions function fairly while still remunerating artists and cultural creators without reproducing discriminatory and exclusive interest structures? This critical examination of a seemingly foundational normative (Western) convention of media and film production in relation to intellectual property and copyright law aligns with the research objectives of "Configurations of Film," which aims to challenge epistemological and ontological presuppositions in the field. The unlearning of copyright law presents an opportunity to reconsider its underlying principles and potentially for it to evolve into a more equitable and inclusive version in the future, thereby enabling

- 14 a move beyond the value systems and definitions that have emerged from colonialist power hierarchies.

In the third section of the book, Bergermann discusses the complex processes of deconstructing racial regimes and colonialist thinking, as well as the property laws that defined whiteness, or supposed white male superiority. Unlearning, she claims, has a short time frame because it is a kind of beginning, but has no end (XX). One rather intriguing thought here is if and how piracy in Global South countries can be seen as an anti-capitalist and anti-colonial practice that reclaims some of the wealth of Global North structures and in a sense defies this colonialist idea of property in several ways. Piracy, as a means of access to culture for many countries in the Global South, is of course not so well regarded in the West, which not only tries to legally prevent piracy through copyright law, but at the same time continues to construct this act as one of the lowest in ethical terms. The colonized and dispossessed were subsequently integrated into the legal systems and property rights of the colonizers, and today must comply with their understandings of media usage. In this context, Bergermann puts forth the notion that piracy can be viewed as a form of resistance. Ramon Lobato explains that in many places, piracy is the only way to access media when there are no legal options, and not always in a necessarily political way (Lobato 2012, 82–83). He emphasizes the everyday banality of most piracy and problematizes the piracy-as-resistance trope. At the same time, he asks us to look beyond the imagination of “the first world user as default subject, and to think of piracy in a wider political frame ... While media industries paint piracy as a sin, ... the piracy-as-access perspective asks us to remember that piracy is often an everyday act evacuated of overt political content” (Lobato 2012, 84–85). Nevertheless, in a postcolonial context, piracy-as-access is concomitant with piracy-as-resistance. Even the banal act of piracy, its “everydayness,” endows it with a political dimension, as it enables the privilege of access to formerly dispossessed peoples, the reappropriation of some of the wealth of the Global

North, and sustenance for a rethinking of copyright law, as Bergermann elaborates. At the same time, she emphasizes that reparation hinges on how the Global North should put an end to taking the wealth of the Global South. The argument extends to the stance of the literary scholar Ngũgĩ wa Thiong’o, who attested to the fact that the colonized have the right to demand their looted properties—even if it is done in indirect (and illegitimate) ways, as in the case of piracy.

For unlearning property and its colonial logics of accumulation and progress, Bergermann imagines a world without property, where people would relate differently to objects and to each other, a world with a different relation to property than *to have/ to own* it. To truly undo racial regimes, we need a radical shift, she claims. Borrowing from Bhandar, Bergermann points out that the idea of a world without property could have a significant impact on identity, as property and identity are closely intertwined today, even in cultures with a history of colonial rule. Artistic expressions, such as media and textile performances, serve as potential tools for reimagining property relationships, shifting from possession to communal interaction. We need to think about how we own and how we are owned in order to start with the undoing of colonialism. As an example of an practice of unlearning, Bergermann examines a work by the queer-feminist artist group RHZ from Hamburg, *Ohne Zeit, ohne Ort / Without Time, Without Place*, which explores alternative notions of ownership and community through performative and visual media to deconstruct these racist and colonialist conceptions of property. The series plays with classic portrait painting formats, showing timeless depictions of groups or individuals wearing things that are reminiscent of historical clothing and reflecting an appropriation of their own white northern European cultural history. It depicts an imagined community with both historical and contemporary cultural references, while at the same time highlighting the problematic aspects of contemporary clothing production, which is linked to colonial histories and global

- 16 exploitation. The collective's work highlights issues of commodification and misappropriation of cultural artifacts by using materials and styles that evoke traditional costumes and historical references. At the same time, RHZ's emphasis on collective creation and shared cultural expressions aligns with postcolonial calls for recognizing and valuing communal and indigenous knowledge systems. RHZ creates a space of "unlearning" imperialist historiography. Overall, it emphasizes that it is not about reconstructing the past, but about actively engaging with history and identity while critically questioning the social inequalities and environmental issues in today's fashion industry.

"Configurations of Film" also calls for this "radical shift" to support the process of unlearning colonialism, in the sense of decolonizing film studies, which can also be facilitated by producing and examining films, particularly documentaries and historical films about the colonized. The production of historical literature on property reparations and racism produced by the voices of formerly colonized people should be strengthened for a more inclusive and accurate view of their experiences. This is due to the fact that filmmakers from countries that have undergone colonialism are better positioned to narrate their stories with a deeper understanding of their own circumstances. Film is a medium for producing these narratives, and it has helped create awareness about different aspects of the colonized experience. An example of this is the story of the pre-colonial Benin Kingdom in Nigeria, as told in the film *Invasion 1897* (2014) by Lancelot Imasuen, which sheds light on how the British stole priceless artifacts from the Benin Kingdom. The film depicts how the colonized people of Benin were marginalized and dehumanized, allowing for a more in-depth engagement with the underlying colonial concepts of appropriation and ownership.

The book issues a call for a more profound examination of naturalized and implemented concepts from imperial pasts, while acknowledging their discriminatory origins. At the same time, it is an invitation to recognize the deficits of Western conceptions

and resources. Thus, Europe and the West continue to indulge their deeply entrenched sense of individual ownership.

In this book from the “Configurations of Film” series, Ulrike Bergermann inquires into the complexities of property as a concept that defines colonizing, white subjecthood and thus provides compelling insights and new theoretical possibilities for decolonizing thinking in areas ranging from copyright, print culture, cultural heritage, property restitution, legal protection, and racial consciousness. Drawing on thinkers like Fred Moten, Stefano Harney, and Karl Marx, she argues that property not only denies the genuine sharing of resources but also shapes human relationships and social hierarchies, entrenching systems of exclusion and exploitation rooted in colonial histories. According to her, the right to own is constructed in colonialist thinking as a white, male ability, a privilege, and as such, a further distinguishing feature from racialized peoples that justifies the colonizing mechanisms/schemes. Property is conceived as an exclusionary right just like whiteness itself. Whiteness becomes property and vice versa. Racialized peoples who engaged in practices of collective use or sharing rather than the radically individualized European notion of property have been defined in a generalized way as incapable of ownership, denying them subjecthood. The argument further traces how early capitalist and colonialist philosophies of property, especially those of the Enlightenment, were intertwined with racial and cultural hierarchies, legitimizing the exploitation and dispossession of colonized peoples. This colonial heritage has embedded itself deeply into modern legal and social systems, permeating the sense of entitlement and identity in Western culture. Furthermore, she discusses how copyright law functions as a colonialist tool and continues to perpetuate injustices between the Global North and the Global South. By revealing these deeply rooted colonial and racist origins of the modern concept of property and intellectual property in the form of the copyright law, Bergermann calls for fundamentally reevaluating and potentially abolishing property in order to create more just

- 18 even without the colonial crimes behind them. Drawing again on Marx, Bergermann elucidates that the Western concept of identity and the dynamics of power are inherently intertwined with materiality to such a degree that they risk becoming meaningless in the absence of ownership. Thus, it is crucial to engage in self-reflection and to consider this unnatural yet naturalized view in conjunction with decolonial questioning. It is only through this process that the possibility of genuine decolonization will be realized, free from the influence of dominant ideologies. It is a challenging process, because decolonization not only entails the unlearning of previously held beliefs and practices but also the dismantling of the structures that perpetuate them. Nevertheless, in this publication, Bergermann's comprehensive analytical and meticulous inquiry into such naturalized concepts establishes a foundation for preliminary, substantiated endeavors at decolonization.

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Property: Colonial Histories and Messages to the Future

Ulrike Bergermann

To possess something is to lose something. And more: to possess something means to lose. This is not some equalizing justice in the sense of: what belongs to one cannot belong to the other, nor is it a retributive principle of justice. As Stefano Harney and Fred Moten (2021, 13) declare: "All property is loss because all property is the loss of sharing." They jump from "property" as something connected to things you can own to "property" as connected to a practice of being together. And this is necessary if we want to question the fundamental feeling of being entitled to possess, to

In March 2021, a fellowship at the Graduate Research Center Configurations of Film at Goethe University Frankfurt am Main gave me the opportunity to discuss postcolonial critiques of property, and I thank very much Vinzenz Hediger for the invitation, and for the lively debate and critical comments also Rembert Hüser, Verena Mund, Sema Çakmak, Laliv Melamed, Nikolaus Müller-Schöll, and others. For illuminating debates around central texts I also thank Bayreuth's Theoriesalon, Christine Hanke, Stephan Trinkaus, Maren Haffke, and all the other members. I was able to discuss sections on postcolonial copyright criticism in the summer semester 2020 at the "Africa Multiple: Reconfiguring African Studies" cluster of excellence at Bayreuth University. A big thank you goes to Andrea Seier for her thorough reading and commenting of the manuscript, as well as to the anonymous reviewer.

- 20 defamiliarize it, and potentially to unlearn and let go of property. This is not about gifts, of giving possessions away, and not even of sharing possessions, but of a state where there is no possession, so you cannot give it away, and not even a group is the owner of something.

Theories of property, conceived in early capitalism, are entangled with colonial history in several respects. They were written in colonial times; their authors were involved in colonial enterprises; they therefore attempted to legitimate racism and enslavement by declaring various groups as incapable of civilization, self-reflection, and whatever would be necessary to make them citizens capable of possessing. Their philosophies are still relevant to our legal systems, they permeate our thinking, our self-esteem, our being in the world, being together. "The legal institution of property deprives objects of their usability by people and it deforms people themselves in a way that they are no longer capable of a meaningful use of objects," wrote Daniel Loick (2018, 10), echoing Harney and Moten's notion of the "sadness" of property.¹ While in a way it is impossible to tie global property systems to subjectivations, colonial structural heritage, and individual desires, it is also impossible to separate them.

In the following text, therefore, after examining a few scenes from the history of property and critiquing them from the perspective of postcolonial theory, I turn to how the controversy over global "white copyright laws" exemplifies the question of "who owns what" through the concept of "cultural property." On a smaller scale, I will show how a critique of the propertization and exploitation of culture discloses juridical practices as still being in effect along racialized power lines. A fundamental critique of property tries to imagine a world that has not propertized everything, from the subject to the earth. Finally, I describe an approach that inches away from property, towards an unlearning

1 They refer to Gilles Deleuze's notion of the "sadness of power," reclaiming it for ownership (Harney and Moten 2021, 17).

of property. How the logics of accumulation, progress, and improvement can be delinked will be negotiated differently in text and in visual media. I refer to theory as well as to a photographic series depicting a textile performance group's practice in dealing with time, modernity, appropriation, and sharing. Property is part of our subjectivation, the history of property is the history of the Western subject; it is linked to the exploitation of the non-European world²—and it is hard to imagine how Western subjects should lose their taste for it.

Media, here, are the curse and the remedy. They are not only (fetishized) objects of possession themselves, making people obsessed with their use and accessibility, but they also make something imaginable. They provide relationships and infra-structures for property, and in this they also show ways out of property relations, both in practices and in representations. Both can be found in the textile and media performances of the artist group RHZ, reminding us of how photography itself is a shifter between “having” a print and “taking” the moment out of time. These pictures establish connections between times, fall in and out of time; they are placeless, but physical, in circulation, and a techno-socially, chemically, and emotionally networked thing.

Property is incredibly self-evident. Everyone seems to have the right to private property, to accumulate things, or to acquire cultural capital, or to do things that create value, from building a house to styling oneself for a social media account. But what makes people unhappy is not just the exaggerated development of the underlying concepts that is responsible for an unfair and cruel distribution of goods, nor is it the psychological pressure that comes with the compulsion to acquire and to enhance oneself. It has been in the history of the concepts of property since its inception, both its figures of thought and the entangled practices of exploitation.

2 This partly holds true for the European world, too. See the British occupation of Ireland, or the Nazi plans for Eastern Europe.

- 22 Do the things I live with belong to me? Or how do they belong to me? Who is the owning Me, and what could me become, what could we become with the things? I drink coffee, my computer runs on lithium batteries, I don't really know which workshop my jeans come from, and every look out of the window or into the cupboard could raise more questions. In the neighbor's apartment there is a display case from previous Jewish ownership. In the city center there are magnificent houses built from colonial assets. My supermarket is full because production conditions are miserable for others. Like the climate catastrophe, this looks too big to tackle. We could at least think of concrete things to do about planetary ecology. But how to access centuries of injustice and exploitation?

Programs like *Decolonizing the Mind* (Ngũgĩ wa Thiong'o) or *Unlearning Imperialism* (Ariella Aïsha Azoulay)³ proceed both on local and global levels, and they need to be translated into cultural, educational, and individual micro-politics (Seier 2019) and affect economies. Did Ngũgĩ wa Thiong'o withdraw from the idea of "decolonizing of the mind" later?⁴ And are calls for

- 3 Both are linked to the climate catastrophe, because we will need to consume less, use less space and resources, and discuss how to define this "we," although the scope of this essay will not expand on that. See Thiong'o (1986) and Azoulay (2019).
- 4 I thank the anonymous reviewer for bringing this to my notice. Wa Thiong'o published *Globalectics* in 2012, at the age of over 70, a review of his own work, encompassing education in the time of independence, the "wind of change" of the 1960s, the following rapid change in teaching materials, and the new importance of Black authors. In his youth in Kenya, everything was tied to the opposition between black and white; during his studies in England, Marxism had crossed this dichotomy; as a literary scholar, he learned to read the complexity, he writes (Thiong'o 2012, 34). However, this does not lead Thiong'o away from the opposites that continue to exist (Fanon finds Hegel's dialectic of master and servant in the colonial relationship; in literature there are Robinson and Friday, Caliban and Prospero, etc.). European knowledge production remains violent and does not dissolve over an old opposition. Writings after independence, though, will interweave forms of knowledge from both the Global South and the Global North. Already the languages in which people write cross borders and belongings.

decolonization an affirmation of dichotomous categories? Arguing “Against Decolonization,” Olúfemi Táíwò (2022) rejects the opposition of colonizers and colonized in order to make something new out of the present that goes beyond the status of being oppressed and thus keeps possibilities and futures open.⁵

(68) In the end, Thiong'o argues very conciliatorily: literatures are globally interwoven, so we should no longer talk about decolonizing (in reading), but about a reading that assumes that nations, places, and times are interwoven anyway; he calls this a “globlectic reading”: “Reading globally is a way of approaching any text from whatever times and places to allow its content and themes form a free conversation with other texts of one's time and place, the better to make it yield its maximum to the human. ... It is to read a text with the eyes of the world; it is to see the world with the eyes of the text” (75). This approach assumes that it is in the eye of the reader to no longer presume global power imbalances, but to perceive the texts without them. Who has the eyes of the world? Can we choose to have them?

- 5 Again, I thank my reviewer for a critical question regarding the possible affirmation of dichotomies. Táíwò calls for more than a mere expansion of the canon, he demands the universalism of the Enlightenment (2022, 16) (although he only wants to use “decolonization” for the process of political and economic struggle, since the “cultural and ideological dimensions” of decolonization were not central (23–24 and 60–61). “No significant good can come from expanding its reach into the broad domain of ‘cultural studies’” (25)). I understand the rejection of a critique of European property models on the grounds that there is no *before* to go back to (for many reasons: there are countless different communities and ways of dealing with what we now regard as property; some advantages of the new order should be kept; expropriation of the ruling and propertied classes is morally, legally, and as a political practice not feasible; reparations payments actually needed to be so high that the West would no longer exist as it is...) and the issue at hand would be to transform the given inequalities of the world into a fairer distribution. However, I do not understand the demand to abandon the idea of “decolonization” because it adhered to old contradictions (which repeat hierarchies) that have become much more complex. If we start from the status quo in terms of property distribution in order to look forward, this does not dissolve the history of violence. This history needs to be kept and opened up at the same time. It would go beyond the dichotomy of ensuring more justice in the old hierarchies and understanding that it is not only a question of whether, for example, the land belongs to A or B (and giving B back its share) if we understand that the land may belong to neither A nor B, because it may be not subject to any order of ownership, it may be not

- 24 The following essay approaches what might be called *the sense of having*. I would like to borrow this formula from Karl Marx here, although his use is specific and part of a theoretical context that I am not going to follow. But when Marx (1977, 101) says that “private property has made us so stupid and one-sided that an object is only *ours* when we have it—when it exists for us as capital, or when it is directly possessed, eaten, drunk, worn, inhabited, etc.—in short, when it is *used* by us,” he is talking about the impact that the social institution of property has on a person (although he attributes an equation of “property” and “ownership/use” to human practice, a distinction that was conceived differently in the philosophical history of the term and to which I will return below; see Loick 2018, 66). Marx traces the link between things and the human through the work of “the senses,” a specific trait of the human condition, which operates somewhere between Immanuel Kant’s “sense” relating to the capacity of differentiation and of judgment (*Urteilsvermögen*) and to bodily activities. “In the place of *all* physical and mental senses there has therefore come the sheer estrangement of *all* these senses, the sense of *having*” (Marx 1977, 101). What property does to people is like a sense and an estrangement at the same time, both sensitive and disconnected—not through the owned thing, but through your connection to it; not by what you have, but by what you feel to be having.

Denormalizing the wealth of the Global North, facing the immense reparation demands from the Global South (and Black and Indigenous people in the North),⁶ imagining what restitution

subject to any order of property, but rather, for example, subject to shared use. Decolonization is not to be rejected as part of this, but rather to be situated.

- 6 See Kehinde Andrew’s (2021, 83–84) instructive study on the scale of reparations: “Various calculations have been done based on damages and loss of earnings to arrive at an estimate of just how much the West owes. For the Caribbean alone, one estimate back in 2005 was \$7.5 trillion. In the United States the estimates range from \$3 to \$14 trillion. What is clear from these figures is that if we were able to calculate a figure owed it would be so

would look like for the privileged to detach from a certain style of living, to think about the “sense of having” and about possibilities of unlearning property.⁷

In order to imagine property differently, or make different images of owning and the common use of things, it is first necessary to understand more precisely how racialized and gendered, how racist and sexist our property principle is.

Neither the Christian nor the humanistic values of the Enlightenment could easily explain how it came about that someone could call something his own and thus exclude others from it. Long considered fate, or God’s will, the distribution of property was more and more said to be an issue of the individual’s responsibility. It became a duty to produce, and to become someone who was fit to be an owner.

The broad historical literature around property increasingly includes the role of coloniality, racism, and sometimes also sexism (the oppression of women’s rights, and murder of the so-called savage women). The following summary of postcolonial critiques of the concept of property from the sixteenth and

large that it would be impossible for the West to pay. The truth is that the figure is incalculable because of how steeped the West remains in the wealth from the Atlantic system. It touches every part of the West’s society and economy and has also impoverished the Black world to a degree that cannot be overestimated. The West remains built on these foundations and to transfer the wealth necessary to repair the damage would destroy the West, not only because of the money involved, but also because if the Black world had freedom that would mean the end of the Western project. Reparations are due, and tearing down Western capitalism is an utter necessity if we are serious about ending racism. But to realize the revolutionary politics necessary for this transformation we first need to recognize that the West can never pay full reparations for slavery without destroying itself.”

- 7 A broad range of political theories starting from anarchist, Marxist, feminist approaches, need to be taken into account—some of which prefer to rearrange the distribution of property, or to share property, while others see the need to abolish the concept of property altogether. Here, I only sketch two historical steppingstones and circle around a photographic series in order to evoke a feeling for other forms of having.

- 26 seventeenth centuries focuses both on redistributions of property and ownership in Europe, on colonial conquests, and on key philosophical texts that accompanied and fueled these developments.

1. Primal Scenes of Property

It is said to be a romantic idea that there was something before property. Jean Jacques Rousseau, in any case suspicious of romanticizing nature, sketched one of his famous primal scenes also in relation to property. At the *Origin and Foundations of Inequality among Men* ([1775] 1993) was the man who first had the idea of drawing a line and calling something beyond that line his own: "The first person who, having fenced off a plot of ground, took it into his head to say this is mine and found people simple enough to believe him."⁸ An earlier state of communal use of all resources is on the horizon, and something like a nameless drive in this mythical man to take something for himself. But "man," they will say in the early theories of economics, has always been a *homo economicus*, already in primitive societies he traded and exchanged, because there was an economic "propensity of human nature"—so the basic assumption for instance in Adam Smith (*An Inquiry into the Nature and Causes of the Wealth of Nations*, 1776) and many others.⁹ None of the theorists or historians of property questions such an urge. *Of course* we want to own things, they would state, in all historical forms of society one could recognize something similar. In order to write history in this way, however, one must not distinguish between the forms of

8 "Beware of listening to this impostor; you are lost if you forget that the fruits belong to all and the Earth to no one!" (Rousseau [1755] 1993, 43). Rousseau's story of the first fence has been scrutinized by Eva von Redecker (2020b, 19 et passim).

9 Gunnar Heinsohn and Otto Steiger (2018, 98) sum up the critique of this *homo economicus* that seems to have existed from the beginning of mankind.

use of things, because otherwise the practices of property can no longer be shown as universals. 27

In the seventeenth and eighteenth centuries, thousands of European peasants were expelled from the land they had been using, often as a shared community practice, in a process called *enclosure* (meaning that the gentry or sovereign put fences around plots of land to prevent the common people from having their livestock grazing or taking wood out of the forest, as had been the practice for centuries, and declared it their property). This containment is not any kind of theft, which could have taken place anytime and anywhere, as Eva von Redecker (2020a, 39) explicates: “While dispossession, defined as violent appropriation, might well be as old as humankind and is certainly not specific to the history of capitalism, propertization is specifically modern.” The people who simply had nothing to eat were forced into the growing cities and factories, working in the early capitalist industries for mass-produced goods from the extracted materials of the colonies (like cotton, cocoa, coffee, or palm oil). Those who refused were criminalized, dismissed as vagrants, severely punished and put into forced labor, which was legitimized by, for example, John Locke¹⁰; while people had sustained themselves before, now they produced surplus value in the

10 In his *Two Treatises on Government* ([1690] 1967), John Locke argued that people were parasites if they did not fulfill the Christian maxim that *by the sweat of thy face shalt thou earn thy bread*. 100,000 vagrants had to be forced to work to make England millions of pounds every year. Those who tried to refuse or to flee could have their ears cut off or face other severe punishments—another “civilizing mission,” not only against people of color, but against the poor. Iris Därmann has recently depicted the situation in England and the Netherlands, with the millions of livestock. For instance, in 1696, when Locke wrote his book, England’s population was 5.3 million people, while there were 4.5 million cattle, 12 million sheep, and 2 million pigs; take their nourishment away, and the animals and the people will starve. With the population coerced into work in the factories, the empire was able to have the raw materials from the plantations made into goods. “John Locke thus proves to be the theoretical head and colonial philosophical founder of tricontinental capitalism” (Därmann 2020, 103, my translation).

28 workhouses, and if they resisted, they could be deported to the colonies to face forced labor there. In feudalism, the common people had lived communally oriented, so their displacement and expulsion from subsistence meant the destruction of communal structures. The conversion from shared goods into private property was a violent development, as Daniel Loick (2018, 20) has argued, and property claims had to be learned for centuries. In the colonies, the settler privatized the conquered land, which had been used collectively before by many indigenous groups in the Americas, or in multiple organizational forms on the African and other continents, so that the both the European and the indigenous *Allmende/commons* were destroyed (21).¹¹

The link between property concepts and colonialism is striking, as the basic legal and philosophical concepts were developed in early modern England, while the kingdom was taking possession of land in Ireland, the Caribbean, North America, etc. Modern property laws emerged simultaneously and in conjunction with colonial appropriation, and were tried out, for example, in the colony of South Australia, then in British Columbia, before coming into force in the United Kingdom itself.¹² But this is not just a historically datable coincidence, but a deep intervention into the definition of people as *modern* or *pre-modern* (those who did not know property rights had not yet advanced to modernity, and those who were not yet modern and capable of owning property did not have to own or had to learn to own; this division ran along racialized lines).

The philosophical groundings for such expropriations were not merely abstract concepts of a new order, but were themselves

11 In 1600 half of the agricultural land in the English kingdom was used collectively, in 1750 only a quarter, and in 1840 almost none at all (Karl Polanyi, quoted in Despret 2022, 26).

12 Before applying these laws to the colonies, the British Kingdom applied them in Ireland, then in South Australia, British Columbia, the Caribbean, North America, only decades later to become the national law in the UK (Bhandar 2018, 3).

directly linked to colonialism. To speak of “expropriation,” of course, is not to say that land and forest were considered private property before the destruction of the commons—it was not that goods were taken from former owners, but the practice of common use was destroyed. As an example from the American continent, the question of how to restore “Aboriginal Property Rights” started from debunking

the myth that native Americans were natural communists with no conception of property. In fact, their societies evolved elaborate collective and individual institutions of property, suited to the circumstances in which they lived and the types of technology at their disposal. They also modified their institutions of property as European contact introduced new technologies and created new economic opportunities. (Flanagan, Alcantara, and Dressay 2010)¹³

- 13 The authors conclude: “This brief survey of North American Indian property institutions allows us to make several generalizations. Aboriginal people everywhere in North America practiced personal ownership of possessions such as clothing, tools, weapons, animals, and housing. With respect to land, there was always a collective sense of territory based on the tribe or nation, combined to varying degrees with specific use rights of families and individuals. Property institutions were related to the economy and culture of the particular society. Prairie hunters pursuing the buffalo over vast territories put great emphasis on tribal hunting grounds but did not try to develop individual property rights in land. Forest hunters had tribal hunting grounds but also developed family and individual rights to particularly valuable spots. The fishing societies of the Pacific Coast developed family and individual rights to valuable fishing stations, weirs, and spawning streams, as well as claims to broader expanses of surrounding land. Farmers had customary family and individual rights to cultivated fields. The society of the Aztecs, with its intensive agriculture and urbanization, had a fully developed system of private property rights in land comparable to that of feudal Europe. The sedentary societies of Mexico and the Pacific Coast developed the ultimate form of private property—slavery, that is, the ownership of other human beings. This panorama of native American property rights is consistent with Demsetz’s theory that property rights evolve as needed” (Flanagan, Alcantara, and Dressay 2010, 40).

As a consequence, Tom Flanagan and his co-authors (2010, 180) demand the possibility for First Nations and Canadians to escape the “Indian Act” and

30 “Natural law” concepts of property have a history long pre-dating the more famous writings of Thomas Hobbes and John Locke, as the indigenous American lawyer and international law expert S. James Anaya explained in his book *Indigenous People in International Law* (2000).¹⁴ The justifications for robbery in the so-called New World on the grounds that the land belonged to no one, or that the people were wild, uncivilized, and incapable of ownership, were already countered in the early sixteenth century by Bartolome de las Casas and Francisco de Vitoria, for example, who described various social, cultural, and religious structures as well as modes of ownership and thus also influenced the prominent “father” of international law, Hugo Grotius. Grotius used “the law of nature” to bring about a secularization of law. The attempt to base jurisdiction on a normative and moral law can initially be seen as an emancipation from the governmental jurisdiction of monarchs, who in turn ruled by the grace of God and the Church (Anaya 2000, 9). Immoral behavior, even by monarchs, could be warded off by invoking this higher right. Should these rights also apply in the colonies, including for indigenous peoples? The theologian Francisco de Vitoria from Salamanca answered this question in *On the Indians Lately Discovered* (1532)

to restore First Nations Property-Rights Systems through a hypothetical “First Nations Property Ownership Act” (proposed since 2003): “Before contact First Nations exercised property rights and utilized markets to raise individual and community well-being. The impressive Aztec, Inca, and Mayan empires are just a few testaments to their past successes. The passage of the First Nations Property Ownership Act is a step to restoring this proud history. It will recognize and implement underlying First Nations title with respect to rights of reversion and expropriation.” On the contrary, Togolese economist and politician Kako Nubukpo assumes an Africa that knew no property before colonization and argues for the continent’s economic independence from Europe (see his statement in: *Die Welt und ihr Eigentum* (F 2022, dir. and interviews: Gérard Mordillat, Christophe Clerc), episode 1, 55 min; see most recently Nubukpo 2022).

- 14 Anaya is a lawyer for the rights of indigenous peoples, for human rights, a professor, and UN special rapporteur on the rights of indigenous peoples. His indigenous ancestry is Apache and Purépecha.

in the affirmative.¹⁵ Almost a century later, Hugo Grotius also assumed in *On the Law of War and Peace* (1625) that it was a general natural right of peoples to negotiate over the land on which they live.¹⁶ The logic of natural law was overlaid by the strengthening of nation states after the Peace of Westphalia (1648), which distinguished individual natural rights from state rights. Both were brought into one model in Thomas Hobbes's *Leviathan* ([1651] 2010) in the body of the state; the law of nature was joined by the law of nations. In the eighteenth century, these two rights diverged,¹⁷ and in the meantime it became increasingly difficult for indigenous peoples to assert their rights.¹⁸

Anaya then moves on to the complex historical un/simultaneous assessments of the inherent universalizations, or the applications

- 15 "Vitoria held that the Indians of the Americas were the true owners of their lands, with 'dominion in both public and private matters.' Neither emperor nor pope, he said, possessed lordship over the whole world. Further, Vitoria maintained that discovery of the Indians' lands alone could not confer title in the Spaniards 'anymore than if it had been they who had discovered us.'" (Anaya 2000, 11, refers to Francisco de Victoria's *De indis et de ivre belli relectiones* (1917), using the Latin version of his name, "Victoria"). It should be added, however, that Vitoria certainly justified the administration of indigenous lands where there were no indigenous rulers and administrators based on the European model—this was for their own benefit; and the concept of a "just war" based on the Roman model was part of natural law (Anaya 2000, 11–13).
- 16 This also applies to non-Christians—a "justifiable war" is based on either defense, recovery of property, or punishment (Anaya 2000, 12; cf. Grotius, *The Freedom of the Seas* (1633)).
- 17 The Swiss Emmerich de Vattel's *Law of Nations, or the Principle of Naural Law* (1758) then distinguishes between the rights of individuals and states (Anaya 2000, 13). Vattel: "Nations [are] free and independent of each other, in the same manner as men are naturally free ... [and accordingly] each Nation should be left in the peaceable enjoyment of that liberty which she inherits from nature" (quoted in Anaya 2000, 14).
- 18 "By contrast, indigenous peoples of the Western Hemisphere and elsewhere, at least prior to European contact, typically have been organized primarily by tribal or kinship ties, have had decentralized political structures often linked in confederations, and have enjoyed shared or overlapping spheres of territorial control," which makes them "savages" for Hobbes (Anaya 2000, 15).

32 of these legal concepts to concrete situations, to concrete communities. Focusing on Latin and especially North America, he retraces discussions about whether the Europeans find “savages” and pretend to have a civilizing mission, or how the “indigenous” (Anaya gives a lengthy and wonderful excursion on the absurdity of this notion) are described in their respective forms of social organization, cultures, and religions. Especially when it comes to the question of property laws, it becomes relevant which criteria of natural law are used to legitimize expropriation. Which land can simply be taken into possession, if supposedly no property-relevant uses can be seen? Who counts as a relevant social unit at all, at what point are “peoples” also legally tangible entities alongside nations and states (and how is the recognition of peoples immediately difficult again, since peoples often overlap with other legal forms, have become parts of nations, etc.)? Who, after all, is capable of self-determination?

Thomas Hobbes’s *Leviathan* ([1651] 2010) argued that the capable beings are the men who in their “state of nature” willingly give in to being governed, in order to protect both the state and their own property.¹⁹ Hobbes’s war-like theory scene has become a well-known founding script for Western nations (Därmann 2020, 59). That his “state of nature” was modeled after the British colonies in North America is not so well known; neither is the fact that this state was a violent one, as our narratives of the Wild West are dominated by romanticized men and missions. In fact, the life of the white settlers was characterized by famines, poverty, and fear of the revenge of the Native Americans whose land they had taken by force, revenge also for killing their animals and resources for life. But an idealized settler’s life became a mold of the theory of the state, which then again became quite influential on European nations.

19 The following section follows the seminal study by Iris Därmann (2020, 77–80 et passim).

Hobbes was a member of the Somer Islands Company, which organized the colonization of the Bermudas, and a co-owner of the Virginia Company. As Iris Därmann (2020, 58–59) has shown, he was well informed about the colonies, through writings like the *Brief and True Report* by Thomas Harriot (1590, with engravings and watercolors by John White), and he made money from them, including from slavery. It is important to notice what he deliberately ignored: the cultural practices, the political organizations, the religions, all the social structures of the Native Americans, which were all well known from anthropology and travelogues. The pictures in Harriot's book resembled an advertisement meant to entice more British citizens to become settlers, depicting peaceful scenes of "red" and "white" people together. By ignoring these, Hobbes would be able to declare the Native Americans "non-civilized" and to come up with his analogies of "natives and beasts."²⁰

John Locke, after him, seemed to see a greater need to legitimize slavery and ownership, or to legitimize the mere possibility of property in a state of nature. Locke is famous for laying the ground for concepts of property and ownership.²¹ Basic characteristics of his concept still inform current laws of today—as well as common feelings toward property and ownership. Shortly after Hobbes, he was even more actively involved in the British colonies: he wrote the constitution of Carolina, he bought shares of land from the Royal Africa Company and from a company on the Bahamas involved in the transatlantic slave trade and others, and he sold them with a high revenue. His writings also became the anchor point for legal systems in Western

20 Därmann (2020, 69–75) about the battles between settlers and indigenous people, the settlers' warlike massacres (like that of Jamestown 1622 with hundreds of murdered Native Americans—like a picture of Hobbes's "state of nature" as permanent war), their hunger and miserable conditions of living, lack of seed, and the lies in reports to persuade other Europeans to join and support them. Därmann (2020, 58–59 and 74–77) describes in detail Hobbes's involvement in colonial enterprises.

21 The German concepts *Eigentum/Besitz* follow the same distinctions.

- 34 nations, which were applied in the colonies too, in wide parts of the world (Därmann 2020, 81–103; Loick 2018, 40).²²

Locke sketched a widely cited fictitious primal scene in his *Two Treatises of Government* ([1690] 1967): All people owned everything on earth, everybody owned his own body, and *Every Man has a Property in his own Person*.²³ When a man works with his hands, if he picks a fruit or harvests from land, then he owns what he has earned and has the right to exclude others from using what he owns. ("The first theft shows up as rightful ownership," write Harney and Moten (2021, 13).) This would be the natural state, a primal scene of the emergence of property. Common things become private property through labor and the body. Some own, because they worked, others don't.²⁴ (This model labor does not include reproductive work, or the way indigenous people use the land, because the basic idea is that of individualized work, of cultivation and improvement, not just care work. (Loick

22 See also Hund (2009, 215): "The 110th article of the so-called Fundamental Constitutions of Carolina gave every free settler the right to enslave black people." Co-author Locke worked for the Council on Foreign Plantations, a body set up by the British Crown to promote trade with the overseas colonies. Locke was paid by the council with shares in the Royal African Company, which was a major player in the global slave trade. By 1670, he was earning money from slavery and endorsed it, and in the 1680s he became "the chief theorist of liberal government" (Martschukat 2023, my translation).

23 In the first of the *Treatises on Government*, Locke refers to this "state of nature." "Though the Earth, and all infereor Creatures be common to all Men, yet every Man has a *Property* in his own *Person*. This no Body has any Right to but himself. The *Labour* of his Body and the *Work* of his Hands, we may say, are properly his. Whatsoever then he removes out of the State that Nature hath provided and left it in, he hath mixed his *Labour* with, and joynd to it something that it his own, and thereby makes it his *Property*" (Locke [1690] 1967, 305–306). I am using male pronouns where the concept more or less implicitly refers to a male human being in patriarchal societies, and it is men who have the disposal over property.

24 This section too draws from Daniel Loick's (2018) great book *Der Missbrauch des Eigentums*.

2018, 28–31))²⁵ Making something one's own halts and petrifies lively practices: "Every acquisition, every improvement, is an ossification of sharing. This ossification is given in and as containment." (Harney and Moten 2021, 14)²⁶

The first narrative tells of property that can be acquired in quantities that the one who worked for it is able to consume; he must not accumulate food that then rots. (Raj Patel and Jason W. Moore explained Locke's political, administrative, and philosophical perspectives on property, including its contradictions,²⁷ as well as his apparent change of mind about the possession of one's own body.²⁸) Locke invented further steps; he claimed it was

25 This seems to make sense, if one thinks of collecting nuts and eating them, or harvesting the land you have tilled, as long as the use and the consumption of the goods coincides, as Locke insinuates (Loick 2018, 25). But what about conquered land (asks Eva von Redecker 2020b, 25)? A comment may be found in Stefano Harney and Fred Moten (2021, 33): "The (anti)social contract is not only a political theory but also an economic practice: the practice of the juridical regulation and antisocialization of exchange in the imposition of improvement. In particular, the social contract specified the individuation of its parties."

26 "The first odious vessel produced by and for logistics is not the slave ship, but the body—flesh conceptualized—which bears the individual-in-subjection" (Harney and Moten 2021, 14).

27 "His views of private property and personhood drew deeply from his work as a colonial administrator. At the same time that Locke was redrafting the *Fundamental Constitutions of Carolina*, introduced in 1682, he was writing chapter 5 of the *Second Treatise on Government*, titled *On Property*. The Fundamental Constitutions affirm that 'every Freeman of Carolina shall have *absolute* power and Authority over his Negro slaves'—Locke oversaw the addition of the part in italics. This is the same Locke who, in the *Second Treatise*, argues that 'every man has a property in his own person: this no body has any right to but himself'" (Patel and Moore 2017, 199).

28 "A considerable amount of ink has been spilled trying to reconcile these two positions. Some have argued that Locke changed his mind about slavery over the course of his life. But this interpretation runs afoul of his work on the *Board of Trade and Plantations* toward the end of his life, work in which he seemed more than reconciled to goods made with slave labor. A more compelling recent interpretation read Locke's proposed treatment of property and the treatment of captives after a just war and observes that they comport well with what his patron, the Earl of Shaftesbury, one of the

36 legal and legitimate to collect things that were not immediately needed, if they were durable or, even better, if they were exchanged for durable goods, or for money. (This is the transfer from the state where everybody may use what s*he needs to the accumulation of capital.) The nation state, then, will have the duty to protect the capital of its citizens and the logic of its accumulation. This story suggests that a right to property evolves out of the natural constitution of man as a creature of need.²⁹

There are two traps involved. The first is that you need to “own” your body, that is to be able to dispose of your body, which is not the case for many people³⁰ (think of women’s rights to their bodies, of reproductive rights, of trans rights; think of black

Lords Proprietors of the Carolinas, wanted to happen in that territory. At the time, a central concern for the Lords Proprietors was the capture, enslavement, and transport of Indigenous People. Locke’s theories smoothed the way for the legitimate acquisition and trade of Coosa men who had been captured while fighting off colonists who had encroached on their land in what settlers called the Carolinas. Indigenous slaves, as spoils of war, could be allowed to have no property in themselves—and Locke provided grounds for that in the *Fundamental Constitutions*. Regarding slaves from Africa, he remained silent. In other words, one of the most enduring contradictions in modern political thought emerged not from some oversight in the system of liberal theory but because one of liberalism’s key philosophers was producing work for hire.” (Patel and Moore 2017, 199–200).

29 Daniel Loick explains further: To legitimize property in England, no such fundamental history would have been needed; it is explained only with regard to America and the colonies. The scene of the state of nature is a back projection that is supposed to work for colonized territories. Actually, Locke does not justify property, but the acquisition of property. His idea of regulating accumulation is not a critique of greed, but follows a cultivation imperative of the conquered terrain; the uses of the indigenous people do not count as cultivation, and thus appropriation is justified. Leaving land waste is a crime against god and the state of nature, and whoever does it may be punished and enslaved. The constitution of Carolina that Locke writes will allow slavery. See Loick (2018, 28–42). On the inseparability of the modern body and the governing state, see also Mühlfried (2022, 11–12).

30 Accordingly, the US Constitution begins with “We hold these truths to be self-evident, that all men *are created* equal,” and not “all men *are born* equal,” because the slave nations of the South wanted to keep owning not only slaves but all children of the slaves as their property. Locke (and the

bodies, the global use of a racialized workforce, of the many forms of unfree labor, indentured labor, and slavery, which was alive from the Middle Ages through feudalism and Enlightenment, and still is today). Regarding slavery, Locke, like Kant and many others before him, declared the European nations and races as civilized and the others in an animal-like state.³¹ (Soon after, Hegel would write that they were not able to have the *will* to own and acquire the world in their hands, so they could not be subjects, citizens, fully human, able to own themselves.³²) Harney and Moten sum it up:

This is why there is no separating Locke the Enlightenment thinker from Locke the writer on race, the author of the notorious colonial constitution of the Carolinas. Ownership was a feedback loop—the more you own the more you own yourself. The more logistics you apply the more logic you acquire; the more logic you deploy the more logistics you

- more radical “levelers” of his time) conceived of the subject as the one that possesses herself, freedom means to own oneself (von Redecker 2023, 44).
- 31 In his analysis of “How Racism and Colonialism Shall Rule the World,” Kehinde Andrews (2021) reconstructs how Kant purposefully omitted abolitionist sources and arguments and emphasized racist authors. “Kant was not just a hostage to his time. He chose his accounts. And he chose to dismiss the claims of abolitionist James Ramsay, who had spent time with those of African descent...,” but he elevated the accounts of the pro-slavery James Tobin (according to whom, black people were lazy and stupid). “What made this even more remarkable is that Kant’s work is part of his response to a challenge from the anthropologist Georg Forster, who had first-hand experience of the supposed savages and criticized Kant for his use of colonial stereotypes. Forster was interested in seeing whether Kant’s theories could offer a notion of humanity to the enslaved, and Kant responded by advancing pro-slavery arguments....” (Andrews 2021, 5).
- 32 On the status of a subject as a condition of possession, Hegel’s *Elements of the Philosophy of Right* (1820), and the bondage of slaves who have not yet performed the feat of knowing their own wills see Loick (2018, 47–52). “Moreover, as Christoph Menke has recently emphasized, property became paradigmatic for the form of rights as such. Modern subjective rights, political rights to liberty, are themselves defined in terms of property. And, finally, the subject itself was conceived on the basis of property, as a relation of self-ownership” (von Redecker 2020a, 42).

require. As Hortense Spillers says, the transatlantic slave trade was the supply chain of Enlightenment. It was never-ending quest and conquest, because ownership is perpetual loss. (Harney and Moten 2021, 16–17)

Racial Regimes of Ownership

Indigenous societies, in colonial logic, do not have the skills, will, and technologies to appropriate. The orders designed by Hobbes or Locke were conceived as universalized, technically applying to whites and everyone else, but at the same time describing non-whites as not capable of being subjects, or owners, who could become propertized themselves.³³ Property functions as an indicator of the racialized and gendered identity ascribed to a citizen-subject:

Being an owner and having the capacity to appropriate have long been considered prerequisites for attaining the status of the proper subject of modern law, a fully individuated citizen-subject. In the colonies specifically, one had to be in possession of certain properties or traits, determined by racial identity and gender, to own property. (Bhandar 2018, 5)³⁴

European legislatures and societies grew rich on the globalized division between possessors and those who could not possess or were themselves propertized. The “ideology of improvement” ranked the rational and productive actors as the “proper subjects of law and history”; the others kept the barren land, as Brenna Bhandar (2018, 7) paraphrases in the double meaning of English *proper*.

33 Captives taken in war—a war thought of as a “state of nature”—were only sold into slavery if they were black.

34 “This way, property ownership can also be understood as complicit in fabricating racial difference and gender identities” (Bhandar 2018, 5).

Bhandar's *Colonial Lives of Property* examines how, from the eighteenth century onwards, prevailing concepts of race were forged in conjunction with economic ideologies that rendered race contingent on particular forms of labor and property relations—captured by the term “racial regimes of ownership” (2018, 2). This is not only a story about a historical coincidence. This approach traces profound interventions in the definition of human beings as *modern* or *premodern/uncivilized*. Ownership or possession are justified along a temporary logic of modernity, which states that the pre-moderns did not make use of the land and left it waste; “the types of use and possession of land that justified ownership were determined by an ideology of improvement” (8). The rational subjects who, according to God’s mandate, made the earth fertile, were declared as opposed to the pre-moderns, to have the higher right to take the unused land and transfer it into a new logic, according to the ideology of racial superiority and “the myth of developmental progress” (26). Property and colonialism are entangled in myriad ways:

Laws of property also reflect and consolidate language, ways of seeing, and modes of subjectivity that render indigenous and colonized populations as outside history, lacking the requisite cultural practices, habits of thought, and economic organization to be considered as sovereign, rational economic subjects. (Bhandar 2018, 3)

The different dimensions plausibilize each other, the history of one supports the other, property relations soon appear as natural as “races,” as well as owning oneself and the consequences for the self-relation and self-understanding of modern subjects.³⁵ Concepts of race and of property are

35 Bhandar refers to Stuart Hall, who proposed the notion of “social formation” for the interplay of racialized and economic structures, or how class and race produce racism, and the notion of “articulation,” which captures the inevitability and contingency of these dynamics and lines of power (Bhandar 2018, 11–12). She adds Cedric Robinson’s concept of *racial regime* (in his *Forgeries of Memories and Meaning* (2007) on the production of whiteness as

40 *articulated though one another*, writes Bhandar (not simply after one another)³⁶; “their co-constitution unfolds in a process of abstraction,” confirms von Redecker (2020a, 51). Property functions as an indicator of which racialized and gendered identity is ascribed to a citizen-subject. Subjects empowered to own property are their own subjects (Bhandar 2018, 7). As a global history, property is always already a history of class, race, and gender, as demonstrated by Lisa Lowe’s notion of *The Intimacy of Four Continents*.³⁷

the invention of nationhood in early US cinema) to co-inscribe the inherent potential of resistance and malleability of these power structures for the production of race, property, and racism (13–15).

- 36 Looking at how exactly Bhandar shapes the ways these layers are connected, we find phrasings like “modern concepts of race and modern laws of property share conceptual logics and are *articulated in conjunction with one another*” (Bhandar 2018, 8, my emphasis), or “racial subjects and modern property laws are *produced through one another* in the colonial context” (26, my emphasis), or referring to a common frame: “... the political ideologies, economic rationales, and colonial imaginaries that gave life to juridical forms of property and a concept of human subjectivity that are *embedded in a racial order*” (1, my emphasis); or Bhandar refers to a *common logic*, which runs through the connected layers: “... the commodity *logic of abstraction* that underlies modern forms of private property shares conceptual similarities with the taxonomization and deracination of human life based on racial categorizations, the early traces of which are evident in the work of natural historians such as Linnaeus” (8, my emphasis). Racism does not simply precede subjection, though the greed for land and property does oftentimes precede the devaluation of the powerless who would be robbed, as has been shown by scholars arguing for greed as the driving force of the entanglements of extraction, economic or religious or scientific conquest (cf. Todorov 1982; Geulen 2007). The question of whether racism was *behind* conquest or was just a later legitimization of the brute force of the conquest misses the point. That the concept of being the rightful owner of the land, of foreign lands, of knowledge, of oneself and of other people, is in itself racialized and gendered from the very inception.
- 37 Lisa Lowe investigated the connections between property and the human, or more precisely: an “archive of liberalism” and its contradictions, the tensions between liberalism, the market and personal freedom through the entangled histories of colonialism, slavery, and early capitalism in four continents. Property is entangled in many ways, on the one hand globally, on the other hand locally with designs of the subject and the family, the

In the early 1990s, US legal scholar Margaret Jane Radin undertook a *Reinterpreting Property* (1993) and, in particular, put up for debate the liberal tradition of the coupling of property and personhood, individuality and freedom; this implicit “personality theory of property” had been both ignored and taken for granted.³⁸ Although she refers to American jurisprudence, her analyses show the intertwining of the self and/ or property. They reveal another strand in the webs that determine the desire for things, be they textiles, material as well as abstract wealth, symbols of recognition, vanities of authorship, elements for a performativity of the self, passions of collecting.... things that would hardly work as merely borrowed (an exception can be clothing and performance in carnival, but already drag can also be understood as an expression of the self and rather performed with one’s “own” attributes). The relationship of property and personhood, says Coombe, “has commonly been both ignored and taken for granted in legal thought” (Radin 1993, 2, referring to Radin 1982)—this is true not only in jurisprudence. The depth of the default settings, the invisible and at the same time extremely visible norms, extend to the queues in front of the changing rooms in fashion chains; consumerism today promises the ability to define and experience oneself through what one acquires, echoing new productions of the self in the eighteenth century. Property is *constitutive*—for whom exactly? “For the personality” would follow too closely the logic of advertising, according to which, for example, a certain style of clothing expresses the inner self; *constitutive for the individual* is also too closely connected

genders, the classes (and thirdly: local is not possible without global): “Bourgeois intimacy, derived from the private and public split that was the socio-spatial medium for both metropolitan and colonial hegemony, was produced by the ‘intimacies of four continents’—both in the sense that settler colonial appropriation with enslaved and indentured labor founded the formative wealth of the European bourgeoisie, and ... in the sense that colonized workers produced the material comforts and commodities that furnished the bourgeois home” (Lowe 2015, 30).

38 Radin (1982) developed this argument as early as the 1980s.

- 42 with unquestioningly positive ideas of personal freedom and autonomy through the connotation of individuality; the formulation “personal property” suggests that one merely wants to distinguish this form from common property... The English *personhood*, on the other hand, seems to capture well the essence that forms in the nexus with property. Any “un-learning imperialism,” “decolonizing appropriation” etc. will have to deal with the personalized structures of this society-forming and affective mechanism. The scandal of having made people into a piece of property also appears here again in full dreadfulness. Radin sees herself as an ethnologist who researches intellectual properties in order to get a look at possession and the dispossessed—both from the point of view of the legal acts that legitimize cultural authority and allow us to fix contested attributions of meaning, for example in the commodification of culture, as well as in the social meanings of cultural signifiers, their hegemonic or subaltern articulation (Radin 1993, 26). At the same time, she pursues a political and theoretical goal: an “unworking of intellectual property as a regime of private property” (33; cf. Philip 2005).

Free to Rot

The second trap hidden in Locke’s invention of property is linked to the split between property and ownership, which is said to have its roots in Roman antiquity,³⁹ called *ius utendi et ius abutendi*, the right to use and the right to abuse (abuse meaning not necessarily destroying, rather consuming—but the possibility to destroy is included). Ownership (in *ius utendi*) means

39 Daniel Loick (2018, 73–75) taught us how this was not a Roman history in the first place. Eva von Redecker’s historical differentiation states that the idea of an *ius abutendi* was part of a scholarly debate in the 13th century (about Franciscan poverty), but not a general part of law; the figure reemerged only in the context of later colonial and other appropriations of land. It became part of the law later, in the Code Napoleon (von Redecker 2020a, 41). Before Roman law, there was only one word for both, the Greek *chrema*; Aristotle had not yet distinguished between *property* and *possession* (Heinsohn and Steiger 2018, 99).

that you have access to things and may use them, like a group of people collecting wood from a forest, while the forest is not at their disposal (they could not sell or burn it; see Savoy 2018). In *ius abutendi*, property allows the full range of all modes of disposition—you can do whatever you want with your property, and no one can stop you (fruit may rot; you can own a house and not live there and not rent it, etc.; this thinking pervades our legal rights to this day; von Redecker 2020b, 24).⁴⁰ Locke's individualism is not interested in maintaining common goods. Modern property licenses absolute dominion: "After four centuries of propertization, it seems hard for us even to understand what owning would mean if it did not entail that right to violation" (von Redecker 2020a, 41)⁴¹ The separation of property and ownership will be central to the copyright debates of the twentieth century.

French art historian and agent of restitution of colonial art Bénédicte Savoy has traced the conceptual pair "possession and ownership" across European national borders. The incongruities and contradictions between the terms Latin *possessio/proprietas*, English *possession/property*, French *possession/propriété*, and Italian *possessione/proprietà* prove, in her view, that the distinction between the two had always required ongoing discussion rather than fixed interpretation, and that it played a role in legal traditions but not in everyday consciousness (Savoy 2018, my translation).

40 The German BGB (Civil Code) still has the concept of "volles Dingrecht." Yet, in the German Civil Code, possession means "actual power over a thing"; the owner can dispose of the thing whether it belongs to him or not; the proprietor can "do with the thing as he pleases and exclude others from any interference" even if he does not have it temporarily in his possession (even if it is stolen from him: the thief is only the owner). Savoy (2018) quotes ownership in BGB § 854 Abs. 1, and property in BGB § 903.

41 Destruction was not included in Roman law. The right to destroy is a modern phenomenon. It was never encoded in Roman law either. "... even if Roman property law included the right to abuse, this would be embedded in a totally different normative order based on virtues and not on individual subjective rights" (von Redecker 2020a, 60).

- 44 The ideological narrative accompanying this coercion is the promise of freedom: own your own body and its “peculiar new property, labor power” (von Redecker 2020a, 45), sell its labor force, and believe that it is precisely the disposal over your own body (von Redecker describes this as “fictitious property”) and its labor power that you can turn into a commodity, all of which gives you access to freedom.⁴² This is possible for the European worker while the black body remains unfree (von Redecker 2023).⁴³ And, though unspoken in most historiographies, this is also only possible insofar as the female body is responsible for the reproduction of the working (male, but also female) body, and this physical and emotional work remains unpaid.

The enclosure of the commons in England, the oppression and murder of women in Europe,⁴⁴ the colonization of the “New

42 For a philosophical figuring of the nexus of property, freedom, and death, see Eva von Redecker (2023). As she writes, property individualism has always been based on *phantom property*: on the claim to subject parts of the living world entirely to one's own will. Liberal freedom springs from the repression of death, while everything we buy is based on someone's or something's death in one way or the other. Something else must be dead for me to experience my freedom (von Redecker 2023, 47).

43 Property claims could also be used as a pacification for those expelled from the land they had been using for a living, as von Redecker mentions, as through ownership for dispossessed vagrants, if white and male, who were promised disposition claims over slaves and women. “The property-less were compensated at the expense of the powerless” (von Redecker 2020b, 28, my translation).

44 How many “witches” were killed? Federici discusses the problems of the sources and investigates scholarly texts counting more than 100,000 murders in two centuries (Federici 2004, 208). The number remains contested, and critics consider it exaggerated; they suspect Federici of a romantic anti-capitalism that places the persecution of women in a causal relationship with the emergence of capitalism—denying entangled histories of the continents, the oppression histories, and of bodies forced to be used for reproduction, production, and accumulation. The sheer scale of the torture and murder of women was not taken account of in conventional or Marxist scholarship, and its relation to Black history is an unfinished assignment. Federici shows their links and joints, and Eva von Redecker suggested a formula for their connection.

World," the murder of indigenous people, and the beginning of Atlantic enslavement did not take place exactly at the same time, but in great proximity. "Witch hunt" in Europe was not yet a mass practice when Columbus sailed to the Americas, but one of the central legal documents had already been issued by the pope (*The Hammer of the Witches, Malleus Maleficarum*, in 1486). Karl V., Emperor of the Holy Roman Empire, decreed the death penalty for witchcraft in 1532. With a peak between 1580 and 1630, the "witch hunts" took place as feudal economies gave way to mercantile capitalism (Federici 2004, 166). Prominently, Marxist-feminist scholar Silvia Federici analyzed the early capitalist accumulation of the sixteenth and seventeenth centuries in 1984⁴⁵ with a focus on the persecution, torture, and killing of women (who knew about the management of reproduction, were unruly or not, but were mostly over 40 years old and poor⁴⁶), and she found multiple arguments for the connection with colonization and expropriation of the European peasantry (Federici 2004, 200).⁴⁷

45 Federici worked in Nigeria for three years, until 1986, when the country's debts forced it to let the International Monetary Fund impose measures in economy, which led both to further propertization of common goods and to interventions into reproduction politics. Federici saw feminist groups like "Women in Nigeria" resist against these measures.

46 "The witch hunts conducted during the seventeenth century did not primarily eliminate women who defended the commons, but people who resisted the emergent form of dominion—single and nonreproducing women, unruly wives, midwives, and herbalists who kept watch over reproduction" (von Redecker 2020a, 46). Women became an available resource and lived in marriage like under custody, without possession and decision-making capacities of their own—an enclosed life for the husband. In Germany, for example, marital rape has been prohibited only since 1996 (von Redecker 2020b, 31).

47 "The counterparts of the typical European witch, then, were ... the colonized native Americans and the enslaved Americans who, in the plantations of the 'New World,' shared a destiny similar to that of women in Europe, providing for capital the seemingly limitless supply of labor necessary for accumulation. So connected were the destinies of women in Europe and those of Amerindians and Africans in the colonies that their influences were reciprocal. Witch-hunting and charges of devil-worshipping were brought

- 46 Things that happen at the same time do not make a narrative, or only false ones; neither is there a central controlling power behind the different developments, nor is one the trigger for the other. Analogies limp, such as those between gendered and racialized bodies. Intersectionality is complicated; one must contextualize and examine each case specifically.⁴⁸ Eva von Redecker ties in with Federici and prefers to speak of “projects of propertization” (2020a, 43), further examining various forms of dominion that built on older hierarchies, such as patriarchy and earlier forms of slavery, and radicalized them in the early modern era.⁴⁹

Ghosts in Possessed Subjects

If we want to think about property and its coloniality and racist and misogynist history in order to understand our desire for property and the resistances against restitution—but also the possibilities and desire for an appropriation that is a sharing—scholarly forms that operate in a linear, causal mode will not help. Referring to *assemblages* and *networks* might dissolve the question of power and responsibility. New notions of *speculation*, *fabrication*, and the inscription of positionality have emerged primarily from Black studies (cf. Hartman 2008; Hartman 2007; Sharpe 2016; Keeling 2009; see also Angerer and Gramlich 2020). The concept of “phantom possession” resembles phantom pain, the feeling of a loss of something that in fact is not only not there (anymore) and that perhaps has never or never

to the Americas to break the resistance of the local populations justifying colonization and the slave trade in the eyes of the world” (Federici 2004, 198).

- 48 At this point I thank very much Henriette Gunkel and Zintombizethu Matebeni for critical questions and suggestions in the run-up to this text.
- 49 In particular, von Redecker (2020a, 43) differentiates “only two further projects of propertization, located on either side of the Atlantic. I will analyze the institutions of slavery and patriarchal marriage as specific kinds of domination, both based on property-logics—in these cases, property in the person and property in reproductive capacities, respectively.”

rightfully belonged to the person feeling the loss: the possession of colonies, the power of disposal over women's bodies and racialized people, sovereignty over discourse and historiography, etc. The feeling of phantom possession spreads in place of a former factual or fictitious domination, in an empty place, where a thing or person might have been dominated. On an individual level, the claims to domination remain; they are a basic building block of modern identities, providing a sense of entitlement.

I focus here on the individual dimensions of phantom possession, as these seem most pertinent in the context of the current rise of authoritarianism, an outgrowth of neoliberal subjectivity. But collective phantom-property, as in the nation and its colonies, would have to be integrated into a full account of the historical dynamics of social protection and proprietization. (von Redecker 2020a, 62)

This immediately sheds light on a certain affective state that can be observed in recent years, when various right-wing populist movements⁵⁰ have seen an increase in the complaints against "censorship" by so-called woke enemies of free speech, the rejection of any sensitivity to discrimination in language, and the hatred of feminism, gender politics, and anti-racism—up to the idea among incels of a stolen power of disposal over heterosexual sex by women, or the vision that one's own country being stolen in the Great Replacement. With an attitude of anger, an affect against those who supposedly take something away from you, be it "the government" or "freedom" (being free to wear a mask or not, to be vaccinated or not), privileged subjects now claim a victim position. This relationship to property is embodied, it feels like a (lost) part of an individual, in a kind of naturalization of an ideology, as von Redecker explains:

50 The idea that neo-Nazis are particularly prevalent in the eastern German states—because people there were economically disconnected—affirms this position while failing to recognize that the truly oppressed precisely do not resort to violence and see themselves as legitimately entitled to violence, namely people who suffer from sexist and racial discrimination.

With the concept of “phantom possession,” ... I describe the embodied dispositions and the corresponding cultural schemas constitutive of modern race and gender identities. ... After the removal of their institutionalized anchors, dispositions toward appropriation become ever more charged at the level of identity. Hence, phantom possession intensifies in the face of resistance and emancipation. Phantom possession in whiteness and masculinity is the excess accumulation of entitlement brought up against the horizon of the possible freedom of oppressed others. (von Redecker 2020a, 35)

When Harney and Moten spoke of property as loss, they also mentioned a peculiar constitution, an agency, or even form of knowledge, a “logistics” (Harney and Moten 2021, 15).⁵¹ The growing amount of aggressiveness we witness in hate crimes can be related to loss prevention, to the fear of becoming deprived.⁵² “This feeling of loss translates into a diabolical obsession with loss prevention” (Harney and Moten 2021, 17).

Whiteness as Property

Property is not only “white” because white people are richer than others. Property is also “white” because the idea that and how to own something has been aggressively transferred from northern Europe not only within its own population, but also over the other continents. Not owning, here, is not an option. Those who do not own cannot participate as citizens in the legal system, etc.

51 “Logistics,” the work of dehumanization, theft, enslavement (in their previous book *The Undercommons* related to the hold of the slave ship, see Harney and Moten (2013, esp. 87–99)).

52 But: Those who have been deprived for a long time have not been active in these waves of hate. Though women have been oppressed throughout centuries of patriarchy, there hardly is a collective rage comparable to the global phenomenon of white authoritarian men on the far right since the 2010s.

How could whiteness be something you own, or a mode of owning something? As legal scholar Cheryl I. Harris (1993, 1725 et passim) argued in *Whiteness as Property* in 1993, property is not a thing, but denotes the sum of rights a person may have in a thing.⁵³ Property is what one owns, and it is a *bundle of rights* that relate to things: “Whiteness—the right to white identity as embraced by the laws—is property if by property one means all of a person’s legal rights” (1726).

Whiteness and blackness are attached to materiality, but this is not the basis—neither skin nor DNA—for the production of race; attributions to skin color and social practices have nonetheless created realities such as “race.” Whiteness is one such effect in whose production the physical entity plays only a small role.⁵⁴ The relationship of whiteness and ownership is not only part of the imagination of white Europeans as an advanced/chosen/higher race that has enriched itself at the expense of others and legislated accordingly. Property law is not just distorted by white interests and advantage-taking, Harris writes. “Rather, the law has established and protected an actual property interest in whiteness itself, which shares the critical characteristics of property and accords with the many and varied theoretical descriptions of property” (Harris 1993, 1724; cf. Bhandar 2018, 7).

Whiteness has a value in itself; white people are able to gain and defend property. There are many ways in which whiteness and property are linked; Bhandar (2018, 7) speaks of whiteness as

53 For a historical perspective to whiteness as property and privilege, see Hund (2009). The extent to which “natural rights/laws of nature” and the contracts derived from them are “racial contracts” from the outset is shown by Charles W. Mills (1997).

54 For the construction, if not invention of whiteness see Allen (2012) and Young (2004). Kehinde Andrews compiled a selection of racist statements from the classic texts of the Enlightenment, see “THE ENLIGHTENMENT AS WHITE IDENTITY POLITICS” (in Andrews 2004, 7–8). Over many pages, Andrews quotes from Herder, Hegel, and Kant’s most racist writings, which I do not repeat here (see Andrews 2004, 2–5 and 36 et passim).

50 an “analogue” of property.⁵⁵ They share central characteristics; exclusionary rights are fundamental to many legal theories of property, and this is also true of whiteness (who gets to belong, who does not; Harris 1993, 1736). “Whiteness and property share a common premise, a conceptual nucleus—of a right to exclude” (1714). Whiteness, like the characteristics of property mentioned before, is unmarked, an unseen domination, universalized.⁵⁶ But what is more, property is actually a relationship (while we used to think of property as objects). It is the illogical rhetoric of “whiteness as property” that describes the social illogic in the fact that the same rights apply differently. It is not a coincidence that Harris’s text is not called “Blackness as Property,” which would have been just as possible if one went only by the formal logic of property as relation.

Von Redecker (2020a, 50) criticized Harris’s formula for the fact that the distinction between different powers of disposal can no longer be found in it, especially the idea of absolute dominion and the total reification of people. But even if this was not part of Harris’s endeavor, the history of white propertization encompasses this as well. For Stefano Harney and Fred Moten (2021), logistics is at the core of the circulation of capital and knowledge, with a first culmination in the Atlantic slave trade. “It is in this double loss of sharing—given in owning and in the imposition of being-owned—that the most deadly, planet-threatening, disease of the species-being emerges: whiteness. And it is for this reason that we can say logistics is the white science” (Harney and Moten 2021, 17).

55 “The right to use and enjoyment, the reputational value, the power to exclude, all are characteristics of whiteness shared by various forms of property. Whiteness is... an analogue of property” (Bhandar 2018, 7).

56 “Whiteness as property has taken on more subtle forms, but retains its core characteristic—the legal legitimization of expectations of power and control that enshrine the status quo as a neutral baseline, while masking the maintenance of white privilege and domination” (Harris 1993, 1751).



[Figure 1] From the series *Ohne Zeit, ohne Ort*, artist collective RHZ (Radikaler Hand-arbeitszirkel—Radical Handicrafts Circle), 2013

A look at postcolonial critiques of property puts the individualized white perspective into a larger frame and shows the

- 52 whiteness of the conception of property. A concrete perspective is offered in the idea of culture as something that is your own.

2. Cultural Property and Postcolonial Copyright

Talking about postcolonial copyright oftentimes implies acknowledging the concept of property and demanding a more equitable distribution. The criticism of a globalized world economy is aimed at the continuing injustice and extraction of all kinds of resources from the Global South and argues for a just dealing with cultural goods, for example against cultural appropriation.⁵⁷ But this in turn implies the economization of the respective goods, even if these, as a materialization of cultures, never followed the economic logic of property and did not consider their objects as belonging to someone or even to a society. If you do not want the pattern used by your community to be part of H&M's autumn sale, you need to invent protection formats, or creators to be paid, or at least assert that it is not part of the public domain, not an open resource to be propertizable by anyone—although it might not have been used like this in the culture of origin.

Legal scholars have tried to extend copyright legislation in order to protect, for instance, indigenous art by inventing new categories like "cultural folklore" to include things and practices, which would not have been protected as property before, thereby

57 A broader discussion about cultural appropriation would have to include more dimensions: a) All cultures learn incessantly from all others, in repetitions and imitations there is always a part of transforming and appropriating, but b) it is a matter of power relations and whether privileged positions continually skim off more value in these processes. In the discussion about cultural appropriation, the accusation of a cultural essentialism is often enough only used to block out these power imbalances and to assume abstract exchange relations "between cultures" for the purpose of securing one's own privileges). For a comprehensive discussion of cultural appropriation, see Distelhorst (2021).

imposing an economic system on cultures which might have had fundamentally different systems of passing on and sharing knowledge. If, as Mark Fisher famously said, it is easier to imagine the end of the world than the end of capitalism, where can we look for imaginations?

Culture complicates property. It does not add value, it can be accumulated only in a few parts, it serves the improvement principle only rarely, it is based on individual creation only in certain areas, and above all it makes no sense not to share it. You can't have culture just for yourself at home. Just as care work shows the inherent illogics of both the traditional theories of work and the Marxist ones, culture demonstrates the abysmal within property thinking. And yet culture is also subjected to property logics in globalized capitalism. Paradoxically, cultural artifacts from regions that did not follow the Western property concept before colonization now sometimes have to define themselves within the framework of property structures in order to continue to exist. After the idea of intellectual copyright, modeled in the sphere of genius and authorship, which should be protected against the theft of their intellectual or artistic work by commercial or other scientific/artistic use, it took decades of debates and treaties during the twentieth century to consider the need for legal protection for products and practices not only of single people, but also of communities.

Possessing Culture—Cultural Copyright

The history of how ideas and concepts came to be regarded and treated as something one can own or possess has been the subject of a vast field of research. These historiographies comprise the impact of the printing press, material histories of paper, water, and machines; the roles of old and new institutions, printing privileges (the approval of church or gentry to print and publish; or the censorship of books and minor writings); new economic structures between markets and sponsors; or archives for oral and written documents. They usually emphasize

54 the opportunities of liberation from authorities and ideological supremacy in new emerging publics, or the emergence of imagined communities between religious and linguistic communities (Anderson 2006); and the new roles of authorship and genius, a new mode of subjectivation in individual reading and writing practices, including their genderings.⁵⁸ These studies hardly ever reflect on the question of a racialization of property. Monika Dommann referred to the continuation of the imaginary and realized racializations⁵⁹ into property and ownership, which were already laid out in the history of intellectual property rights, conceptualized for the minds of white (usually male) subjects. As she pointed out, in the nineteenth century,

authors' rights were mentioned in the same breath as civilizing development, and the efforts to internationalize literary and intellectual property that resulted in the Berne Convention in 1886 directly cited notions of progress. ... Authors' rights were praised as the achievement of the

58 Though Friedrich Kittler was not interested in questions of the social or the human, and not of race, etc., in his early writings about print culture he included reflections on the genderings of authorship in his *Gramophone, Film, Typewriter* (1999). For a critical reading see Breger 2006.

59 Dommann takes the WWW as a starting point for reflecting on property thinking in culture, exemplarily in music. Who owns the blues? Who can decide about the sharing of music? Here, too, the talk is not of *race* but of *ethnocentrism*, of the 1990s criticism that (music) copyrights are "ethnocentric" (Dommann 2019, 178, quoting Mills 1996), and of the idea that a culture can claim rights to *its* music. The general assessment of intellectual property has been criticized as "romantic assumptions" (ibid., quoting Brown 1998, 193). Ultimately, even when authorless and timeless works receive legal protection, the teleological narrative prevails historically: "After all, tradition—at least in law—will at some time be modernized" (Dommann 2019, 179, possibly with a melancholic tinge). Here, neither colonial history and its continuing effects in the wealth gap, etc., play a role, nor do the enormous power inequalities in which any confrontation of an indigenous community with a global corporation must stand.

While the history of popular culture, especially pop music in twentieth-century America, provides striking examples of how songs and styles from Black musicians were taken and commercialized by white musicians, it was mainly with regard to global copyright issues that a fundamental criticism of "white copyright law" emerged.

Copyright critique is not anarchist. It refers first of all to the commodification of culture, to the penetration and transformation of everything possible into commodities.⁶¹ The postcolonial critique of copyright does not discuss the abolition of property, but provides a concrete perspective on another level of the whiteness of property. It acknowledges that property exists, and it calls for a more equitable distribution. Legal scholars plead for the recognition of the value of cultural heritage, and for the protection against its commercial appropriation; their critique of a

60 Dommann (2019) is interested in the discourse around "civilization" as part of the relations between the USA and Europe, and the respective "others" are called "bandits," which is probably not a racialized term. So questions of race do not come into focus as an intrinsic part of copyright thinking here. (For a discussion of "folk music," Black music, and claims of "public domain," see Dommann 2019, 172 et passim.) That this history is a gendered one seems to be so self-evident that it does not need to be mentioned. Decolonization comes up as a historical episode, and as a discourse in cultural anthropology from the 1990s, critically reassessing western modernity as well as the nationalisms of the decolonized nations; "copyright shows that European imperialism was just as involved in producing and reusing these cultural anchors as the nationalism of the Third World" (Dommann 2019, 170).

61 The history of copyright could be differentiated here into variants of juridification. It took place over a long period in different local, national, and media-historical structures, between forms of government, censorship policies, new techniques, and concepts of originality. Dommann (2019, 11) draws attention to the complexity of these relationships. One could not speak of liberal economic propertization in general, for example, because there are parallel economies that cannot be subsumed without difficulty, such as the reputation economy, etc.

- 56 globalized world economy aims at the continuing injustice and extraction of everything from the Global South. Postcolonial copyright critique demands equal and just participation or the restitution of looted cultural goods in the sense of: withdrawal of the corresponding goods from the market, no further use of Indigenous or Black culture, or simply: refusing to be a part of this system.⁶²

***Eigenthümlichkeit* and Propertization**

Literary scholar Gerhard Plumpe investigated the etymology of the German *Eigentum* (property) and found a change in the meaning of the word *Eigenthümlichkeit* (what is special about something) around 1800, at the time of the beginning of industrialization. In German Romanticism, it had programmatically denoted the poetology of individual creation, after having been a purely legal term (Plumpe 1979, 176–78). (The Latin *proprietas/ proprius* had had corresponding meanings for some time.⁶³) The discussions were under the influence of Lockean natural law property doctrines—you have a property right to what you create by your own forces. Johann Christoph Gottsched wrote in 1730: “Poets are free to make their own property out of known things/ Through wit and art and diligence.”⁶⁴ The property-qualifying

- 62 The logic is familiar from the critical science on global warming and nature conservation. While arguing against the reification of nature, one must impose measurability and valuability on individual resources in order to protect them within a system that reifies, measures, and values everything. To refuse the whole logic can mean, for example, to leave oil in the ground, to leave regions, and to stay away from indigenous ritual places, etc. For a discussion of the problematic in using voices, art, etc. from the Global South for scholarship in the Global North see Tuck and Yang (2014).
- 63 *Eigenthümlich* as an adjective (from *Eigentum*, a derivative from the Germanic *eigen* since the 13th century) emerges only around 1500. The Latin *proprietas/ proprius* had had corresponding meanings for a longer time (Plumpe 1979, 179).
- 64 Original: “Es steht den Dichtern frey, sich aus bekannten Sachen/ Durch Witz und Kunst und Fleiß ein Eigenthum zu machen.” (Plumpe 1979, 184–85, my translation).

terms *wit*, *art*, and *diligence* stand in the context of modern subjectivity. You may use what is already there, if you make it your own through your ingenious qualities. Already in the eighteenth century, that which was previous to the individual poet was always mentioned as well. A work was always a processing of *publica materia*. In the mid-nineteenth century, further criteria for *Eigenthümlichkeit* were added: the work to which a claim of ownership was made also had to be *eigentümlich* (peculiar), it had to be distinguished by originality. In Herder's words: "... and the more faithful he remains to himself, the more peculiarly he will compose and depict" (Herder 1787 quoted in Plumpe 1979, 193, my translation). In the second half of the eighteenth century the juridification and the propertization of things pass from "natural law" to intellectual property. Since the 1760s, genius aesthetics (*Genieästhetik*) saw genius precisely in what could not be achieved through mere diligence; only the greatest minds and truly autonomous subjects were really unique. In modernity, following Foucault, "the author" holds together spheres that are increasingly falling apart, so that readers can celebrate a coherence that would not otherwise have existed, ennobled by romantic or modernist images of subjectivity (Jaszi 2011, 415).

Defining the author as the first owner of his work was mainly done from the perspective of publishers and their legal advisors (so that the author could contractually transfer his rights to the publisher; Plumpe 1979, 179–80). Previously, rulers had granted "privileges" to have books printed.⁶⁵ The *Statute of Anne* in 1709 was the first law passed by a parliament aimed at a right for citizens independent of the king and as an encouragement of learning; according to it, authors have natural rights, also against publishers, to promote creativity, but soon it became apparent that the concept of the author served the commercial interests of publishers surprisingly well.⁶⁶ The Romantic idea of the

65 ... while exercising censorship (Jaszi 2011, 40).

66 This development is unfolded in detail in Gillian Davies' *Copyright and the Public Interest* (1994, 7 et passim). Davies traced the development based

- 58 author was also about a rebellion against monarchy; the French Revolution, for example, took as its starting point the author as a citizen who was a public servant rather than one of the king (Jaszi 1992). Intersecting class issues are hierarchies of center and periphery within the Global North. While Germany, politically fragmented, was still far from being a nation, a European divide existed in questions of education and culture between the Protestant North, Saxony, and Brandenburg-Prussia as centers of book production, among others, and the Catholic South; this gap would be bridged by the “reprint princes” (Woodmansee 2011, 183).

Propertization in the eighteenth century meant that more and more printers and publishers regarded their reproduction, distribution, sales, and property rights to the tangible book as their property, acquired by contract from the author, and this protected them against unauthorized reprinting by “pirates.” A shift then took place from the tangible book to the intellectual work; the intangible content and form of expression of a work were also considered intellectual property. “The relations between producers, intermediaries, and users of ‘intellectual works’ were henceforth more strongly shaped by the guiding idea and institution of individual private property. It was then that the long historical process of propertization of culture, knowledge, information and entertainment began” (Siegrist 2006, 77).

on two central texts: the British *Statute of Anne* of 1709 and the *Copyright Clause of the American Constitution*, drafted in 1787, enacted in 1790. The first chapter points to implicit principles of European copyright law like that of “Natural Law.” The claim to protect the creative spirits, the authors and artists, from having their intellectual property marketed without their participation in it, was only true to a very limited extent from the very beginning, because it was mainly the publishers who earned from the copyright regulations.

The Romantic author of the Enlightenment⁶⁷ had devalued the idea of collective authorship, but the new writing practices that have tended toward collective work in the digital age point to the need for an appropriate jurisprudence (although this was difficult to imagine against the background of the individualistic attitude of previous lawmaking).

Legal scholars Alpana Roy and Angela Riley have both laid out how the idea of intellectual property and copyright was in line with the values of the European Enlightenment, Romanticism, and Liberalism, and how they follow the model of a script-based society from the Global North. Alpana Roy examined copyright as a colonial idea up to the *Berne Convention* (at the end of the nineteenth century) and the TRIPS Agreement (in the twentieth), and its role in the ongoing othering of the South in global economies. (The Agreement on *Trade-Related Aspects of Intellectual Property Rights* is an international legal agreement between all the member nations of the World Trade Organization, 1994.) She calls copyright “a colonial doctrine in a postcolonial age” (Roy 2008).⁶⁸ Modeled on a script-based society,⁶⁹ the global “agreements” are not necessarily “agreements” but support prevailing narratives shaped by the dominant cultures (Roy 2008, 112).

67 “The first recorded copyright statute, the English *Statute of Anne*, was passed in 1709, marking the appearance of the terminology of ‘authorship’ in Western law. By the mid-eighteenth century, Romanticism began to emerge in literature and in general social thought, fueled by the philosophies of strict individualism found most prevalently in the works of Locke and Hobbes” (Riley 2000, 179). Riley is Professor of Law and Indigenous Rights at UCLA, member of the Citizen Potawatomi Nation of Oklahoma. Cf. Jaszi (1992).

68 Alpana Roy is Professor of Law at New Zealand/Waikakato with Indian roots (Hindi and Bengali).

69 Similarly, a nineteenth-century mass medium, the novel, invented and solidified narratives of land grabbing and naturalization of colonial possessions while denying the colonial relationship; the novel clarified who could and could not be the subject of history, and it mirrored the nexus of property laws and racialized subjectification (Bhandar 2018, 1–2).

- 60 Copyright is part of a multi-million-dollar global industry that is very lucrative for countries in the North (for the US, alongside weapons and agriculture, copyright is the largest source of economic export revenue).⁷⁰ Roy underlines that

... copyright (like other forms of intellectual property) is not a natural right, but instead embodies a particular set of values and assumptions—such as the need to commodify ideas, and also the expression of those ideas. As a product of the European Enlightenment, the concept of copyright has been infused with the ideals of the liberal legal tradition, and these ideals—such as “private property,” “authorship” and “possessive individualism”—are not universal principles of property law, but instead are Western ones. (Roy 2008, 112)⁷¹

The *Berne Convention* (1886) was a union and a “colonial construct” (Roy 2008, 120–23) of four major colonial powers (France, Spain, Great Britain, and Germany) and of the laws applied equally in their colonies. In the era of decolonization, the (formerly) colonized countries criticized the Eurocentrism of the Convention, arguing that it favored the existing copyright holders, but that rights had been unfairly distributed in colonial times. For many Native Americans for example, individuality is nurtured by group memberships. Several groups demanded compensatory rights because of the previous colonial rule and support in building an education system without copyright barriers. As a result of that criticism, revisions were attempted, such as in the

70 The export of products with copyright always transports values with it. Frederic Jameson believed that the US cultural export would have greater consequences than previous forms of colonization, imperialism, or tourism. Cf. further copyrights, e.g. for medicine, for the production of AIDS drugs in South Africa, etc.

71 Lars Eckstein, too, questions the universality of property concepts through its historicization and provincialization of the Western imaginary; he also questions the suppressed memory of the many “Western” appropriations and copies—before the racialized talk of underdeveloped cultures that have not participated in modernity and could only copy without creativity (Eckstein 2016).

Berne Convention of 1948 and the *Universal Copyright Convention* (UCC) of 1952, but the improvements did not affect decolonized countries that had adopted the legal system of their colonizers. In the 1960s, there was a campaign by several African and Asian countries against the *Berne Convention*, leading to a so-called “crisis in international copyright.” The main criticisms were, first, that it was impossible for publishers in the Global South to acquire rights for book translations and other transmissions into local languages and textbooks, and second, the impossibility of acquiring licenses to publish books from abroad. A further revision of the Convention in 1967 addressed these criticisms but was never implemented, and another in 1971 had an appendix that improved access but was hardly used. In the 1980s and 1990s, the dependence of the Global South on goods covered by these laws increased; this holds true also for intellectual property and “trade in services” (of intangible goods). In spite of multilateral TRIPS Agreements, the fundamental imbalance remained—in the South, there are copyright users and not copyright owners. Thus, Roy also refers to newer TRIPS Agreements as postcolonial constructs.

Intellectual property is not the same as cultural property; the former is associated with individuals, the latter with societies or cultures. But cultural property can also have individual creators (such as designers), and in the age of economic globalization, if the economically stronger party claims the freedom of access and appropriation that applies to all, this means something different and has different effects than if a group without great economic power does it. On the contrary, the small group and its products may even be threatened in the further performing of its culture; a globally organized market may deprive local markets and forms of production of their basis. The protection of local cultures (which in the context of globalized Western hegemonic culture are always situated as minoritized, marked, indigenous, etc.) did not appear in questions of property laws and was considered a political or ethical question, but not a legal one.

- 62 More and more concepts of property emerged in the twentieth century in relation to cultural forms; *cultural heritage* demands legal and political formats and actions. Calls for decolonization need tools on all levels. Traditional forms of knowledge, local practices, or biodiversity are increasingly valued; digital networked media provide information about cultural artifacts and bundle interests. Rosemary Coombe (2009) asserts an increase of propertization; more and more cultural things are considered under property aspects, *cultural property*, or *folklore*.

"Folklore" denotes that which is not fine art, but everyday culture, crafts, the culture of the common people, ritual acts or religious and spiritual ceremonies and their objects, and mostly refers to non-technical cultures, not to photography, film, etc. (connoting something old-fashioned, pre-modern, and often female-gendered). "Folklore" can basically claim no property rights for itself. Long considered authorless and part of the public domain, political movements—including indigenous movements—starting in the 1960s have demanded the status of "intangible property" for their work (albeit largely without success; Perlman 2011, 115).⁷² In 1978 and 1979, an international protection law on "folklore" was enacted by UNESCO and WIPO, the World Intellectual Property Organization. A decade later, WIPO specifically established a division (Global Intellectual Property Issues Divisions, 1998) to include "indigenous peoples," and previous conceptions of "cultural property as folklore" were replaced by versions on "traditional knowledge." Interestingly, this was accompanied by a major conceptual shift. "Folklore" had been discussed with reference to copyright, "traditional knowledge" more with reference to patent rights. What was previously tied to location,

72 In 1973, Bolivia asked UNESCO to protect commercial international use of its "cultural expressions of collective or anonymous origin with traditional character" (Perlman 2011, 117). Only authorship property actually succeeds. Both authorship and the unauthored undergo an interesting transformation in the imaginative history of their models during the centuries of propertization.

to a community, and to a space, thus shifts to the question of who are the rightful custodians of certain resources.⁷³ The 1990s saw stronger indigenous movements and also protection claims in the environmental movement (biodiversity, biopiracy), so that criticism from the South gained greater attention. In 1997, Australians delegated to a UNESCO World Forum on “folklore” criticized this term for being too narrow (saying it would have to include not only artistic expression but also knowledge systems and biodiversity)—but above all, that the term connoted inferiority, and so it should be replaced by “Indigenous Intellectual and Cultural Property” (Perlman 2011, 120).⁷⁴ In 2002, the Forum replaced the term “folklore” with “traditional cultural expressions,” TCEs (125).

“Folklore,” as Rembert Hüser reminded us, is never simply the other of technology, industry, civilization/high culture, as McLuhan’s *Folklore of Industrial Man* (1948) demonstrated.⁷⁵ But this insight of cultural studies did not play a role in the legal and

73 Marilyn Strathern (2011, 101): In 1998, WIPO created a Global Intellectual Property Issues Divisions to include “indigenous peoples” within its purview, and “traditional knowledge” began to take over from earlier understandings of cultural property as folklore. “Folklore was typically discussed in terms of copyright; traditional knowledge points toward patent law.” This implies an association of traditional knowledge with natural resources. Indigeneity, originally tied to being of a place, now backed up people’s claims as original owners of resources—and therefore appropriate guardians of them. The *UN Draft Declaration on the Rights of Indigenous Peoples*, in 1994, included cultural, intellectual, religious, and spiritual property; for the *Indigenous customary law* (1997), collective ownership was a major concern. The working groups of UN and WIPO argued that there were protection rights to be granted even where no relationship of “property ownership” was established, but relationships through traditional knowledge and cultural values.

74 The 1990s are the decade of digital technologies and the internet as a mass medium, so that digital rights technologies prompted the global North to expand property rights.

75 Rembert Hüser, contribution to the discussion in the graduate program Configurations of Film, Goethe-University Frankfurt Main, online, on March 29, 2022.

U.K. fashion house pulls copied Inuit design, here's their apology



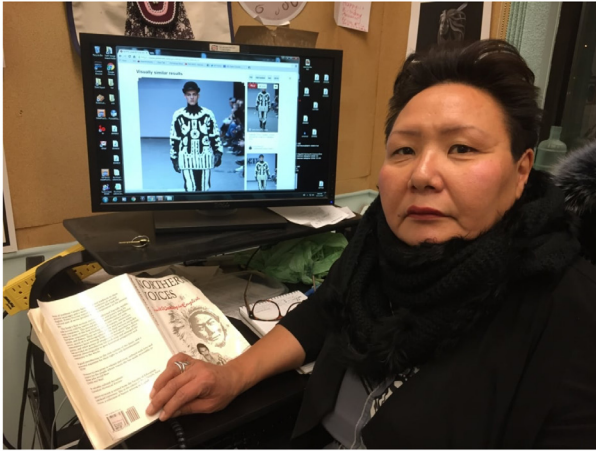
CBC Radio · Posted: Nov 27, 2015 10:27 AM ET | Last Updated: November 28, 2015



KTZ has apologized for using a sacred Inuit design in their high-end sweater. (KTZ website / Kieran Oudshoorn/CBC (from book Northern Voices))



Salome Awa displays an archival image from Northern Voices showing her great grandfather shaman Awa in his sacred caribou skin parka. (Kieran Oudshoorn/CBC)



'How dare you use this garment design that was envisioned by my great grandfather,' said Salome Awa, 'It's his design, his vision, it's so meaningful to him.' (Sima Sahar Zerehi/CBC)

[Figure 2–4] Inuit design used by a fashion label (Source: CBC Radio 2015a and CBC Radio 2015b)

political debate about who was granted access to which objects and who would be allowed to make money with them.

Copyright North/South—Postcolonial Copyright

A simple example of the complex debate about folklore copyright and “cultural appropriation” would be the copying of a tribal pattern from the Canadian Nunavut by a British fashion label (figure 2). The granddaughter of the shaman who had produced the quilt complained, and the fashion label withdrew the piece (sold in Canada for 900 dollars). The complaint required visual media, the documentation in the book, photography, archives, communicating, and campaigning online (figure 3 and 4). Here, it is obvious why there should be copyright legislation for “cultural folklore,” for indigenous cultures, and also for collective values. Thinking about these cases of a clear extension of the north-south exploitation, which takes “everything but the burden” (Tate

- 66 2003) from indigenous, Black, and minoritized cultures, becomes more complicated when we think of oral cultures, of “intellectual property” in other material forms or without them, and of the practices of digitization and the worldwide cultures of piracy, oftentimes divided into an allegedly “creative appropriation” of northern cultures vs. devaluated “cultures of copy” in Asia and the Global South. Kavita Philip (2014) analyzed media political discourses about “good and bad copying” with their racializing attributions (“Europeans are being inspired by other cultures; others, especially Asians, simply copy and steal them”; cf. Lessig (2004)).⁷⁶ Min-Ha T. Pham found a “racial plagiarism” in the way the Western cultures make use of everything, the real copy culture in fashion brands, depicting especially the stereotyping of Asian brands, but also the power of online counter-strategies.⁷⁷

The Western Mediality of Copyrights

In 2000, Angela Riley called for a collective model, “a group rights model of ownership of intangible property,” to protect the works of indigenous cultures from “white law” (Riley 2000, 240). Collaborative and intergenerational tribal culture would have to come into focus, as exemplified in the law of the Native Americans (Indian Commerce Clause⁷⁸); a new “Indian Copyright Act” would

76 Counter strategies like pirate copying subvert global copyright restrictions and their revenues in the Global North.

77 Examples include rapid market losses after social media accounts and hashtags revealing unpaid use of indigenous or queer culture in Prada or Gucci shows. “The naming and shaming of fashion copycats do race work by organizing and maintaining relationships to global fashion capitalism along racialized lines. ... ‘Top-down copying’ receives much less attention. In fact, the most common forms of top-down copying often go unrecognized as copying. Popular euphemisms for top-down copying like *creative inspiration*, *homage*, and *cultural appreciation* rebrand what are actually copies into original works of authorship. ... This is perhaps the greatest privilege informal copy rights confer: the power to copy without being branded a copycat” (Pham 2022, 12, 13, 14). See also Pham (2017).

78 “This paper contends that only a group rights model of ownership of intangible property will adequately protect the works of indigenous peoples

have to include oral literature. The argumentation for the implementation of certain laws directly refers to European concepts from the history of thought, philosophy, and its political, economic, and juridical roots, rejecting the respective racialized and universalized schemes of what is human and what is civilized:

For Native Americans, the Western legal infrastructure is the narrative of “white law”—a system devoid of indigenous values, concepts, and lifeways. Native peoples remain outside of most formal legal systems in the United States and continue to be surrounded by dehumanizing images of the Indian, supporting the myth that Native peoples are inhuman, timeless, and essentialized. (Riley 2000, 240)

Riley does not describe orality simply as a different mode of writing, as if only one medium had to be treated as equivalent to another. The requirement that a copyright record must be set down in a tangible medium is impossible for oral cultures to fulfill.⁷⁹ Ironically, it can even happen that the rights to a work pass to the Western researcher who notes it first. Even the originating cultures then no longer have access rights (Riley 2000, 116, refers to Chakava 1995). The Eurocentrism of jurisprudence thus contributes significantly to problems in the preservation of cultural heritage. Riley understands orality as the mark of an overall attitude that does not appropriate the world,⁸⁰ but sees the point of view of the speaker and hearer, the transmission

from an ever-encroaching dominant society. The validation of communal property seeks to bring collaborative, inter-generational tribal creations within the scope of copyright protection” (Riley 2000, 177).

79 This history shows how fundamentally thinking about property is linked to writing. On the one hand, because writing was a main starting point of legislation, after Gutenberg’s printing press in 1450, this history shows how writing co-determines the model of what is worth protecting; this also means that oral culture, for example, is difficult to protect unless it is notated and written down in some form.

80 “The indigenous model rejects European tropes of discovery, invention, naming, and originality, concepts which animate modern intellectual property laws” (Riley 2000, 190).

- 68 through generations, etc., as part of a chain. What starts as a simple question of the modality of the object to be protected proves to imply ideas and conceptions of communality running counter to the Western idea of originality.⁸¹

Alpana Roy emphasizes the role of the printed word in colonization, too: The history of copyright is a history of the expanding hegemony of the printed word. Print culture tends to universalize particular ideas through the monologic dissemination of identical copies. The printing press overturned European cultural and technological production; new channels of information were also tested in the colonies, and they helped to make Europe the center of the globe, to make certain concepts and also legal codes the standard. The printing press also supported the capitalist enterprise through the credit system and paper money. Without the dissemination of propaganda, political or religious, and trade documents, manuals, navigation plans, maps, tide tables, and treaties with the so-called natives, among other things, the imperial project would not have been possible, and no empire could have lasted. "Interestingly, several of the so-called universal 'truths' which evolved during the Enlightenment period (and essentially placed European Man at the centre of history) coincided with the rise of the print medium—and subsequently, the law of copyright," added Roy (2008, 119). Coherence and stability over longer periods and distances were believed to depend on print culture; and the idea of civilizational superiority was linked to literacy in a European language (in

81 "In an indigenous society, concepts of creativity and originality rely on notions of fluidity not seen in the Western world. By its very nature, oral tradition is a passing down, a handing off, of creative expression. A work can be reborn and recreated each time it is sung; it takes on the needs of the tribe, defined and redefined by its keepers and by the purposes for which it is called upon. Without a recognition of group rights to communal property, it is virtually impossible to frame indigenous works in the monolithic scheme of current copyright law which entirely excludes non-Western conceptions of originality" (Riley 2000, 190–91).

colonial education, etc.).⁸² The very constitution of what counts as knowledge is affected by this:

69

As a form of communication, printing (unlike oral communication) has a tendency to universalise ideas by disseminating information through identical texts in standardised languages. Particular ideas become universal and, indeed, begin to be accepted as “truths” simply through repeated distribution and widespread dissemination of the same standardised texts. (Roy 2008, 110)

The Copyright Thing Does Not Work Here

Clothing, textile, and specifically patterns are a particularly interesting field for a discussing international copyright because they undermine several distinctions that are commonly used to clarify ownership issues. They are simultaneously physical and conceptual (material in fabric, conceptual in pattern)—you can hardly divide them between copyright law and patent office; they do not simply belong to the realm of art, where things are considered to be genuinely attributed to a creator and placed under copyright; their “design” is also not patentable by a designer, but is handed down and in this sense “belongs” to no one—or

82 “European languages have also remained the preferred language of many of the elite in the former colonies, and this has been reinforced through the education system as many of the privileged schools conduct the bulk of their curricula in a European language” (Bhandar 2018, 119). “As Wright suggests, the ‘history of copyright is a history of the expanding hegemony of the printed word.’ ... Wright asserts further that: ‘The maintenance of large empires, such as the Spanish and later the French and British, relied on the printed word to create cohesiveness, uniformity and relative stability over long distances and periods of time. It assisted in the continuation of loyalty and connection to the ‘mother country’ on the part of European soldiers, missionaries, traders and settlers. The possession of writing and, even more so, printing also allowed European colonisers to justify their actions through ideologies of technological and cultural superiority over the largely oral cultures they encountered. Literacy in a European language was, and still is, seen as a sign of civilisation and progress” (Roy 2008, 118). See Walter D. Mignolo (1998, 39 and 41).

70 to the members of a culture,⁸³ if it is to be protected from (further) exploitation by the Global North. The laws on copyright are divided into two categories: first the copyright laws on intellectual property, then the industrial rights (patents, etc.); this separation corresponds to those between the arts and the science-and-industry sector (since Paris's 1883 *Industrial Property Law* and Berne's 1886 *Copyright Law* (Boateng 2011, 9)).⁸⁴ This is not a cultural property essentially situated in the realm of the creative and imagination. The production, design, and uses of textiles in particular show that the categories do not apply here; they are reminiscent of the body-mind dichotomy like in other variations of art vs. craft, originality vs. mimesis, etc.⁸⁵ and, as Verena Mund has argued, this subversion of the dualism of the material vs. the conceptual will also hold true for the photo/performance series *Ohne Zeit, ohne Ort*.⁸⁶

83 On the question of postcolonial memory studies, the significance of textiles in oral cultures and the fixation on digital media for cultural memory, see Keightley (2022): Clothing is not only the "content" of cultural tradition, but also a mode of archiving itself. "... technologies of bodily performance interpolate clothing and textiles as technologies of memory, producing complex moments of embodied knowledge through acts of wearing in which participants narrated both remembered connections with close and distant others, but also memories otherness and difference both in terms of culture and age in the diaspora" (12).

84 Boateng is a professor of Communication Studies in San Diego.

85 Textiles also figure prominently in critical methodologies. Postcolonial media studies must not only reflect on how they privilege Western technological media over others, repeating what Johannes Fabian described as Time and the Other for anthropology: placing the Other in an earlier, less developed time. They must also consider other forms of knowledge storage and communication, and these can include elements of an oral or a material culture, as Emily Keightley (2022, 10–12) shows with the example of a research project: Indian women who had lived in East Africa before coming to the UK shared their experiences, their histories, and their transnational and intergenerational knowledge about fabrics and their clothing.

86 Verena Mund, contribution to the discussion in the graduate program Configurations of Film, Goethe-University Frankfurt am Main, hybrid/online, on March 29, 2022.

"The Copyright Thing Doesn't Work Here," Boatema Boateng quotes an informant from her 2011 study of "Adinkra and Kente Cloth and Intellectual Property in Ghana," a cloth she had considered part of her cultural heritage. So she decided to pursue the Ghanaian government's attempt to legally protect it against copies of Adinkra cloth in East Asia.⁸⁷ (The question of appropriation is not simply a North-South affair. Appropriated versions of Kente are also produced in Ivory Coast or Ghana itself, not just in Southeast Asia. These complex relationships undermine simple concepts of Western hegemony, in multidirectional flows of commodification and appropriation.⁸⁸)

In indigenous societies, cultural productions circulate according to principles of custodianship, and they are considered inalienable, that is, they cannot be possessed by anyone. Intellectual property is here fundamentally common property, public domain, and the mere category "intellectual" (in its separation from the material) makes little sense (Boateng 2011, 11).

The usual legal logic, which considers the design as something worth protecting, that is: the *idea* and not the physical embodiment, hardly fits here, because seen in the context of the *use* of the cloth, the design cannot be detached from the connection with the material, the fabric. Thus, the protection of design misses the conditions under which design receives its value. The individual categories of the law limit what can be protected and prove inappropriate for the case of such complex cultural products as Adinkra and Kente (3).

87 For more discussions about "patterns of appropriation," complex "nosterification" processes and Africanicity see studies about wax prints, see Sylvanus (2007), Sylvanus (2016) and Rabine (2002).

88 Here Boateng (2011, 15 et passim) refers not only to the famous Dutch wax prints, the Dutch imitations of Indonesian batik, which they could not sell in their own colony when reproduced by machine, but which became popular in West Africa and even as appropriated imports bear the sign of Africanicity; she also cites other transnational cycles of appropriation, such as those of diasporic communities, or the importation of cloth by African mercenaries during the European world wars).

72 These laws create property rights to intangible cultural goods and thus transfer them into the realm of commodity exchange. Their usefulness is now measured in economic categories, whereas in indigenous culture it is tied to religious rites or symbolic membership in a community and other identity-forming characteristics (7). Boateng summarizes, “intellectual property law is therefore bound up with the commodification of culture” (8). The laws distinguish between creators and owners of a work. However, those who invent something often do not have the will, the intention, or even the means to commercialize it. As a result, IPR, Intellectual Property Rights, are often granted to corporations that, for example, finance the research that leads to inventions. So even such laws, which are created in the name of individual rights, usually serve corporations—or even the state that stepped up to protect local culture.

Folklore, specifically the production of Adinkra and Kente, is both individual and communal, Boateng states. Ghana initially considered ethnic communities as folklore creators in 1985, but this was controversial because many of the fabric/design creators are actually known by name. The Ghanaian law made the state the owner of local cultural production, strengthening institutional rather than individual rights. The law thus forgot the emancipatory promise with which it started, as both individual and community rights were written out of it. Rights of “unidentifiable authors” are included, over which the state now has custody (even in Adinkra and Kente designs, no individual author can claim authorship (11)). Individual rights are only provided for in the Industrial Law. Boateng (2011, 170) therefore accuses the government of a form of expropriation in its own country that economically exploits indigenous culture. It seems that even the most well-intentioned ownership concepts hit dead ends.



[Figure 5-13] From the series *Ohne Zeit, ohne Ort*, artist collective RHZ (Radikaler Handarbeitszirkel—Radical Handicrafts Circle), 2013

















3. Messages to the Future: Potential History

Ariella Aïsha Azoulay's book *Potential History: Unlearning Imperialism* (2019) has two challenges in its title that are also relevant for rethinking property. Both parts point to the future, both are twisted in themselves, in a reversal: "Potential History"? Is "history" not the factual, that which has happened, the opposite of possible? And: if something is as pervasive as global imperialism, how can it be dealt with by something as delicate as a beginning, in an "Unlearning Imperialism"? At the same time, it seems that small movements, shifts of thoughts and perspectives, and the work on one's naturalized habits and desires is needed, and that even the work on the self-evidence of access to all kinds of things, on entitlement, or on speaking positions (Azoulay 2019, 38) presents a major challenge, and it is a great place to start.

Sema Çakmak has pointed to the inherent contradiction of the wording—and at the same time to the question, if it were to be appropriated by the extreme right, which, especially since the late 2010s, has adopted the styles, communication tools, activist practices, and also rhetorics of emancipatory movements, including their affective strategies of rage and indignation.⁸⁹ Together with "COVID deniers" and *Reichsbürgern* (German anti-democratic monarchists), the extreme right discourse claims to be critical of "the system" and revolutionary. Their halting and rewriting of history circle around the allegedly deprived *white* majority, while Azoulay speaks of minoritized and exploited fields and actors; what is more, Azoulay demands an undoing of these histories "with companions" (Azoulay 2019, 5) always with others,

89 Sema Çakmak's contribution to the discussion in the graduate program Configurations of Film, Goethe-University Frankfurt am Main/hybrid online, on March 29, 2022. See Fielitz and Thurston (2018) and Strick (2021). Henrike Kohpeiß has found a connection between colonialism and affect in "bourgeois coldness," in a form of subjectivation that is closely linked to racism and the history of colonial violence and extends into the "structural-colonial status quo" (Kohpeiß 2023, 13).

also with absent (even deceased) others, speaking with the people affected by the violence of (colonial) history.

A central metaphor of Azoulay's book comes from photography.

In a split second the camera's shutter draws three dividing lines: in time (between a before and an after), in space (between who/what is in front of the camera and who/what is behind it), and in the body politic (between those who possess and operate such devices and appropriate and accumulate their product and those whose countenance, resources, or labor are extracted). The work of the shutter is not an isolated operation, nor is it restricted only to photography. (2019, 5)

We should refuse the work of the shutter, Azoulay writes, in many ways. We should halt the belief in the necessity of an ongoing chronological history, step back, withhold interpretations, ask for alternative narratives in given data, refrain from relating objects and facts to already well-known structures. "One should unlearn the authority of the shutter" (Azoulay 2019, 8). And she invites us to relearn. This starts with a sharp analysis of the status quo, its history, with criticism, and lots of refusal. Rejection. Saying no.⁹⁰

Lisa Lowe put this "history of the present" brilliantly in describing her reading the "Intimacy of Four Continents":

I explore in my readings a relationship to the past that attempts another approach, what I refer to as a *past conditional temporality*, through which I suggest it is possible to conceive the past, not as fixed or settled, not as inaugurating the temporality into which our present falls, but as a configuration of multiple contingent possibilities, all present, yet

90 She even demands that we "undo the operation of the shutter in space, time, and the body politic, the three dimensions through which imperial violence operates" (Azoulay 2019, 9). "To refuse the shutter is to begin to practice potential history" (10). "Rehearsing disengagement is the practice of doing potential history" (43).

none inevitable. The past conditional temporality of “what could have been” symbolizes a space of attention that holds at once the positive objects and methods upheld by modern history and social science, as well as the inquiries into connections and convergences rendered unavailable by these methods. It is a space of reckoning that allows us to revisit times of historical contingency and possibility to consider alternatives that may have been unthought in those times, and might otherwise remain so now, in order to imagine different futures for what lies ahead. This is not a project of merely telling history differently, but one of returning to the past its gaps, uncertainties, impasses, and elisions; it is tracing those moments of eclipse when obscure, unknown, or unperceived elements are lost, those significant moments in which transformations have begun to take place, but have not yet been inserted into historical time. It is an attempt to give an account of the existence of alternatives and possibilities that lay within, but were later foreclosed by, the determinations of the narratives, orders, and paradigms to which they gave rise... (Lowe 2015, 175)

Azoulay practices just that—also in her own writing—in two ways. She calls her own book an outcome of rehearsals. She rehearsed refusing shutters, reading timelines differently, rejecting the concept of progress (because progress is a marker of our being implicit in temporal hierarchies, like in “helping poor people,” “rescuing endangered cultures” (Azoulay 2019, 11)), listening to people in other time frames, unlearning, reversing, halting, rewinding, and she practices dealing with time differently in her call to *imagine*.

I assume that there could still be a learning process, not only that there would be the willingness and readiness to learn, but that there still is time to learn. Perhaps, however, time is up (see Ngumi 2022), and the demands can no longer be ignored, and the livelihoods on the planet are no longer to be had, and the gated reserves of the super-rich are no longer secure. Un-learning only

has a small window of time, and at the same time it is an endless task. This is why Azoulay's writing has such an appeal. Like in Walter Benjamin's messianism, she is at the same time looking forward to a future time and sees that every moment has its revolutionary potential in the present.

Possess as If Not

Brenna Bhandar, too, concludes her *Colonial Lives of Property* (2018, 193) with alternative scenarios of ownership: "... the undoing or dismantling of racial regimes of ownership requires nothing less than a radically different political imaginary of property."⁹¹ *Studying* and *analyzing* is followed by *imagining*.

The figure of the pirate has been fueling the imagination around property, injustice and reparations for a long time; by no means always heroicized, the pirate is designed as the other of the creative Western individual, especially in commercial Asian copying.⁹² The personification of copyright infringement reminds Lawrence Liang of the "motley crew" in the social history of the seventeenth to nineteenth centuries, in which thieves and runaway convicts or escaped slaves came together with radical idlers, illiterates, beggars, and renegade sailors. In the famous alternative history of the Atlantic, *The Many-headed Hydra: Sailors, Slaves, Commoners, and the Hidden History of the Revolutionary Atlantic* (2000), it is these motley pirates who do not follow the hero type of a Heracles and who, according to Peter Linebaugh and Marcus Rediker (2000), established anti-capitalist zones of shared commons (Liang 2011, 177). Without mystifying the commons, and with an eye to the fact that "creativity" is a

91 On the role of the state as a guarantee not only of concrete property rights, but also of their imaginations, cf. Danewid (2024).

92 Liang (2011) about the *othering* of pirates, especially Asian pirates. Kavita Philip (2014) found the "genealogy of the pirate figure" as a boundary object, first at the edges of the Empire, then resurrected in the digital age, a "key feature of twenty-first-century political economy" for the constitution of an outside.

86 cost-neutral and universal human resource for proponents of strong copyright laws as well as for their opponents, Liang (2011, 175) recommends something like *custody* or *custodians* for a cultural heritage that is curated and guarded in order to endure.⁹³ Franklin Obeng-Odoom, nonetheless, criticizes the concept of the commons as a Western liberal idea failing to address questions of justice and of ecology.⁹⁴ For possible counter strategies from the perspective of the Global South in the present, Lars Eckstein proposed the notion of “Postcolonial Piracy.” Is piracy in the Global South a theft of (Western) protected media content, or a subversive practice that undermines the capitalist world system and its structural injustices, and food for creativity (Eckstein 2016, 161 et passim)?⁹⁵

To focus on the ways of thinking and acting in our former colonial societies, I do not pursue resistance strategies in the Global South here⁹⁶ and return to possible reactions, refusals, new rehearsals in the Global North, which, according to Bhandar, will not work without “the transformation of the self and our relations with one another that are a precondition for wider social and political transformations” (2018, 193).

These need to be individual as well as communal. But going against a logic of ownership that has taken hold in all areas

93 At the same time, there is no such thing as a “creativity as universal human imperative”; we should not mystify the commons.

94 “This approach does not address what Julian Agyeman, the Black socio-ecological theorist, calls ‘just sustainabilities’” (Obeng-Odoom 2021b, quoted after Agyeman 2008, 2013). See also Obeng-Odoom (2021a).

95 Like early print piracy, postcolonial piracy fuels dissemination of culture and knowledge, it threatens the revenues of single artists and authors, it provokes legal measures that claim to be universal and do not take into account the different distributions of access and wealth.

96 But it is important to mention all the resistance movements in the North, too. For a compelling, engaging, and emphatic summary of the current queer-feminist, anti-racist, anti-colonial and *Fridays for Future* movements, where alternatives are already practiced in the here and now, see von Redecker (2020b, 92–132 et passim).

of life makes decoupling largely impossible, and communities decoupled from global markets and legislatures are almost inconceivable, especially if it is not about a variation of ownership and economics (for instance, socialist planned economy in place of capitalist free market), not about “owning differently,” but about a radical rejection of ownership. Daniel Loick (2018, 92–115; see also Giorgio Agamben 2013, 123–25) introduces the example of the Franciscan Order, which sought to live free of property.

Within the very worldly, wealthy structures of the Christian Church, they followed an ideal of poverty, more precisely: not the ideal to be poor (possessing little or nothing), but: *to possess not*. Neither individually nor as Order. From the mid-thirteenth to the mid-fourteenth century, the Franciscan Order sought to realize an ideal within the Church: only a life that did not enter into a possessive relationship with the world could be ethically perfect. In this way, the Franciscans placed themselves outside the legal order, initially still covered by the Church leadership (the pontificate), which bought the secular goods of the Order in 1245 and put them to their use, without the Franciscans being their owners.⁹⁷ But then, from 1316, Pope John XXII denied Jesus's propertylessness (the Church was too rich to allow this contradiction), and claimed that in the consumption of goods the possession and the use fell into one. In 1322 the Pope forced the Franciscans to become owners of the things they used again; the ideal of poverty was called heretical, and the Franciscan leaders had to go into exile (Loick 2018, 92).

The Franciscan goal of living without taking possession of anything was formulated by St. Paul in the *Epistle to the*

97 Formally there was a distinction between *usus simplex* and *usus facti*—the *right of use* and the *purely factual use* (Loick 2018, 94). The Franciscans did not make any statement about whether they considered their desired way of life to be ultimately the best for humanity. One could accuse them of being able to realize their experiment only within the framework of and *at the expense* of the institution of the church. At the same time, every alternative practice will find a framework, a boundary, behind which the hegemonic order lies.

- 88 *Corinthians* with the formula “as if not,” *hos me*: do something as if you were not doing it.⁹⁸ Use the world as if you were not using it. Have as if you do not have (Agamben 2006, 37; 1. Corinthians 7:31).⁹⁹ The goal would be to create general social conditions that make it possible to make use of things without appropriating them,¹⁰⁰ a prevention of the appropriation of the world.

Hos me is interesting for contemporary appropriation issues in two perspectives. The formula of *as if not* subverts the logic of *have or have not, possess or own*; it does not simply plead for *shared possession* or the replacement of *property* by *ownership*. Is

- 98 Agamben (2006, 34–35) is interested in *hos me* because of the juridical paradox of both claiming rights, and claiming a life outside the law, but especially because of forms of *use*. The letter to the Corinthians makes explicit references to the definition of property (*dominium*) in Roman law and its *ius utendi et abutendi*. Paulus contrasts the *dominium* with a new, messianic *usus* (37). This *usus* does not guarantee identity (and so is also diametrically opposed to Hegel’s later concept of the subject). Making use of something in a messianic time understands the possibility of use as the potential of all in life: “It is a general potency that one uses without ever being its owner” (Loick 2018, 117, my translation). A detailed interpretation of the “Messiah” as a relational figure is given by Hendrik Rungelrath (2022).
- 99 With the verb to *have*, we first seem to escape the historical determinations of *own* or *possess* (or even to return to what Marx will later call *the sense of having*). But then there is this strangely twisted negation in the subjunctive. In the Epistle, this attitude is demanded in view of the coming redemption—by “buying as if not keeping, and using the world as if not using,” because the world will soon pass away and the Messiah will soon come. Paul writes: “But this I say, brethren, the time is crowded together. What remains is for women to be having as if not having, and be weepers as if not weepers, and rejoicers as if not rejoicers, and buyers as if not buyers, and those who use the world as if not users. For the form of this world is passing away. I will now that ye be without sorrow” (Paul, Definition of Messianic Life, 1 Corinthians 7:29–32, quoted in Agamben 2006, 34, my translation).
- 100 In the thirteenth century, further differentiations were made, especially with regard to the “*usus facti*”: “... the conceptual opposition no longer runs between *dominium* and *usus*, but within use itself, between *ius utendi* (‘the right of using’) and *simplex usus facti* (‘simple de facto use,’” but John XXII’s bull *Ad conditorem canonum* denied that there should be a “de facto use” (Agamben 2013, 126). “A small group of young monks (since such were the Franciscans at first) could hardly be accepted for a large and powerful religious order” (137).

it possible to secularize this? Does it still work if you subtract the Christian reason that motivates why you should use something as if not (because it doesn't matter anyway when the world ends and the Messiah owns everything or nothing)? Is it possible to blend the registers of the religious, the philosophical, and the juridical and form from them an idea for a new understanding of use?¹⁰¹ Even if one invented a new mode of use, the question was how to live it, as no economic enclave could survive, dependent on exchange with its environment, which follows hegemonic categories of use.

At this point Loick discusses the “right not to need rights,” and the forced incorporation into a (legal) community; the Franciscans were transformed by the Pope into (legal) subjects they did not want to be¹⁰²—and this, later, was a principle also effective in European colonies.¹⁰³ And it remains virulent in current restitution debates. It has effects on how local cultures look at their traditions in terms of their vulnerable marketability, or on the modes of the restitution of land.¹⁰⁴ Where pirates (or other figures, the bling bling queens and hip hop gangstas, etc.) may counteract or ridicule the hegemonic capitalist system, they remain within the legal frameworks while subverting them; other communities try to think of doing away with capitalist economy altogether. This includes the resistance against being a subject of hegemonic law and philosophy. The pope's bull denied the Franciscans the possibility of being the subject they wanted to be

101 Daniel Loick did exactly that and compared this attitude with that of squatters: lodging as if not lodging, lodging without an appropriation relationship with the house or flat. In this way, the prevailing connection between ownership and abuse is creatively countered by a new connection between (house) squatting and ownership (Loick 2018, 117).

102 The formula “the right not to need rights,” which is reminiscent of Hannah Arendt, goes back to Werner Hamacher (2006) (Loick 2018, 38).

103 The Franciscans were the European example that proved the extra-Europaen norm, writes Loick (2018, 98).

104 For an example in Aboriginal rights and British colonialist rule in Australia, especially land rights, see Loick (2018, 100).

90 and forced them to live with property; colonial powers instituted a property order that destroyed the existing self-relations and world-relations by their transforming them into an “alien social grammar” (Loick 2018, 99). To fight against the alien grammar, people would be forced to learn this grammar and to use it. There is no right “not to own in such a way.” It has to be made by claiming it existed.

Terrible Loss and Wonderful Difference

Well-known alternative property forms are viewed skeptically by Azoulay, Bhandar, Loick, and many others. A Marxist socialization of property, for example, still keeps property, even if it is shared by many; the so-called “bundle of rights” model varies and differentiates the possibilities of disposal, but leaves the principle of property as it was (Bhandar 2018, 20)¹⁰⁵; even a redistribution in the mode of restitution would leave the global concepts of distribution untouched; and the concept of the *commons* shares these problems.¹⁰⁶ It could not work as an isolated solution, and again does not correspond to the ways of life of, for example, expropriated indigenous peoples.

105 For a perspective from the Black Radical Tradition in socio-ecological terms, in critical distance to Marxist “workerist” and capital-centered approaches as well as the “Western Left Consensus,” see also Obeng-Odoom (2021b).

106 At the same time, see also *commoning* as a counter-strategy as conceived of in Lauren Berlant (2022, 82): “The common usually refers to an orientation toward life and value unbound by concepts of property as constituted by division and ownership. It reframes public as something generally accessible for use. It also points to the world both as a finite resource that is easily depleted and spoiled and, in addition, as an inexhaustible fund of human consciousness or creativity. At the same time, at the moment of this writing, the proclamation of ‘the common,’ what it works to manifest, is always political and invested in being inconvenient to the reproduction of power, with aspirations to decolonize actual social and economic spaces that have been weaponized by empire, capitalism, and power over land rights. This means that the commons is incoherent, like all powerful concepts. Under its name, across the globe, communities tap into legacies of occupation to contest normative jurisdictional ownership rights and resource justice.”

Interviewed by Loick, Brenna Bhandar (2020) referred to individual local practices involving restitution, redistribution of resources, etc., so as to no longer subscribe to the idea of universalized forms of property. This is also true of the commons; various First Nations criticize the commons because they don't want to have stolen resources returned to indigenous communities as long as it is done in the Western property system (64 and 66). In response to Loick's question, "How can it be possible to refuse colonial dispossession without presupposing a prior 'property order' that colonialism is violating?" Bhandar replied, "I don't see how you can use a legal apparatus of dispossession in terms that are wholly other to that legal apparatus." (66 and 68) Bhandar finally argued for "property abolitionism"; the abolition of the concept of property altogether.¹⁰⁷ "[This] requires a great deal of intellectual heavy lifting and ingenuity. And this means going through the 'masters' tools' and coming out on the other side with something terribly and wonderfully different; it requires a deconstruction in its deepest sense, but accompanied by a materialistic drive for something that is alien to the private property form" (68).

The loss of property regimes will be terrible, because we will lose ourselves, our subjectivities, which have been tied with it, in a way, and life will be different. Bhandar does not promise it will be wonderful, but "wonderfully different." Again, imagination is needed to question "various imperial imaginaries" for new "relationships between self and world in the widest sense," after the undermining of "the purportedly universal reach of post-Enlightenment definitions" (Eckstein 2016, 162).

To change the knot, which Bhandar calls the "identity-property nexus," with the aim of painting alternative imaginaries of property relations, every thread in the knot must be taken up; "the undoing or dismantling of racial regimes of ownership requires

107 Bhandar refers to Ruth Wilson Gilmore's "abolition geography" (Bhandar and Loick 2020, 60, 62).

92 nothing less than a radically different political imaginary of property" (Bhandar 2018, 193). How are we, how am I connected to property, how are we possessive, possessed, possessive, self-possessive, as entrepreneurial subjects, but also as objects of possession? For all subject positions, property regimes hold forms of subjectivation, and any form of resistance to practices of dispossession must ask itself where it co-inscribes old logics of appropriation and possessiveness (18). None of these positions can be universalized (as articulated several times in a critique of Judith Butler, who in a dialogue with Athena Athanasiou describes a fundamental vulnerability of the human being as a deprivation of autonomy—"everyone is always already expropriated"—whereas Athanasiou, shortly after the Syntagma square occupations against EU austerity policies, points out that this is different when one's house is expropriated (Athanasiou and Butler 2013, 3)). Subjectivation and possession/expropriation are fundamentally linked in another way, according to Brenna Bhandar (2018, 16), through several centuries of world capitalist economy and through the individuations it produces.¹⁰⁸

Imagination does not always need images, but changing the medium you think in can provide different imaginations.

108 "... the a priori condition of being is one of dispossession, defined by an inescapable interrelationality. An apparent universalism creeps into the assertion that 'we can only be dispossessed because we are already dispossessed.' We suggest that dispossession is not a universal condition of becoming that everyone labors under albeit in radically unequal circumstances. While Butler asserts that the two valences that Athanasiou identifies at the outset of their conversation are bound to one another, Athanasiou maintains that 'there is no ontological, causal, or chronological link between "being dispossessed" (as a primordial disposition to relationality that lies at a fundamental level of subjectation...) and "becoming dispossessed" (as an ensuing, derivative condition of enforced deprivation of land, rights, livelihood, desire, or modes of belonging)'. In our view, there is an inescapable relation between processes of subjectivation and material forms of dispossession; the very constitution of the racial subject, for instance, is conjoined to an economic system premised on its subordination" (B. Bhandar and D. Bhandar 2016).

Photography maintains different relations to time, for example, than writing.¹⁰⁹ Photography is classically said to stop time, capture it, conserve it, or even: suspend it, make a strange presentness. Photographic performances that relate to history and property, to cultural appropriation and the white male subject, can appear as something that has already dealt with the property issues from history.

Restitution, if you really look at it, is bottomless (Andrews 2021, 120; see also Tuck and Yang 2012). If there is a time Europe has to await, it is not the time of the Messiah but of payout. Today, we live amongst the things and wealth from the past, and have to think of rehearsing new relations. Like in the performance/photography series *Without date, without location*.¹¹⁰

109 Not only because it can be considered “art”—art is not simply the autonomous space to practice things differently—but because it may offer a concrete example, as a blue print, a political model. Not as an illustration of theory, but as a statement in its own language.

110 RHZ, *Ohne Zeit, ohne Ort (Without time, without location)*, photograph series, photographer: Wolfgang Scheerer, D 2013. Solo exhibition, Kaskadenkondensator, Basel 2013.



[Figure 14–24] From the series *Ohne Zeit, ohne Ort*, artist collective RHZ (Radikaler Handarbeitszirkel—Radical Handicrafts Circle), 2013





















Here, we see members of the artist collective RHZ. “RHZ” once was the acronym for several wordings, like “radical handcrafting circle,” but now it is only the short name of a queer-feminist artist group in Hamburg, Germany.¹¹¹ Within their series *Ohne Zeit, ohne Ort* (translatable as “no date or place given”—such as in signatures of art works, where you would usually give the time and place of origin—or as “without time, without place,” timeless as the things we see), we find two classic formats of portraiture, as a group or as individuals, either from the field of portraits of wealthy citizens (aristocrats would still have jewelry or insignia of power), or in the presentation of a family, a group of important noblemen or officials, in self-contained postures. The series obviously is about the clothing, as if this is about costumes (*Trachten*). There are costumes, but there are none, and yet they are called up in the pictorial memory, the hoods and aprons from past centuries in northern Europe. RHZ crossed centuries, but not continents. But a little bit of the folklore that is conjured up looks non-European; maybe a hint to the group’s connection to the political sewing group “Numan” in Tokyo.¹¹² We might see an invented history, an imagined community. In any case, we see a kind of appropriation of their *own* white northern European cultural history, which for women/ queer/non-binary persons is

111 “RHZ (formerly known as *Multipurpose yarn* Radical Handcraftcircle) is mixing up, twisting, turning and negotiating cultural matter into performances, videos, photographs, textiles and texts. RHZ is a group of five artists and based in Hamburg. RHZ is active since 2009. RHZ studied Visual Communication, Illustration, Art and Design in Hamburg, Kiel and Karlsruhe.

The ease of thinking by doing, acting together and the secrecy of a circle are the key ingredients of RHZ’s work. RHZ uses various techniques such as the issues of hiding, of gaps, of wanting to be recognized, of stabilizing and dissolving in order to be present in society—with art” (RHZ n.d.).

112 *Numan* is hosted by the “Irregular Rhythm Asylum” Infoshop in Shinjuku, Tokyo.

106 not so simply a history of their own.¹¹³ So in a way the situation we see is also a very serious one, a confrontational one, somewhere there is also a lot of refusal here. At the same time we are in a floating time, in a feeling of presentness given by the sharpness of the photography and the looks, sometimes enhanced by a flashlight, and by the openness of the possible roots and meanings. And for sure there is a lot of *potential history* here. The clothing history and materials of the art work show that there is a *Trachten* history within the polyester clothing of today, or may spring out of it at any time.

If I think of historical painting, like Dutch group portraits, which are evoked through the posture of those photographed—fixed, frontal, looking out of the picture, like in their Sunday best or in representative apparel—I wonder which *family* has confidently gathered here (not smiling, a habit, that only became the norm decades later). The gaze into the camera recalls the bourgeois portrait of late nineteenth century. Groups of people not obviously connected by profession or blood ties could only be conceivable for guilds or groups of people working together (like peasants). Only in the twentieth century did photographers like August Sander begin to be interested in those groups. RHZ enacts August Sander's protagonists transferred into a studio. The clothing's outlines, forms, and modes of wearing can allude to specific clothing designated as markers of a culture (even if interior and children are explicitly missing here and the genres of status or family portraits are undermined in their separation). This, however, does not take place on the image itself/alone. The space where the meaning of the photographs arises has no time and no place.

113 RHZ prefers not to be identified as a group of one gender. While refusing these categorizations, at the same time they see their work as in a queer-feminist tradition, and in the case of *Ohne Zeit, ohne Ort*, they were also interested in producing imagery depicting a certain age, menopause, and grey hair, besides other categories. RHZ member, personal communication, Hamburg, Nov 7, 2022.

I also see: an analogy between today's clothing production, which exploits the Global South in sweatshops and pollutes the oceans with plastic, and the evoked centuries of contemporary colonial history, which had just started to bring colonial goods, tea, sugar, coffee and more, also to Europe's working classes. RHZ "has" this history *as if not*.

One's own property is in so many ways "second hand"—because it is re-used, used for other purposes, and because women in Vietnam might have been sewing it, with their hands, and now RHZ reworks it.¹¹⁴ The evocation of the figure (the *Gestalt*) of the

114 Part of the first exhibition and for a long time also of the website was a chart with information about the clothes' origins. The group decided to remove it, because they thought it might give the impression of "sources" or explanations, which in fact they are not. If there are sources for the impressions of *Trachten*, they are global. To give an idea, I quote from the former webpage: "Waschschwämme aus Plastik, China 2012; handgestrickte Babydecke, Baumwolle, Oberbayern 1920er Jahre; Wintermütze, Polyamid, China, 2003; Stör, Polyester, Polen, 1980er Jahre; Spitzenbluse, Baumwolle, Thailand 1987; Farbrulle, China, 2010; Spitzenborte, St. Gallen, 1910er Jahre; Wolljanker, Österreich, 1980er Jahre; Deko-Wachteleier, Plastik, China, 2000er Jahre; Kopftuch, Baumwolle, Paris, 1950er Jahre; Basttasche, Bali, 1994; Spitzenunterrock, Baumwolle, Ungarn, 1980er Jahre; Nachthemd, handgewebtes Leinen, Uckermark, 1890er Jahre; Plastikblumen, China, 1998; Baumwollbinde gerollt, DDR, 1976; Kopfkissenbezug, Samt, gesmolt, Deutschland, 1973; Spitzenfragment, Baumwolle/ Polyester, Ungarn, 1970er Jahre; Spitzenvorhang, Polyester, Türkei, 2001; Bettwäsche, Baumwolle, Deutschland, 1950er Jahre; Blumenübertopf, Plastik, DDR, 1962; Schürze, Polyester, Taiwan, 1970er Jahre; Tischdecke, Leinen, Indien, 1980er Jahre; Atemschutzmasken, Deutschland, 2013; Tischdecke, bedruckt, Viskose, Deutschland 1950er Jahre; Faltenrock, Wolle/Polyacryl, Belgien, 1971; Glasperlenkette, Griechenland, 2001; Tüll, Polyester, Frankreich 1950er Jahre; Häkelkopfkissenbezug, Baumwolle, Indien, 1970er Jahre; Kappe, Baumwolle, Altötting, 1984; Posamentenborte, Viskose, Schweiz, 1960er Jahre; Rock, Wolle, Deutschland, 1970er Jahre; Schal, Schurwolle, handgestrickt, Hamburg, 1996; Paillettenstoff, SwiftTouch, St. Gallen, 2001; Handschuhe, gehäkelt, Baumwolle, Kroatien 2010; Strickrock, Baumwolle/Viskose, Spanien, 1980er Jahre; Seidenkleid, handgenäht, Süddeutschland, 1930er Jahre; Posamentenkordel, Seide, Schweiz, 1940er Jahre; Rüschenjacke, Polyester/ Viskose, U.S.A. 1980er Jahre; Häkeljacke, Baumwolle, Deutschland 1972; Lockenwickler, Metall, Deutschland, 1960er Jahre; Vorhang, Baumwolldamast, Frankreich, 1980er Jahre; Tischdecke mit Borte, Leinen, Jugoslawien 1978; Jacke, handgestrickt,

108 costumes is in the corner of one's eye, but it disintegrates when one takes it into view centrally. It is best seen with half-closed (or squinted) eyes. It is there and not yet there. It has been there and is still there. It takes property and undoes property. It keeps the temporalities of rehearsal, appropriation, and restitution in suspension. Rehearsal, though, is not an innocent procedure, as Rembert Hüser has commented, but is one of the practices that have become neoliberal tools, for example in body politics.¹¹⁵ So to keep the idea of a rehearsal as a space not for improvement and usability, but for dismantling what used to feel like one's own, one also has to work against the mainstreaming appropriations, closures, and functionalizations of critical tools.

This photographed performance subverts the classical distinction of handwork and headwork, Verena Mund noted, while reminding us of the genre of reenactment.¹¹⁶ Cinematic and/or theatrical re-enactments of historical events or imagined times evoke a special realism. Despite their staged nature, they become effective for the participants and change the present. Famous re-enactments stage historical battles, re-appropriate one's own repressed history or desired worlds, address trauma, or discuss current negotiations, for example in staged court hearings in which real participants appear and which, although they have no legal effect, are nevertheless highly effective both subjectively and for

Oberbayern 1982; Stützkorsett, Baumwolle, Gummi, Deutschland, 1970er Jahre; Steppjacke, Polyester, Frankreich, 1970er Jahre; Geklöppelte Tischdecke. Baumwolle, Griechenland, 1966; Weste, Schaffell, Österreich, 2000; Damenstrümpfe, Nylon, China, 2006; Blumenrock, handgenäht, Baumwolle, Hamburg, 1981; Stofffragment, Seide/Swarowski-Steine, St. Gallen, 2001; Strickschal, Polyester, Vietnam 2013." <http://www.rhzrhz.de>, March 2020.

115 Rembert Hüser, contribution to the discussion in the graduate program Configurations of Film, Goethe-University Frankfurt am Main, hybrid/online, on March 29, 2022.

116 Verena Mund, contribution to the discussion in the graduate program Configurations of Film, Goethe-University Frankfurt am Main, hybrid/online, on March 29, 2022.

the public.¹¹⁷ "If one repeats an event, then it is assumed that this event is fixed in its basic moments," argues Mund (2016, 281, my translation), thus illuminating the fact that RHZ's reenactment has no literally real thing to repeat, it rather enacts the *re-*. So, RHZ also overrides what Bhandar called the temporal logic of colonial modernity. Azoulay contrived special temporalities in her idea of rehearsals, let us add: dress rehearsals, which

do not seek to make legible *again* but *from ever—from* an indefinite past rather than toward (or in anticipation of) indefinite futures, as in *for ever*—not as retrieved histories but as an active mechanism that seeks to maintain the principle of reversibility of what should have not been possible, a refusal of imperial shutters closing in the first place. ... Unlearning imperialism means unlearning what one's ancestors inherited from their ancestors, (Azoulay 2019, 10 and 13)

which is what RHZ practices, keeping the shutter open for a moment, inscribing themselves into a history of representation—while undoing it. We can see *Ohne Zeit, ohne Ort* resonating with Azoulay's writing (or the other way around), because "potential history is a form of being with others, both living and dead, across time, against the separation of the past from the present, colonized peoples from their worlds and possessions and history from politics" (Azoulay 2019, 43). We see them *unlearning with companions* (refusing the imperial temporality relegating certain people into the past, or referring to them as sources; defying this hierarchy, one should consider them companions in the research, which is a rehearsal (15)). We might see traces of an "affective commons," "a commons that begins with being-with" (Berlant 2022, 85). This companionship is not only an integral part of this artist collective's practice. It is also reaching into the past, the past present, the present past. It is not about the restoration of

117 See Roselt and Otto (2012), or the performativity of the law as explained by Cornelia Vismann (2012).

110 a former better state, but about a return “*from ever*”—a formulation that starts in temporal nothingness and the present. We are not reconstructing the past. It is not about an alternative historiography. It is about a “nonimperial grammar” (Azoulay 2019, 195). “Nonimperial grammar cannot be invented—it can only be practiced through unlearning the imperial one” (196). Its “potentialities constitute a continuous present” (288).¹¹⁸ Silvia Federici’s (2004, 8) search for the history of the separation of production and reproduction also comes to its end here for a moment (there is no separation). And maybe the copy destabilizes the original, even if it is not really a copy, but we might see traditional costume and classical family/representative’s photography differently now, if we think of Michael Taussig’s “mimetic faculty ..., the faculty to copy, imitate, make models, explore difference,” which draws from the power of the imagined original, but also from “the power of the copy to influence what it is a copy of” (Taussig 1993, xiii and 250).

Rosemary Coombe (2011) had called for a different copyright law by social movements and traditional communities; and she continues that these certainly also emanated from “imagined communities” and also from “invented traditions” (78–79). Gathering to invent *Trachten* surely might become such an invented tradition. Angela Riley also might like its collaborative form, given her proposal for new forms of recognizing cultural production that continue to be inspired by a media model, but no longer by analog writing in the digital age, rather by networked communication, which exists virtually, is “fixed” or “fluid” in new ways, and encompasses non-Western cultures; Riley (2000, 219–20, 222ff.) has referred both to codes as performative writing

118 The “not yet” arises from the gaps, to quote from Lowe again: “This is not a project of merely telling history differently, but one of returning to the past its gaps, uncertainties, impasses, and elisions; it is tracing those moments of eclipse when obscure, unknown, or unperceived elements are lost, those significant moments in which transformations have begun to take place...” (Lowe 2015, 56).



[Figure 25] From the series *Ohne Zeit, ohne Ort*, artist collective RHZ (Radikaler Handarbeitszirkel—Radical Handicrafts Circle), 2013

- 112 (comparable to the performance of dressing) and to applications of collaborative writing (like in the group photographs).

While the clothing industry today is one of the major driving forces of climate change, pollution, and social inequality on the planet, it is not the need to shelter the body, but fast fashion that would be a candidate for unlearning property.

4. Wrap Up: From/For Ever

Property relations are the relations that individuals have with their property, and they are the relations that people have with each other (if it weren't for you, I wouldn't need a fence around my land; if Europe hadn't accumulated capital in the plantations, peoples wouldn't have been murdered and Africa wouldn't have been depopulated and destabilized by enslavement). Harney and Moten (2013, 58–68) summarize these relationships in two forms of monetary economy, credit and debt (see also Lorey 2019). Credit is what I owe someone and what I must return to them with interest, so the lender will earn from my indebtedness. Debt is the more general term for lending and being liable between persons or institutions. The difference is, as they write: "... debt is social and credit is asocial. Debt is mutual. Credit runs only one way. But debt runs in every direction, scatters, escapes, seeks refuge" (Harney and Moten 2013, 61). "Credit is a means of privatization and debt a means of socialisation" (ibid.). Without looking deeper into the financial juridical forms (and especially their US context, particularly with regard to the outcomes of the US debt crisis since the year 2000 and also the student debt, and other aspects of Harney/Moten's criticism of the university system), we may use their distinction to complement our reflections on people and possession. We have seen that subjects themselves are subjects precisely when they can take possession of themselves, when they can conceive of and improve themselves as capital, as a form of self-ownership that is a nexus of racialized, classist, and sexist lines.

These subjects are the place where feelings of desire or loss, like in phantom possession, cross bodily relations to the land, goods, money, or other people.¹¹⁹ They, we are the site to start with, writes Bhandar (2018, 193): "Considering how to dispense with characteristics of the self-possessive or indeed the entrepreneurial subject of contemporary capitalist rationalities is arguably at the core of any consideration of dismantling the forms of subjectivity presupposed and shored up by racial regimes of ownership." This involves decolonizing, reconfiguring the old relations between racialized subjectivities and epistemological Western traditions, and recasting the "identity-property nexus of the self-possessive individual" (197). Our subjectivities are rooted in forms of possession, like in a "fever of possession" (199). Harney and Moten (2021, 83) use the idea of a bad debt, a real debt that is unaffordable, versus the idea of black debt, queer debt, which figure our social relations: "Our indebtedness is all we have, and all we have is what we owe to 'one another.' ... That indebtedness is what we live, is the living we make, as the invaluable."

Owing everything to history, but refusing history. Left indebted by colonial history. Blocking the self-evident extension into the present. Celebrating the exchange and rewriting, the spaces to speak and to put into perspective and the pictures of minoritized groups, the cancellation of the credit, the recognition of the debt. Designing human subjects as not only those with the sense of having (private property). Moving away from the loss of sharing.

The images are reminiscent of the anarchist practice of anticipating the coming community. So it makes perfect sense when Eva von Redecker (2020b, 287) writes that the "Revolution for Life" misses something that cannot yet be known.¹²⁰ Especially

119 "The term [phantom possession in modern identities] allows us to link the subjective side of embodied entitlement to dominion to the objective side of propertization" (von Redecker 2020a, 48–49).

120 "Everything should belong to everyone, only belonging should be something completely different. Everything should be common" (von Redecker 2020b, 292, my translation).

- 114 as Kehinde Andrews (2021, 84) told us that “we first need to recognize that the West can never pay full reparations for slavery without destroying itself.” To move towards this terrible and wonderfully different time,¹²¹ we strip ourselves down to possessive subjectivations, colonial structural heritages, individual desires, follow the demands for a fairer copyright for cultural folklore, grant nature rights to her own,¹²² while at the same time aiming at transferring these property rights into a new right, the right to move outside an imposed property order, the right not to have (to have) these rights.

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- 121 Bhandar demands that the deconstruction of the concept of property always be conceived in materialist terms—“it requires a deconstruction in its deepest sense but accompanied by a materialist drive for something that is alien to the private property form” (Bhandar and Loick 2020, 68).
- 122 The philosopher of property Tilo Wesche recently proposed a pragmatic, non-anarchist transformation in the face of the climate catastrophe: Nature itself should be granted property rights, it has ownership of itself—change is only possible by linking up with prevailing property concepts (Wesche 2023).

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Ulrike Bergermann

Property. Colonial Histories and Messages to the Future

To possess something is to lose something: Starting from this seemingly contradictory claim this essay invokes various registers to defamiliarize the ways in which property structures subjectivity, world relations and affects. Intertwined with colonialism, racism and sexism, concepts of property have found an echo in piracy and “postcolonial copyright”. At the level of theory, a crossing out and a reversal of time are required to undo property-related violence and its mind-sets. At the level of artistic practice new modes of appropriation become imaginable. And while the commons will not be restored, multiple modes of having and commoning are possible.

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