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Registering Interests: Modern Methods of Valuing Labor, Land, and Life

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INTRODUCTION: THE PRESENT AND ITS HISTORY

In his critical engagement with Duncan Kennedy's Three Globalizations of Law and Legal Thought, 1850–2000, Chris Tomlins points to the presence of an absence, specifically, to the absent condition of contemporary legal thought in the "third globalisation" schematized by Kennedy: neoliberalism. Tomlins argues that neoliberalism, in its redeployment of the social for economic ends, "is highly compatible with Kennedy's characterisation of modern legal consciousness, the mode of (contemporary) legal thought that is the subject of the third globalization, as a schizophrenic oscillation between neoformalism, balancing tests, and rights" (Tomlins 2015: 11). For Tomlins, neoliberalization reverses the relationship between the economic and the legal that characterized the first two globalizations described by Kennedy; legal principles, questions, and interpretation are increasingly expressed in the conceptual grammar of economics.

The argument that a neoliberal rationality has saturated diverse legal fields, from human rights discourse and humanitarian intervention to judicial interpretations of the U.S. Constitution or financial regulation, has been pursued by many scholars. Another sphere increasingly shaped by neoliberalization is of course the university, and this raises an issue that remains unremarked on in Kennedy's Three Globalizations, namely, the institutional conditions in which contemporary legal scholarship is produced. While Kennedy is interested in how elite legal scholars in the postcolonial world have metabolized American critical legal studies scholarship and its dominant *episteme* throughout the mid-twentieth century, the institutional conditions under which this production of transnational legal knowledge materializes remain to be considered.

Taking the public university system in California as his primary focus, Christopher Newfield has argued that over the past four decades, the marketization of university education was a part of a concerted assault on a particular vision of the middle class. As an educated and diverse constituency, cutting across blue- and white-collar workers, across racial and ethnic groups, the university-educated middle class was seen to possess a cultural knowledge shaped by the "interconnection between social movements and professional knowledge" (Newfield 2008: 46). These forms of knowledge, which privileged progressive ideals of equality and egalitarianism, were to provide the foundation for the "knowledge economy" and its attendant political sphere. These ideals, however, became the focal point of the culture wars in the 1980s and '90s and saw "conservatives portraying every kind of social equality as a danger to economic efficiency, freedom, and meritocracy" (Newfield 2008: 64). Newfield illuminates how the market rationalities gradually imposed on the public university were part of a broader attack on new forms of knowledge that prioritized racial equality and egalitarian democracy (Newfield 2008: 65).

Neoliberalism, as an economic and political ideology that transposes virtually any aspect of life into the language and form of capitalist market relations, has other, constitutive dimensions that reflect particular concepts of value and modes of evaluation that far exceed economic factors. Commodity logics that render human life and ways of living as quantifiable, exchangeable factors that can be measured and marketized have long been bound to a racial ontology of the human; and it is this relationship that I seek to explore in this chapter. Newfield points to the firm grip that a neoliberal rationality came to exert over the public university in California (and elsewhere in the United States) and shows how it had an explicitly racial dimension, evident in the repeated and ultimately successful attacks on affirmative action policies, to take but one salient example. The language of merit and meritocracy, the attacks on what was descried as political correctness, the disavowal of the histories of racial oppression that necessitated affirmative action policies in the first instance – all of these can be understood as cultural aspects of a larger neoliberal rationality that saturated higher education institutions in the United States and elsewhere.

The university has long been a prime site for the realization of the nation-state's racial projects, as Roderick Ferguson argues in *The Reorder of Things: The University and Its Pedagogies of Minority Difference* (2012). The drive to include more people of color within the academy, in the aftermath of the civil rights and social movements of the 1960s, was accompanied by their

disciplining and exclusion based on the *potential* capacity for minoritized subjects to reach a standard of "excellence" (Ferguson 2012: 88–9). The standard of excellence came to be used as a means of measurement and a putatively "neutral" way to assess the performance of the racial minority academic or scholar within a system that structurally reinforces his or her marginalization.

In the United Kingdom, higher education has since the 1980s become increasingly beholden to state-driven market rationalities that also perpetuate and sustain the simultaneous inclusion and exclusion of scholars of color. As Wendy Brown remarks: "Britain has semi-privatised most public institutions and tied remaining state funding to a set of academic productivity metrics that measure knowledge according to 'impact'; in contrast with the United States, where the 'proliferation of more informal ranking systems proximate to crowdsourcing' marks the hallmark of transformation in higher education" (Brown 2015: 23). Brown refers here to the Research Excellence Framework (REF), a system of evaluation established by the UK government in the 1980s, in order to determine how state funds for institutions of higher education should be differentially allocated. Currently, all full-time "research-active" academics in every department (or School) of each university are expected to submit four "outputs" (articles or books published, for those in the humanities and social sciences) in every four- to five-year cycle. With "mock exercises" undertaken by most if not all departments in order to maximize their scores in the real exercise, along with the expense of the actual evaluation process, the REF costs individual universities and the government hundreds of millions of pounds to administer and run (Lyons 2015). The metric-driven approach behind the evaluation of scholarship in the UK university context reflects the belief that all scholarship can be objectively measured and valued; this is then reflected in a grading system of stars (1, 2, 3, or 4 stars, with only the latter two grades, respectively defined as "internationally excellent" and "world-leading," being deemed worthy of government funding). The process of grading and the criteria that define the ranking system have been roundly criticized by scholars across disciplines.

Mary Evans, in her book *Killing Thinking: The Death of the Universities*, identifies two government reports in particular that hijacked UK higher education into a value system overdetermined by market imperatives: the Jarrett Report of 1985 and the Dearing Report of 1997. The latter report explicitly linked the function of higher education institutions to economic objectives, stipulating that research should "support consultancy and attract inward investment . . . " and "foster entrepreneurship among students and staff" (Evans 2004: 23). Universities were intended to become a major force in the economy, and the marketization of higher education was identified as the means to achieve

this. Consequently, the rise of an "audit culture" has enveloped practically all aspects of academic life (research, administration, and potentially, as recently proposed by the current government, teaching[1]) within a system of measurement governed by a market-driven rationality (Strathern 1997).

The institutional conditions under which contemporary scholarship is produced have generated considerable human costs, both on an individual level and for particular groups of academics. A survey done by the Universities and Colleges Union in 2003 of more than 7,000 academics found "that 67% felt that they could not produce the required output without working excessive hours," with 34 percent of respondents indicating that the stress was affecting their health. This of course has particularly gendered implications for women academics, many of who still shoulder the burden of care responsibilities.

Moreover, the selection process by which departments determine who should be entered into the REF exercise has become, in the words of David Price, vice-provost of Research at UCL, "a process with conspicuous potential for discrimination" (Price 2015). According to the Higher Education Funding Council for England's own report, *Selection of staff for Inclusion in the REF 2014*, "black and Asian UK and non-European Union nationals were significantly less likely to be submitted [to the exercise] than members of other ethnic groups" (Price 2015).[2] A neoliberal, market rationality that governs the assessment of research quality, based on a set of putatively objective criteria that define excellence, is having a profoundly negative effect on long-standing and persistent race and gender discrimination in higher education in the UK. The ostensibly neutral criteria upon which research is assessed, and the (often anonymized) mock exercises undertaken at great expense by many departments, reveal a far more nebulous process of evaluation whereby some types of scholarship have over time been marginalized and excluded[3], and particular scholars deemed unworthy of being evaluated at all.

[1] See the Department of Business, Innovation and Skills Green Paper, "Teaching Excellent, Social Mobility and Student Choice," published November 2015; and a critique: Christopher Newfield, "Are UK Universities Being Cast Academically Adrift?" *Wonkhe, Higher Education: policy, people and politics*, November 17, 2015. http://wonkhedev.jynk.net/blogs/are-uk-universities-being-cast-academically-adrift/

[2] Price also notes that scholars with disabilities were also less likely to be selected for inclusion than scholars without a disability; and while the percentage of women submitted rose, it remains disproportionately lower than the selection of eligible men.

[3] For example, the American heterodox economist Frederic Lee, who taught in the United Kingdom from 1990 to 2000, reported on the basis of his experience of two rounds of the Research Assessment Exercise in the 1990s that "economists who study alternative theories such as Marxism have been squeezed out because the assessment has consistently favored mainstream work at elite institutions, published in a small subset of journals" (Owen 2013: 290).

The conditions in which legal knowledge is being produced, in the United States and the United Kingdom (and very likely elsewhere), are shaped by a relationship between value (what counts as legitimate scholarship, for instance, and who is qualified to produce research that is recognized as having value) and processes of racialization. If these are the conditions in which legal knowledge is being produced, this raises important questions about the state of contemporary legal thought, and the challenges faced by legal scholars (particularly racial minority scholars) whose objectives are to contend with contemporary forms of neoliberalism that further entrench racialized forms of oppression.

I will return to this question by way of conclusion. In this chapter, however, my particular aim is to examine the history of this present, notably the concepts of value and methods of evaluation that were used to create property interests in land and life insurance in the mid- to late nineteenth-century in the context of the British Empire. I argue that systems of registration, by the mid-nineteenth century, had become central to the legal representation of commodity visions of land and life, reflecting and constituting particular forms of value as social and legal facts. The broad intent of this chapter, and what links its opening reflection on the contemporary university to nineteenth-century legal history, is to explore the forms of marginalization and exclusion that modern methods of evaluation both produce and obscure. The development of methods to conceptualize, quantify, and measure value has a long and varied past. I delve into the nineteenth century to explore methods of valuing land, labor and life, as a means of trying to understand one aspect of the history of our present, also manifest in the contemporary nexus of race, finance, and ownership, with which I conclude.

This history begins in the year 1858, when two men on different sides of the planet won legislative victories after advocating for significant reforms in the regulation of two different markets: one in land, the other in life insurance. In South Australia, Richard Robert Torrens successfully persuaded his colleagues in the parliament of South Australia to pass the *Real Property Bill* 1858, which implemented a system of title by registration in the growing colony. In Massachusetts, Elizur Wright would prevail in his mission to reform the provision of life insurance through the implementation of a life insurance registry. Besides the fact that these two registries came into existence within months of each other, and that both Torrens and Wright were modernizing reformers in their respective fields, what (if any) similarities might we identify in the function of these two registries, and of the registry in general?

The life insurance registry and the actuarial practices of Elizur Wright, the "father of life insurance" and a well-known abolitionist, offer a view of how life was valued and propertized in the context of a labor market characterized

by racialized forms of free and unfree labor. While the commodification of land and that of life may seem to bear no relation to one another, I will suggest that they share a conceptual logic. A brief detour through William Petty's *Political Anatomy* exposes the techniques of valuation that rendered human lives as economic units, capable of being equated with the value of other commodities, such as land. Specific techniques of quantification and measurement were used to objectify and standardize both economic value and forms of knowledge across domains of wealth production, which for Petty included land, labor, and population. Thus, while commodity visions of land and life appear to be disaggregated by the nineteenth century, the methods of valuation employed in the propertization of land and life both rely on techniques of valuation rooted in a turn to "scientific" methods, and furthermore, reflect a racialist humanism that persists in producing and valuing whiteness over the lives of people of color.

1 THE EPISTEMIC FUNCTION OF THE REGISTRY

In the registration of a property interest (be it in land, a life insurance policy, or a mortgage), what kinds of facts and phenomena are given a legal and social life by the act of registration? How do the interests registered in state-regulated, bureaucratic archives both create particular kinds of value and, at the same time, reflect the prevailing concept of value that has already taken shape in social and economic relations? As I elaborate below, the registry can be understood as a form of representation of legal facts that encapsulate forms of value. Perhaps another way of conceiving of the epistemic function of the registry, drawing on the work of Mary Poovey, is to see registration as capturing a kind of writing – "a genre – that seem[s] capable of addressing complicated economic issues at a relatively abstract level and in a systematic form that seem[s] to mirror the system . . . [found] in market relations" (Poovey 2008: 77).

The creation of registries and the act of registration function as a means of differentiating between legal interests (in increasingly abstract forms of property) and interests deemed to be nonlegal and lacking in economic value. The registration of property and other financial interests is a means of signifying "real" ownership interests, and providing a state guarantee of its legal, factual existence. In the nineteenth century the rise of registration across juridical domains (life insurance, title to land, national censuses of population) can be understood as a means of resolving the crises in representation that emerge in the eighteenth century. As Poovey, Baucom, and others have explored at length, the dramatic rise in the significance of credit instruments in the

functioning of a globalizing economy of trade caused a crisis in representation. In *Genres of the Credit Economy*, Poovey argues that a crisis of representation was created by the gap between instruments of credit and their value (in the eighteenth and nineteenth centuries in Britain). The need to distinguish between so-called real and fictitious forms of value in the market led to the "breakup of the fact/fiction continuum." Consequently, the attempt to purify and separate fictitious from real value involved processes of factualization and fictionalization (Poovey 2008: 61), which in turn helped to create specific literary genres, of which financial journalism, novels (the writings of Defoe and later Dickens, for instance), and the writings of political economists are just a few examples.

The era of Trans-Atlantic slave trade and of Empire threw up another crisis in representation, conjoined to the one just described. How to represent the human, juridically speaking, when some humans fell into the category of capital and were used as instruments of credit themselves? The use of slaves as credit instruments reflected the dehumanization and commodification of the lives of slaves. Their value was determined according to the potential value of their labor, estimated according to criteria such as age, gender, weight, and height. For instance, in the Americas, contracts for the sale of slaves grouped them together in quantities called *pieza de Indias* [pieces of the Indies]. In the words of Philip D. Curtin:

> For a slave to qualify as a *pieza*, he had to be a young adult male meeting certain specifications as to size, physical condition, and health. The very young, the old, and females were defined for commercial purposes as fractional parts of a *pieza de India*. This measure was convenient for Spanish imperial economic planning, where the need was a given amount of labor power, not a given number of individuals . . . Market conditions in Africa made it impossible to buy only prime slaves and leave all the rest, but the extent of the difference varied greatly with time and place. The *asiento* of the Portuguese Cacheu Company in 1693, for example, provided for an annual delivery in Spanish America of 4,000 slaves, so distributed in sex, age, and condition as to make up 2,500 *piezas de India*. (Curtin 1962: 22)

The representation of the exchange value exists in the form of currency. Circulating across the Atlantic, as objects of exchange, their value was realized through productive labor on plantations. The violence of equivalence is explicit, if heavily mediated. The measuring of human value according to the potential value of the individual's labor was fixed by racial value in an absolute sense, given that slaves would come to be defined (by the late sixteenth century) as black and unfree.

The dual crises of representation that emerge in the seventeenth century in relation to human value and capital are resolved through the making of "factual" and scientific knowledge (Poovey 1998; Baucom 2005). Measurement and quantification became the primary tools in the creation of forms of knowledge that would enable the standardization of value and the making of equivalences between land, labor, and human life. The statistical methods initially devised by William Petty for measuring value are based on a logic of measurement and quantification, one that is echoed in the valuing of human lives with the advent and expansion of the life insurance market in the nineteenth century, as well as the valuing and measurement of land for the purposes of a more commoditized form of ownership. The discussion so far has gestured toward major epistemic shifts in how human life and land were valued. How are the twin crises in representation resolved in legal domains?

In the United States, the value of the life of a black slave was infamously quantified as being three-fifths of that of a white person, and legally codified and represented as such in the U.S. Constitution. However, the financial value of slaves and nonwaged labor was expressed more explicitly in the private law domain of insurance. The insurance of slaves as objects of property has been analyzed by many literary scholars and historians as a means of exposing the financialization of life under slavery. Infamous and tragic cases such as that of the *Zong*, in 1781, where 140 slaves were thrown overboard to their death, exposed how insurance contracts were used to protect the financial interests of slave owners, and the status of slaves as mere financial interests.

In 1833, on the 25th of August, three days before the *Slavery Abolition Act* would receive Royal Assent in the UK Parliament, another shipwreck resulted in the loss of 133 lives. Captain John Hunter refused help from French shoremen because he was under orders to deliver the cargo – this time, white female convicts – to New South Wales. Captain Hunter was under the impression that to take the women and children to shore would have violated his orders, as they might have escaped custody. The British convict transport registry records the thousands of lives transported and transmuted into economic value as unpaid laborers on the frontier. The connection between the two cases is present in the work of J. M. W. Turner, who represented both tragedies with great pathos in *Slavers Throwing Overboard the Dead and Dying – Typhoon coming on* (1840) and *A Disaster at Sea* (1835), which predated the former by five years. Like the chronology of Turner's paintings, the temporalities of colonization and modernity's "idealization of progress" are never linear:

> The history of labor un/freedom, the ordering of its segmentations and imbrications, is simply not one that can be traced to or explained by the classic

> engine of modernization, capitalism, alone. Its secrets lie as much in the processes and demands of colonizing, and their far less linear historical trajectory. (Tomlins 2010: 342–343)

Turner's dramatic representations of two cases that involved, fundamentally, the commoditization of human lives – in the form of cargo in the first case, and potential labor value in the second – draws our attention to more mundane modes of representation of modern methods of valuing life and land. The registry, be it for British convicts being transported, for land ownership, or for life insurance policies, became a primary means of solidifying and representing particular concepts of value as legal facts. These representations were, by virtue of their life in the registry, public, with their "truth value" being guaranteed by the state.

The introduction of a life insurance registry in Massachusetts was intended to provide security for the owners of life insurance policies, by analogy with the security provided to property owners by land registries. The life insurance registry begun by Wright in 1858, while going beyond the letter of the law that was passed that year, "recorded the individual valuations for every individual policyholder in the state" (Levy 2008: 161). As Levy recounts, in his first report after becoming Commissioner, Wright wrote "any holder of a policy in one of these companies, by knowing the number of his policy and consulting this registry would find the surrender value to which he was rightly entitled" (Levy 2008: 161). But more than the security it provided, the need for a registry to record the value of the life insurance policies reflected a need for regulation that was a consequence of a massive boom in the uptake of such policies. How was life valued for the purpose of insuring it? What were the owners of life insurance policies vulnerable to, and what forms of insecurity required the institution of a registry to protect their interests? What kinds of differential value between black and white lives were reflected in each of these policies recorded in Wright's registry?

2 REGISTERING THE VALUE OF LAND AND LIVES

Both the institution of a system of title by registration in the colony of South Australia, and the creation of a life insurance registry in Massachusetts, are small indications of *longue durée* transformations in the commoditization of land and human life. As noted earlier, I approach these registries as sites of investigation, as a genre of legal writing that captures and represents (in the form of a title document or life insurance policy) the contemporary machinations of the market. To find a way into the registry in this particular instance, I

am focusing not on the documents themselves, but on the main protagonists who were behind the creation of these registries. I leave a detailed examination of the documents themselves, their physical existence in particular neighborhoods of Adelaide and Boston, the details of how the documents were filed and by whom, and the materiality of the records for another day. Now, I turn to the writings of Richard Robert Torrens and Elizur Wright and their biographies, to discern how and why they promoted registry-related reforms.

Richard Robert Torrens and Elizur Wright had a number of things in common. Torrens was born in Cork, Ireland, in 1814, to a father who had a long and distinguished career as a colonial administrator. His father, who had assisted in the colonization of South Australia, was also a renowned political economist. Wright was born to a strict Calvinist family who availed themselves of a land grant on the Western settler frontier. Wright cut his missionary teeth as a colporteur for the American Tract Society in the trans-Appalachian West and eventually gained a license to "preach in the wilderness" (Goodheart 1990: 30). Born into an America that remained tethered to England culturally and economically, Wright traveled to and from the frontiers of the American west to England, while Torrens made his way from the British Isles to the frontier of settlement in South Australia. Like his English forbears in Ireland, Wright described the Irish migrants he encountered in America to be "very ignorant" and "little above the half civilized state" (Goodheart 1990: 32).

Another similarity between the two reformers was their disdain for the English aristocracy. While Torrens was vociferous in his views on the unsuitability of English property law for the colonies, primarily because of the bulwark against land reform that the aristocracy maintained (Bhandar 2015), Wright abhorred the privileges accorded the landed gentry on the basis of nothing more than hereditary status. On his seven-month sojourn to England, he had the opportunity to meet with Wordsworth, who asked him whether he thought that America needed a class of gentlemen with landed estates so large that they could devote themselves entirely to the pursuit of literary endeavors. He reportedly replied:

> Indeed to me the longer I staid [sic] in England, the more this class of independent, hereditary gentlemen seemed to me like a perpetual devouring curse of locusts, the glitter of whose beautiful wings, and the merry hum of whose self-satisfied song, by no means repays the faint and weary working millions for the toil it costs to support them. (Wright and Wright 1937: 165)

As a Calvinist, Wright was obsessed with the notion of self-improvement, and his strongly held belief was that every man, regardless of race or class, had an equal right to self-ownership and all that it entailed, including the right and,

perhaps more significantly, a moral obligation to freely sell one's labor in the marketplace. A life not shaped by productive labor reflected some degree of moral failure on the part of the individual.

At the same time, both men viewed England as the true birthplace of civilized life. Like many colonial administrators and governors, Torrens returned to England after retirement in South Australia to promote his titles system there. He was invested in attempting to reform English land law and spent the remainder of his years, until his death in 1884, exerting much effort to realize this desire. Wright, on his visit to England in 1844, waxes poetic about the magisterial British Museum. His reflection on how the "brains of the British lion" made him feel as an American is worth quoting at length:

> Here is the hiding place and home of that knowledge which is power. When a man begins to grope his way about . . . to carry forward the great victory of the human mind over matter, to scale the high places of creative wisdom, it is a great thing to be able at once to avail himself of the experience of all past ages, of all past achievements. Here he can do it to perfection, as far as the past has recorded itself . . .
>
> As a Republican, boasting the spirit of '76, I felt cheap and small in the British Museum. Every step I felt cheaper and smaller. If my hoping organs had not been inordinately large I would have hired lodgings for life in Great Russell Street, or somewhere near this great assembling of the living dead, and calling my family to me would never have thought of re-crossing the Atlantic". (Wright and Wright 1937: 161)

Moving beyond the biographical similarities, both Wright and Torrens promoted reforms in their respective fields of interest that were characterized by particular ideas about subjectivity and ownership. The self-possessive individual, whose primary mode of being involved market-based forms of exchange, deserved and required systems of ownership that were secure and reliable to realize his full potential. The concept of the free individual whose capacity to alienate his labor should be unfettered, in a marketplace where the circulation of bodies and goods would be free and easy, spoke to a commodity vision of life and land governed by a logic of abstraction. Commoditizing land, and commoditizing life itself, entailed the transformation of, in the case of the former, entire life-worlds of land use, the production of food for subsistence, spiritual value attributed to particular places, and the kinship and community relations that these forms of use subtended into a fungible, exchangeable commodity. With respect to life insurance, we have life itself being given an economic value that protects the insured (or their beneficiaries) against future loss of life, transmuted into financial and economic value. The life insurance

contract itself became, as I note later, a financial instrument in the English context, traded like other commodities.

Here, we can draw on the notion of real abstraction as developed by Sohn-Rethel, in order to better grasp the social and political dimensions of commoditizing land and life, in these specific contexts of colonial South Australia, and the state of Massachusetts prior to the abolition of slavery in the southern states. In *Intellectual and Manual Labour*, Sohn-Rethel argued that intellectual abstractions – such as scientific concepts, or ideological notions – have their origins in real abstraction – that is, for Sohn-Rethel, in the abstractive social practices embodied in commodity exchange and monetization (Jappe 2013: 7). If "property" as a concept is also an intellectual abstraction, as Marx would have it,[4] what are the real abstractions that help us to unpack or unfold property as a legal form, understood in terms of the particular social relations that constitute it? What kinds of actions, practices, or techniques are used in the fashioning of the commodity form of property as it takes appearance in the form of a recorded document in the registry?

The dominance of statistical knowledge, and the use of mortality and life tables to standardize the value of human lives for the purpose of life insurance, emerged in relation to the general logic underlying the surveying and parcelization of land. The value of an economic interest in land and life was measured by time (or duration) and quantified on the basis of the potential productivity of the resource, be it land or a person's labor. The primary method used to commoditize land in this way was introduced with the cadastral survey. As many scholars have recounted, the cadastral survey effectively transformed how land was measured and represented, giving concrete form to an abstract, commodity vision of land. Chris Tomlins has pointed to the transformation of social relations on the land that accompanied the radical re-presentation of land as a commodity, first undertaken by the English on a large scale in Ireland (Tomlins 2010: 402). Nick Blomley, drawing on the work of landscape geographer Kenneth Olwig, writes that "dominant forms of mapping, 'create a geometrical, divisible, and hence saleable space' by making parcels of property out of land that had previously been defined according to rights of custom and demarcated by landmarks and topographical features" (Blomley 2004: 55).

[4] "In each historical epoch, property has developed differently and under a set of entirely different social relations. Thus to define bourgeois property is nothing else than to give an exposition of all the social relations of bourgeois production. To try and give a definition of property as of an independent relation, a category apart, an abstract and eternal idea, can be nothing but an illusion of metaphysics or jurisprudence" (Karl Marx, *The Poverty of Philosophy* (1847), as quoted in Sayer 1987: chapter 2).

William Petty oversaw the completion of the cadastral *Downs Survey* in Ireland around 1665. However, it was not just the mapping of land according to its potential productivity that marked the ingenuity of Petty's method. William Petty devised a means of measuring the value of the Irish peasantry in his *Political Anatomy of Ireland* that bound together an evaluation of the physical, everyday lives of the peasantry and the value of the land itself. Petty relates the value of land and the value of people through time; that is, the life spans of people as workers are used to calculate what the value of land title ought to be (Petty 1899: 45). What is a fee simple in land *naturally* worth? Petty calculates this according to the average life span of three generations of men, which is roughly equivalent to the number of years its owner will be using and improving it. People come to be understood and represented as economic units. Petty's objective, to ascertain through a scientific method inspired by Baconian empiricism the most efficient way to increase national wealth, could only be realized with the transformation of information about human life and productivity into statistical knowledge. Land, labor, and people had to be reduced to factors in an equation. As Petty wrote, the question for him was "how to make a *Par* and *Equation* between Lands and Labour, so as to express the value of any thing by either or alone" (Petty 1899: 181).

The rudimentary statistical information garnered in the *Bills of Mortality* generated the beginnings of data collection for the purposes of political economy and population control (Petty 1899: 45). Petty's work in *The Political Anatomy* was preceded by the completion of the *Observations on the Bills of Mortality*, co-authored with John Graunt, in 1662. Recall that Petty was an anatomist of both the human body and the economy. Drawing on his knowledge as a physician, he and Graunt made a number of observations about the diseases, environmental factors, and other conditions contributing to the rate of death in particular English parishes. Using census information and the bills of mortality led Graunt to devise the first life table, establishing the basis for actuarial science and the model of evaluating the life expectancy of particular populations.[5]

The measuring of land and life in units of time, determined according to the longevity of man's productive life as a laborer, and therefore dependent on the type of labor performed, labor conditions, and other environmental factors, became congealed and flattened in the statistical information underlying the life insurance policy. This mode of calculation and evaluation, arguably an inheritance from Petty, reflects some epistemic continuities that helped shape the creation of legal and social facts.

[5] Petty would attempt a similar exercise in relation to Dublin; however, with inferior "raw data" to draw from, the results were far less noteworthy than those of his colleague Graunt.

> For the purposes of insurance, life is divided into units of time, each measuring a year, during which the risk is assumed not to change, but from anyone year of age to that which succeeds it the risk increases according to an assumed scale, which is founded on the mortality observed of a large number of lives of the same ages under similar circumstances". (Wright 1873: 4–5)

The development of actuarial science as the basis for life insurance enabled the shift in its status from one of "the most outrageous forms of speculation on the duration of individual human lives" to "an exemplary financial technology of the orderly, pious and prudent" (McFall 2007: 600). Wright was contracted in 1844 to prepare valuation tables for six life insurance companies (Wright and Wright 1937: 230). Wright's work on producing reliable mortality tables won him the title the "father of life insurance" along with his campaigning zeal to protect the interests of the insured.

Life insurance companies experienced huge growth with the rise of industrial labor in the United States during the mid-nineteenth century. Before this, however, and as noted at the outset, insurance for property was a key fixture in maritime trade; the insurance of the lives of slaves facilitated the shift to an economy very dependent (if not based) on credit and, significantly, provided assurances for those for whom the belief that financial value could be realized through the use of instruments of credit was not yet naturalized.

Savitt has noted how the insurance of the lives of slaves blurred the distinction between slave lives as objects of ownership and as subjects whose humanity was worth some value (Savitt 1977). However, the difference between life insurance for free white men and black slaves was eclipsed for Elizur Wright when he observed, during his trip to England in 1844, the sale of life insurance contracts at the Royal Exchange, traded like any other security on the market.

> "What I saw at that sublime center of trade [the Royal Exchange] was sale of several old policies on very aged men to speculators apparently of Hebrew persuasion, to be kept up by them by their paying annual premiums to the company till the decease. This was done, I was told, because the companies made it a rule "*never to buy their policies*." A poor rule it seemed to me! I had seen slave auctions at home. I could hardly see more justice in this British practice. If I should ever become old myself, I thought, I should not like to have a policy on my life in the hands of a man with the slightest pecuniary motive to wish me dead". (Wright and Wright 1937: 223, emphasis in original)

What he witnessed in the unbridled use of the life insurance policy as a commodity motivated Wright, on his return to America, to lobby for policies that would prevent the poor from being exploited in this way. It was wholly unjust in his view that people who could no longer afford to pay their premiums would lose everything they had invested, left with nothing upon death, and

furthermore, that the new owner of the policy had a financial interest in the death of the insured. Wright succeeded in getting legislation passed that required life insurance companies to hold reserve funds to pay against policies taken out, and in 1860, he succeeded in getting a nonforfeiture law passed. The 1860 law prevented companies from simply using the reserves on lapsed policies for their own benefit (Wright and Wright 1937: 238).

For Wright, the spiritual value of life was transmuted into economic value, and thus the insurance company was held to the standard of a trustee, the trustee of *sacred* funds. With the value of life represented in monetary terms, Wright's mission to reform life insurance was, in a sense, a mission to protect the value of the policy as though he was protecting life itself. One cannot help but recall Marx's comments on flesh becoming the spirit of money in the context of credit:

> Human individuality, human *morality*, have become both articles of commerce and the *material* which money inhabits. The substance, the body clothing the *spirit of money* is not money, paper, but instead it is my personal existence, my flesh and blood, my social worth and status. Credit no longer actualizes money-values in actual money but in human flesh and human hearts. (Marx 1975: 264)

The registry of life insurance policies that Wright created contained a record of every policy of every insurance company in Massachusetts (Wright and Wright 1937: 233). Each document recorded the number of the policy, the premium paid, and the reserve of the insurer. He encouraged policyholders to pay him a visit, and he was able to inform them if they were "being swindled, how much the insured would lose by dropping the policy, and what cash surrender value the company in equity would pay" (Wright and Wright 1937: 233). The life insurance registry, like those for land, was intended to provide security for the owner. Keeping a public record of the policy (or title deed) meant that the fact of ownership (of a monetary interest or piece of land), the content of that ownership right, and its limits or boundaries would take on a legal and social existence, undefeatable in the face of other, nonrecorded interests or realities.

As noted earlier, the form and content of the record in the registry represents a particular form of ownership: one based on a logic of abstraction that commoditized both land and life. The excavation of the techniques of evaluation that produce these real abstractions, these legal representations of these various forms of ownership, render visible the historical conditions of slavery, land appropriation, and displacement out of which prevailing concepts of value emerged. The concrete, lived effects of the real abstractions are witnessed in the aboriginal title claims over land that, once registered, erased

all prior ownership interests in that land; or in the class action suits against life insurance companies that incorporated racialized statistics into the putatively neutral face value of their policies.

Biographers of Wright see his earlier activities as an abolitionist as completely consistent with his later zeal as a life insurance informer. Wright was a proponent of free-labor ideology (Goodheart 1990: 94), premised on the idea that every man should have the right to freely alienate his labor in the market. "Slave labour degraded the [Protestant] work ethic" (Goodheart 1990: 95). Wright's book, *Mysteries and Politics of Life Insurance*, does not concern itself with the racial differential in valuing life; he was an abolitionist who believed that black men should have the freedom to contract in the same way as white men. However, in the 1870s, when Wright's magnum opus on the subject of life insurance was published, the massive growth in the sale of industrial policies (policies aimed at the poor, working class, often intended to cover no more than the costs of burial) also witnessed the rise of race as a primary criterion in assessing the value of life of these free waged workers. Indeed, black lives began to matter to corporations intent on accumulating wealth through speculating on human longevity.

The racial dimensions of life insurance continue to dog the industry even into the present moment. In 2001, approximately "75 life insurance companies faced government probes for having 'race-based' premiums for their policies" (Paltrow 2001a). In a widely reported case against Met Life, it emerged that despite assertions the company had stopped using race as a criterion in assessing the value of life insurance policies by 1960, it continued to use race as a criterion through a form of redlining, which was called "area underwriting."[6] Area underwriting involved tailoring contracts for life insurance based on the racial composition of a given neighborhood. Although a lawsuit against insurance giant MetLife for using race-based criteria in their policies was settled in 2002, the lawsuit yielded a mass of documentation detailing their area underwriting practices. Race and place were laminated onto each other, spatializing racist practices of accumulation and fixing racial value to particular bodies and places.

Mary Heen has argued that in addition to redlining practices, by the early 1960s, "industry professional organizations had developed and approved

[6] "MetLife researchers drew up detailed maps of dozens of cities. For instance, a map of Manhattan listed 108 neighborhoods in which a mercantile report had to accompany any life-insurance application. Researcher Paul H. Jacobson said in a memo that the map was based on factors other than race, such as housing quality and how many residents held unskilled jobs. But he noted that three-fifths of residents of the neighborhoods were 'non-white' or 'Puerto Rican,' and included tables listing each district's racial composition" (Paltrow 2001b).

race-integrated mortality tables as an industry-wide standard" (Heen 2009: 361). Like the commodification of land in the settler colony, the propertization of life in the insurance contract was saturated with a racial ontology that employed the abstract language of statistics to justify its premises and conclusions. The sublimation of racist assessments of the value of black lives is explicit in Frederick Ludwig Hoffman's *Race Traits and Tendencies of the American Negro* (1896). As Mary Heen has noted, Hoffman's treatise was published in the same year as the judgment in *Plessy v Ferguson* (163 U.S. 537), which sanctioned Jim Crow laws (Heen 2009: 377) and recognized racial status as an explicit and legitimate property interest deserving of legal protection. This text became the basis for racially differentiated policies that would last, as noted earlier, until the mid-twentieth century. While the basis of racial profiling would change to one determined by the racial composition of particular areas, racial science was the initial and primary basis of Hoffman's conclusions about the mortality statistics of African Americans.

I will not recount the substance of Hoffman's findings here. To reach his conclusion that black communities were "doomed to extinction," he relied on recorded data on the number of births and deaths of the "coloured population" in a range of cities. The use of statistical information gave Hoffman a putatively neutral canvas on which to project whatever racist conclusions he deemed plausible. We have in Hoffman's text the interpretation of data through the gaze of a white supremacist, the data then being understood as evidence to prove his racist presuppositions. A classic tautology, vintage thinking from those hanging onto the coattails of the age of Empire: "the negro shows the least power of resistance in the struggle for life," and this is proven by data showing that blacks die at greater rates and younger ages than whites, and therefore, the mortality statistics can be relied on to prove that the black race will disappear (Hoffman 1894: 36–7).[7]

Some scholars claim that the gradual discrediting of racial science after World War II led to a different rationale for race-based insurance premiums.

> MetLife has said its race-based practices for selling life insurance didn't reflect prejudice but simply the fact that blacks, on average, died sooner. Blacks' life expectancy was much shorter than whites' in the first half of the 20th century. It remains shorter, though the gap has narrowed to about six years. Most health experts and actuaries attribute this largely to factors such as poverty and access to medical care rather than inherent racial traits. (Paltrow 2001b)

[7] Much more could be said here about the relationship between the techniques of evaluation we have been tracing thus far and racial science.

Whether the racial differentiation in the value of life insurance policies was based on the idea that black mortality rates were higher due to biologically based racial inferiority, or environmental and socio-economic factors, the result is largely the same. In a perverse realization of what Ruth Wilson Gilmore has defined as the essence of racism, black people who sought life insurance literally had to pay for the fact of being black. Gilmore defines racism as "the state-sanctioned or extra-legal production and exploitation of group-differentiated vulnerability to premature death" (Gilmore 2007: 28). Within a capitalist framework of valuation, in a commodity market, those lives vulnerable to premature death would pose a higher risk of mortality, and therefore to insure their lives, it would cost them more.

Spatial practices of redlining bound together, in Pettyian fashion, the value of life with particular neighborhoods, namely, poor neighborhoods populated predominantly by people of color. Insurance salesmen who were tasked with selling policies to industrial workers usually did this door to door, collecting the small premiums by hand. The route was traversed weekly or monthly, and the area was called, appropriately, a *debt*. The debt is echoed in contemporary redlining practices that played a prominent role in the subprime crisis. Freedom, to recall Saidiya Hartman, presents itself as a double bind; for people of color in the United States, freedom came at an immeasurable cost, bound to a seemingly un-repayable debt.

3 FROM ECONOMIES OF CREDIT TO DEBT: CONTEMPORARY ISSUES OF REGISTRATION

> In which sphere of social life do we need to intervene to heal the ravages generated by social abstraction? (Jappe 2013: 8)

Previously, I discussed the work of scholars who have elaborated an array of techniques that were used from the eighteenth century onward to effect an epistemic transformation in how value was conceived. The turn to "scientific" facts, and to a statistical empiricism that was deployed to measure and quantify the raw material of wealth creation, bolstered the development of a global economy in which credit was a central component. Of course, credit would not be what it is without its companion concept, debt.

The development of finance capital, as a species of capital itself, has a long history, some of it recounted in the scholarship on slave insurance.[8] The rise of finance capital and processes of financialization, and their role in the 2008

[8] See for instance Baucom 2005; Rupprecht 2016.

crisis, have forced us to reconsider the primary place of both credit and debt as primary techniques of a neoliberal regime of discipline and governance. Here, I simply want to consider one small part of the issue of financialization as it relates to the nexus of valuation of both property and people.

The subprime mortgage crisis, as has been well documented, disproportionately affected black and Latino communities. In relation to the property practices of subprime lenders, the Mortgage Electronic Registration System has received much critical focus, and rightly so. The creation of a privatized registry for mortgage securities in the United States effectively subverted the guarantees that public land registries have afforded property owners for centuries (Singer 2013). By creating the MERS corporation and making it the nominee for successive transfers of the mortgage securities, the banks ultimately have made it impossible for people challenging foreclosures to access a record that verifies which institution owns the mortgage. Moreover, as argued in the *amicus curiae* brief of the Civil Rights Scholars and Advocates in Support of the Plaintiffs in *Jackson et al v MERS Inc.*, which went before the Supreme Court of Minnesota in 2009,

> [t]he absence of a public record of the institutions that brokered, originated, and securitized a foreclosed property effectively means that civil rights laws prohibiting racial discrimination in lending cannot be enforced. (Brief of Amicus Curiae, 2009, 4)

The MERS, in failing to "carefully document all the mortgage transfers" and by "losing or misplacing mortgage notes" (Singer 2013: 517) has obscured ownership of the mortgage note. Indeed, the ambiguous status of the MERS corporation as nominee for both the mortgagor and the mortgagee, with the latter position allowing it to bring foreclosure proceedings in its own name, has been the subject of much litigation. Redress for discriminatory lending practices, and also for individuals seeking to delay or quash foreclosures on the basis of wildly unfair mortgage contracts, has been made extremely difficult by the incompetence and legal ambiguities produced by MERS.

Rather than securing property interests and representing the value of ownership on the basis of a logic of measurement and quantification, MERS reflects an unbridled form of speculation, if highly mathematized itself, that is parasitic on forms of accumulation embedded in forms of racial dispossession. Simultaneously, the MERS contributed to the creation of value that had no direct relationship to the "real" or "productive" economy. One response to the crises exacerbated by the MERS system has been to insist that with proper state regulation, those who were subjected to unfair mortgage contracts could

at least challenge their most pernicious consequences.[9] Although this is most probably the case, it does not touch the "ravages" of social abstraction that are manifest in the array of financial instruments used to expropriate wealth from vulnerable individuals who were tempted by the stability and security offered by home ownership (see Bhandar and Toscano 2015).

Perhaps what is required in thinking through the privatization of mortgage registration in the United States are the forms of legal knowledge that are both precondition and effect of forms of expropriation characterized by the privatization of state assets. If this intensification of financialization in the realm of the subprime mortgage market reflects a neoliberal economic reason, wherein legal regulation is clearly trailing behind economic "innovation," what critical legal resources might we avail ourselves of to better understand contemporary forms of value embedded in the somewhat disaggregated network of registered interests?

In the United Kingdom, the government has reiterated its intention to sell off the Land Registry (in their autumn 2015 budget announcement), for an estimated £1.2 billion (Pickard 2015). As a state-owned agency that currently employs approximately 4,500 people, resistance to the proposed privatization on the part of workers, unions, and civil society organizations helped bury the initial proposal to privatize it in 2014. As one organization opposing the privatization has noted, privatization would likely introduce instability into the housing market and drive up the costs of buying and selling property,[10] which will inevitably have a disproportionately negative effect on less well-off property owners. Given that the Land Registry drew a surplus of £98.8 million in 2012, it goes without saying that the privatization of this state asset would appear to be wholly unnecessary in relation to its financial viability.

If commodity forms of value that emerged in the nineteenth century are reflected in the registration of interests (in land and in life insurance policies), then what does the privatization of the state's function in the securitization of these private interests signify? To return to the point with which we began, how is a form of neoliberal reason (Brown 2015) shaping legal forms of expropriation, specifically, of the wealth generated by the state-backed system of guarantees of private interests? Privatization seems to fold back in on itself here, expropriating public wealth generated through the regulation of private markets. What kind of contemporary legal thought might grasp the

[9] Advocates of the formalization of land title, such as Hernando De Soto, have argued as much. See Dyal-Chand 2010.

[10] See "We own it: public services for people not profit": http://weownit.org.uk/evidence/land-registry

multiple modalities of abstraction that underlie the financialization of a seemingly infinite range of material interests?

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