



LAW, PSYCHOANALYSIS, SOCIETY: TAKING THE UNCONSCIOUS SERIOUSLY

BY MARIA ARISTODEMOU

Routledge, New York, NY, 2014. 179 pages, \$125.00.

Reviewed by Christopher Faille

Jacques Lacan's psychoanalysis, sometimes under a "back to Freud" banner, sometimes with the help of some Hegelian dialectical riffs, seeks to install at the heart of its discipline a dismal view of the human condition, which I can best paraphrase this way: We are forever searching for a self that does not exist, and so we throw together various borrowed bits of furniture and *call* it a self. We have borrowed those bits of furniture from the other pseudo-selves we see about us, which are collectively called (when theorists are in the Hegelian mode) the "field of the Others."

Law-and-Something Movements

Now for a bit of a leap. In this book, Maria Aristodemou, senior lecturer at Birkbeck College, University of London, writes of entire bodies of thought or learning as if they were individuals seeking themselves, sharing in this godforsaken condition. Law, for example, or literature, may be described as a subject in an endlessly frustrated search for its "self," finding emptiness or finding the artefacts it has placed into the void where it thinks its "self" should be.

Aristodemou believes that recent attempts to merge the law with other disciplines (law and economics, law and sociology, law and science, law and literature) illustrate this broad Hegelian/Lacanian dynamic. Law is in search of a partner that will give it an identity it otherwise lacks. Unfortunately, it is destined to find that economics, sociology, science, and so forth are engaged in the same search and are fated to the same frustration in the face of the same void.

If readers are inclined to smile at all this, I assure them that I smile too and that I believe any sound account of law will appeal rather to the impulses that make us smile than to those that led Aristodemou to write this book.

One of the small ironies of her observation about all the law-and-something-else movements is that for much of this book she seems to be trying to contribute to one of them, the

law and literature genre associated with, for example, Robin West or Adam Gearey. These scholars are always urging us to learn about law from, say, Kafka or Joyce. Aristodemou gives us instead a legal philosopher's reading of Honoré de Balzac.

Law and Literature

One Balzac story, "Étude de Femme" (1830), turns on the consequences of a misdirected lusty note, written by Eugène de Rastignac, intended for his mistress Madame de Nucingen. The note was actually received by Madame de Listomère. The straightforward rendering of the French title of this story would surely be "Study of Woman," but Aristodemou discusses it under the more academic-seeming translation, "A Study in Feminine Psychology." And this is part of what she has to say:

One way for her desire to remain unsatisfied is for Madame de Listomère to choose something that is prohibited; that is, the law comes in very handy here. As she never actually planned to have a liaison with Eugène, how are we to explain her disappointment at realizing she wasn't the object of Eugène's desire? My suggestion is that Madame's hope was to use law as a *defence* against her own desire to be desired by Eugène.

The "law" that would serve as a defense in this instance is actually a widely accepted social institution with legal manifestations and consequences: monogamy, which Madame de Listomère considered binding. It is in this sense that the "Femme" of the story's title is "robbed of the opportunity of using law as a defence" by the discovery that the letter wasn't intended for her anyway.

This feeds into the Lacanian lament about human nature. Incidental to the great lack, our lack of a self, is the fact that we don't *really* want to satisfy our desires; we seek to create a pseudo-self precisely by allowing our desires to be frustrated.

We deny ourselves *jouissance* (French for "enjoyment," but a word that seems also to serve as a technical term for Lacanians, so Aristodemou preserves the French here when writing in English).

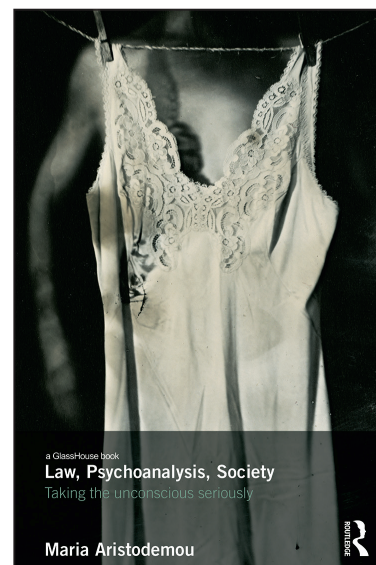
Aristodemou concludes, with regard to Balzac, that he "appreciated, before Lacan, that law is not only an agent of prohibition, preventing access to and attainment of desires, but actually the defence against what we do not even dare to want: the Real of *jouissance*."

A related idea is that human beings are in some sense freer than we can appreciate. We are our own prisoners, fancying that we are the prisoners of fate. Our author invokes Hannah Arendt on this matter, citing Eichmann as an example of a man who surrendered his own freedom, because it is more comfortable to see one's self as an instrument.

I think I've been fair to this book here. I will simply add that the book wasn't entirely fair to me. These woolly-headed ideas detract from my *jouissance* in that they fail to reward the investment of time and effort I put into understanding them.

They remind me chiefly of the fact that the English Channel is wider than the Atlantic Ocean. This book reads at times like a near-parody of the "continental" tradition in philosophy, a tradition whose cleverness makes us plainer bluff English-speaking blokes eager to return to the non-dialectical drabness of our native pursuits. ☺

Christopher Faille graduated from Western New England College School of Law in 1982 and became a member of the Connecticut Bar soon thereafter. He is at work on a book that will make the quants of Wall Street intelligible to sociology majors.



OWNING THE EARTH: THE TRANSFORMING HISTORY OF LAND OWNERSHIP

BY ANDRO LINKLATER

Bloomsbury USA, New York, NY, 2013. 483 pages, \$30.00.

Reviewed by Jon M. Sands and Noah L. Bucon

“Law makes long spokes of the short stakes of men.”

—William Empson, from “Legal Fiction,” a 1928 poem

If you have a propensity for “big” history, with a big thesis, and supported by fascinating historical facts, accounts, and portraits, mostly pertinent to the argument, then you will enjoy Andro Linklater’s *Owning the Earth*. From the roots of American democracy to tales of Russian autocracy to revolutionary movements in Asia and South America, Linklater provides a rich history of the global evolution of land ownership. His scope is remarkably large. Whereas his previous work did an admirable job of depicting how the historical transformation of ownership in the United States was aided by the process of measuring and recording, he has expanded his range here into a somewhat unmanageable though always interesting tract.

Linklater’s thesis is that “the idea of private exclusive property that first appeared in relation to land in sixteenth-century England could be said to have conquered the world.” Linklater contends that private property, and principally private land ownership, especially as exemplified in England and America, was a unique product of its society and culture, and led to democracy and the world know today. The ability to possess land, fence it, use it, sell it, “measured, mapped, and registered”—especially with the vast continent of North America ripe to be platted—transformed how we thought of property. Linklater, using largely but not exclusively an Anglo-American focus, argues that the revolution in property rights began with the transformation from feudal rights and large monastic holdings, to the freeholders of the English gentry, Puritans, and the New World. Whew! That thesis, startling in its scope, encompassing continents, centuries, rising and falling classes, revolutions, and religions, has occupied generations of historians. Linklater’s selected, albeit interesting and insightful, historical snapshots, complete with explorers, exploiters, wily investors, suckers, political philoso-

phers, political reformers, countries headed by kings or beheading kings, and new republics, smacks of strategic cherry picking.

Linklater’s historical conclusion, unsurprisingly in today’s intellectual climate, is that having land in private hands makes for the best use of it. He arrives at this conclusion grudgingly. He is not an Ayn Rand realtor, closing an ideological sale. In many respects, he wishes that there were other forms of successful land ownership—communal or state. At length, he contrasts land rights and land reforms in Western Europe (France and Germany), in British colonies (Australia, Ireland, and Canada), in countries with Western-influenced reforms (Japan and Korea), and in countries with alternative approaches (Russia, China, and Cuba). Linklater uses examples from Russian serfdom, Chinese peasant poverty, and foreign colonial domination to argue that the lack of individual property condemned these societies to poverty and exploitation. Throughout, Linklater explores the development of private property from natural rights—that is, the right of an individual to claim land, be it pasture, field, forest, or pond. Linklater champions private land ownership as the generator of industrial revolutions and democracy. It is an ambitious claim. He makes it while recognizing that the West’s concept of an inalienable right to own land is a cultural prejudice and not really a “natural” right.

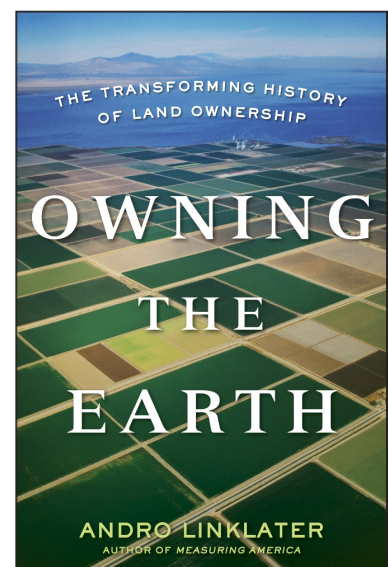
But Linklater sees both sides. He writes that private property “has proved to be the most destructive and creative cultural force in written history.” He acknowledges the destruction that greed for private land ownership can spawn, and he recognizes that it can result in inequalities. He credits the English Civil War of 1642 to 1651 with accelerating the revolution in private property by wresting sovereignty over land from the crown and giving it to the individual—the freeholding landed gentry. Even though Cromwell’s victory seemed to seal the deal for private land ownership and market forces, radical land reform movements arose arguing that prime property should also be distributed among the peasants and land workers. Such movements, such as the Levelers (the name states their goal) challenged—futilely and for many fatally—the absolute rights of private land ownership. The clashes were bloody, with Cromwell’s army brutally suppressing insurrections. But the clashes were also on the

intellectual and moral plain, where the radicals had somewhat more success, at least in having their arguments survive in pamphlets, broadsides, and historical accounts. Linklater gives them their due.

He believes, however, that owning land can and has resulted in wealth for all. Attempts at land reform that sought communal ownership condemned societies to misery if not starvation. Russia and China both experimented with communal ownership: We know where that ended. To paraphrase Churchill on democracy, private land ownership to Linklater is the worst form of ownership, except when compared to every other kind.

The legacy of the English Civil War and the sovereignty of private property, argues Linklater, established the foundation of the modern relationship between the governed and the government. Linklater offers extended vignettes on political philosophers he considers key to the private property revolution and the resulting political framework. His profiles of John Locke and Thomas Jefferson are especially effective.

Locke, to Linklater, championed natural rights that the state can trod upon only at its peril. Locke identified life, liberty, and property as such natural rights. Locke’s concept of property extended to one’s ownership of things, of course, but also to one’s skills and intellect. One had the right to make whatever use of one’s skills that one could. Still, when it came to land, acquisition as a result of skills was not absolute. Locke justified the acquisition of private property only where there was an ample supply for others. To



Linklater, this makes Locke a revolutionary, affording a right to property but a requirement that others be provided for.

Subsequently, across the Atlantic, in Independence Hall, Jefferson placed his own spin on Locke. For Jefferson, natural rights consisted of life, liberty, and the pursuit of happiness. Jefferson's move from property to pursuit of happiness as a goal, for Linklater, made Jefferson an advocate of the use of landed private property as merely a starting point for a wider fulfillment.

The Founding Fathers are heroes to Linklater. The government they crafted allowed, even enshrined, private property as necessary for pursuing happiness. Jefferson in particular, with the Louisiana Purchase, bequeathed to the new nation an abundance of land, for better or worse. Jefferson believed that land must be used, and to be used, it must be owned. Land ownership became as American as apple pie, made from apples picked from the family orchard, if it had not been destroyed by drought or repossessed or abandoned. The ability to own land, unencumbered, to Linklater, drives American exceptionalism.

Linklater argues that Jefferson recognized the tension between the natural right to own property and the natural right to pursue happiness by making use of land. Private property not used was an affront to the pursuit of happiness. Land ownership without use is not only wasteful, but it undermines the rights of others to pursue happiness on it, under it, or over it. Quoting Jefferson, Linklater writes, "where privately owned ground was left uncultivated, and the poor were consequently denied land to work, 'it is clear that the laws of property have been so far extended as to violate natural right.'" Where the two conflicted, the natural right to use property trumped the right to own it. This view may resonate with those who argue, at a tea party, for state ownership being returned to individuals. But it also argues against private landowners locking up property. To prevent a minority from accumulating too much wealth, Jefferson, as quoted by Linklater, explicitly called for governments "to tax the higher portions of property in geometrical progression as they rise."

Linklater recognizes that the frontier may be closing for the preeminence of

private land ownership, but that a new and limitless frontier, intellectual property, is available to be staked. The problem, of course, is that land to be owned, at least in America, was always over the next hill. The hunger for land, and thirst for water to till it, was the frontier thesis of Frederick Jackson Turner's. Land was available to all. Intellectual ownership, however, is available only to the elite and the intellectual.

The drive to stake out private property in intellectual fields threatens even communal folklore knowledge, which sometimes cannot withstand efforts to privatize it. Under international intellectual trade agreements, communal ownership of knowledge, such as the use of a certain plant in traditional folk medicines, has been found ineligible for protection, while a pharmaceutical company can claim exclusive property rights into its research of the plant's medicinal properties. Perhaps some communal property should continue to exist in the cloud as well as on earth.

Owning the Earth is not fine-grained with historical, economic, or social science studies. It is a long rambling discourse on why we have private property and how it led to our system of governance. Rather than economic relationships having established forms of government (so much for Marx!), Linklater argues that one's view of real estate determines one's relationship to others and to the state. This is highly debatable.

Linklater turns away from class analysis to property analysis and how the state regards property. To Linklater, a person's relationship to the state derives from the tension between Thomas Hobbes and John Locke. The extent to which life, being "solitary, poor, nasty, brutish, and short," requires state intervention, as opposed to the extent to which the state merely confirms the natural right to own property, makes, to Linklater all the difference in our view of government. Do we owe the state for creating and protecting private property for us, or does the state owe us a duty to protect our natural right to private property?

The political plot thickens with these philosophies, but Linklater is good at aerating the intellectual soil with engaging stories. In the end, Linklater is not providing a text or a treatise, but a rumination drafted, as he writes at the start, in his

15th-century English farmhouse in the wake of the Great Recession, which was caused, in large part, by the real estate bubble. How did we get here, and was it worth it? "Pour a scotch, and I will tell you a tale," one can almost hear him say, "it will be a long night for the story I am about to spin."

Only in the final pages does Linklater provide any cumulative analysis of land ownership. His investigation into the modern implications of privatization is quite possibly the most thought-provoking segment of *Owning the Earth*. He undertakes a remarkably concise bout of foreshadowing in which he warns the reader of the impending threat of conflict between the burgeoning global population and the rise of ruthless natural resource capitalism. He argues that, "As domestic demand for land and its scarcity increase in the years ahead, foreign ownership will come under increasing pressure and ever closer scrutiny" and "most corporate investors will sooner or later realize that property based on state-enforced law looks less secure than the kind based on natural right." The justification for owning the Earth will continue to exhibit the tension that Linklater charts, impressively but also maddeningly meanderingly, as veering between the arguments of Hobbes and Locke: "either it is a creation of civil law enforced by the power of the state or it is the realization of a profound and inescapable sense of justice innate in human kind."

Will the state own cyberspace and afford us rights to it, or will citizens own cyberspace and afford the state limited authority to regulate it on our behalf? Perhaps, as Linklater posits, if landed private property is the foundation for the present digital revolution, we will see whether Blackacre is destined to become the password for a private portion of the cloud, given to individuals and protected for them by the government, or rather to be seen as a natural right owned by individuals in the first instance: Hobbes.gov or Locke.com. ☉

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