Narrative Claims: Literary Ownership and the Question of Property

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1. Narrative Claims: History, Literature and Property

The following discussion tries to productively align two rather different perspectives on the question of how literary narratives engage with property: as a legal institution or as a cultural practice. Since these two perspectives at first sight may appear to be too dissimilar to be aligned productively at all, it may be necessary to say a few words on behalf of their specific relation and, in fact, interdependence.

The first perspective which informs my readings is fairly straightforward and focuses on the ways in which U.S.-American literature has been engaged in central debates about property, possession and ownership throughout its history. Questions of possession and ownership may be said to form a central problematic 'core' in U.S.-American prose writing since the early republic and until today. One could even argue that there is something of a literary history of property at the heart of American letters. While this observation has been readily acknowledged and discussed by various scholars and critics in regard to specific, canonical woks, a more systematic investigation and a more thorough critical assessment are still pending.[1]

Obviously such a discussion lies far beyond the scope of my observations here, but nevertheless the discussion will be driven both by an interest in the individual works at hand and an attempt at a systematic understanding of certain patterns and elements which inform narratives of property in the U.S.-American context – by which I mean both *literary* and *legal* narratives. This latter point is important for the initial focus of interest, for the questions of property that U.S.-American literature engages with are social, cultural, and political, but most of all they are legal: whenever a literary text is concerned with property it is also, and inevitably so, concerned with the legal institution of property, its dominant concepts as well as its dominant practices. My leading hypothesis in this respect will be that literary narratives about property are by necessity deeply engaged with legal narratives about property; more precisely, literary narratives are fundamentally shaped by the specific way in which the

[1] For some excellent examples see Luck (2014), Clymer (2013) and Holloway (2014).

law's understanding of property – meaning both its legal definition and form – relies on and generates specific narratives: precisely, *narratives of property*.

As will become clear in the discussion of my examples, what is of central interest in regard to these 'narratives of property' is their normative charge and function. At the basis of these narratives lies a *normative* understanding of property and property rights; they are, thus, what Rainer Forst has called *Rechtfertigungsnarrative* (justification narratives), i.e. basic cultural plots and narrative schemata that help to legitimize, stabilize and expand the ideological principles and functions attached to the legal and cultural institution of property. While Forst does not explicitly address property or property narratives in his discussion of the important foundational relation between normative social orders (*Rechtfertigungsordungen*) and their specific justification narratives, he indeed singles out the U.S. and its foundational narratives as one of his prime examples for the historical emergence of political justification narratives during the eighteenth century, showing their mutual affirmation, as well the specific counter-narratives they did, and continue to, engender (Forst 2018). Given the central significance of property and property rights for the political, cultural and legal justification narratives in the U.S., Forst's observations about the basic structure and internal dynamic or tension of such narratives may also serve as points of reference for my discussion of the dominant narratives and basic plot structures which characterize the U.S.-American 'culture of property' (Stolzenberg 2000).

The 'normative force' of justification narratives, Forst argues, is due, on the one hand, to the specific way in which they are able to combine and bring into focus the specific experience and the aspirations of human agents but also, on the other hand, how – by way of referencing more abstract and general principles and notions of universal rights and values – they are able to transcend these specific contexts, thus claiming their general universal validity and truth.[2] This 'narrative construction' however, is never finished and never complete because the dominant narratives constantly engender, and are challenged by, counter-narratives, which then over time become part of the larger narratives of legitimacy:

[2] "Let us note here that the justification narratives briefly sketched here gain their normative force, on the one hand, from the specific way in which they bundle human experiences and expectations and shape them into ideals; but that they also, on the other hand, essentially aim at relative, abstract principles such as justice, freedom, or collective self-determination, whose validity constitutes the quality of justification and transcends specific contexts." ("Halten wir an dieser Stelle fest, dass die hier kurz skizzierten Rechtfertigungsnarrative ihre normative Kraft einerseits aus der spezifischen Art gewinnen, wie sie menschliche Erfahrungen und Erwartungen bündeln und zu Idealen formen – dass sie andererseits aber im Kern auf relative abstrakte Prinzipien wie solche der Gerechtigkeit, der Freiheit oder der kollektiven Selbstbestimmung abzielen, deren Geltung die Rechtfertigungsqualität ausmacht und spezifische Kontexte transzendiert.") (Forst 2018, 93; my translation).

> Again, this reveals the unfinished and contested narrative construction of the 'true America(n)', and the extent to which different justificatory narratives and counter-narratives overlap. [...] These larger stories form the indispensable reservoir for the narrative construction of the legitimation of American politics – not only in inauguration speeches of American presidents, but also in everyday culture and in the aesthetic negotiation of the past or present. (Forst 2018, 95–96; my translation)[3]

My argument moves beyond Forst's general observations in focusing on both law and literature as specific and rather significant contexts in which the dominant cultural justification narratives are negotiated, made explicit, but also may be interrogated and challenged. The term *narratives of property* thus refers to the specific manner in which both legal and literary discourses participate and intervene in the larger justification narratives by addressing property, property rights and proprietary relations and how they do so in specific cases or stories, but, at the same time, in reference to a more universal 'plot' or 'narrative' about legitimate ownership.

To this rather straightforward approach to narratives of property in law and in literature, I would like to join a second, less obvious and probably even more vexing perspective. This alternative perspective on literature's engagement with the law and with property foregrounds questions about *literature's own status as literary property* and the interests of writers and readers connected with this status. My leading hypothesis here is similar to the one which informs my initial perspective on property in literature and in law – only here the question is about literature as property in its own right.

What connects the two approaches in my discussion is a dominant notion of property as a *claim*, instead of a thing (that is owned) or a right (which is granted or protected). 'Property' from this perspective (shared by law and literature) denotes a specific way of connecting a potential object of possession with a subject of ownership in the form of a claim. To look at property as a claim also insists on its inevitably *intersubjective* nature since a claim is only valid in relation to other claims by other (potential or factual) owners. This is why narratives of property in law and literature are ways of grounding conflicting claims in contesting versions of historical facts and 'truths'; each one claiming legitimate ownership by claiming both historical truth and narrative authority.

The legitimacy of ownership is thus bound up with questions of narrative authority and legitimate authorship – this is where the various perspectives on

[3] Original: "Wieder zeigt sich, dass die narrative Konstruktion des 'true America(n)' unabgeschlossen und umstritten ist und wie sehr unterschiedliche Rechtfertigungsnarrative und Gegennarrative einander überlappen. […] Diese umfassenden Erzählungen bilden das unverzichtbare Reservoir für die narrative Konstruktion der Legitimation amerikanischer Politik – nicht nur in Inaugurationsreden amerikanischer Präsidenten, sondern auch in der Alltagskultur und in der ästhetischen Verarbeitung der Vergangenheit oder Gegenwart."

narratives of property outlined here must converge. For at the center of these narratives is the question of the sources of legitimate ownership.

2. *Concepts: Legal and Literary Property*

In her seminal collection of essays on the history, rhetoric and theory of property, *Property and Persuasion*, Carol Rose (1994) starts out with a single question, which she calls "a fundamental puzzle for anyone who thinks about property": "How do things get to be owned?" (11). In the following remarks, I would like to invest some effort into posing a slightly revised version of the same question, namely, 'How does literature get to be owned?' This is not to replace Rose's question by a different one; on the contrary, it is meant as an extension of her original question to stress the fact that literary property is indeed a form of property which challenges us to think about its legitimate origins.

To use Rose's question as an inspiration for this move has a great deal to do with her answers and especially with her shrewd and tenacious discussion of the central role of narrative and storytelling in the constitution and justification of property in its legal form, but also in its cultural practices and institutions. I will rely on Rose as one of my major guides for my own exploration of what an important early case in English law, Donaldson v. Beckett, called the 'great question of literary property.'[4]

My aim is of course much less ambitious than Rose's, but it might still appear somewhat immodest since I want to extend the inquiry beyond the confines and clarity of legal definitions and codifications into the muddled territory of literary and cultural history. Instead of following a single question about the emergence of literature, or rather literary works, as a form of property, I want to ask multiple questions, and ask them all at once. This immodesty appears to be necessary, I claim, because the question of literary ownership cannot be answered by the law alone; in fact, to give only a legal answer to the question 'How does literature get to be owned?' might result in reducing literature to a category of 'things that can be owned,' and only if they fulfil the necessary criteria. "Lawful writing" in this sense, as Martin Kayman has called it (1996, 761), may be literature defined as property in the legal sense (most likely by being tied to a specific concept of authorship and concomitant copyright regulations); but it says nothing about how this particular definition at any point in time bears on the ways in which a whole culture conceives of, claims, and practices, literary ownership.

So the foundational puzzle needs to be extended by asking more questions such as, 'How is literature owned?' and 'By whom at what time'; 'How is

[4] For a thorough discussion of this case, see Mark Rose (1988) and Ginsburg (1990).

literary ownership claimed' and 'by whom' and 'for what reason'? What are the consequences of these questions and claims? How does the legal conception of literary property react to these claims and questions? Is there a mutual interaction between the legal and the cultural understanding of what property means: what can it mean, or even what should it mean, to 'own' literature? And finally, what is owned by literature: can literature – in the act of writing as well as in the act of reading – constitute or 'create' a form of property? Is a national literary canon a form of literary 'property'?[5]

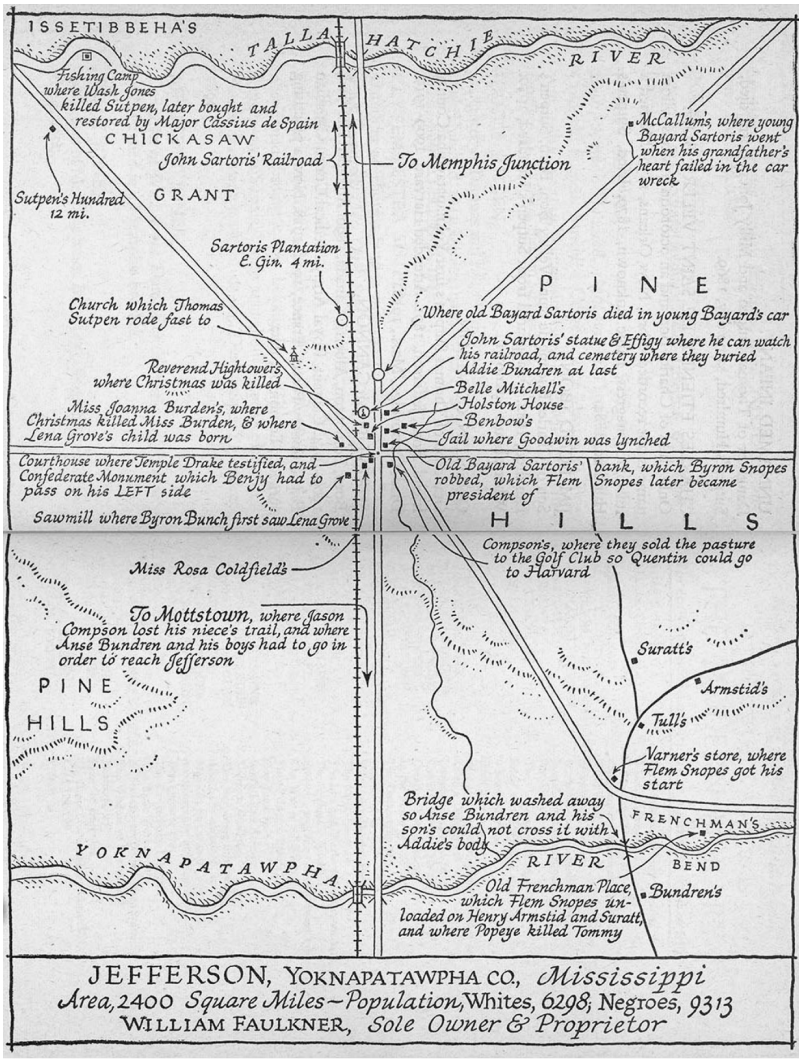
From the vantage point of history it would be easy to reject these questions as merely cultural 'epiphenomena,' and thereby to solve the question of literary property by relegating and reducing it exclusively to its legal definition. This tendency – to render the question of property as merely a legal question, property being an exclusively 'legal' category – is unfortunate, especially for literature, or more precisely, for literary history and literary theory. For, if we abide by the conventional distribution of conceptual labor between the disciplines of legal and literary studies, the question what literature is *qua literature* will be defined by literary criticism and scholarship (and probably also the readers), but how literature may be defined *as property* will be exclusively determined by the law. My point in what follows is that such a separation of attitudes and perspectives vis-a-vis the interdependence of literature as a legal form of property and literature as a cultural form of ownership (and the difference is crucial here and in the following argument) is at best counterintuitive and at worst counterproductive.

It may be helpful to explain my argument by bringing in an example of the kind of 'extended' literary ownership that I have in mind. William Faulkner's effort to graphically chart the territory of the fictional *Yoknapatawpha* county which forms the setting of almost all of his narrative works is a rather obvious and explicit instance of claiming literary ownership in a form which is sanctioned and acknowledged by the law. Faulkner had appended an original, hand-drawn version of a map to his 1936 publication of *Absalom, Absalom!* The map reproduced here (Figure 1) is a revised version produced for the 1951 edition of the novel and is based on (yet) another version of the map produced for Malcolm Cowley's edition of the *The Portable Faulkner* in 1946. Cowley's edition was meant to establish Faulkner as a reputable (and not just obscure) author for a wider American audience, but also as an international author of high reputation and value. That bid proved quite successful – Faulkner's reputation in Europe for some time had been much more favorable than at home and in 1949 he was eventually awarded the Nobel Prize of literature. The major point in Cowley's 'campaign,' however, was not Faulkner's European reputation; rather, it concerned Faulkner's aspirations towards establishing himself as

[5] For a more detailed discussion of these questions, see Schneck (2015).

a local (or territorial) author who was able to write the history of the American South by composing/inventing the parallel fictional history of *Yoknapatawpha* county. But what is most notable – and helpful for my discussion – is that for Cowley's edition Faulkner added something to his original map, quite obviously a claim for authorship and ownership. In the version reproduced here, he added the lines

> JEFFERSON, YOKNAPATAWPHA COUNTY, MISSISSIPPI
> Acres, 2400 square miles. Population: Whites 6298, Negroes 9313



William Faulkner's map of Yoknapatawpha county, originally drawn in 1936, amended in 1946.

and most importantly: "William Faulkner, sole owner and proprietor." Clearly then, the map represents a claim of ownership, but what kind of ownership is this? How do you claim ownership of a completely fictional territory, complete with the locations and inhabitants that only exist in your imagination? What could be the possible grounds for such a claim?

In Faulkner's case, the claim is based on his status as the author – the inventor or creator of the fictional county – and thus it somehow only represents or reinstitutes a claim which is backed by law, albeit in a slightly metaphorical and, at the same time, slightly more reifying manner:

> What is […] remarkable about the map is that it articulates that the land is 'in fact' the possession of the author of the map. He might have wanted to retrieve the lost terrain in a symbolic way. On the other hand, the map clearly serves as Faulkner's inventory of property. Map is Territory, however, not simply because of that inscription of ownership but because of the relation between the owner/cartographer and the intrinsic faculty of a map. The map enables Faulkner to display *Yoknapatawpha* as the whole of the knowledge the author should grasp about the land. (Tokizane 2007, n.p.)

But in a much more urgent and even more absolute sense, the act of mapping a fictional imagined location as a *territory* and adding to that mapping a claim of absolute proprietorship seems 'overreaching'; it also seems besides the point in terms of legal ownership. Mark that Faulkner does not add a copyright sign to his drawing (the reproductive rights of this version rest with the publisher). So the ownership Faulkner claims is of a different order and addressed to an audience who might appreciate and understand, might in fact *acknowledge* such a claim.

Returning to Carol Rose's understanding of property originating in acts of communication about claims of possession, Faulkner's map is a clear signal of such an act, and the *form* of the act follows long-standing conventions of claiming legal title in regard to land or territory. Finally, this claim is connected or even essential to Faulkner's emphatic claim to a specific form of literary property, or more precisely a specific form of authorship or creative agency that is absolute, at least with regard to its creations. As he famously stated "I can move these people around like God, not only in space but in time too" (Meriwether & Millgate 1980, 255).

If Faulkner's (and his editor's) choices make any sense as claims of ownership it would be fair to assume that there exists an audience that would acknowledge these claims and react accordingly. In Carol Rose's words: "the original claim to property looks like a kind of speech, with the audience composed of all others who might be interested in (also) claiming the object in question" (1994, 14). But if there is indeed an audience for this kind of claim, one may ask about the specific form and response which would make such claims legitimate and effective. The question, again, must thus be considered in terms of its legal *and* its wider cultural implications.

3. *Property Narratives: A Model*

In order to find some structured responses to the questions I have asked in a rather disorderly manner, and which I have illustrated with a somewhat mystifying map of an imaginary territory created, governed and owned by Faulkner, I would like to propose a model for property narratives. This approach looks at the question of literary property and ownership from three different, but related angles. The model is meant as a kind of heuristic scaffolding which will allow me, in the second half of my discussion, to look at three distinct literary examples and their 'narrative claims' to literary property. The triangular perspective, it is to be hoped, will also allow me to keep the connection alive between the texts' obvious concerns with (a) specific questions of property, (b) their particular ways of representing aspects of ownership and proprietary practices and concepts in their fictional worlds, and, finally, (c) the central notions or figurations of property and ownership which in each case inform the narratives. My aim is not a detailed and individualized interpretation of the single texts, even though I will need to discuss some details more closely. The main objective is, rather, to treat the examples as representative realizations of a basic 'structure' or 'plot' that, it could be argued, dominates U.S.-American narratives of property and which explains the contrasts as well as the affinities between the examples. The 'model' narrative thus may serve as a heuristic or analytic tool to tease out the continuing resonance and correlation between narrative forms, cultural norms and authorial claims for legitimate ownership.

The three angles or aspects which, I think, essentially characterize the model narrative, could be called "Taking," "Doing" and "Making" – together these three aspects circumscribe a *processual conception* of 'original' property which came to dominate notions of property since the early modern period. Again, I am not claiming any originality on this point, certainly not in the sense that the three proposed angles alone would amount to an analytically mature model of 'property' from a philosophical perspective. The model is just meant to look at different phases of the process of 'how things get be owned.' Property has to come from somewhere, unless one would want to argue for the magical appearance of property out of the blue, and the 'taking' aspect points to that 'somewhere' as a source or a resource. At the same time, it also emphasizes the active involvement of an agent who does the taking. The agent usually is human and, in regard to the legal concept of property, a 'person' in the legal sense. This active engagement with a source or resource already connects to the 'doing' angle or aspect; it is part of the processes and practices of transformation and curation or even struggle which are culturally associated with legitimate or acknowledged forms and practices of ownership. As Neal Milner has observed, these may be expressed in the form of common "property narratives which are framed around […] sets of social practices, myths and beliefs"; Milner calls

them "rites of identity, rites of settlement, and rites of struggle" – in short, "the rites of ownership" (1993, 227).

The narratives which Milner identifies in the stories of everyday people about their property and their rights share a crucial feature with the narrative structures and plots described by Rose in the stories of common law about the origin of property and property rights. These property narratives do not simply define or constitute ownership in any positive sense, rather, what these cultural and legal narratives actually do (and are used for) is a form of claiming or 'making a case' for property rights in a contested situation in which property and the right to own are at stake. In this respect, they could and should be read as justification narratives or narratives of legitimacy in the sense of Forst's *Rechtfertigungsnarrative*.

The third aspect, the 'making' aspect, also resonates with the 'doing' aspect because it is a form of active involvement which can be described as a *practice* of ownership, and thus, can become integrated as an important element in the cultural property narratives which Milner identified. However, what distinguishes the 'making' in contrast to the 'taking' dimension of the process of 'doing property' is that 'making' results in something different from the original source or resource. Since property as a cultural and legal institution finds its most basic justification in the notion of an overall collective 'gain,' the distinction between what had been taken and what subsequently has been made, inevitably adds and actually demands an evaluative perspective to the narrative.

I am quite aware that this rough and ready description of the model despite its crudeness may start to look rather familiar because it could be understood as a basic 'type' of a larger repertoire of 'types' or 'genres' of cultural property narratives, which may also be found in legal property narratives. For instance, it might appear suspiciously close to the labor theory of property devised by John Locke. This is no accident at all. On the one hand, Locke's theory marks an important point of reference for Western concepts of property since the seventeenth century. On the other hand, there is certainly a mutual calibration at work between legal and cultural 'stories' about the origin of property, which works to align these narratives with more or less success. In fact, one might argue that the dynamic of potential difference and potential alignment between the cultural and the legal narratives is rather crucial for the mutual and self-reflexive justification of legal and cultural norms over time. So far, the 'model' simply seems to affirm the cultural predominance of a specific correlation between legal and cultural narratives of property (or claims to property rights).

Yet, even while one may understand the 'taking, doing, making' model as a basic type in the larger repertoire of property narratives in culture and in law, this acknowledgment may seem to amount to nothing more than a banality. For, if we were satisfied with pointing out similarities of legal and literary

(or cultural) narrative claims, we would miss the chance of asking about and exploring the particular mutual positioning of these narratives vis-a-vis each other. It is one thing to posit that there is some sort of congruence between these narratives; it is quite another to understand and approach the cultural narratives as a sort of broader commentary and register, i.e. both as an ongoing affirmation *and* criticism of the main *forms* which enable us to justify and claim property and property rights.

My argument in what follows will focus on the relation or even congruence between the specific claims that are *narrated* in the three exemplary works of fiction that I will discuss and on the associated claims for literary property by their authors (and possibly also their readers). Both claims are made in the specific *form* of literary narrative fiction. While the fictional narratives share surprisingly many structural aspects with the basic stories and narratives discussed by Rose and Milner, the legitimacy which is claimed in each case always also refers to the specific literary form as a legitimate mode for the claim.

4. Taking … and Making

My first example, **Cooper's *The Pioneers***, comes from the genre of historical 'frontier' fiction, which rose to prominence and came to dominate the critical discourse obsessed with identifying the characteristic features of a national literature in the U.S. during the first half of the nineteenth century. In fact, one could argue that James Fenimore Cooper's *The Pioneers, or, the Sources of the Susquehanna* (1823) was explicitly written in response to the criticism of Cooper's first two novels. *Precaution* (1820) was a rather crude imitation of Jane Austen's popular novels of manners, which 'flopped' rather embarrassingly. It was followed by a second slightly more successful 'historical' spy novel, set during the time of the revolutionary war (*The Spy, a Tale of the Neutral Ground*, 1821). It is important to describe the genesis of Cooper's third novel in this detailed manner, since this work, the first of the so-called *Leatherstocking Tales*, established its author as the first truly 'American' writer and novelist, nationally as well as internationally. Cooper's resonating success thus was not the result of a streak of innovative genius; rather, *The Pioneers* is the outcome of careful modulations and diligent revisions of existing forms of historical narratives, both in relation to available sources of historiography and with regard to a fairly new and successful form or model of fiction, especially in the example of Walter Scott, who quite obviously served as the major model for Cooper.

The novel has been characterized quite fittingly as a "romance of property" (Cheyfitz 1993, 125). A host of critics from different times and different theoretical backgrounds have duly noted and discussed the novel's obvious interest in and close relation to the legal discourses and debates of its time. In many

ways, then, *The Pioneers* may be seen as a foundational work, whose 'key-position' for the establishment of the field of U.S.-American literature and literary criticism is acknowledged even while its specific property narrative has come to be severely criticized and, indeed, delegitimized.

The property form in question is land ownership, and the source and resource therefore is land, or more precisely, nature. As Rose has remarked, the taking and the first occupancy of land is a crucial (foundational) element of the common-law narrative of the origin of property. In terms of land ownership in the U.S., this is even more crucial since the entire system of landed property is based on the famous Supreme Court decision in *Johnson v. M'Intosh* from 1823, which is also one reason why Cooper's novel, published in the same year, has been read as a fictional affirmation of the 'discovery doctrine' which legitimized settler-colonial expansion. The Supreme Court decision argued that colonial appropriation of natives' land was legal on the grounds that the land which had been taken by the colonial powers had been 'empty' and basically in the state of nature.

Hence, the 'taking' which is being described in the novel's narrative about building a frontier settlement very obviously follows the logic of the common law's narrative of the origin of property as identified by Rose. However, for the specific narrative claim about the legitimacy of the property in question, the 'doing' is just as important. The novel takes great care to show the settlers' distinct ways of realizing and practicing their 'natural' property rights. Some practices are in conflict and lead to struggles between various factions, and some practices are harmful to the preservation of natural resources (uncontrolled mining results in wild fires just as uninhibited hunting leads to massive killing of wildlife). Obviously following a basic Lockean script, Cooper uses these occurrences within his plot to make an argument for the necessity of civic and legal order, a "system of mild laws" (Cooper 1823, vol.I, 2) as he calls it in the famous opening scene of *The Pioneers.*

And it is precisely this well-known landscape description at the beginning of the novel, which marks the convergence of the property claims *in* the novel and the property claims *of* the novel itself. This opening scene is not attached in any way to the narrative agency and the experiential sphere of the characters, and it is also not an element of the plot. In fact, one could read the novel without reading the opening paragraph, and it would still make perfect sense as narrative fiction. But that does not mean it is irrelevant. On the contrary, the opening is essential to Cooper's claim for legitimate literary ownership.[6] The opening scene in fact presents the *final* result of the process of taking, doing, and making property which the novel actually retells from the perspective of fully legitimate ownership, as the final remark of the passage indicates: "only

[6] For a more detailed discussion of the scene see Schneck (2018).

forty years have passed since this whole territory was a wilderness" (I, 2). The entire landscape description thus stands as a form of retrospective priming because it frames the dominant narrative genre and the central plot – the core historical novel – from the perspective of other, earlier and more descriptive and 'taking' genres: travel narratives, exploration, and even tourist manuals. To actually place the 'making,' i.e. the *result* of taking and doing property, at the very beginning of a historical fiction about the origins of property is to insist on judging and assessing historical processes and struggles from a privileged perspective on the process of 'making' property: the privilege of authorship as ownership.

Cooper's description works like Faulkner's map, it demarcates the boundaries of legitimate proprietorship in similar ways since the fictional 'making' of property (on the level of the narrative plot) and the creative composition of the landscape (on the level of literary form) collapse into one and the same claim: authorship legitimizes ownership, and vice versa. Aesthetic form thus claims legitimacy for a form of ownership (taking, doing and making of properties) that is projected into the past and at the same time into the future. Like Faulkner's map, Cooper's landscape legitimizes a generative and reproductive form of authorial ownership, i.e. literary property which depends on (or even insists on) what could be called 'absolute dominion.'

My second example, **Charles Chesnutt's *The House Behind the Cedars*** (1900), presents a much more challenging, and indeed critical, narrative about the legitimate 'origin' of property and property rights in the U.S. Written in response to the failed efforts of reconstruction after the Civil War, the blatant legal disenfranchisement of black citizens by the Supreme Court, and the emergence of a legally fortified and culturally enhanced system of racial segregation, Chesnutt's first novel (after two successful short story collections) deconstructs the racialized fiction of free agency upon which the legitimacy of the dominant legal and cultural property narratives came to rest.

Next to the assumption of vacancy as the natural state of unpropertied nature, another major assumption of the taking, doing, and making narrative of the 'natural' origin of property rights concerns some fundamental capacities of the acting agent. Legitimate taking requires that the agent is able to act on his or her own account, both physically and mentally, i.e., s/he possesses the capacity to perform intentional physical acts in accordance with his/her motivated decision making (or planning). In the Lockean version of the basic narrative of property and property rights, free will and free mind are not just capacities that exist before or alongside property, they actually already constitute a form of property of the individual person. This notion of a normative convergence of liberty and property on the level of the individual, as Marietta Auer remarks, is a most consequential 'legitimizing trick':

> [Liberty] no longer stands alongside the concept of property, as it did with Grotius, but rather below it. Locke's concept of property encompasses not only the ownership of property and other property rights, but rather explicitly the entire individual sphere of freedom and rights of the person – 'Lives, Liberties, and Estates, which I call by the general name, Property. […] Locke's theory of rights thus succeeds in the legitimating trick of making property, liberty, and subjective right one and the same by conceiving *liberty as a property right*. (2014, 25; my translation)[7]

This 'trick' owes a great deal to the semantic flexibility of the term 'property' (as Auer takes care to point out), with the fatal consequence that this particular convergence or collapse of personal liberty and personal property into one sphere of subjective individual rights (the "ineins [...] setzen") could serve as a foundation for the universalism of property rights reserved exclusively for those who mutually acknowledged the 'properties' they already possessed. It also made the protection of liberty contingent on the protection of property and vice versa; and it generated and reproduced universalized forms of exclusivity which in turn generated and reproduced attendant legitimizing forms of highly genderized and racialized property narratives which were meant to protect specific 'properties' (whiteness, maleness) as the only legitimate and foundational 'properties' of property.

Chesnutt's deconstruction of these foundational fictions of property relies on a fragmented form of narration which moves back and forth between different times and locations. He does not simply present one conclusive narrative, but gradually reveals and confronts different narratives of property which are mutually contingent yet also incommensurable according to the dominant cultural fiction and factual legal force of "whiteness as property" (Harris 1993, 1724).

As an author of mixed ancestry who could pass as white, but chose to identify as black, Chesnutt in obvious ways invested autobiographical as well as historical knowledge into his tragic narrative of passing. As a lawyer he also integrated legal history and even incorporated quotations from legal documents to reveal the mixed origins of property and its 'impossible' legacy, a history of property which is neither black nor white but both, and which thus must be denied and disavowed. On the one hand, by integrating legal decisions and documents in verbatim form into his fiction, and, on the other, by presenting the southern white ownership class as acting out fictional scripts taken from the historical novels of Walter Scott, Chesnutt lets his narrative hover between the factual

[7] Original: "[Die Freiheit] steht nicht mehr wie noch bei Grotius neben, sondern vielmehr unter dem Eigentumsbegriff. Lockes Eigentumsbegriff umfasst nicht nur das Sacheigentum und sonstige Vermögensrechte, sondern vielmehr ausdrücklich die gesamte individuelle Freiheits- und Rechtssphäre der Person – 'Lives, Liberties, and Estates, which I call by the general name, Property.' […] Lockes Rechtstheorie gelingt also das legitimatorische Kunststück, Eigentum, Freiheit und subjektives Recht ineins zu setzen, indem sie *die Freiheit als Eigentumsrecht* konzipiert." See also the similar argument in Pipes that for Locke "property necessarily entails liberty" (1999, 36). Pipes also stresses that Locke's thoughts are less original than the latter's particular phrasing.

and the fictional, showing up the complicity of racialized fictions in the construction of a racialized property regime.

The story which Chesnutt tells starts with a "stranger," "a gentleman from South Carolina," whose identity is certified by the name entry in the hotel's register by the clerk, who makes out the stranger as a man of wealth and property "probably in cotton, or turpentine" (Chesnutt 1993, 1–2). As it turns out, the stranger is a fiction because he is no stranger at all, and his name is not his real name, but his wealth and property are real. One of the structural devices Chesnutt's narrative employs is to challenge his readers' ability (and willingness) to identify with the main characters' fictional and real identities, because they inhabit and perform these identities at the same time in different spaces (in this case, North and South Carolina), which are equally both fictional and real spaces. They are fictional because they are created by the legal and cultural scripts and narratives of performing (and recognizing and identifying with) racial identity, and they are real, because these performances produce and secure real forms of wealth and power.

The same disconcerting (and for the characters dangerous and even deadly) mixing of different identities and spheres likewise happens on the level of time and temporality, since the stranger from South Carolina is visiting his own past in North Carolina in order to take his sister from the past to join him in his new fictional and real life as a white, propertied gentleman who has married into a respectable family and thus possesses all the privileges of white ownership. The 'passing' siblings thus present two property narratives, two major origins or sources of legitimate ownership; this ownership is attained but at the same time denied, because 'whiteness' is treated as property – both on the register of the real and the imaginary.

The stranger's real property and wealth are based on slave labor, but his ownership results from his fictional property of 'whiteness,' which is acknowledged and thereby legitimized by his marriage to the heiress of a plantation. (He has moved from his past history in North Carolina to the south and 'passed' as white in South Carolina.) This narrative is paralleled by his sister, who finds herself courted by another wealthy white owner soon after she has joined her brother in South Carolina. "It's a dream, only a dream," his sister announces in reaction to the courtship, as she, too, is seemingly accepted as white into society. This dream, however, gradually turns into a nightmare when her suitor learns about her past and it eventually ends with her return to the role of 'a young colored woman' and her death. Thus the novel ends with a passing 'in reverse' as it were when Rena's racial identity is confirmed and at the same time her identity as an individual character is taken from her (42; 159).

The contrasting trajectories of the conflicting narratives – which either produce whiteness as an accepted illusion of property or whiteness as a denied form of property – stand for a paradoxical and 'impossible' form of ownership.

Whiteness as a proprietory existence is both real and unreal at the same time, precisely because the two trajectories result from the *same* historical and biographical constellations: a mixing of properties occurs which produces a property that can only be claimed when its history is being disclaimed at the same time.

This impossible in-between status of the properties which Chesnutt's protagonists undeniably possess but, at the same time, are being denied by the same historical trajectory of the origin of whiteness as property, also resonates and is reflected on the level of authorship and Chesnutt's own claims for literary ownership. These claims, as Chesnutt was painfully aware, are partly complicated by the very strategy of mixing and creating dual identities within two fictional spaces which complete each other but also contradict each other or even cancel each other out. Moreover, on the level of genre and mode, Chesnutt's novel presents and employs a whole range of different forms of expression and representation that run from the comical to the tragic, from the ironic to the satirical. The novel's character descriptions include idealizations collapsing into stereotypes and racist remarks by "unreliable narrators in the third person," as critics have pointed out, which are a challenge to the reader since they be could be mistaken for the narrator's: "These [racist] sentiments rephrase [the character's] thoughts as if they are the narrator's and thus mask from many readers the truth of the tale by cryptically contradicting the logic of the text" (Hattenhauer 1993, 34).

This uneasy and challenging mixture of forms and modes establishes a variety of possible and contradictory positions (of the narrator and hence the reader) vis-a-vis the actions and characters depicted: how does one claim ironic ownership of melodrama, how can one claim to 'own' a reality that is satirized at one moment and idealized at the next? Moreover, it never really finds a proper foundation in one coherent form of experience. For one of the most poignant, and also self-reflexive, strategies of Chesnutt's formal mixing of different literary 'properties' is to emphasize how much the self-perception (the identity) of every character depends on literary forms and genres: on their literary properties, as it were. If we look at Chesnutt's narrative of property from the three angles I suggested, we might come to the conclusion that *The House Behind the Cedars* rejects and deconstructs the basic narrative plotting of the 'taking, doing, making' model. But that conclusion may be a bit too hasty because, while the novel certainly rejects and deconstructs the exclusionary fiction of 'whiteness as property,' the novel does not question the normative coherence of liberty and property, but rather critically reveals the exclusionary force of racialized fictions about the source and origin of property and property rights.

My last, and shortest, example is meant to highlight this central question of normative and narrative coherence as a major requirement and expectation of legal and cultural narratives of legitimate property and ownership. **Kaui Hart**

Hemmings's 2007 bestselling novel ***The Descendants*** connects in obvious ways to Cooper's novel (both are about landownership and inheritance laws) as well as to Chesnutt's novel, because they both share a central concern with the legitimacy of 'mixed' sources of property. What links all three novels is the essential status and central role of narratives of 'consent and descent' (Sollors 1986); more precisely, the way in which the motivated and deliberate intersection (the consent) and 'mixing' of genealogical structures (the descent) of transfer and tradition have contributed to a specific 'American' way of claiming legitimacy, in terms of both property *and* identity.

The question of property at the center of Hart Hemmings's novel concerns the possible sale of a huge piece of land (undeveloped) on the main island of Hawaii. It is owned 'in trust' by the extended descendants of the original joint owners, a Hawaiian princess, Kekipi, and an Anglo-American missionary, Edward King, who is a financial officer and estate planner working for her father. The joint ownership is the result of the princess's active resistance against the customary laws of descent (generational transfer of property by marrying in the family): she chose to marry the estate planner rather than (according to local custom) her brother. The casual manner in which the current chair of the trustees and main protagonist and narrator of the novel, Matt King, explains the complicated chain of legitimate property, already establishes the narrative's major attitude towards the property in question. This attitude is informed both by ironic detachment and cynical fatalism:

> Okay, then, what happened ... Kekipi was supposed to marry her brother, a weird Hawaiian tradition. Yikes. Just when they were ready to tie the knot, she had an affair with her estate planner, Edward, and they married soon after. […] Anyway, they had a lot between the two of them, and when another princess died, she left three hundred thousand acres of Kauai land to Kekipi as well as her estate. Kekipi died first. Edward got it all. Then Edward set up a trust in 1920, died, and we got it all. […] There's Edward, hollow-eyed and serious. […] There's Kekipi, which means "rebel," her brown and flat, chubby face. Her bushy brows. Whenever I see her picture I think we would have hit it off. I can't help but smile at her. […]
>
> My father died last year, marking the termination and dissolution of the trust. And now, land-rich and cash-poor, we, the beneficiaries, are selling off our portfolio to … someone. I don't know.
>
> It's what I inherited. Like it or not. (Hart Hemmings 2009, 36)

What complicates the question of property and the pending sale of the estate is that King's wife has fallen into a coma after a boating accident, leaving him not only in charge of their two daughters but also with the responsibility to decide about her status in relation to the law, that is, whether she is legally alive or dead. The major family plot line in the novel turns around this question, because it marks the transfer of agency and thus of control. The paradoxical twist is that only when Matt King officially declares his wife dead, her legal will (called her 'living will') will be executable. The very idea of narrative progress

thus hinges on a decision about life and death, linked to the decision about the future of property and ownership.

At the beginning of the story, Matt King is as much detached from his family and his wife, as he is from the history of his property as a family history. Thus he only gradually learns about his wife's affair with a real estate developer interested in King's property after her boating accident. The narrative thus could be read as a process of transformative ownership: letting go of his wife and accepting her duplicity and unfaithfulness, Matt at the same time regains his legitimate authority (as a father) and finally accepts the responsibility of ownership, turning from an accidental heir into a legitimate proprietor.

The property narrative which the novel unfolds is the narrative of the cynical and fatalistic acceptance of existing legal and cultural conditions of property relations (*doing* property) which have become an unreflected way of life. These conditions are only gradually reformed into meaningful and purposeful relations by the responsible acceptance of the cultural and social history of property relations. The coherence that the narrative is able to regain in the end is a coherence brought about by the re-establishment of familial relations over time, connecting the recovered past with a meaningful future.

The model of authorship and literary ownership which underlies these efforts in the novel is the scrapbook which the youngest daughter is assembling as a school project, and which she uses to create a coherent family narrative around the living absence of her mother. The scrapbook stands for an open-ended and accidental but nevertheless motivated effort to collect and bring together scraps of memory (both collective and individual) which will help to form a narrative and a literary property (as a legacy and an inheritance) which can be accepted as a collective history of consent and as a shared cultural memory of descent.

As the major re-connecting lines evolve, the Kings' family history moves backwards to the source of the property about to be alienated. That 'source' is another historical connection, the unconventional, but significantly far-reaching relation between the heiress of the royal family and her American suitor, presumably one of the missionary developers who prepared the gradual annexation of Hawaii by the U.S.A. during the nineteenth century. One of the most effective narrative twists of the novel lies in recalling to memory the complex struggle which shaped the history of Hawaiian property rights in the context of American colonization and remodeling it as a love story.[8] The origin of ownership – and its legitimacy in the novel's plot as a form of reconciliatory history – thus comes to rest on the consensual formation of intimate *and*

[8] For the complex history of native land rights and new real estate developments during the 19th-century Hawaii before annexation, see LaCroix & Roumasset (1990) and Levy (1975). For the specific legal contexts and issues the novel is situated in and refers to (e.g. the rule against perpetuities and trust law), see Roth (2013).

formal bonds, i.e. the contractual meeting of minds. No force, no violation, no asymmetry of relations, just a stubborn insistence on subjective attraction – all of these are of course at stake in the novel's strange recovery of a relation where minds did not meet, and can no longer meet, where one mind has to 'make up' another in order to find out what the wife, hovering in a comatose state between biological and legal death, actually wanted him to do with the property. While the name of the protagonist (King) is a weak reminder of a crucial concept (kingship) in relation to genealogy and inheritance, linking him to his Hawaiian progenitors, Matt King's wife clearly serves as a representative of the U.S. mainland and its economic interests. Her relation to the land as property is determined by claims of sovereignty and economic rationality 'dressed up' as an affair with a successful American mainland developer who is as much attracted to Matt's wife as he is interested in Matt's property.

The final scene of the novel, the burial of the mother's ashes at sea, while focusing on the daughters' reactions and their renewed bonding, is told from the perspective of their father, and thus successfully reestablishes a narrative legitimacy (of voice and of telling) that had almost been lost at the beginning of the novel. In fact, the two major dramatic strands which the plot follows – the restoration of the King family and the conservation of the family's property – both present a struggle for a legitimate voice (or, rather, a center of consciousness) which is able to evolve over the course of the narrative and to reconcile the claims of the family with the larger claims of the (historical) collective: the community of Hawaiian landowners, defending their land and their history against foreign 'developers' from the U.S. mainland.

Matt King's legitimate position as a responsible father and owner, preserving the family's property by refusing to sell, also restores the myth of the family as the rightful owner and conserver of the original aesthetic splendor of the landscape of Hawaii. This last point moreover highlights the claim of restored authorship which is also inscribed in the final scene and expressed through Matt's musings and observations at the end of the novel. Successfully retaining the family's property is tantamount to restoring the family, and it also means keeping a specific connection between property and authorship in place. The claim of rightful dominion is connected to the claim of narrative authority, which in turn is regained through the scrap-book as the shared work of remembrance, if only in bits and fragments. The author is still a "proprietor" (Rose 1988, 51) but this status is only secured after the ancient history of property relations has been reimagined as a story of stubborn and resilient love and desire and after Matt has accepted to speak for the dead, literally burying the silent, yet persistent claims of his wife.

5. Conclusion: Plotting Property

Instead of a stringent and conclusive comparison of the three individual works I have discussed, my short conclusive remarks aim to highlight their exemplary and representative character as narratives of property in the context of U.S.-American literature and culture. They thus should not be read simply as historically situated and specific narrative fictions that accidentally share an interest in questions of property and legitimate ownership. The more general motivation for bringing these works into contact across their historical time and social and cultural spaces was that their accidental interest in property was in fact a continuing and persistent historical, social and cultural trait which continually motivates and generates narrative claims, and does so in order to justify, but also to criticize, specific property regimes, their reality and their practices. Thus, in the most obvious way, because these selected fictions – and they may perhaps be argued to represent a substantial mass of fictional prose in U.S.-American literary history until today – are 'about' questions of property: they are inevitably engaged with concrete existing legal and, in a more general sense, cultural narratives about the origin and the legitimacy of property and ownership. The 'taking', 'doing', and 'making' aspects of these narratives, both in law and in literature, must be seen as the most basic form of emplotment, of 'plotting property' as it were. Legal and literary narratives of property in the U.S.-American context thus legitimize (or criticize) ownership within a larger process of historical continuity, connecting the (mythic) origin of ownership with specific forms of productive and generative use and expected specific 'yields' or realized 'gains.' Each one of the dimensions may become the basis for the justification, as well as the target of criticism, while still retaining the overall logic of the basic plot of the normative property narrative.[9]

The final point of my discussion has been to insist that the act of creating such narratives in the form of literary fictions must be seen in itself as a claim for property that is 'literary', i.e. a claim for property which is defined and realized by being literature. For Cooper, the claim of *The Pioneers* is made obvious above all through the descriptive appropriation of specific landscapes, an appropriation that is both territorial and aesthetic, merging existing literary forms of landscape description with the normative 'markers' of appropriate possession. Cooper's 'descriptive tale' (as indicated on the title page) thus lays claim to a specific legal-aesthetic form of literary fiction, indeed the 'romance of property.' For Chesnutt, in contrast, I have argued that such obvious claims for literary property are constantly frustrated by the racialized narratives of legitimate ownership and continuous dispossession, indicating the precarious position of

[9] For the specific connection between the meaning of 'plot' in the legal and the literary discourse since the early modern period, see Brückner & Poole (2003); for a discussion of property in the context of expected 'yield' as a principle, see Levy (2021).

'mixed' authorship and ownership within a legal culture of racial segregation. Finally, the reconciliatory narrative at the center of Hart Hemmings's novel restores contemporary claims of native ownership and authorship by revisiting and revising their historical formation based on trans-ethnic desire and 'mixed' genealogies – claiming the legitimacy of literary and legal property through the fragmented narrative of disruptive desire 'patched-up,' as it were, by the trust that may be invested in new responsible forms of ownership. Whether these claims are seen as legitimate depends as much on their legal and their literary assessment; the specific emplotment is never fully accidental and never fully autonomous, neither with regard to the legal nor to the literary formation and justification of property.

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