CHAPTER 10

Epilogue: The Necessary De-Westernisation of the Models of Land Ownership

Reflections on the Idea of Feudal Remnants in Spain

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1 Introduction

The content of this Chapter can be better understood with an introductory note of a personal nature. When Manuel Bastias Saavedra asked me to participate in the workshop that gave rise to this book, I had initial reservations. Not because I was not interested in the subject, but because I found it difficult to contribute something new, that is, something that I had not said on previous occasions, about land ownership in Spain or Latin America. But I also could not help sharing with him the concerns that worried and occupied me at the time, and continue to occupy me, regarding a specific problem: the weight of Western models in the historical analysis of land ownership. He encouraged me to present them in the workshop, and if I did not shy away from this opportunity, it was for two main reasons. Firstly, because the basis of my concerns was the desire to be useful in the historical analysis of land ownership in any geographical area and, therefore, also in the Latin American sphere. Secondly, my reflections were based on my empirical research on Catalonia and Spain, allowing me to weave in certain similarities with the rest of the participants which would have been more difficult to achieve in other contexts. Therefore, the workshop, and now this volume, offered me a unique opportunity, not only to share some new ideas with like-minded researchers, which in itself represents an intellectual stimulus, but also to explain to them the very reason why I decided to investigate supposed model societies. Can this type of reflection be useful for historical research on non-model societies, such as the Spanish, or non-European, such as the Latin American? Readers of this chapter will be able to decide for themselves whether the experience was worthwhile.

2 The Necessary De-Westernisation of Our Perception of Land Ownership

The main aim of my text, written in and from Spain, that is, from my experience as a researcher, but in which I will write little about Spain and the Hispanic world and much more about France, England, and the United States, is to contribute to the necessary de-Westernisation of how land ownership is viewed, a step that I consider fully necessary if we are to advance our studies on this subject. Why has this aim led me to address these countries in particular? In fact, since what I am going to present is a small preview of a much broader work, I can make the question a little more specific: why have I decided to devote so many hours of study to these countries in recent years? In this section, I refer to some relatively recent works by authors who have accompanied me in my decision.

The first work I would like to reference is one of Thomas Piketty's latest books, *Capital and Ideology*. In the conclusions, Piketty confesses his fears that he has not sufficiently removed himself from "the limits of de-Westernizing our gaze".[1] And as the main argument in his book, he conducts a self-criticism of the space occupied by France and the United States: "The French Revolution comes up repeatedly, and the experiences of Europe and the United States are constantly cited, much more so than their demogaphic weight".[2] Well, in my case, it could be said that I have followed the exact opposite process; I have decided to deal with countries that have served as universal models for years because it seemed to me the best way to combat some topics that have for decades acted as a kind of linguistic-ideological corset. Returning to Piketty's book, for example, my main criticism would not be that its author talks a lot about France, but that he gives unquestionable importance to France as a model extended to other European countries, without deeming it convenient to stop and explain the real mechanisms of transmission. In my opinion, this is one of the weakest aspects of the dominant historical narrative around "what constitutes feudal", and it serves as the guiding axis for this chapter.

This is the second decision, related to the theme of this book, which perhaps deserves some clarification. Why even write about "feudal" issues? Why not write, for example, about the "commons"? Perhaps because today it is fashionable to speak of the commons and not of the feudal. Perhaps because I have already written about this trend on other occasions. But, above all,

1 Piketty, Capital and Ideology, 1037.
2 Piketty, Capital and Ideology, 1038.

because I think that the word feudal has played an important role in the construction of the Western perspective that we wish to abandon. Jack Goody's reflections in his ouvre, *The Theft of History*, can help us see this. Piketty cites him as a reference for the "de-Westernized" view and, in his work, Goody considers that historians have tended to abuse the concept of "feudalism". Reflecting on this, Goody differentiates between the common meaning of the term and some more technical meanings of the word, to clarify that he uses it to refer to the "period that followed Classical Antiquity in Europe". Goody denounces the view of feudalism as a progressive stage of Western development.[3] It is one which considers the influence of Roman law on feudalism fundamental in explaining "the decisive advance from conditional to absolute private property".[4] Goody criticises the legalistic interpretation hidden behind this view—shared by most historians—and repeatedly cites Henri Summer Maine and, specifically, his work *Ancient Law*, published in 1861, to highlight the fact that all societies actually know "a hierarchy of rights in land, some located in the individual, others in particular groups", which does not match with "the earlier dichotomies of individual and communal, categories that fail adequately to characterize the tenurial system of societies either in the past or in the present".[5]

Throughout this chapter, I will also be drawing on the writings of Maine, and we will therefore have an opportunity to better understand his point of view. For now, let me just point out that the idea highlighted by Goody also fails to fit with the idea of a collectivist *avant la lettre* as promoted by Paolo Grossi.[6] However, I have already said that in this work I am not going to refer to the "common", but rather to the "feudal". In this sense, the use of the word feudalism in the aforementioned work by Maine is interesting: in 1861, he qualified England as "the Herculaneum of feudalism", putting the expression in quotation marks to make it clear that it had an author, which makes it even more interesting because it reveals that it was not an isolated opinion.[7] I have searched for the expression and it was not difficult to find its author: Eduard Gans, a German jurist, disciple of Hegel and professor of Marx at the University of Berlin. Although I have not been able to find the text where Gans used the expression, we know of its authorship thanks to one written by a French jurist, Édouard

3 Goody, *The Theft of History*, 68. This sentence is in Chapter 3: Feudalism: A transition to capitalism or the collapse of Europe and the domination of Asia?

4 Goody, *The Theft of History*, 96.

5 Goody, *The Theft of History*, 59.

6 Grossi, *Un altro modo di possedere*.

7 Maine, *Ancient Law*.

René Lefebvre de Laboulaye, translated into English in 1865.[8] This text contains some interesting reflections on the strength of English feudalism, compared to feudalism on the European continent. Note that these reflections were quite widespread at the beginning of the second half of the 19th century, and I have not found them expounded by any historian of the 20th century. The issue itself is built upon a contradiction: how is it possible that the most economically advanced country in the world could also be a bastion of feudalism?

Now, the common use of the word does not share this progressive view of history. According to dictionaries, "feudalism" means the complete opposite of social progress. How could it be that the same word has served to identify a historical stage of progress and to designate the antithesis of progress today? I think we would be making a mistake if we were to set this paradox to one side. The common meanings that words end up having are not only the result of the dominant historical narratives, but have also contributed to reinforcing that narrative. The word feudalism has two different meanings, but, while the meaning that the dominant historiography has given it, denounced by Goody, has served and can serve to reinforce a unilinear view of history—by representing a more progressive stage than the previous one and less than the following one—the common use of the word combats this view and qualifies as "feudal" all evidence of "anti-progressive" aspects that today's society offers us.

To further develop this last line of reflection, I have found it very useful to read the third contemporary author that I want to mention here: the American legal theorist Joseph Singer. In several of his works, this author does not hesitate to contrast his idea of feudalism with that of democracy and, therefore, with the idea of progress. This is his starting point: "Feudalism was based on the idea of lordship, with the Sovereign as the ultimate lord of the land. This system was premised on inequality, personal loyalty, and landed aristocracy". In this society, a large part of the population lived in undignified conditions: "at the bottom of the feudal hierarchy were the unfree peasants, who lived at the lord's beck and call".[9]

It is clear that Singer has in mind a stereotype of feudal society based on medieval Europe that many medievalists today would refute. But the main question is: why does Singer feel the need to talk about feudalism in a book dedicated to analysing the experience of the subprime crisis of 2008 in the United States? It is here that we find the advantages of mixing the two conceptions. For Singer, the crisis reveals the need to not let our guard down in the face of

8 Laboulaye, "General Reflections upon Feudal Law".

9 Singer, "Property Law as the Infrastructure of Democracy", 3–4.

the threat of significant social regression. To maintain this state of alert, and on this I agree, it is not enough to appeal to a supposed "time's arrow", but rather necessary to recall the social struggles of the past. Thus, in chapter 5 of the book, entitled "Why Conservatives like Regulation and Liberals like Markets", we read:

> Indeed, we remember our history of rebellion against feudalism and our hard-won victory over the institutions of slavery and racial segregation and patriarchal privilege, it becomes clear that our property system has, over time, moved closer to a liberal ideal where each person is secure, free, comfortable.[10]

And in the following chapter, the last in the book, entitled "Democratic Liberty", Singer summarises the achievements for the social progress of the United States through citizen struggle thus:

> We have outlawed feudalism, titles of nobility, slavery, male privileges, racial segregation, and discriminatory denial of access to the market. These laws limit the contracts we can enter into and the property we can create, but they do not take away our freedom; they define what it means to live in a free society that treats each person with dignity.[11]

At this point, I suppose that the reason for the choice of these three countries and the "feudal" theme of my chapter is now clear. In recent years, an economist, an anthropologist, and a jurist have challenged me as a historian. And they have done so based on their vision of France, England, and the United States. The dominant Western thought has presented these three countries as models of economic growth and historical development, and the idea of the "end of feudalism" has played an important role in this model vision. Regarding Spain, which is the case and the example that interests us today, the idea is widespread and accepted both inside and outside of the country that things were not done well; the concept of *supervivencias feudales* (feudal remnants) has contributed to corroborating this image of failure. In fact, everything that has been pointed out as the imperfections of property in Spain, in the sense of not corresponding to ideal types of property, has tended to be seen as 'feudal remnants'. Hence the title of this chapter, in which I will explain that even though we can find the

10 Singer, *No Freedom Without Regulation*, 173.
11 Singer, *No Freedom Without Regulation*, 178.

same type of evidence in rich and therefore developed countries, this has barely provoked the kind of discussion or rejection we see in the Spanish case.

What lessons might we draw from all this? If we limit ourselves to talking about less developed countries, we will always find evidence of multiple 'imperfections'—susceptible of being described as 'feudal remnants'—that will seem to confirm the validity of some ideal models supposedly freed from any historical ballast and will thus continue to feed the dominant models in use. I myself have the feeling of having done so in my work on Spain. This is, in fact, the main reason why I have decided to take a step forward and highlight some misunderstandings at the base of these models. I have already outlined the general lines of my approach. Now we are going to see it in more detail, based on three specific, almost anecdotal, problems, each related to one of the three countries that have served as models and that have been cradles, let us not forget, of the main modern theories on ownership and property rights. These problems differ greatly from one another, but they are all related to certain silences, omissions, uses and abuses regarding the term 'feudal', detected both in history books and in the current mass media, the consultation of which I will not shy away from, because they seem to me to be especially revealing of the pitfalls of a supposedly universal language that can no longer continue to be so.

3 France: The Disappearance of the *Seigneurs Directs* (Direct Lords) from the Scene

I dedicate this section to a vocabulary problem that has had somewhat of an impact internationally. I am referring to the fact of characterising as "eminent lords", or as "lords who possessed eminent domain", those who actually appeared in the texts of the time as direct lords, that is, as holders of direct domain. Undoubtedly, the influence that the French historiography of the 1960s and 1970s exerted on French agrarian historiography as a whole has meant that the same habit has spread to historians from other countries, as is easy to see in the cases of Spain and Italy. The expression "eminent domain" is also found in historical studies on land ownership during the *ancien regime* in these countries to indicate the rights of the lords that in the documents of the time were referred to as "direct lords".

Here, we face a vocabulary problem that I think has affected historical interpretation much more than we could imagine. If we look at the dictionaries of the time, there was no confusion. The texts speak of direct domain, or of *dominium directum* if they are written in Latin. When and why, then, was this

CHART 10.1 "Domaine utile", "domaine direct" and "domaine éminent" in French books (1700–2019) calculated by Ngram Viewer

term substituted for eminent domain? In order not to lose ourselves in quotes, a graphic produced by new digital technologies will suffice to represent this point (see Chart 10.1).

This exercise allows us to observe that in publications written in French, the dominant binomial was clearly *domaine utile*/*domaine direct*, and that the concept of *domaine éminent* came later. Why, then, have historians and jurists managed to popularise the binomial of useful domain/eminent domain as the authentic one? As an example of this popularisation, it will suffice to reproduce a few paragraphs of the corresponding article from Wikipedia in French:

> Eminent property, also called eminent domain, was a form of property rights in manorial law. It was the case of lordship over lands and cities in the classical Middle Ages, and also of the Spanish Crown over American lands in modern times. Eminent property (or domain) contrasted with useful domain (or property), which was the set of rights of those who exploited goods and collected fruit [...]. The distinction between eminent domain/useful domain disappeared in the revolutionary period in France, which brought an end to many feudal institutions through the abolition of privileges.[12]

12 "La propriété éminente, appelée aussi domaine éminent, est une forme de droits de propriété en droit seigneurial./ C'est le cas de la seigneurie foncière des campagnes et des villes au Moyen Âge classique, ou encore de la Couronne espagnole sur les terres américaines à l'époque moderne./ La propriété (ou le domaine) éminente s'oppose au domaine (ou à la propriété) utile qui est l'ensemble des droits de celui qui exploite le fonds et qui en recueille les fruits/ ... La distinction domaine éminent/domaine utile a disparu en France dans la période révolutionnaire, qui met fin à nombre d'institutions féodales, d'abord par

But the truth is that I have not found any example of historical documentation that corroborates the existence of the binomial eminent domain/useful domain in pre-revolutionary France. It does not appear in *Montesquieu*, nor the *Encyclopedie*, nor in *Pierre-François Boncerf*, nor the different dictionaries I have analysed. It has, nevertheless, long infiltrated the language of law manuals. Thus, in *Les Biens* by J. Carbonnier we read: "The presence of eminent domain hindered exercising of the rights of useful domain: it is useful property that the civil code proclaims as absolute, a concept detached from that of eminent domain".[13] In the *Dictionnaire de l'Ancien Régime*, Jean Gallet, although he has chosen the correct terminology, as he combines domaine utile/domaine direct in a single voice, is still a little ambiguous in the definition of the latter term:

> "Direct domain", domain of superiority, eminent domain, designated the rights that the lord had retained over this same land, especially the right to benefit from the help of the vassal, or the right to collect a *cens* and some other rents, to authorise hereditary sales and transmissions and, on these occasions, to collect some dues.[14]

We would not be giving so much importance to what happened in France if the same substitution process had not spread to other countries, including Spain. Bartolomé Clavero, for example, in his celebrated thesis on the Castilian *Mayorazgo*, published in 1974, defined eminent domain as a form of direct domain.[15] In the current version of Wikipedia, surely due to the influence of the term in English, a distinction is made between the current juridical concept of 'eminent domain', understood as the State's right of expropriation, and the assumed different use of the same term in the past:

> Eminent domain is a legal concept, which in contemporary law is applied to the domain (understood as part of the right to property) that corres-

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l'abolition des privilèges". Available at https://fr.wikipedia.org/wiki/Propri%C3%A9t%C3%A9_%C3%A9minente, last consulted on 14 November 2023.

13 Carbonnier, *Les biens*, 116. "La Révolution a abolí le régime féodal, la décomposition du domaine, en domaine éminent et domaine utile. La présence du domaine éminent entravait l'exercice des droits du porpriétaire utile".

14 Gallet, Jean, *Dictionnaire de l'Ancien Régime*, 417: "Domaine direct/domaine utile". "Le 'domaine direct', domaine de supériorité, domaine éminent, désignait les droits que le seigneur avait conservés sur cette même terre, notamment le droit de bénéficier de l'aide du vassal, ou le droit de lever un cens et quelques autres prestations, d'autoriser les ventes et le transmissions par héritage et, a ces ocasions, de lever des redevances".

15 Clavero, *Mayorazgo*, 4–5.

> ponds to the State and is applied in the concept of expropriation. On the other hand, in historical contexts, particularly in medieval feudalism and its extension during the *ancien regime*, land ownership had a peculiar consideration, since it was shared between lord and serf (or, more generically, peasant), that is, between the party that retained that eminent domain and the one that accessed so-called useful domain (in the event that the lands were originally considered to belong to the lord, since the opposite was also possible—that it would have been the lord who attributed rights to lands originally owned by the peasants).[16]

In this same text, which cites some Spanish jurists as authorities, we find clues to interpret the operation we are analysing as one that may have had consequences for the historical analysis of land ownership. This is seen clearly in the following paragraph:

> The lord's "eminent domain" has been interpreted as a mix between property and sovereignty, by means of which the feudal income that he received is identified with the concept of tax and the rest of the rights that he exercised are identified with the concept of jurisdiction.[17]

In my opinion, substituting the concept of 'direct domain' for 'eminent domain' has served to strengthen the idea of the birth of a new concept of ownership in contemporary times, in a way that broke with the past, which has contributed to the idealisation of a certain ownership model. In the French case, this process has served to downplay what was actually a clear process of expropriation. The idea of eminent domain emphasises the idea of the political and blurs the view of lords' rights as particular ownership. However, this was how they

16 "Dominio eminente es un concepto jurídico, que en el Derecho contemporáneo se aplica al dominio (entendido como parte del derecho de propiedad) que corresponde al Estado y se aplica en el concepto de expropiación. En cambio, en contextos históricos, particularmente en el feudalismo medieval y su extensión durante el Antiguo Régimen, la propiedad de la tierra tenía una consideración peculiar, puesto que se compartía entre señor y siervo (o, más genéricamente, campesino), es decir, entre quien retenía ese dominio eminente y quien accedía al denominado dominio útil (en el caso de que las tierras se consideraran originalmente del señor, puesto que también era posible lo contrario—que hubiera sido el señor el que se atribuyera derechos sobre tierras originalmente de los campesinos".

17 "Se ha interpretado el "dominio eminente" del señor como una mezcla entre propiedad y soberanía, con lo que la renta feudal por él percibida se identifica con el concepto de impuesto y el resto de los derechos que ejerce se identifican con el concepto de jurisdicción".

were understood in the context of the Spanish liberal revolution. The Spanish rulers were able to do that type of processing in the name of the sacred right of property. In an economically backward country, such as Spain, calling them eminent, due to the influence and strength of the French model, facilitated their interpretation as 'feudal remnants'. But then, should this same idea not be extended to many other countries, including England, considered one of the countries with the highest level of protection in terms of property rights?

4 England and Scotland: Why Hereditary Practices Ceased to Matter

We could dwell on the subject of copyholders surviving until 1920, but our trip to England will take us down other paths. The conflation of feudalism with a society of unequal inheritance was fairly widespread in many 18th-century writings. Among enlightened 18th-century Spaniards, for example, the feudal institution par excellence was the entail. Adam Smith, John Stuart Mill, and even Maine condemned this practice and saw it as one of the most serious obstacles to the economic development of their country. Let us first consider Smith's words in 1762:

> Upon the whole nothing can be more absurd than perpetual entails. In them the principle of testamentary succession can by no means take place. Piety to the dead can only take place when their memory is fresh in the minds of men: a power to dispose of estates for ever is manifestly absurd. The earth and the fullness of it belongs to every generation, and the preceding one can have no right to bind it up from posterity; such extension of property is quite unnatural. The insensible progress of entails was owing to their not knowing how far the right of the dead might extend, if they had any at all. The utmost extent of entails should be to those who are alive at the person's death, for he can have no affection to those who are unborn. Entails are disadvantageous to the improvement of the country, and those lands where they have never taken place are always best cultivated: heirs of entailed estates have it not in their view to cultivate lands, and often they are not able to do it. A man who buys land has this entirely in view, and in general the new purchasers are the best cultivators.[18]

18 Smith, *Lectures on Jurisprudence*, 401.

Almost a century later, Maine would be of the same opinion. It is in speaking of "entailment", in fact, that he refers to England as the Herculaneum of Feudalism:

> [...] the land-law of England, "the Herculaneum of Feudalism", is certainly much more closely allied to the land-law of the Middle Ages than that of any Continental country, and Wills with us are frequently used to aid or imitate that preference of the eldest son and his line, which is a nearly universal feature in marriage settlements of real property. But nevertheless, feeling and opinion in this country have been profoundly affected by the practice of free Testamentary disposition; and it appears to me that the state of sentiment in a great part of French society, on the subject of the conservation of property in families, is much like that which prevailed through Europe two or three centuries ago than are the current opinions of Englishmen.[19]

In England, unlike in Spain and in many other supposedly more economically backward countries, the great noble fortunes were not questioned by any government or parliament. It comes as no surprise, then, to verify the validity of what is considered feudal in the definition of the word 'entail' in Wikipedia, which redirects the word to the expression 'fee tail':

> In English common law, fee tail or entail is a form of trust established by deed or settlement which restricts the sale or inheritance of an estate in real property and prevents the property from being sold, devised by will, or otherwise alienated by the tenant-in-possession, and instead causes it to pass automatically by operation of law to an heir determined by the settlement deed. The term fee tail is from Medieval Latin *feodum talliatum*, which means "cut(-short) fee" and is in contrast to "fee simple", where no such restriction exists and where the possessor has an absolute title (although subject to the allodial title of the monarch) in the property, which he can bequeath or otherwise dispose of as he wishes. Equivalent legal concepts exist or formerly existed in many other European countries and elsewhere.[20]

The same article highlights the following as being the main opponents of this practice: "the monarchy, the merchant class, and many holders of entailed

19 Maine, *Ancient Law*, 201.

20 Available at https://en.wikipedia.org/wiki/Fee_tail, last consulted on 8 November 2023.

estates themselves who wished to sell or divide their land".[21] It also states that fee tail was abolished as a legal estate in England by the 1925 Law of Property Act. A dozen works of fiction have also been found that deal with this subject, most of them written and published in the 19th century, including the emblematic *Pride and Prejudice*, as well as a reference to the famous 21st-century TV series *Downton Abbey*.

A study of the English case reveals that there was an important break between what was considered emblematic of feudalism in the 18th century and what came to be considered feudal in the 20th century. We have reason to believe that if England had succeeded in regulating those hereditary practices during the 19th century, this would not have happened. The consequences of this may be more important than it would at first appear. Many misgivings regarding those family ties expressed by authors from the time of the *ancien régime* or the first half of the 19th century had a lot to do with the issue of social inequality. The survival of these 'feudal remnants' in England, the country of the industrial revolution, probably contributed to this issue ceasing to be central in debates on economic development and us needing to wait until the 21st century for Piketty's work to become aware of the central role that inheritance has played in the transmission of social inequalities in capitalist societies.

5 The United States: The Anti-Rent Movement, a Little Known War

If this chapter was focused exclusively on the United States, I would certainly not have chosen the subject of feudalism, but rather that of slavery, which seems to me more provocative and effective when it comes to highlighting the contradictions between economic progress and social progress. In the context in which we find ourselves, however, I think it is appropriate to refer to the anti-feudal movement that some US states underwent during the 19th century. We can then link this to the previously mentioned cases. Furthermore, it is a very little known social movement, and it will therefore also be interesting to examine the reasons for it being forgotten in historiographic terms. Let us start by reproducing what Wikipedia says about The Anti-Rent War:

> The Anti-Rent War (also known as the Helderberg War) was a tenants' revolt in upstate New York in the period 1839–1845. The Anti-Renters

21 Available at https://en.wikipedia.org/wiki/Fee_tail, last consulted on 8 November 2023.

> declared their independence from the manor system run by patroons, resisting tax collectors and successfully demanding land reform.[22]

In the same article, at the end of the section entitled "Results", we read: "The New York Constitution of 1846 added provisions for tenants' rights, abolishing feudal tenures and outlawing leases lasting longer than twelve years. The remaining manors dissolved quickly as the patroons sold off the lands".[23]

However, the results were not as clear as this article seems to suggest. One of its main scholars, Charles W. McCurdy, questions the importance of the cited constitutional text:

> Each of the prohibitions spoke to the future and not to the past. For the holder of a lease of two or three lives, the constitution of 1846 merely created a different transaction setting when the existing agreement expired and his family's house, barn, and other improvements reverted to the landlord. For the holder of an existing lease in fee, it changed nothing at all. The tenant and his heirs would remain in "feudal servitude interminable" unless the state government subsequently intervened or a new agreement could be worked out with the landlord.[24]

The book provides numerous pieces of evidence regarding the conflict's continuity and its interrelation with the anti-slavery movement, at least until 1865. The final paragraph is worth reproducing:

> [...] the most appropriate monuments to the Anti-Rent era are buried in county land records. Astonished home buyers sometimes learn that they are required every year to pay a nominal rent charge to some remote assignee of Stephen Van Renselaer III. Their title deeds stand as reminders of how law, politics, and ideology frustrated the achievement of a reform everyone wanted to achieve during a supposed "golden age" of American democracy. We forget them at our peril.[25]

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22 Available at https://en.wikipedia.org/wiki/Anti-Rent_War, last consulted on 14 November 2023.

23 Available at https://en.wikipedia.org/wiki/Anti-Rent_War, last consulted on 14 November 2023.

24 McCurdy, 207.

25 McCurdy, 336.

For McCurdy and other scholars of the anti-rent movement, the fact that over the years legislators of different persuasions had left the tenants' demands unprotected, encouraging them to negotiate directly with the landlords, had repercussions on the increasingly individualistic mindset of Americans. But the roots of this individualism can be seen in the movement itself. In reality, many of the leaders of the anti-rent movement were among the wealthiest taxpayers, who may not have felt too comfortable facing acts of anonymous violence perpetrated by young people with little or no land disguised as Indians, who claimed their right to obtain resources from communal lands, which the former were not willing to recognise.

In fact, the anti-rent struggle was not unique to the State of New York. But I am not in a position to pronounce further in this regard, so I will limit myself to pointing out the interest with which Singer has followed a similar movement in New Jersey. Led by Brendan McConville, it had a very different outcome than that of New York. This reference to Singer will allow me to finish this section by linking these historical events with some of the reflections I made at the beginning of this chapter. Singer celebrates the successful struggle of the New Jersey settlers against their feudal lords, who were explicitly referred to as 'proprietors' there, and converts it into a fundamental piece of United States history. We can see this when he cites as a result of that victory a 1971 New Jersey court ruling that a doctor and a lawyer not be denied entry to attend to an immigrant. In a way, as we have said, for Singer the end of feudalism meant the triumph of democracy and the end of absolute property. Thus, although starting from similar historical processes with different outcomes, both McCurdy and Singer warn us of the need to study these cases in order to better understand the present. And this is, I think, the main lesson that we must assimilate from the three reflections that I have shared relating to France, England and the United States.

6 Application to Latin America

To what extent can this be applied to Latin American countries? It is not necessary to change history to argue that it is indeed applicable. Although historiography and historical research has had a decisive weight in the three problems I have addressed, resolving them has required that many elements be rescued from historiographical oblivion.

Let us turn to a practical example to see this. The vision of perfect property has prevailed as the ideal of all liberals in Spanish historiography and in most Latin American countries. And jurists seem to be one of the main transmit-

ters of this vision, both in Spain and in Latin America. But was it really so? We can trace the work of the jurist Joaquín Escriche, considered a progressive liberal, since he was in exile for several years following the Liberal Triennium. In the *Diccionario Razonado de Legislación y Jurisprudencia*, published in Spain, under the word *propiedad* we find: "Property is divided into perfect and imperfect"; and under the word dominion: "Dominion is divided into full and less full, that is, perfect and imperfect. Less full domain is subdivided into direct and useful".[26] In the *Manual del abogado americano*, Escriche recognises the same division of property.

> Domain or property is: the right or power to exclude others from the use of something, according to one's discretion, if not prevented by law, the will of the testator, or any convention. The domain whose effects are divided between two owners is called less full and is divided into direct and useful. Direct is the power either to concur with the disposition of something, or to demand something in recognition of domain; and useful that of perceiving the entire usefulness of the thing. There are innumerable kinds, depending on the convention of the parties.[27]

On the other hand, in the same manual, which addresses an American audience, Escriche does not grant any space to indigenous communal ownership. When he points out that men are subdivided into free men and servants or slaves, he defines the latter category as follows: "Servants are those who are subject to the power of another against nature, so that what they acquire is for their master, and he can do of them what he will, except kill them".[28] He does not seem to feel any need to qualify this definition, as he does when defining nobility. Here Escriche writes one of few footnotes in the *Manual*, to warn

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26 Escriche, *Diccionario Razonado de Legislación y Jurisprudencia*.

27 Escriche, *Manual del abogado americano*, 45: "Dominio o propiedad es: el derecho o facultad de excluir a los otros del uso de alguna cosa, según su arbitrio, si no lo impide la ley, la voluntad del testador, o alguna convención. El dominio cuyos efectos están repartidos entre dos dueños se llama menos pleno y se divide en directo y útil. Directo es la facultad o de concurrir a la disposición de alguna cosa, o de exigir algo en reconocimiento del dominio; y útil la de percibir toda la utilidad de la cosa. Sus especies pueden ser innumerables según la convención de las partes".

28 Escriche, *Manual del abogado americano*, 13: "Según el estado civil, son los hombres libres o siervos; nobles o plebeyos; eclesiásticos o legos; vecinos o transeuentes; naturales o extranjeros. Siervos son los que están sujetos al poder de otro contra la naturaleza, de modo que cuanto adquieren es para su señor, y este puede hacer de ellos lo que le acomode, menos matarlos".

that in the free states "all of the privileges and prerogatives of the nobles have ceased" because "all citizens are equal before the law". He claims to have left the description of the word so that people remember "such hateful distinctions".[29]

The only other explanatory note refers to entails, where after indicating the damage this institution caused to the members of affected families, he notes the social problem they represent:

> They are ultimately detrimental to society, because by stagnating land properties in a few hands, there are fewer who enjoy them, the improvements that lands usually receive when passing from one hand to another are lost, national wealth is diminished, and the population is reduced. That is why these antisocial establishments have already been abolished in the states governed by good laws, and it would be very advantageous if no trace of them remained anywhere.[30]

Reading this *Manual*, which was of undoubted influence in Latin America, may serve to recreate the prevailing mindset in these countries, but also, as we have just seen, to illustrate many misunderstandings and paradoxes that affect our work as historians. How can we overcome them? The emergence of so-called global history can contribute to doing so, but only if studies carried out on non-European societies are taken into consideration and the concepts on which Western historiography has been built are reviewed. We are not alone, but we are in the minority. And "the voices on the other side are often so dominant, so sure of themselves, that we can perhaps be forgiven for raising ours".[31] These are the final words of Goody's introduction to his book on the theft of history. There he cites Maine, who, as we have seen, in the 1860s regarded England as the European country in which feudalism was most deeply rooted and therefore least weakened. All historiographical schools—including neo-institutionalists and social historians—have tended to convey the opposite idea: that a modern system of property developed in England, and not, for example, in Spain, a country where feudal elements are thought to have survived.

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29 Escriche, *Manual del abogado americano*, 14.

30 Escriche, *Manual del abogado americano*, 104: "Son en fin perjudiciales á la sociedad, porque estancándose en pocas manos las propiedades territoriales, son menos los que gozan, se pierden las mejoras que suelen recibir las tierras al pasar de unas manos á otras, se disminuye la riqueza nacional, y se va reduciendo la población. Por eso se han abolido ya estos establecimientos antisociales en los Estados gobernados por buenas leyes, y sería muy ventajoso que en ninguna parte quedase vestigio de ellos".

31 Goody, *The Theft of History*, 9.

We are not in a position to blame Spanish and Latin American intellectuals of good faith for adopting the vocabulary that appeared before their ears and eyes as the one that could lead them to progress. It was very difficult to escape this in their times. But today, in the 21st century, we cannot continue to accept this vocabulary as neutral. Goody uses a similar argument when calling for a rereading of Maine:

> Earlier scholars had a paucity of documentation and fanciful notions about the past. Later writers have access to a wealth of studies of recent societies with vaguely similar political economies which demonstrate the validity of Maine's notion of a hierarchy of rights in land, some located in the individual, others in particular groups.[32]

Although Goody cites few works by recent historians, he knows that the historical account cannot remain the same in the 21st century. And he poses a question when he reaches the conclusion that certain supposedly universal terms must be abandoned:

> To affect a valid comparison would involve using not predetermined categories of the kind antiquity, feudalism, capitalism, but abandoning these concepts to construct a sociological grid laying out the possible variations of what is being compared. That is notably lacking from most historical discourse in the West. Instead, historians have simply claimed desirable and "progressive" features for themselves. They have stolen history by imposing their categories and sequences on the rest of the world.[33]

In one way, these may seem like unkind words to a historian's ears. But they can also be stimulating. And there are already a few of us—although we are still, certainly, a minority—who not only do not accept the aforementioned terminological straitjacket, but also fight to remove it as the only way to better understand historical reality. This Chapter is addressed to those who think this is a worthwhile task. Good luck in this exciting adventure!

32 Goody, *The Theft of History*, 59.
33 Goody, *The Theft of History*, 304.

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