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From Historical Chains to Derivative Futures: Title Registries as Time Machines

For centuries, transferring ownership of land under common law was a slow, complex process requiring the construction of a chain of paper deeds evidencing multiple decades of prior possession. In 1858, colonist Robert Torrens developed a new system for the transfer of land in South Australia, where the land was understood by colonial powers as ‘new’ and without history. With the intention of making land a liquid asset, Torrens’ system of title registration shifted the legal basis of title from a history of prior possession to a singular act of registration. Analysing the structure and effects of title registration, engaging with interdisciplinary work on time, and taking H.G Wells’ iconic time travel novella as a point of departure, I argue that title registries can usefully be understood as time machines. Like the machine H.G Wells imagined, title registries use fiction to facilitate fantastical journeys in which the subject is radically temporally dislocated from the material constraints of history. As with time machines, it tends to be a transcendental white male subject who is most likely to survive this dislocation. While based on fiction, the impacts of title registries are very much real, facilitating humanity’s arrival at racist, dystopic landscapes in the here and now.

Keywords: time, title registration, land, property, colonialism

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The Time Traveller (for so it will be convenient to speak of him) was expounding a recondite matter to us. His grey eyes shone and twinkled, and his usually pale face was flushed and animated.

So opens HG Wells’ iconic novella, ‘The Time Machine’ (1895/2017: 3). First published in 1895, Wells’ book is generally credited with being the first to make popular the concept of a machine which could be operated to transport its driver backward or, of greater interest to Wells and his readers, forward in time. In Wells’ story, a middle class white man builds the physics-defying vehicle as an experiment in his London home. He operates it to take him, almost instantaneously, many centuries into the future. The time traveller survives this fantastic journey a little shaken but with his mind and body fully intact, ready to explore and become involved with this future world, knowing he can use his machine to return to the present if and when he chooses. In the dystopic landscape in which he arrives, humanity appears to have divided into two species, one of which feeds off the other. He finds both life-threatening danger and wasteful frivolity at every turn, but manages to nimbly escape and return to the present to tell the tale. Despite his friends’ objections, the story finishes with the traveller bravely continuing his temporal explorations.

Wells conceived of his Time Machine during an era of British industrial capitalism when scientific discoveries and colonial voyages were inspiring white men in the sciences and the humanities to think boldly about how they might reformulate and even overcome what had previously been understood as the natural constraints of space and time. A few decades earlier a British colonist named Robert Torrens innovated the revolutionary legal technology

of land title registration. Title registration, as I will explain below, is an administrative system which legally certifies ownership and facilitates the transfer of land. It has become popular with law-makers around the world because it turns land into an almost liquid asset, a feat previously thought impossible due to land being an immovable, limited, unique and necessarily shared resource. Like Wells' time machine, this apparent defeat of the laws of nature was only possible through the use of fiction.

In this article I argue that Torrens' title registration shares with Wells' time machine a basis in fiction, a reliance on radical temporal dislocation, and the facilitation of humanity's arrival in dystopic and racist landscapes. Title registries operate on the basis of fictional accounts of land which portray it as a market commodity with a short and entirely contained history. I seek to show that like Wells' time machine, Torrens' title registry allows its users and the land attached to them through property to be temporally extricated from the material constraints of history and relocated into the future. This radical temporal dislocation can reap great benefits for registry users, but those who cannot access the registry are left behind in a temporal era deemed to have ended, their current relationships with land rendered temporary. As such, title registries tend to produce racial-temporal categories of white subjects whose entitlement to land is transcendental, and non-white subjects whose entitlement to land is either confined to the past or to a future that never comes. Unlike Wells' time machine, title registries and their temporal effects are real.

Torrens' title registry was just the prototype: the American mortgage registry which was innovated during the mid-1990s securitisation boom, has pioneered even greater possibilities for title travel. Our arrival at some of today's dystopic landscapes of global capitalism - sprawling shopping centres atop sacred Aboriginal land; houses emptied of their residents and boarded up while newly homeless people search for a place to sleep - has been facilitated by title registries. While not quite the cannibalistic world of Eloi and Morlocks in which Wells' time traveller arrived, the dystopic landscapes which title registries have helped us arrive at today are, I argue, no less terrifying. To create better futures, we need to understand how title registries work, what they can do and perhaps how to re-engineer them from and for a different imaginary.

Common law conveyancing: Retrospection and linear time

Before title registration, the process for transferring title to land in common law jurisdictions was a convoluted and time-consuming exercise in retrospection. Conveyancing relied on the premise that all title had a historical 'base point': a past event at which possession of the land was legitimately acquired, and from which all present day title derived (Keenan 2016: 90). Indeed, the basis of common law title was and - for unregistered land, still is - the raw fact of physical possession. Possession-based title is relative rather than absolute. Based on the feudal tenure system, all land is subject to the radical title of the Crown, and when disputes arise, common law courts do not declare any party 'the owner', but rather make a determination as to which of the parties has the better title at that point in time (Gray and Gray 2009: 56). Even a lord with his paperwork in perfect order could effectively lose his title if he allows his land to be possessed by a squatter for 12 years or more. This possibility exists for unregistered land because paper deeds do not themselves legally constitute the title, they are merely evidence to support a claim to title based on possession.

Possession-based title being relative, and the historical 'base point' being impossible to prove in most cases, prospective purchasers would need to take great care that the title they were buying could not be trumped by someone with a better claim to the land. This need for care

generally meant prospective purchasers would hire solicitors to construct a chain of title deeds that stretched from the seller back in time as far as possible. Until 1875, the legal standard for the length of such chains was 60 years (an arbitrary time period perhaps chosen because it was roughly commensurate with upper class life expectancies at the time, thus reducing the likelihood of a prior adverse claim) (Offer 1981: 23). Constructing the chains was a difficult and time-consuming task, the deeds being described by Lord Chancellor Westbury as ‘difficult to read, impossible to understand and disgusting to touch’ (cited in Offer 1981: 23).

As Alain Pottage writes, these documents ‘stored up the past and projected it into the future’, with the purpose of keeping land in the family (1998: 135). Conveying land via title deeds involved legal practices of retrospection which strongly linked the past, present and future of land into a seemingly irreversible, logical and natural progression. This seemingly progressive sequence of ownership produced what Carol Greenhouse and others would identify as a linear temporality for land (Greenhouse 1996: 20). Until the late 19th century, English land tended to be overwhelmingly owned by a small class of aristocratic families who had held onto the land for many generations, and the linear time of common law conveyancing helped to naturalise their multi-generational possession of land (Keenan 2016: 91). Greenhouse argues that time arises from the temporal assumptions embedded in specific state practices, including bureaucratic administration and a variety of legislative and judicial power (1996: 74). Time arises from such practices because, according to Greenhouse’s seminal theorisation, time ‘articulates people’s understandings of agency: literally, what makes things happen and what makes acts relevant in relation to social experience’ (1996: 1). Building on Greenhouse’s theorisation, Michelle Bastian suggests that time be understood as ‘a powerful social tool for producing, managing, and/or undermining various understandings of who or what is in relation with other things or beings’ (2012: 25). Following these understandings, time must be understood not as an objective, universal and quantitative measurement of progress or existence, but rather as a culturally specific understanding of how events relate to each other. The linear temporality which arose through common law conveyancing functioned as a social tool which supported an understanding of aristocratic families as being in a natural relationship with the land they would inherit title to.

Law, and in this instance the common law of conveyancing, thus produces time, rather than existing within it (Grabham 2016: 12). Emily Grabham argues that legal temporalities ‘have specific effects in dissolving distinctions between law and nature, and in strengthening ontological ties between law and reality’ (2016: 47). That is, the time produced by law has a particularly strong naturalising effect: legal events and the worlds they create and maintain come to be understood as natural and real rather than legally constructed. This naturalising effect is a result of both legal form itself and the techniques adopted by lawyers in daily practice. The key temporal assumption of common law conveyancing through deeds was that present title was founded upon the past (Pottage 1998: 139). The linear temporality which materialised through this assumption and solicitors’ practices based on it strengthened the ontological tie between legal title and practical entitlement to land. Despite the extensive efforts required of lawyers in producing strict settlements to keep land in the family over generations (see Murphy, Roberts and Flessas 2004); despite the machinations required of aristocratic parents in ensuring their children entered marriages for the same purpose (see any Jane Austen novel); and despite the social, political and legal repression required to prevent landless workers from seizing control (see Thompson 1975), the passing of land by inheritance came to seem natural. English society functioned on the basis that the aristocracy belonged in their mansions with their children for the indefinite future, while workers

belonged in tenant farmhouses, village cottages or servants quarters, for now. The linear temporality produced by common law conveyancing helped to make a social and physical world ordered by class and inheritance.

There is much to be critiqued about the common law system of deeds-based conveyancing, and the class system that it helped to naturalise and maintain. For the purposes of this article, I want to emphasise that title was legally constituted through actual physical possession of land, that title was relative rather than absolute, and that this system had the effect of keeping legal title and physical possession in sync with each other. Title being possession-based and relative meant that lawyers charged with conveying it needed to engage in retrospection - constructing historical chains of deeds to attest to prior possession - and that families in possession of land tended to retain it for multiple generations. The aristocracy's relationship of permanent control over land was supported and naturalised by the linear temporality of common law conveyancing.

Industrial Revolution: Rejecting Retrospection, Balancing Books

This 'old world' of deeds-based conveyancing and multi-generational inherited title to land persisted in England for centuries (and continues to some extent today¹). A push for reform came during the Industrial Revolution, when trading systems generally were becoming faster and more efficient, and when there was a growing number of prospective land purchasers from outside the aristocracy who felt frustrated by the cumbersome system of deeds-based retrospection. This was a period of significant change in terms of manufacturing processes, social organisation and urban development, and also in terms of systems of record keeping and knowledge production. Double-entry bookkeeping, which records only the quantitative rather than the qualitative details of commercial transactions (Poovey 1998: 54), was increasingly embraced by British companies and government departments during this period because of its efficiency in organising large numbers of transactions and producing usable financial data (Edwards et al 2002: 646). As Mary Poovey has shown, this method of bookkeeping represents commercial transactions as zero-sum, neat and tidy affairs, divorced from the historical and social contexts in which they take place (Poovey 1998: 58-62). So long as the books are balanced, all is well and business can safely continue.

This a-contextual representation of commercial transactions is fictitious: all transactions, whether commercial or non-commercial, occur within historically produced socio-economic systems and norms, and have a range of predictable and unpredictable effects which cannot be captured in the rigid and primarily numerical terms of double-entry bookkeeping (Poovey 1998: 55-56). Traders treat the records produced by double-entry bookkeeping as authoritative because doing so makes their trade easier: if treated as authoritative, traders can rely on those records to determine future deals. Double-entry bookkeeping thus creates what it purports to describe. The fiction that the value of any business is wholly and accurately represented by its books is treated as factual, and thereby becomes factual. As Poovey and others have noted, self-actualising fictions are essential to the operation of credit and security instruments which became increasingly widespread in 18th and 19th century Britain, and to the finance economy: although they represent future value, cheques and share certificates must have immediate value in the present, and stock exchange records have to be treated as facts, in order for these markets to operate (Poovey 2008; Durand 2017). As Annelise Riles writes, actors involved in financial markets make those markets work by acting *as if* the holder of credit and security instruments already have clear and complete rights to the collateral behind them (2011: 169). That is, they act as if the future has already arrived.

In 1829, the central British government began adopting double-entry bookkeeping, in what was seen as an important efficiency-enhancing administrative reform (Edwards et al 2002). The following year, inspired by such administrative reform and by the centralised systems used to buy and sell financial assets, the first of several government proposals to replace deeds-based conveyancing with a title registry was put forward (Simpson 1976: 40-42). Such a registry would be constantly updated so that prospective land purchasers would not need to engage in the inefficient process of retrospectation. Consistent with the principles of double-entry bookkeeping, the record of title on the registry would be treated as authoritative: ‘the entries in the register must constitute *the title*, the entire and *only title*’ (Hogg 1830 in Simpson 1976: 40, emphasis original). Such a registry would necessitate a move away from the relativity of possession-based common law title, and toward a more absolute and market-friendly registration-based title.

These proposals were met with significant resistance. While British aristocrats embraced newly centralised and efficient systems for trading stock, bonds and commodities, they were strongly opposed to any such system for the transfer of title to English land. They feared that a title registration system would make land transfers too easy, turning land into a commodity that *anyone* with the appropriate funds could purchase (Anderson 1998: 109). Land was seen as ‘the badge of full citizenship’ and indeed was still linked to voting rights (ibid). To legally administer the transfer of title in a way that resembled balancing the books of ordinary finance was antithetical to the unique reverence accorded to land at the time. Registration was seen by aristocrats as a radical idea, opening up land to purchase by the masses and thus dismantling aristocratic identity (Offer 1981: 33). The slow and linear temporality of the old system of conveying title using paper deeds suited them, and they were loathe to see it disrupted.

‘New World’, New Title: Land in British Colonies

Meanwhile however, land in the British colonies and in Australia specifically was seen by those same aristocrats as ‘new’ and free of any ownership or history. (Of course, when the British arrived on the landmass now known as Australia, Aboriginal people had been living there for at least 40,000 years, but prevailing white supremacist policies of the time deemed them too backward and barbarous to be recognised as fully human, let alone have rights to land.ⁱⁱ) It was seen as a good ‘testing ground’ for the ‘adventurous’ idea of conveying land via a title registration system (Rogers 2006: 127). In 1858 English colonist Robert Torrens developed a system for registering land in South Australia that was modelled on the system used to certify and transfer ownership of British ships (Patton 1951; Bhandar 2015; Mawani 2016). Having clear commonalities with double-entry bookkeeping and sharing its purpose of commercial certainty through a-contextual procedural clarity, that system involved a national registry, with each ship having its own page listing its name, description, owner and any charges against or other financial interests in the ship. A duplicate of that page would be given to the owner and would serve as comprehensive proof as to the condition of the ship’s title.

As with double-entry bookkeeping, the ships registry system emphasised the formal precision demanded of its own procedures, and treated the records thereby produced as factual and conclusive. The Torrens system applied this model to land. Each parcel of land was listed in the registry, given a unique number, a description, preferably though not necessarily a map, and a record of any mortgages or other interests affecting the title (Pike 1960). The owner was given a certified copy of the registry entry, which would eliminate the need for chains of deeds to prove ownership. Importantly, the legal basis of title to land was changed from

possession to registration. Registered titles were independent of their predecessors because they drew their legal legitimacy, and thus their marketability, from the singular act of registration (Keenan 2016: 93).

But the history of land is far longer, more multifaceted and complex than that of ships. And unlike ships, land is generally immovable, indestructible, unique and limited, which are the reasons commonly given at the start of Land Law textbooks for why land cannot be dealt with like any other form of property.ⁱⁱⁱ In order to operate effectively, the Torrens system of title registration had to put forward a set of fictional claims about land, and make those fictions self-actualising. It did this through its three defining principles, commonly referred to as the mirror, the curtain, and insurance/indemnity (Taylor 2008: 12).

The 'mirror' principle dictates that a publicly available register will accurately reflect the title and any interests affecting it. The entitlements to land that appear on the register are deemed to reflect the entitlements to land which exist in reality. The representation of title made by the registry mirror is fictional on a number of levels. Firstly, like all mirrors, the registry 'mirror' will only reflect what is held up to it, and can be manipulated so as to create distorted representations of reality. Interests in land that exist in reality but, for whatever reason, are not brought to the registry and so do not appear in the 'mirror' will be deemed not to exist at all. Secondly, in an ordinary mirror the reality comes first and the reflection second, whereas the registry mirror reverses this order. Whereas under the common law system, possession was the basis of title and so title necessarily came after possession, under Torrens' system, title is brought into legal existence by the registry. It appears first in the Torrens mirror, and then in reality. And whereas possession-based title meant it was possible for a title-holder to be separated from the land to which he was entitled (if a squatter took possession for an extended period), under Torrens' system, the title-holder – referred to as the 'registered proprietor' - is conceptually inseparable from the land. If the registered proprietor to a particular piece of land is to change, an entirely new registry entry must be created. The second Torrens principle draws a metaphorical curtain across all prior and existing interests in the land that exist in reality but are not registered. Any interest hidden behind the curtain will not take effect in property law and can be ignored by prospective buyers, meaning they are legally disappeared. Such interests are likely to include complicated and/or contested relationships with land that are difficult to quantify in legal terms.

Much like magician's smoke and mirrors, or stage-designers' curtains and mirrors, the registry's 'mirror' and 'curtain' block particular realities from view and conjure up fictional representations of land (Keenan 2016). Unlike magicians' and set-designers' illusions though, the title conjured up by the registry has the force of law. The third and final Torrens principle, that of insurance, means that the state guarantees the accuracy of the register. Working together, the registry's mirror, curtain and insurance principles conjure up fictional representations of land, and then make them real. As famously described by Australian High Court Chief Justice Barwick, Torrens is 'not a system of registration of title but a system of title by registration':^{iv} that is, registration in this system is not the recording of pre-existing title, it is the manufacturing of title – new, indefeasible title. It is also, in Nicole Graham's terms, a system that 'dephysicalises' property in land, treating it as an abstract right rather than a material relationship between place and people (2011). Dephysicalisation removes the messy uncertainties and contestations of actual physical relationships between place and people, and makes property in land an easier object to trade and financially invest in. The certainty that Torrens' system provided titles and the speed with which it enabled titles to be transferred, made land a more liquid asset than ever before. Banks and trust companies were

willing to treat a Torrens certificate of title ‘like they would a government bond and lend money on it freely without further examination’ (Patton 1951: 223).

The certainty which the Torrens system provided to lenders and speculators was particularly important to the South Australian context in which it was innovated because unlike other Australian colonies which were established as penal settlements, South Australia was built on the principle of land purchase (Croucher 2009: 303). South Australian land was sold to British buyers in advance of their moving to the colony, and many had no intention of ever moving there, investing in the land as a purely financial venture (Pike 1960: 172). By 1875 Torrens title registration had been adopted by all Australian states, New Zealand and the western provinces of Canada, and soon after in Hawaii, the Philippines, British Malaya and some Latin-American jurisdictions (Patton 1951). Described by some as ‘the jewel in the Crown of colonial land management’ (Home 2013: 17), the Torrens system or versions of it are today used throughout most of the Commonwealth, and are increasingly being adopted in other parts of the world – sometimes at the behest of the World Bank and/or the IMF (Deininger 2003). Title registration has been introduced more gradually in England and Wales: the Land Registration Act 2002 changed the basis of title from possession to registration, making this key change for English and Welsh land a century and a half after it was made for Australian land.

Celebratory legal commentators continue to describe title registration with a level of awe, some ascribing to it a magical quality: the moment of registration starting time anew for land, thus freeing it from the chains of history and insuring it against the uncertainties of the future (Taylor 2008: 10; Ruoff 1958 cited in Lim and Green 1995; Rogers 2006: 128). To paraphrase Mary Poovey and apply her observations about double-entry bookkeeping to the Torrens system, ‘in the world idealised in Torrens’ title registration, there are no dangers (such as squatters, indigenous people, travellers or climate change): all the neighbours are happy, all the boundaries are fixed; the violence of the enclosures and colonisation are long past, and the future has already arrived. Like uncertainty, history and human struggle have disappeared from view, and the only threat worth noting is the one an error poses’ (Poovey 1998: 62).^v But this idealised world created through the magic of the registry is divorced from land’s pre-existing and persistent reality: it is a fictional world that becomes self-actualising through the authority accorded it. Indeed, Torrens title registry is only able to create new worlds through a manipulation of time and space akin to that performed by Wells’ time machine.

Radical Temporal Dislocation: Time travel as the consequence of making land liquid

In *The Time Machine*, the time traveller arrives in a new world despite having remained in the same physical location. Wells’ time traveller describes his feelings of fear and exhilaration as, from his seated position in the machine, he watches the world that he knew rapidly blur away and transform into an entirely new land.

I was still on the hill-side upon which this house now stands, and the shoulder rose above me grey and dim. I saw trees growing and changing like puffs of vapour, now brown, now green; they grew, spread, shivered, and passed away. I saw huge buildings rise up faint and fair, and pass like dreams. The whole surface of the earth seemed changed—melting and flowing under my eyes. The little hands upon the dials that registered my speed raced round faster and faster.

(Wells 1895/2017: 24)

The machine allows time travellers to be radically temporally dislocated: extricated from the material constraints of history and relocated into the future. In Wells' story, this temporal relocation is physical: it does not just happen in the time traveller's imagination, he truly arrives in a new world without moving an inch. While the space around him has transformed into something entirely different, the time traveller himself has remained fully intact. Protected by his machine, he is detached from the restrictive materiality of history; he is out of sync with the world beyond his machine, enduring while the world beyond grows, dies, melts and flows away. His body and mind arrive in the future uninjured. Although a work of fiction, Wells' fantasy has some scientific basis. According to Einstein's theory of relativity (and consistent with the philosophical work on time discussed above), time is not universal but relative, and time passes slower the more you move.^{vi} If a vehicle could move faster than the speed of light then its passenger could become temporally disconnected from the world around him. As explained by Professor of Physics Dr Andrew Steane, 'Imagine you're travelling very fast away from Earth and you stay in orbit for a year. You would age by a year, like on Earth, but when you returned, the Earth may have aged hundreds of years.'^{vii} The time traveller's radical dislocation from the Earth's temporality allows him to arrive, uninjured, in its future. So time travel into the future is theoretically possible, the fiction is that a machine exists which can reach the unearthly speed required to facilitate it.

Radical temporal dislocation is also key to the operation of Torrens title registries, which are real, but rely on the fiction that land has no history other than what is represented on the registry entry. Title registries enable their users to take radical temporal journeys, during which they travel at their own unearthly pace, and then safely arrive in new worlds. As outlined above, the mirror, curtain and insurance principles work together to manufacture titles which are conceptually 'new', disconnected from history and thus out of sync with the land to which they relate. The linear time produced by common law conveyancing no longer applies to land once it has been registered. Registration is, as legal commentators Gray and Gray describe it, 'the terminal event in the lifetime' of unregistered land (2009: 195). Once title is registered, it takes on a new temporality, one that is determined only in relation to the registry and its users rather than any reality external to them.

The registry operates like Wells' time machine by shielding its users and the space immediately around them from the effects of external events. The title registry produces a temporality which is uniquely oriented around and protective of its users. It enables registered proprietors and their land to move into the future at such a pace that they experience time differently from the unregistered world around them. The curtain protects registered proprietors from the past, orienting them toward their own indefeasible futures. The mirror produces a fictional reflection of the registered proprietor and his/her land, a fiction which is then actualized, despite any real but unregistered counterclaim to the land. This outcome is literally guaranteed by the insurance principle. From the perspective of the registered proprietor, the world external to the registry can blur away into insignificance. As the duration and content of title is determined solely by reference to the registry rather than to any unregistered event, the registered proprietor can safely fall out of sync with the external world, surviving while it grows, dies, melts and flows away.

Consistent with Grabham's argument that legal temporalities dissolve distinctions between law and nature, the temporality of the registry fosters the building of actual worlds. Title registry temporality materialises not only through the operation of the curtain, mirror and insurance principles, but also through the objects and structures which the registered proprietor builds upon and/or into the land, and the practices accommodated by those objects

and structures. These practices include local, physical use of the registered land (for housing, farming, building etc), as well as speculative financial practices, which may translate at the local physical level into leaving the land unused. Distinct from the worlds maintained by common law conveyancing, the worlds facilitated by the registry are not anchored in any way to the history or current (but unregistered) use of the land. As such, these worlds and the registered proprietors they are built around can be radically dislocated from anything external to them.

Because title registration systems are orientated toward the future and away from the past, commentators have described them as favouring ‘dynamic’ over ‘static’ security (O’Connor 2005, 2009). In economic terms, static security allows property to be securely held – thus favouring those who already have it – while dynamic security allows property to pass securely to new owners, thus favouring those who make later purchases. In reality, land and physical human relationships with it tend not to be dynamic: whether societies are primarily nomadic or settled, connections with land are generally built up over time. Sudden changes in land or in human relationships with it tend to either be the cause or result of a destructive event. Title registries however do not convey title in accordance with changes in human relationships with land, but only in accordance with its own formal procedures and records. Sudden changes in title are not only made possible by title registries, but are also made more likely to occur as title is treated as a legal object separate from the land to which it relates. The overarching time produced by title registries is constituted by a series of dynamic, staccato-like temporalities that are detached from the past, oriented toward a contained and memory-free future and out of sync with the historically produced temporality of land and human relationships with it. This time of registered title is comfortably inhabited by registered proprietors and their land. Like Wells’ time machine, the contained and detached temporality of the title registry enables its users to materialise and arrive in worlds they had only previously imagined.

Owning the Future: Who can use the title registry/time machine?

Not everyone can ride the time machine, surviving the radical temporal dislocation its journeys require. In *The Time Machine* and stories that have followed it such as *Back to the Future*, the time traveller is a white man. For a subject to confidently navigate the uncertainties of history and of futures yet unseen, he must be transcendental. When, in Octavia Butler’s science fiction novel *Kindred* (1979), the black female protagonist Dana is involuntarily transported into the antebellum past, she loses an arm in her desperate attempt to return to the present.

Similarly, not everyone can use the title registry. First there is the issue of access. Not everyone with an interest in land will have the knowledge, confidence and resources to approach the registry. Then there is the issue of fit. Even for those who do approach the registry, not everyone’s interests in land can be processed through the registry’s mirror, curtain and insurance principles. In the Australian and other settler colonial contexts, some relations with land - most notably, those which are pre-colonial and thus belong to indigenous people - are not registrable. Indeed, early colonial land grants were given out with the purpose of increasing the white population and bolstering the settler project of taking over indigenous land (Christensen, O’Connor, Duncan, and Ashcroft 2008). Even if an indigenous person tried to register their relationship of belonging with land, the Torrens mirror is not capable of reflecting it because those relationships are grounded in indigenous sovereignty which the Torrens system is not programmed to recognise^{viii} (a point which applies in other

settler states, see Pasternak 2014; Bankes, Mascher and Hamilton 2014). These relations with land do not appear in the mirror, despite their existence in reality.

In addition to the issues of accessing and fitting into the registry, not everyone can inhabit the worlds built through it. Because titles manufactured by the registry are indefeasible, so too are registered proprietors. In colonial contexts, the absolute entitlement title registries give to registered proprietors assists them to inhabit the colonial time of settlement. To inhabit this time carries racial significance. As Renisa Mawani argues, as a colonial formation, the settler is ontologically white, being constructed through the conquest of land and assertions of permanency, priorness and superiority over ‘immigrants’, who are racialised differently and constructed as having a less permanent claim to the land (2014: 81). The white settler subject who inhabits the time of registered title – looking confidently into the future, shaping it as he sees fit and blocking out aspects of history which might jeopardise his entitlement – is transcendental. He owns the future. Such transcendental subjects are best equipped to become registered proprietors as they are also best equipped to become time travellers: to survive radical temporal dislocation requires a seemingly unbreakable subject. The white settler subject has his transcendentalism reaffirmed by surviving dislocation. Writing in the context of white male entitlement to land and to the bodies of Aboriginal women in Canada, Sherene Razack argues that ‘moving from respectable space to degenerate space and back again is an adventure that confirms that they are indeed white men in control who can survive a dangerous encounter with the racial Other and who have an unquestioned right to go anywhere and do anything’ (Razack 2002: 127).

Aileen Moreton-Robinson also points out the whiteness of the ‘settler’ category, whose entitlement to remain on Australian land is based on its original 18th century theft by the British, and its fictional characterisation as *terra nullius* (2003: 27-29). Consistent with Mawani’s analysis of the temporalisation of racial categories in settler colonial contexts, Moreton-Robinson compares the permanently entitled white settler to the differently racialised ‘migrant’ category, who must seek permission from settlers to arrive and stay on the land (2003: 27-29). If permission is granted and those in the ‘migrant’ category go on to buy land, becoming registered proprietors will help them to inhabit the colonial time of settlement, because they become invested in land on the terms of colonial law; they will coordinate with other registered proprietors and be oriented toward the land’s colonised future (Keenan 2016: 103). By investing in the land’s colonised future through the registry, racialised migrants can move closer to the white settler category: they have literally buy into the Great White Australian Dream of homeownership, survive the temporal dislocation of registering title to stolen land, and will be afforded a level of material comfort and social acceptance for doing so.

Although the original design of the Torrens title registry was premised on their exclusion from using it,^{ix} it is today possible for indigenous subjects to become registered proprietors. The structural racism upon which settler colonies are based means that indigenous subjects are less likely than others to inherit land (it being stolen from their ancestors), or to have the capital necessary to purchase land (indigenous populations experience levels of abject poverty unthinkable to most settlers). Even in cases where indigenous subjects have the necessary capital to become registered proprietors, they may prefer to live on land held communally under native title or legislative land rights frameworks (Altman 2013). As I have argued elsewhere, indigenous subjects who do become registered proprietors do not thereby become white, but rather take action which better enables them to survive the colonial time of settlement (Keenan 2016). This time is a dystopic era for many indigenous subjects, who live

shorter lives than settlers, are disproportionately homeless, subject to violence, and killed with impunity by police (Perera and Pugliese 2011). Indeed, today's Australia is a prime example of the dystopic worlds that title registries can facilitate: the oldest continent and civilisation on Earth now run by the descendants of a far-away island, their white skin completely unsuited to the sun-drenched environment, much of the land gutted and poisoned by mining companies. Despite the apparent radical dislocation of these white-skinned rulers from their historical environment, they nonetheless survive, the title registry protecting their indefeasible futures on the land. Indigenous subjects able and willing to become registered proprietors must take a uniquely treacherous radical temporal dislocation, riding this colonial machine into a dystopic future premised on the fictional erasure of their historical relation with land. Surviving such dislocation requires what Moreton-Robinson describes as 'a doubleness whereby indigenous subjects can "perform" whiteness while being indigenous' (2003: 31).

Although title registries were first innovated for early colonial Australia, and although the settler colony provides a strong case study for highlighting title registries' temporally dislocating effects, it would be a mistake to confine this critical analysis of title registration to settler colonial contexts. This is firstly because title registration systems are being adopted in jurisdictions around the world, including many which are not settler colonies. Secondly, settler colonial contexts themselves have complex histories of slavery, indentureship and other forced migration which produce racial-temporal divisions other than indigenous/settler/immigrant (Mawani 2014; 2016). As the real estate industry becomes increasingly globalized and digitized, title registries have taken the form of databases, and subjects from a range of different starting points are taking the radical temporal journeys enabled by title registries (see Rogers 2017). Title registries are evolving in various way to make those journeys faster and more ambitious. In the next and final section, I examine a new form of title registration operating in the US, with new time travel capacities. This title registry is facilitating the production of dystopias different from the Australian ones discussed above, yet similarly racist and horrific in effect.

The Magic of MERS

By successfully facilitating a speculative market for British investors trading title to Australian land, Torrens title registration became the prototype for law and policy makers aiming to make land a liquid asset. With its facilitation of efficient land market transactions and its provision of dynamic security for buyers, Torrens title registration is future-oriented and well-suited to finance. As Leigh Claire La Berge argues, 'finance is an orientation and a contestation over futurity' in revolving around promises to pay, and/or expectations of being paid in the future (27). Since the invention of the Torrens system, housing and the land it requires have become increasingly subject to financialisation. That is, housing and land are increasingly treated principally as a commodity, a means of accumulating wealth and often as security for financial instruments that are traded and sold on global markets, rather than as a secure place to live (Farha 2017). New models of title registration have been innovated to serve the financialisation of housing and land.

In the US, there is now a registry exclusively for mortgage interests in land, designed to facilitate mortgage securitisation. A mortgage is a legal arrangement whereby a bank lends money to a borrower on the condition that the borrower's house is used as security. The securitisation of mortgages was first developed in the US in the 1970s, and grew there exponentially as a financial practice in the 1990s. As Anastasia Nesvetailova argues, securitization is a process whereby - via financial and legal instruments - contractual debt

(and in the case of mortgage securitisation, the contracted debt obligations of homebuyers) is pooled, sliced and transformed into liquid assets which can be iteratively traded on financial markets (2015). The mid-1990s growth of mortgage securitisation coincided with the inclusion in the mortgage market of racial minorities who had previously been excluded from access to mortgage loans - in particular, black Americans (Dymski 2009: 150). The structural racism against black Americans has long included their systemic exclusion from homeownership through government policy and banking practices (Hamilton and Ture 2011: 26; Rosser 2013: 137). The newly available mortgages however, were funded on the banks' side by securitisation, and offered to homebuyers on terms which were onerous or 'subprime' (terms including high rates of interest, penalty fees for late payments, and minimal protection from foreclosure). The original lender would assign its mortgage, which would then be reassigned, sliced up and repackaged for the financial markets.

The existing legal process for transferring mortgages was not designed to facilitate multiple assignments, let alone the slicing up and repacking involved in securitisation. Indeed the US conveyancing system is surprisingly inefficient. The federal US government does not operate a land title registry. Title registries exist in some states, but conveyances mainly take place via deeds, copies of which are then registered at county clerk offices, and the title is insured privately (McCormack 1992). Commentators have suggested various reasons for the US' failure to embrace the Torrens system, including the entrenched nature of the title insurance industry, and lack of public appetite for the federal government spending which initial registration would require (McCormack 1992). American mortgages are created by paper documents, which are then recorded at the county clerk office. County clerk offices charge a fee when the original mortgage is recorded, and when there is any subsequent assignment of the mortgage title.

In 1993 a group of prominent mortgage market participants including the Federal Housing Association, Bank of America, Wells Fargo, Frannie Mae and Freddie Mac determined that there should be a national mortgage registration system to facilitate the exploding number of mortgage assignments (Green and Sandifer 2013: 18). In reasoning similar to that put forward by Torrens in the 1800s, this group of American government and corporate entities found that the paper-based process for transferring mortgages was time-consuming, inefficient and expensive (Peterson 2015: 19). Their solution was to introduce the Mortgage Electronic Registration System, or MERS, which is the only form of title registration system that spans across state jurisdictions in the US. As of 2013 MERS had more than 70 million mortgages - more than 60% of all residential mortgages in the country - registered on its system (Card 2011: 1634). Sub-prime mortgages were almost inevitably registered with MERS because from the lenders' perspective, they were created in order to be securitised.

MERS' trademarked slogan is 'process loans, not paperwork'. MERS works by requiring homebuyers to name MERS as mortgagee and nominee for the actual lender on the paper deeds that create the mortgage agreement and in the county clerk office record. As explained by MERS marketing brochures, upon closing the mortgage, the borrower signs a document appointing MERS as "mortgagee as nominee" for the lender and its successors and assigns in the mortgage (MERS 2017). Legally, this means the mortgage of the house, including the right to foreclose, is assigned not to the bank which is lending the homebuyer the money (as one would expect in a mortgage agreement), but rather to MERS, a privately-run title registry. But while the originating documents state that MERS is the "nominee" for the lender, on public record MERS simply appears as the owner of the mortgage charge (hence the confusing "mortgagee as nominee"). This arrangement means that when the original

lender assigns the mortgage, and when every subsequent assignment of the mortgage takes place, it is not publicly recorded; assignments are only recorded within the MERS database. A mortgage registered with MERS can thus be sold and resold, assigned and reassigned ad infinitum without ever paying the county fee or doing the paperwork usually required for legal assignment.

MERS afforded mortgage titles an unprecedented level of liquidity. Like Torrens registries, MERS manufactured mortgages, doing away with the traditional paperwork that would establish a chain of mortgage title, and promising registry users perfect titles and commercial certainty. Like Torrens registries, MERS has been described by legal commentators as operating magically (Weber 2011: 2017). The magic of MERS is similar to the magic of Torrens in that MERS pulls a metaphorical curtain across the mortgage for the duration of its time in the world of securitization. But during that time, MERS does not so much create an illusory image of the mortgage lender and its property interest (as a Torrens mirror would) so much as it creates a replicant^x lender and interest (“mortgagee as nominee”). The MERS replicants are sent out to the world of securitization, where it produces a highly abstract, fast-moving and future-oriented temporality. In the meantime the original lender and mortgage agreement remain with the borrower, facilitating the day-to-day repayment of the loan in exchange for possession of the house and producing a slower, more localised and debt-oriented mortgage temporality. MERS thus produces a temporality with two strands: one which follows the replicant in the fast-paced and opaque world of securitization, and the other which remains synchronized with the borrower, weighing the borrower down with the past by constantly demanding the repayment of her debt.^{xi} The replicant temporality is radically dislocated from the day-to-day temporality of the borrower, but together the two temporal strands allow mortgage titles and their owners (ie banks and lenders) to embark on previously unimaginable financial journeys to the future and back again. The moment a borrower defaults and foreclosure proceedings are sought in the day-to-day temporality of the mortgage, the MERS curtain is pulled back, and the replicants brought to a stop, thus revealing from the world of securitisation which lender holds the mortgage title and thus has the right to foreclose at that moment.

MERS operates as a time machine, but a different model machine from Torrens. Another difference is that unlike Torrens registries, MERS is not a creature of statute. It has been in legal trouble since the 2007/2008 crisis which has seen over 7 million homes sold in foreclosures or distressed sales (Levitin 2013: 637). It is clear that MERS failed to follow the legal process required to assign a mortgage (Peterson 141; White 484). When MERS realized this failure might cause it problems, it engaged in the fraudulent practice of ‘robo-signing’ - hiring people to sign up to 10,000 documents a month without reviewing their contents (Woolley and Herzog 2012: 372) - in an attempt to ‘catch up’ its paperwork with the title trade that it had already facilitated on its database. That is, robo-signing was an attempt to belatedly synchronise MERS’ replicant temporality with its day-to-day temporality. But the two temporal strands were designed to be worlds apart, making synchronisation legally and physically impossible: it was only possible through the fraud and perjury involved with robo-signing (Singer 2013: 525). Yet despite the blatantly illegal practices performed by MERS, on the whole the titles it magically assigned have been respected by the courts (see Steven 2012).

MERS two-strand temporality is oriented around and protective of registered mortgages and their owners (i.e. banks, lenders and other financial investors). This duplicitous temporality facilitates the rapid trade in mortgage titles on financial markets while maintaining the day-

to-day tempo of the original mortgage agreements. Within this temporality, the mortgaged house is an abstract and temporary object, used to extract and construct financial value in the world of securitisation until it is sold. In contrast, homebuyers' relationships with these same houses tend to be one of relative permanence, used to provide a stable physical home. Reflecting on the foreclosure crisis, Darden and Wyly wrote in 2010, that 'while quicksilver capital is back up to speed, time has slowed down in the families and neighbourhoods devastated by a kind of violence' (2010: 432). This violence occurs when MERS' replicant temporality catches up with the homebuyers, rendering their relationship of permanence with their house temporary as foreclosures are instituted. This violence was racialized. As Chakravarty and Ferreira da Silva argue, the subprime crisis facilitated the exacting of profits from places and persons produced as unsuitable economic subjects (2012: 366). These subjects, mostly black and Hispanic, were not transcendental: they could not survive the radical temporal journey taken by the mortgages attached to their homes. This time machine was not built to protect them, but rather to protect those exacting profits from them and their neighbourhoods. The dystopic world into which the banks, lenders and other MERS users emerged following their fantastic financial journeys, is one in which rows of boarded up homes lie empty while newly precarious families search for emergency accommodation. Despite political, ethical and legal reasons why MERS users should not survive into the new world their journeys helped create,^{xii} most did survive the 2007-2008 crash. Their survival was assisted by MERS temporality, which was oriented around and protective of both their futures and their capacity to return to the present whenever it suits them.

The transcendental financial subject which safely inhabits MERS temporality is most likely to be white and male. Recounting his journey into the future, Wells' time traveller states 'I was, so to speak, attenuated - was slipping like a vapour through the interstices of intervening substances! But to come to a stop involved the jamming of myself, molecule by molecule, into whatever lay in my way' (Wells 1895/2017: 25). This magical resilience to one's own disassemblage and radical temporal dislocation is also what is required to be a suitable economic subject and a homeowner in a time of mortgage securitisation. Reflecting on the changing forms of property and ownership that have accompanied financialisation, Bill Maurer argued in the late 90s that to buy a financial instrument was to buy a trace of a future, and to thus invest in managing the risk and controlling the unpredictability of temporality. 'The Lockean and Hegelian subject of property,' he argues, 'takes a back seat to a system of statuses based on one's investment in that temporality, as ownership itself evaporates into risk profiles.' Arjun Appadurai similarly argues that 'the modern financial subject is a recombination of infinite divisions of risk scores, persons are divided up (across various aggregated temporal maps) and then reassembled' (2015: 65-68). Within the world of financial risk profiles, the debts of black and Hispanic homebuyers, particularly when they are women, are constructed as high risk (Lichtenstein and Weber 2015). As such, investing in these debts is either to be minimised, or engaged in only as a short-term bet. MERS speeds up the pace at which these risky debts can be passed on to the next buyer. The homebuyers who owe those debts are thus unlikely to survive their own disassemblage in anything but the short term, and are instead rendered temporary financial objects. The transcendental low risk subject who emerges, surviving his own disassemblage and radical temporal dislocation, and most likely to be steering the banks and lending institutions MERS was designed to serve, is once again white and male.

The evaporation of ownership which Maurer refers to, and with it the traditional subject of property, could be something to celebrate. The Lockean and Hegelian subject of property Maurer cites has long been critiqued for being based on racialised and gendered assumptions

about who could ever be capable of being a subject, and for thereby providing conceptual justifications for white supremacist and patriarchal property practices including colonialism, slavery and coverture (see Harris 1993; Brace 2004; Davies 2007; Coulthard 2014; Moreton-Robinson 2016). But the new forms of ownership generated by contemporary finance are derivative of property's past. Securitisation and the legal means innovated to support it are based on a familiar formula of taking human relationships with land and turning them into distinct, seemingly independent and history-free assets to be traded and insured. The dephysicalisation of property in modern Anglo-American law has become more extreme with financialisation, and the new temporalities which accommodate this dephysicalisation have racial consequences. Charles Dannruether and Oliver Kessler have recently shown how the ostensibly quantitative and objective processes involved with financial risk management, many of which have their historical roots in the transatlantic slave trade, rely on the de-socialisation, de-humanisation and de-territorialisation of reality (2017: 358). That is, financial processes rely on fiction. But the authority afforded to these fictions makes them self-actualising. Risk profiles become attached to real bodies and their homes, and the duplicitous temporality of MERS facilitates humanity's arrival at real-life racist dystopias, different from but derivative of property's white supremacist past.

Conclusion

In this article, I have set out the history of the legal innovation of title registries, and argued that this innovation can be understood as a time machine not dissimilar to what HG Wells imagined. The previous common law system of conveying land title via paper deeds was based on the temporal assumption that present title was founded on the past. Torrens' magical system obliterated this assumption and freed title from history, on the basis of a fictional representation of land produced through the curtain, mirror and insurance principles. The Torrens registry kept afloat the British speculative market for South Australian land upon which that new colony depended, and has since spread to other settler colonies and indeed much of the common law world. But the radical temporal dislocation it allows does not benefit everyone. While those able to become registered proprietors can build a future on their notionally new land, those whose historical relationships with land are blocked out by the curtain are caught in an era deemed to have ended, and their present lives on the land rendered temporary. Though based on fiction, the racial-temporal divisions and dystopic landscapes facilitated by Torrens title registries are very much real.

MERS takes the magic of Torrens title registries even further, producing a duplicitous temporality that allows mortgage titles to take previously unimaginable financial journeys into the future and back. But not everyone can keep up with the fast-paced world of securitisation MERS was designed for. While the transcendental white subject and his bank speculates on his future with land, racialised homebuyers are left behind in a precarious and temporary present.

Title registries are time machines because they operate on the principle of radical temporal dislocation, using fiction to manipulate time and space in a way that allows their users to enjoy risky but rewarding experiences. Indeed both the time machine and the title registry facilitate their users' arrival in new worlds. Like HG Wells' time machine, the Torrens registry came out of a white male colonial imaginary, taking further the time-saving technology that was being innovated in other sectors during that industrial era. MERS came over a century later, out of a financial imaginary that is also overwhelmingly white and male, taking further the time-saving technology that is being innovated in this digital era. As title registry technology continues to improve for the benefit of its users, we must be aware of the

effect it is having on the pre-existing world. That world was and is of course highly imperfect, and there is nothing inherently oppressive about systems that break free of certain historical patterns of who is entitled to land. However the way these registries have been engineered and operated produces futures that are derivative of property's racist and destructive past.

There is currently a surging interest in Afrofuturism, that is, speculative fiction and art inclusive of people of colour: concepts and visions that imagine new possibilities for what the future can hold for those currently relegated to racial-temporal divisions that deem them temporary and/or historical (see Womack 2013; Afrofuturist Affair 2014). Time travellers need not be white men tinkering with physics in their spare rooms; they can also be black American women, or Aboriginal boys and girls, reinventing technology to reclaim their futures. Taking inspiration from Afrofuturist writers and creators, and also from indigenous artists who have long produced anti-colonial imaginaries based on radically different understandings of land and of time, those of us in law and geography might endeavour to re-engineer these space-time manipulating machines in ways that reclaim black futures, rewrite the land's past and reconceptualise what material reality can be.

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ⁱ As of 2010, more than a third of land in England and Wales is still owned by the aristocracy (Country Life, 'Who Really Owns Britain?' <http://www.countrylife.co.uk/articles/who-really-owns-britain-20219> (16 November 2010)).

ⁱⁱ See *Mabo v The State of Queensland* (no 2) (1992)175 CLR 1.

ⁱⁱⁱ see for example McFarlane, Hopkins and Nield 2012: 8-12.

^{iv} *Breskvar v Wall* (1971) 126 CLR 376: 381.

^v Poovey's quote reads: 'In the world idealized in double-entry accounts, there are no dangers (such as highwaymen, pirates and bandits): all the ships return safely, all the moneys are realised; the haggling and bargaining of the marketplace are long past, and the future has already arrived. Like uncertainty, risk and human labour have disappeared from view, and the only threat worth noting is the one an error poses.'

^{vi} Oxplore, 'Can time travel ever be possible?' https://explore.org/question-detail/can-time-travel-ever-be-possible?utm_source=t.co&utm_medium=referral#998 (accessed 7 March 2018).

^{vii} Oxplore, 'Don't stop me now!' https://explore.org/question-detail/can-time-travel-ever-be-possible?utm_source=t.co&utm_medium=referral#998 (accessed 7 March 2018).

^{viii} Since the recognition of native title in Australian common law in 1992, indigenous Australians who successfully prove they have retained their native title since before British settlement can register their title on a different register. Native title is inalienable and the National Native Title Register does not operate on Torrens principles. For excellent critiques of native title in Australia see V Kerruish and J Purdy, "He "look" honest – big white thief" (1998) *Law Text Culture* 4(1): 146-171; Irene Watson, "Buried Alive" (2002) *Law and Critique* 13:253-269.

^{ix} Noel Pearson argued in 1991 that the Torrens title registration system was designed with the express intention of rendering legal the wholesale dispossession of Aboriginal Australians from their land (Ainger, Susanne. 1991 (June). Aboriginal trailblazer discovers 'extraordinary conspiracy', 18-19. Sydney: *Sydney University Gazette*). Whether or not this claim is true, the system was clearly designed for use by white settlers buying stolen Aboriginal land.

^x In the classic science fiction film 'Blade Runner' (1982), replicants are androids which look identical to humans but have superior strength, agility and intelligence. The superior model of replicants were built to have a short life-span (four years) to prevent them from developing empathy.

^{xi} For an excellent discussion of the cultural life and social disciplining of mortgages in the context of time, see Annie McClanahan, *Dead Pledges: Debt, Crisis, and Twenty-first-century Culture*. Stanford University Press, 2017.

^{xii} See for example Steve Chapman 'The Case Against the Bailout: Why the government shouldn't save businesses from their bad choices' *Reason.com*, 25 September 2008 (<http://reason.com/archives/2008/09/25/the-case-against-the-bailout>).