BIROn - Birkbeck Institutional Research Online

Keenan, Sarah (2023) The transfer of what? Electronic conveyancing and the destabilisation of property. Law, Technology and Humans , ISSN 2652-4074.

Downloaded from: https://eprints.bbk.ac.uk/id/eprint/50696/

Usage Guidelines:
Please refer to usage guidelines at https://eprints.bbk.ac.uk/policies.html or alternatively contact lib-eprints@bbk.ac.uk.

Advance online publication https://doi.org/10.5204/lthj.2544

The Transfer of What? Electronic Conveyancing and the Destabilisation of Property

Sarah Keenan
Birkbeck School of Law, University of London, United Kingdom

Abstract

In jurisdictions around the world, the previously paper-based practice of conveyancing is being digitised. The move to 'e-conveyancing' has attracted little critical attention and tends to be regarded as a mere change of form rather than substance. In this article, I examine Australia's move to national, platform-based electronic conveyancing, focusing on legal and practical changes made in the state of New South Wales to facilitate that move, asking how changes in the legal form of property affect its substance. Using legal analysis and engaging with a range of interdisciplinary literature on materiality, I argue that these digitising reforms involve a new structure of governance for the transfer of property in land, which in turn has negative implications for the relevance of subject-owns-object theories of property and the status of the proprietor. Although the diminution of proprietor status is presently occurring in ways that bolster the power of corporate finance, the shift away from older modes of landownership nonetheless presents a moment of potential disruption to the political regimes they help uphold, and an opportunity to reimagine what property is and could be.

Keywords: Conveyancing; property; materiality; subjectivity; paper.

Introduction

In a YouTube video made by Property Exchange Australia Limited (PEXA)—the digital platform used to upload and exchange documents and money in Australian real estate transactions—two white, middle-aged men in business casual sit at a desk by an interior office window and hold an awkward six-minute conversation.[1] One is PEXA's CEO, the other the president of the Australian Institute of Conveyancers (AIC).

Within the first minute, PEXA's CEO assures AIC's president that PEXA regards conveyancers as important: 'It's critical for PEXA. We're part of this industry. We're not separate from it, and we see ourselves as being, I guess, the servants of the industry in many respects, and that's how we want to be seen, how we want to operate.'

Seemingly emboldened by this assurance, AIC's president immediately follows with a 'hard' question, 'Is PEXA going to be doing conveyancing in the future?'

PEXA's CEO's well-rehearsed answer is delivered with passion. 'PEXA is not going to do conveyancing work. It is not going to take the place of the industry.' AIC's president nods seriously as PEXA's CEO explains that a pilot project in which PEXA did conveyancing work was only an experience-gathering experiment. 'There is nothing in our entire five-, seven-year horizon that I can see in our business plans that reflect anything except providing services to conveyancers and lawyers…It's our responsibility to make things easier and better and be your partners in this, not feel a threat in any way, shape or form.'

AIC's president thanks PEXA's CEO sincerely, and the conversation moves on to how PEXA is educating banks on the use of its platform.

[1] PEXA, "5 in 5 with AIC National President."

Except where otherwise noted, content in this journal is licensed under a Creative Commons Attribution 4.0 International Licence. As an open access journal, articles are free to use with proper attribution. ISSN: 2652-4074 (Online)

© The Author/s 2023

The video was circulated by PEXA in a 2019 edition of its newsletter, 'Clicks and Mortar'.[2] The conversation has the feel of a staged conciliation, performed to reassure Australian conveyancers that this new technology is not there to replace them. The men are ostensibly discussing 'e-conveyancing', a term that broadly refers to the digitisation of processes required to transfer title to land legally. Yet, this seemingly dull video targeted at a small audience of real estate professionals provides a window into political struggles over the legal form of property in land, with implications that extend far beyond those immediately involved in the conveyancing process. Conveyancing is not the mere transfer of pre-existing property in land, but rather is constitutive of that property.[3] This is because property in land is not a pre-existing object but is created and dependent on networks of social and legal relations.[4] In Australia, property in land is the nation's most valuable asset class, as well as the legal basis of settler colonial sovereignty.[5] As such, the means through which it is conveyed from one owner to the next is a crucial geopolitical infrastructure. Australia is famously the site of the invention of 'the Torrens system' of title by registration, which changed the basis of land title from possession (as it had long been under common law) to registration. Implemented as a colonial experiment in South Australia in 1858, the Torrens system was designed to make conveyancing a more efficient and reliable process than it had been when it involved handling fragile, old parchment.[6]

While the move away from deeds and towards registered conveyancing attracted controversy among 19th-century English landowners and the legal profession,[7] the 21st-century move away from paper and towards e-conveyancing has been subject to comparatively little attention. In the main, it has been constructed by legislators as an inevitable and minor reform, a matter of form rather than substance. As PEXA's CEO assured AIC's president, the official message for conveyancers and solicitors is that nothing fundamental is going to change; computer programs are not exerting their own authority but merely assisting law to carry out its functions, *PEXA is not going to do conveyancing work*. Although there is an acceptance in the industry that day-to-day conveyancing practice is changing, the platform's proponents insist that the Torrens principles and the form of title they produce remain unaltered.[8] However, legal form and content are never cleanly separable. Law is constituted by its records,[9] and day-to-day legal practice revolves around handling them. It is through such practice that legal concepts materialise in the world, impacting human and non-human life far beyond the walls of the offices in which most legal work occurs.[10] As the concept of property in land is tied to questions of governance and personhood, shifts in how title is recorded and transferred are worthy of critical attention.

In this article, I argue that PEXA does not do conveyancing work so much as its existence changes what that work is. Moreover, because conveyancing work is the practice of transferring a concept—the legal concept of property in land—changing what that work is has implications for the legal form and substance of what is being conveyed (the object of property). Further, a change in the object of property will necessarily also affect the subject of property, that is, the legal form and substance of land ownership. Examining the legislative and practical framework introduced to enable PEXA to operate and focusing on the state of New South Wales (NSW)—where '100% electronic conveyancing' came into effect in October 2021—I argue that these digitalising reforms involve a new structure of governance for the transfer of property in land, which in turn has negative implications for the relevance of subject-owns-object theories of property and for the status of the proprietor that went with those theories. I consider the implications for the diminished relevance of subject and object in conveyancing transactions and ask what factors are taking their place. In examining the structures of e-conveyancing in NSW, a new cast of human and non-human actors are brought into view, working together not principally for the goal of transferring property but rather for the goal of risk minimisation. Enlightenment theories of property and the social and legal orders they helped to justify appear largely irrelevant in the new system, opening space for the legal concept of property in land to be rethought.

---

[2] Dowie, "Clicks and Mortar Industry."
[3] Pottage, "The Measure of Land," 361–384; Pottage "The Originality of Registration," 371; Keenan, "Smoke, Curtains and Mirrors"; Pike, "Introduction of the Real Property Act," 169–189.
[4] Keenan, Subversive Property.
[5] The decision in *Mabo v Queensland (No 2)* (1992) 175 CLR 1 is that British sovereign's radical title is non-justiciable, while the conversion of that radical title into beneficial title is dependent upon possession. As such, Australian sovereignty is dependent upon and inseparable from property in land, as both a legal form and material practice.
[6] Fitz-Gibbon, Marketable Values; Keenan, "Smoke, Curtains and Mirrors".
[7] Offer, Property and Politics.
[8] This is evident from the YouTube conversation in the introduction. See also, for example, Tay, "The Demise of Paper Certificates".
[9] Vismann, Files.
[10] Grabham, Brewing Legal Times.

What is Conveyancing Work?

What constitutes conveyancing work has changed significantly over the past two centuries, as has the cultural and political economy of land. As property in land is itself an abstract concept, its transfer has long been a complicated affair involving an element of ritual. Alain Pottage recounts medieval conveyancing ceremonies involving words and cut turf in England[11] and the slapping of infant witnesses in France[12] as examples of highly physical conveyancing rituals intended to embed the event of property transfer into the minds of those who might be later called to remember it. The physicality of these rituals balanced out the highly abstract set of concepts involved in common law property in land; only the Crown can 'own' land directly, so what is being transferred among subjects is a title to an estate, which is conceived as a slice of time in the land. All titles other than the 'radical title' of the Crown are relative rather than absolute, based on a history of 'the raw fact of physical possession' and subject to the superior title of the Crown.[13] Prior to the innovation of state registries, law would not declare any party 'the owner' and guarantee their title; instead, courts would make a more contained and local determination as to which of the parties had the better title at that point in time.[14] The relativity of title, its basis in possession and the lack of any authoritative central record meant that it was 'a fragile commodity, which depended for its stability upon the vicissitudes of recollection'.[15] Conveyancing was the transfer of this fragile commodity. Once parchment deeds came to stand in for the more embodied memory rituals discussed above, it involved solicitors undertaking the time-consuming and cumbersome task of assembling historical chains of such deeds, which showed title transfers back in time as far as possible.[16]

In 19th-century England, there were proposals to reform conveyancing by introducing a registry system so that proprietors of land would be able 'to convey it with the same facility as the owners of ships, or of stock, or of railways shares'.[17] English landowners resisted this reform, partly because of a fear that registration would make land transfers too easy, turning land into a commodity that *anyone* with money could purchase.[18] English land was the basis of social and political power, and landowners felt an attachment to their deeds—which were hefty ceremonial documents, hand embossed and sealed—and a mistrust of the idea that they should instead rely on 'a little piece of paper' from a registry office to prove their title.[19] Land in the colonies, however, was seen as less culturally valuable and, therefore, ripe for legal experimentation. English colonist Robert Torrens received broad support for the introduction of his system of title registration for South Australian land in 1858.[20] The Torrens system revolutionised conveyancing by guaranteeing the accuracy of its centralised registry records, doing away with the need for deeds. The system ran on three key principles: the mirror (the details recorded on the folio will accurately reflect the title), the curtain (any interests in land not recorded on the folio are 'hidden' and cannot take effect in property law) and insurance (the accuracy of the folio details are guaranteed by the state, which insures the registered proprietor against loss resulting from inaccuracy).[21] This system increased the speed and efficiency of conveyancing and the liquidity of land by guaranteeing the accuracy of title details recorded in the registry's paper folios. Once transfers or other dealings with title are registered on this system, the registered proprietor's title becomes 'indefeasible', meaning it cannot be challenged by a contrary historical claim to the title.

The Torrens system, or versions of it, have since been adopted in jurisdictions around the world. Although it did away with parchment deeds, as a material culture, 19th- and 20th-century Torrens conveyancing still revolved around paper. Specifically, Torrens conveyancing in NSW centred on the 'folio', which was the authoritative paper record of title kept at the registry and the 'certificate of title', which was a copy of the folio. In paper form, the materiality of the folio embodied the mirror principle, as each separate paper 'folium'—like each title—was contained and complete, limited by its physical edges, and unique.[22] Though the folios were the legally authoritative record of title, registered proprietors were provided with a piece of paper, which they would keep in their possession—the 'certificate of title', which was a duplicate of the folio (*Real Property Act 1862*, s. 30). Though lacking the aesthetic grandeur, social gravitas and legal authority of the parchment deeds that came before them, certificates of title were official copies of the folio and functioned as evidence of proprietorship. Until 2018, the NSW Land

[11] Pottage, "The Measure of Land," 361.
[12] Pottage, "Evidencing Ownership."
[13] Gray, Elements of Land Law.
[14] Gray, Elements of Land Law, 56.
[15] Pottage "The Measure of Land," 361.
[16] Offer, Property and Politics, 23.
[17] Cited in Fitz-Gibbon, Marketable Values, 132.
[18] Anderson, "The 1925 Property Legislation."
[19] Fitz-Gibbon, Marketable Values, 148–149.
[20] Rogers, "The Impact of the Australian Torrens System."
[21] Taylor, The Law of the Land, 12.
[22] Christensen, "Electronic Land Dealings."

Registry required the certificate to be produced before any subsequent dealing with the title could be registered.[23] The certificate thus functioned as a ticket into the registry for the purpose of dealing with one's own title. The work of Torrens conveyancing was a physical process involving paperwork; overseeing the production and exchange of contracts for transfer, documents for mortgage discharge and creation, and cheques or other written instruments facilitating the transfer of funds, as well as the location and production of the certificate to the registry.

Where a title was mortgaged, lenders tended to insist on retaining the certificate of title. Historically, common law mortgages executed via deeds-based conveyancing were highly convoluted legal arrangements that tended to favour the borrower rather than the lender due to borrowers historically being members of the landed aristocracy whom English courts regarded as the real owners of land, even when they defaulted on their mortgage loans.[24] The Torrens system was designed to make land a more secure asset to lend against, improving conditions for mortgage lenders and fuelling the burgeoning credit economy.[25] However, while the Torrens system made mortgage lending more secure by making the title easily identifiable and parring back court discretion to allow leniency to defaulting landowners, its efficiency also introduced a new risk for lenders. As the system confers indefeasibility upon dealings once they are registered, lenders feared that a registered proprietor/mortgagor might—contrary to the terms of the mortgage—register a transfer or second charge of the title. It became standard practice for lenders to insist on possession of the certificate for the duration of the mortgage, thus physically preventing the mortgagor from being able to register any further dealings with the title.[26] With the continued growth of residential mortgage lending in recent years, the practice of retaining paper certificates of title led banks to be in possession of such vast volumes of these certificates that an NSW parliamentary discussion cited the excessive cost of storing and insuring them as a reason to move towards a digital system.[27] As well as being a ticket into the registry,[28] handing over the certificate of title could also be the basis of equitable transfers of title. It was possible to create an equitable mortgage by depositing the certificate with a lender.[29] Certificates of title were thus powerful pieces of paper, necessary for mortgage loans and transfers, and imbuing those who possessed them with a level of control over future dealings with title.

While the move to e-conveyancing does not change the mirror, curtain and insurance principles of the Torrens system,[30] it does involve substantial changes to the legal infrastructure in which conveyancing takes place, the everyday legal practice required to execute it, and the end of certificates of title. The move to e-conveyancing is also occurring within the context of a political economy of land in which mortgage finance is an essential component of most transfers.[31] Below, I analyse the changes in conveyancing infrastructure within the context of this political economy. In doing so, I draw on a range of literature that addresses the materiality of legal practice and the connection between that materiality and the organisation of the economy and the social. Critiquing Bruno Latour's characterisation of law as a regime of enunciation, Alain Pottage urges an engagement with the materiality of law in a way that does not presuppose law as a basic social category.[32] Materiality for Pottage is a kind of dynamic condition of existence: one which is encoded in things or artefacts, but which extends beyond them.[33] Law's materialities tend to take the form of paper files, which, as Cornelia Vismann has shown, take on ontological qualities as they are created, circulated and updated.[34] Emily Grabham also writes of the ontological nature of legal 'things' such as paper files, which become inseparable from the concepts they represent through the lives they take on in daily practice.[35] Vismann and Grabham's work is consistent with the approach Pottage urges, namely, to start with the materialities rather than with 'law' in a way that presupposes its categorical coherence.

[23] Thomas, "Australasian Torrens Automation."
[24] Sugarman, "Land Law". Though note the class politics of landownership were different in the colonies, including Australia; see Simpson, A History of the Land Law, 243–247.
[25] Weaver, The Great Land Rush.
[26] Hammond, "The Abolition of the Duplicate Certificate."
[27] Petinos, Debate on Real Property Amendment.
[28] Thomas, "Electronic Conveyancing and Incomplete Gifts."
[29] Edgeworth, "Recent Developments in the Torrens System."
[30] Though note that in some jurisdictions the principles are at least modified: Carruthers, "A Law for Modern Times"; Carruthers, "From Immediate to Deferred."
[31] See Rogers, the Geopolitics of Real Estate.
[32] Pottage, "The Materiality of What?"
[33] Pottage, "The Materiality of What?", 168.
[34] Vismann, Files, 10.
[35] Grabham, Brewing Legal Times.

PEXA and the New Infrastructure for Conveyancing Work

I start here with the materialities of e-conveyancing by setting out the governance structure established for it to function. Prior to e-conveyancing, Australia did not have a national legal infrastructure for conveyancing. Each state and territory instead administered its version of the Torrens system pursuant to its own legislation. This is still the case to some extent, but the innovation of PEXA and its governance structure create an overarching national framework for conveyancing work.

In the late 2000s, state and territory governments identified the digitisation of registry records as an area that could be reformed in the interests of moving towards 'a seamless national economy'.[36] A number of those governments incorporated a company, allowed Australia's major banks to become shareholders[37] and began developing an e-conveyancing platform known as PEXA. PEXA has thus been a 'public–private partnership' shaped and owned by banks throughout its development.[38] This is a shift from manual Torrens conveyancing, in which banks were involved as parties but did not directly own or shape the means through which conveyancing occurred.

The move to e-conveyancing thus became an exercise in nation-building in which large financial institutions have been given a significant role. For a national e-conveyancing infrastructure to function, however, state governments needed to back it. State Land Registrars created themselves into a regulatory committee with this purpose, forming the Australian Registrars' National E-Conveyancing Council (ARNECC) in 2011.[39] The ARNECC advises state registries on drafting and implementing e-conveyancing legislation and produces Model Operating Rules and Requirements for how platforms such as PEXA will function. In ARNECC terminology, PEXA is an Electronic Lodgement Network Operator (ELNO), meaning it is the business operating an Electronic Lodgement Network (ELN), defined as an 'electronic system that enables the lodging of registry instruments and other documents in electronic form for the purposes of land titles legislation'.[40] Though not legislatively defined as a platform, ELNs satisfy the technical definition of platforms, namely '[a] foundation technology or set of components used beyond a single firm…that brings multiple parties together for a common purpose', where the platform's value increases exponentially as it offers more complementary products and services and gains new users.[41] ELNs bring conveyancers and banks together for the common purpose of doing conveyancing work ending in the lodgement of transfer with the relevant state registry. Their widespread use was guaranteed once state registries began phasing out their acceptance of paper documents, a point I will expand in the next section.

As a platform, ELNs are very exclusive. While in manual Torrens conveyancing, registered proprietors could technically conduct their own conveyance by attending an office on settlement day with the appropriate paperwork, in e-conveyancing, only 'Subscribers' may enter and use an ELN 'workspace'. This is because, under ARNECC Rules, only Subscribers can use ELNs.[42] Under these Rules, Subscribers must be businesses[43] with four kinds of insurance policies (professional indemnity, fidelity, public and product liability and asset) worth at least $A20 million in regard to the first two policies and $A10 million for the third from an approved insurer.[44] These insurance requirements mean that only conveyancers, solicitors and financial and government institutions can become Subscribers and enter an ELN workspace. There are two types of Subscribers: 1) Principal Subscribers who represent themselves (financial institutions and government agencies), and 2) Representative Subscribers (solicitors and licensed conveyancers), who represent others.[45] The capacity of Principal Subscribers to represent themselves on the ELN means that banks will be able to create and discharge mortgages directly, lodging those dealings with registry offices and creating them as legal property charges. Landowners/proprietors can only contact the registry via a Representative Subscriber. Although it was relatively rare for registered proprietors to conduct their own conveyance in the manual system, the ELN scheme removes this possibility completely (which did spark a short-lived campaign in defence of 'DIY conveyancing').[46]

[36] Australian Council of Governments, "National Partnership Agreement."
[37] Rosier, Understanding National Econveyancing.
[38] Since 2019, PEXA has been wholly owned by Link Market Services (a global share registry and financial services provider), Commonwealth Bank of Australia (the country's largest bank) and Morgan Stanley Infrastructure (a global infrastructure investment platform).
[39] Rosier, Understanding National Econveyancing, 20.
[40] Electronic Conveyancing (Adoption of National Law) Act 2012, Appendix, s. 13.
[41] Shaw, "Platform Real Estate."
[42] Model Participation Rules Version 7 (2021) 7.2.1.
[43] Model Participation Rules Version 7 (2021) 4.1.
[44] Model Participation Rules Version 7 (2021) 4.7, Sch 1.
[45] NSW Register General's Guidelines, "What is a Subscriber?"
[46] On the website of company 'Quick Law Conveyancing', which sells DIY conveyancing kits, it states, 'From the 1st of July 2019 all States will have to use the monopoly system called PEXA, even though in the last month there has been adverse news reports with the hacking of

In 2019, ARNECC announced its support for 'an efficient and effective market with competing ELNOs', opening up PEXA to competition from other ELNOs offering the same service and further complicating the public-private terms on which conveyancing is to take place.[47] What started out as a process of replacing paper registry records with digital ones has thus morphed into a process of shifting the scale at which conveyancing takes place, the structure through which it is governed, and the actors involved in its execution.

The Certificate of Title

As mentioned above, in NSW, certificates of title (often referred to as 'CTs') were paper copies of the registry folio. The CT had to be produced before further dealings with the title were registered, which is why mortgage lenders insisted on retaining them for the duration of the loan. Providing certain other criteria were met, having physical possession of the CT gave the proprietor the status now only afforded ELN Subscribers, that is, the status of controller of dealings with the title. The CT was treated with a level of reverence in manual Torrens conveyancing to the extent that, in one NSW Court of Appeal case, an increased mortgage charge was removed on the basis that the charge had been registered through an 'unauthorised and improper' production of the CT by the mortgagee bank.[48] The proprietor's title was thus protected, in part, on the basis that the object representing it had been improperly handled. Criticising this decision, Bennett Moses and Edgeworth wrote that the remedy for unauthorised use of personal property (i.e., property that is not land) 'is not the grant of an interest in land',[49] that is, there is a difference between the certificate (personal property) and the title it represents (real property/land), which has been confused here. Far from being just 'a little piece of paper', as early opponents of registered conveyancing described it,[50] Bennett Moses and Edgeworth's reading of this case is that the certificate of title was treated as if it was the title itself.

Whether that judgment is understood to have been 'wrong' on the basis Bennett Moses and Edgeworth suggest, the decision gestures towards the power the CT had, as a legal thing with a vitality and agency that extended beyond the physical limits of its paper edges, reaching and shaping concepts and practices of property and ownership. CTs can be understood as legal 'things' in the sense Emily Grabham writes of them—that is, as objects that have a vitality and agency which give them a life of their own. Building on anthropological work, which challenges the distinction between material things and their social and cultural meanings, Grabham argues that through their active roles in everyday legal practice, legal things can become inseparable from the concepts they represent.[51] Grabham assesses specific legislation, case reports and policy documents for their legal and material form, 'treating these objects as artefacts in themselves that have a certain shape, typeface, and structure, that contain patterned phrases, and that have a performative power'.[52] This approach, Grabham argues, 'allows one to analyse, on a pragmatic level, the types of legal person that legal forms enact'.[53] Applying Grabham's approach to CTs, it can be seen that these objects not only represented the title but came to be inseparable from it. The performative power of the certificate also affected the type of legal person enacted by it; both the registered proprietor—whose name appears on the certificate—and, if relevant, the mortgagee bank (itself a legal person) obtained particular status and responsibilities from their relationship with this piece of paper.

Cessation Day

Being paper objects, CTs had to be phased out as part of the move towards e-conveyancing. In 2014, the NSW Government passed an amendment to the *Real Property Act 1900* (NSW) that allowed the Registrar General to 'from time to time, determine circumstances when, or classes of persons to whom, certificates of title will not be issued' (s. 33AA). Acting on this power, the class of persons to whom the Registrar General decided not to issue certificates was proprietors with mortgage debts. For this

---

the so-called secure PEXA system.

We need YOU to make a complaint to your state member of parliament and the Office of The Registrar General for NSW and let Registrar General Jeremy Cox know you do not want your legal right to do your own conveyancing taken away.

ORG-Admin@finance.nsw.gov.au

There should be provision in the new e-conveyancing legislation for a paper-based conveyance for non-represented parties or access for the general public into the PEXA system once verification of identity can be verified by the Australia Post.' Archived on November 5, 2020: https://web.archive.org/web/20201105094752/https://www.quickconveyancing.com.au/

[47] ARNECC, "Electronic Lodgment Network Operators."

[48] *Mercantile Mutual Life Insurance Co Ltd v Gosper* (1991) 25 NSWLR 32. Note that this case concerned the personal equities exception to indefeasibility in circumstances where a forged variation of mortgage had been registered by the mortgagee. The approaches taken by each of the three Court of Appeal judges differed, including a dissent from Meagher JA. The case was also subject to academic criticism: Sonter, "Case Note."

[49] Bennett Moses, "Taking It Personally."

[50] Fitz-Gibbon, Marketable Values.

[51] Grabham, Brewing Legal Times, 22.

[52] Grabham, Brewing Legal Times, 14.

[53] Grabham, Brewing Legal Times, 14.

class of persons, rather than issuing a certificate, the Registrar General would instead record 'the name of the person who has control of the right to deal in the land', which will be the mortgagee bank. This amendment thereby created a new proprietary status, that of 'CoRD-holder' (i.e., a person with control of the right to deal). No dealings with the title would be registered until the CoRD-holder gave digital consent. The control of the right to deal (CoRD) system was in place until 21 October 2021, 'cessation day'—when CTs stopped being issued completely, all existing CTs were 'cancelled' (meaning they no longer have legal effect) and the state achieved its goal of '100% e-conveyancing'.[54]

In the lead-up to cessation day, the Office of the Registrar General released a discussion paper, 'Certificates of Title: The Next Evolution',[55] introducing 'eCTs' followed by a position paper.[56] Explaining that e-conveyancing is part of the NSW Government's 'commitment to leading digital innovation', the discussion paper explained that an eCT 'is a notation on the Register that records the details of the person with control of the right to deal (CoRD) with land' and that 'eligibility for eCTs is currently limited to authorised deposit-taking institutions with a registered first mortgage',[57] that is, they are only available to mortgagees (banks). There are two points to note about eCTs. The first is that although the discussion paper's language suggests otherwise, there is no such *thing* as an eCT. By this, I do not mean that by being digitised, the paper certificate has lost its physical materiality and thus its 'thingness'. Rather, I mean that there is no such legal thing in the sense that Grabham understands legal things; it is not possible to locate a legal artefact with the same vitality, agency and performative power as the paper CT. There is no longer an object (either physical or digital) that represents title and is, in legal practice, inseparable from it. Despite the comforting metaphor, what exists in this scheme is not an electronic version of a paper certificate but a new digital status ('the person who has CoRD') solely, authoritatively and pre-emptively determined by the register rather than by the assemblage of a legal person and physical thing that determined status under the manual system.

The second point to note about the CoRD system is that it only applied to mortgaged titles. The Registrar General's discussion paper explains that the system was introduced following an extensive report by Clayton Utz (2012), which was used as the basis for garnering 'industry participants' views on the proposed CT solution'.[58] Following these reports, the NSW Land Registry Service (then known as NSW Land and Property Information) released a consultation paper that focused on the 'industry need to be satisfied' and that it will have 'the same protections and assurances' as it had with paper CTs.[59] Industry participants here are primarily banks whose concern is that the risk profile of their securities (the mortgaged titles) does not increase as paper is phased out. Parliamentary debates about the phasing out of paper CTs confirm that the legislative concern was with protecting the interests of mortgage lenders.[60]

As for mortgagors, they were already physically separated from their certificates of title (the banks retaining them as a condition of the loan). They were perhaps also accustomed to understanding their ownership as mediated and contingent rather than absolute. As a 'class of persons', since the financial deregulation and extension of mortgage lending in the 1980s, residential mortgagors had already been regarded by lawmakers with some suspicion, often treated as consumers to be disciplined rather than citizens to be protected.[61] However, by introducing a status separate from and superior to that of the registered proprietor, the CoRD system structured this suspicion into legal form and automated it. Where a mortgage exists, the agency formerly exerted by the paper certificate is redistributed to the bank empowered with CoRD status and, as a Subscriber, the bank also has the capacity to deal directly with the title via an ELN.

The Registrar General's 2019 position paper concluded that 'paper certificates of title should no longer exist'[62] and set out the NSW Government's position that the CoRD system should be replaced by one which relies even more heavily on digital status. The amending legislation, which enabled cessation day, also inserted a new section 33A of the *Real Property Act 1900*, which deems the Registrar General entitled to assume that any person registering a dealing has authority to do so. This moves the risk of fraud or otherwise unauthorised dealings from the registry onto ELN Subscribers, thus privatising this risk previously absorbed by the state registry and raising the stakes of Subscriber status. Subscribers (which remember, must have insurance policies worth over $A50 million) now assume responsibility for the veracity of the documents they lodge with the registry, including the identity and right to deal with the titles of those they represent, which the registry had previously taken responsibility for by issuing and requiring the presentation of paper CTs. Subscribers now effectively have 'control of the right

[54] This date is known as 'cessation day' under the Real Property Amendment (Certificates of Title) Act 2021.
[55] Office of the Registrar General, Discussion Paper.
[56] Office of the Registrar General, Position Paper.
[57] Office of the Registrar General, Position Paper, 3, 7.
[58] Office of the Registrar General, Position Paper, 9.
[59] Clayton Utz, Certificate of Title, 13
[60] Constance, Second Reading.
[61] Whitehouse, "Homeowner."
[62] Office of the Registrar General, Position Paper, 5.

to deal' for all titles, in the sense that even 'unencumbered' (i.e., mortgage debt-free) proprietors are not able to deal with their titles. However, they also absorb the risk of those dealings. As insurance is one of the three key principles of Torrens conveyancing and the insurance burden has now substantially moved from the public registry to private Subscribers, this is not just a shift in conveyancing work but also in how title to land is being formulated—in what legitimates and constitutes property in land.

Phasing Out Property (As We Know It)?

There was sufficient public anxiety about cessation day threatening land ownership that the Office of the Registrar General held a one-hour webinar on the topic the month before it occurred. Most of the questions from the public expressed concern about how the cancellation of CTs affected their property. In response to the first question, 'Is it true that all homeowners are going to lose their properties in this process?' the registry lawyer responded, laughing, 'I certainly hope not. I like my house' (at 34:07). He went on to assure proprietors that their certificates were never the source of their title, the register was, stating, 'The Torrens title register has always been and will continue to be the single source of truth as to the ownership of a person's home', and 'The register is everything'.[63] However, while it is correct that CTs were only ever copies of the authoritative register, the anxiety proprietors feel over their loss is perceptive of the changing landscape in which their property exists and upon which its legitimacy depends. It is similar to the threat perceived by AIC's president in his conversation with PEXA's CEO; a threat to the old legal order that may have greater implications than the registry suggests. Some legal commentators have also picked up on this threat posed by e-conveyancing, arguing that the Torrens system has been 'debased' and 'degraded' by changes made to facilitate platform conveyancing.[64]

Destabilising Property

The destabilisation of property being sensed here stems from an understanding of the relationship between form and substance. While the registry and PEXA spokespeople continue to provide assurances that the move to e-conveyancing does not *really* change anything, the new infrastructure and material culture of conveyancing suggest otherwise, and a range of affected parties can sense that. Further, how people feel about property affects its material stability, as a range of feminist property scholars have shown.[65] Property has never been stable; rather, it has always been a malleable concept dependent on legal form, social norms and cultural context.

Writing about the phasing out of paper share certificates from equities trading, Bill Maurer suggested that Lockean and other canonical Anglo-European understandings of property were fading in relevance over 20 years ago. Maurer argued that in late 20th century capitalism, the figure of the proprietor was being redefined 'not as the bearer of rights but as a risk profile subject to the disciplinary practice of insurance'.[66] At stake in this redefinition, Maurer argued, is 'not merely a new definition of property but a new definition of personhood and a new form of governmentality'. For the theory put forward by Locke, property is an essential element of personhood. It is through control of an object (land in the state of nature) that subjects/persons acquire property within civilised society. Maurer's argument that property was changing and, with it, the figure of the proprietor, was grounded in a study of arguments made by late 20th century American lawyers to reform the procedure used to transfer shares. In particular, the lawyers sought the abandonment of the paper share certificate. As well as slowing down the processing of transactions, the lawyers argued that the existence of the certificate 'encourages clients to "ask stupid questions"—namely, the question of what exactly they own'.[67] Their preference was to abandon the idea that shareholders owned anything, and instead to conceive of securities transactions not as the transfer of objects but rather as the reallocation of rights and risks. That is, the lawyers sought to eliminate the thing of the paper certificate and, with it, the idea that their clients were proprietors of an identifiable object.

The Lockean theory discussed by Maurer has long served as a key justifying principle for property in land in former British colonies like NSW.[68] If the move to e-conveyancing indicates a reconceptualisation of land title transfer as a reallocation of rights and risks, this poses a problem for liberal understandings of and rationales underlying both land ownership and citizenship. A significant difference between the shareholder and the proprietor of land is that, historically, the latter subject has been regarded as the ideal citizen, meaning that the move 'from proprietor to risk bearer', as Maurer put it, in the context of land ownership has even greater potential implications for governance and concepts of personhood. Historically, English

[63] Office of the Registrar General, Cancellation of Certificates of Title Webinar.
[64] Thomas, "Australasian Torrens Automation."
[65] Rose, "Property and Persuasion"; Cooper, "Opening Up Ownership."
[66] Maurer, "Forget Locke?" 366.
[67] Maurer, "Forget Locke?" 374.
[68] Graham, "Lawscape."

landowners have been protected by law. Tracing aspects of the history of the old common law mortgage, David Sugarman and Ronnie Warrington argue that from the perspective of pre-20th century English courts, shielding young heirs from the consequences of unwise deals made with moneylenders was a matter of protecting English national identity.[69] In that era, mortgagors were aristocrats who were more powerful than the moneylenders they were dealing with. As 'a class of persons', those mortgagors were very different from the contemporary NSW residential mortgagors, who were the first to lose their paper CTs. Land is no longer a monopoly of the aristocracy, and banks' eligibility to be ELN Subscribers is just one instance of the significantly greater power wielded by moneylenders compared with the average residential proprietor, who is also a mortgagor.[70] With post-1980s financial deregulation extending mortgage finance to an expanded range of borrowers,[71] the registered proprietor is more likely than previous iterations of landowners to be drawn from an expanded demographic category. As Fiona Allon has argued, the extension of financial inclusion and home ownership to formerly excluded groups has been conditional on a demotion of the home as an idealised space of autonomy to one of everyday financial calculation and regulation.[72] Property in land shifted in social and cultural meaning as changing economic conditions shifted its distribution patterns.

Writing on this change of meaning in the context of the USA sub-prime mortgage crisis, Annie McClanahan argues that 'subject-controls-object' theories of property have become incoherent, even contradictory, as the object of property—the home—now controls the subject, rather than the other way around.[73] Due to the constant threat of foreclosure and the need to construct daily life around making their repayment obligations, McClanahan argues that the mortgage 'defamiliarizes domestic space, which instead of being a place of comfort and security becomes a space of unease and alienation'.[74] The mortgaged home may have an uncanny, even hostile feel to the indebted proprietor, whose supposedly sacrosanct right to possession 'is contravened by the increased likelihood that she will be evicted from her own property by door-busting cops'.[75]. This insecure, indebted proprietor is a sharp contrast from the idealised Lockean subject, who exercised control over land and the women and children in it and thereby earned his right to engage in public life.[76] Of course, that Lockean citizen/owner was always racialised and gendered,[77] and the reduction in status of the mortgagor/proprietor is too. Aside from the empirical reality that women suffered disproportionately in the subprime crisis,[78] Marieke de Goede has shown how credit itself is gendered. Credit was constructed, De Goede explained, in late 17th and early 18th century British writing as the dangerous feminine other to rational economic man.[79] To control 'Lady Credit' and the businessman's unfortunate lust for her, he must foresee and pre-empt her actions through methods such as double-entry bookkeeping.[80] Moreover, aside from the disproportionate representation of non-white homebuyers forced to accept mortgage loans on highly restrictive and often punitive (i.e., 'sub-prime') terms,[81] there are precedents for forms of land title granted by settler colonial governments to indigenous people that exclude their capacity to deal with their land,[82] justified in part by paternalistic racism. Applying these readings to the NSW scheme, the removal of transactional control from the registered proprietor, who can only enter an ELN via a Subscriber, pre-empts her from conducting any foolish or illegal transactions. This pre-emptive removal of control can be understood as a paternalistic shift in the legal construction of the property-owning subject, a shift that constrains that subject and makes her fit less easily with the figure of the (white, male, autonomous) landowner/proprietor of previous eras.[83]

[69] Sugarman, "Land Law."
[70] Hall, "Trends in Home Ownership in Australia." '…the number of owners without a mortgage has declined since 1994–95, from 41.8% of owners to just 31.4% of owners in 2013–14. The 2016 Census data shows a similar trend, with the number of occupied private dwellings owned outright declining from 32% in the 2011 Census, to 31%,' 6.
[71] Allon, "The Feminisation of Finance."
[72] Allon, "The Feminisation of Finance."
[73] McClanahan, "Dead Pledges."
[74] McClanahan, "Dead Pledges," 127.
[75] McClanahan, "Dead Pledges," 148.
[76] Ott, "When Wall Street Met Main Street."
[77] Arneil, John Locke and America; Bernasconi, "The Contradictions of Racism"; Davies, "Queer Property, Queer Persons"; Brace, "The Politics of Property."
[78] Baker, "Eroding the Wealth of Women."
[79] De Goede, "Mastering 'Lady Credit'."
[80] De Goede, "Mastering 'Lady Credit'," 66.
[81] Bocian, "Race, Ethnicity and Subprime Home Loan Pricing."
[82] For a discussion of the discovery doctrine as set out in *Johnson v. M'Intosh* 1823 USSC, see Park, "Conquest and Slavery."
[83] See Green, "Citizens and Squatters".

Destabilising Sovereignty?

As legal concepts, property and sovereignty are closely related, the former being both dependent upon and a necessary element of the latter.[84] If property has been destabilised by e-conveyancing, does this also indicate a destabilisation of sovereignty?

In their article on computer juridisms, Vismann and Krajewski identify the threat digitalisation poses to law. Explaining the political implications of the different materiality that digital 'files' have from their paper predecessors, Vismann and Krajewski point out that once information previously recorded on paper is digitised, it is the computer chip that establishes prohibitions, protects privileges and implements unalterable rules.[85] As such, the information operates within a different system of authority than that which existed in manual systems. In storing and publishing its records on computers, Vismann and Krajewski argue that law has become a user of computer media and has thereby become subject to the sovereignty of the chip. Media theorist Benjamin Bratton also identifies a threat to sovereignty, arguing that the move to computation in almost all spheres of life denotes a new form of governance that political theories of a world constituted by sovereign nation-states and their citizens are not able to explain.[86] Rather than fitting into a liberal political theory of a state sovereign making laws which govern citizen-subjects and their property, ARNECC, ELNs and their Subscribers might be better understood as layers within Benjamin Bratton's theory of the stack—'an accidental megastructure…that is not only a kind of planetary-scale computing system; it is also a new architecture for how we divide up the world into sovereign spaces'.[87] Now that the structures of authority underlying conveyancing have shifted, has the title being transferred shifted too? Do conventional understandings and rationales for property (including its reliance on state sovereignty) still make sense within this new scheme of conveyancing? Is the state's sovereignty still intact when it is Subscribers rather than the state that now bare the risk and authorise the legitimacy of each newly registered title?

It is beyond the scope of this article to answer these questions, but the significant changes involved with the implementation of e-conveyancing and the persistent sense that something other than simple legal form is changing indicate that they are worth asking. In Bratton's stack ontology, the proprietor might, at best, be a user on the basis that they will be represented by Subscribers and use the ELN that way. However, even then, the user is the figure at the bottom of the stack, 'a normative figure of subjective agency', which brings with it 'residual and sometimes discredited concepts of human agency and cognitive transparency'. Vismann and Krajewski describe the user as 'that peculiar type of subject that is born as one who is capable of neither any insight beyond the surface nor any programmer's knowledge whatsoever'.[88] Wendy Hui Kyong Chun goes even further, describing users as 'an effect of software'.[89] On ELNs, the proprietor is not a user but a figure who must hire one to appear on the platform. Far from being a Lockean rights-bearing subject, a 'good citizen'/landowner, they are not even an effect of software but a peripheral object to be taken into account in the calculations which will determine their future. Land, the object of property around which this entire scheme notionally revolves, is rendered a similarly peripheral object as Subscribers concern themselves with the allocation of rights and risks. This is a very different world not only from the one envisaged by Locke, but from any legal or philosophical theory of property in land that I am aware of.

Conclusion

This article is ultimately a plea to critical scholars to be attentive to and take seriously the changes to legal form and material culture that e-conveyancing are initiating. How property in land is legally formulated, dealt with, talked about and understood has profound political implications. New structures of governance are emerging, as the move from paper to platform involves the rematerialisation of not only the thing that represents property but also the concept of property itself. There is potential here for property in land to be rethought.

In opening the Cancellation of Certificates of Title Webinar, the NSW Registrar General started by saying, 'Firstly, I want to pay respects to the current and past Aboriginal people from all the various parts of NSW that you're all in right now', then swiftly moved on to discuss a more 'efficient, secure and customer-focused' system to marketise and transfer the very land from which those Aboriginal people have been dispossessed. Much has changed with the move to paperless conveyancing in NSW, but certain fundamentals remain the same. Legal title depends on registration, but registration must now occur via an ELN, a platform that only Subscribers may use directly. Subscribers being businesses with insurance policies worth at least $A50 million, this leaves registered proprietors without the capacity to directly control dealings with their title in the way they

---

[84] Fitzmaurice, Sovereignty, Property and Empire.
[85] Vismann, "Computer Juridisms," 97.
[86] Bratton, The Stack.
[87] Bratton, The Stack, xviv.
[88] Vismann, "Computer Juridisms," 96.
[89] Chun, Control and Freedom, 30.

could, at least notionally, when paper CTs acted as tickets to registry dealings and proprietors had possession of those CTs (or an expectation that they would eventually obtain them once they paid off their debts). While the CT was never the legal source of title but rather a copy of the registry folio, it had come to be a vital object with agency to create legal rights and responsibilities, principally relating to controlling dealings with the title itself. Now those rights and responsibilities are predetermined via the ELN, and proprietors do not even have the status of users in that system. The phasing out of paper CTs was piloted on proprietors with mortgage debt, and its extension to all proprietors is reflective of both the normalisation of mortgage debt among proprietors and the reduced cultural status of the figure of the proprietor compared with earlier iterations of this legal character. However, while the proprietor in NSW today is not as powerful a figure as the white male landowner of eras past, and while it may be more accurate to describe e-conveyancing as the allocation of rights and risks rather than the transfer of an object of ownership, the land that is ultimately at the heart of this system cannot be disappeared. Never having been subject to a treaty, all land in NSW is unceded Aboriginal Country. While digitalisation may well be shifting the relevance of state sovereignty, the continued project of making stolen land a liquid asset furthers the colonial violence enacted upon the original assertion of British radical title.

The formulations of property produced through Australia's e-conveyancing framework depart from subject-controls-object formulations and the modes of governance that went with them. The shifted material culture of the legal practice of conveyancing has destabilised the concept of property underlying it. Perhaps new possibilities of political change lie in the realisation that that concept was never stable to begin with, but reliant on legal rituals and social and cultural norms. The Enlightenment philosophies that underpinned the subject-controls-object property concept were limited in their application to those who qualified as civilised subjects. These are the ways of thinking that have justified genocidal practices of colonial land theft, enslavement and environmental destruction. In that sense, the dissipation of these modes of thinking and the formations of property they produced is nothing to lament. With the move away from the idea that registered proprietors own their title comes an opportunity to rethink property, personhood and government. Feminist property theorist Jannice Käll argues that 'data as an object may further the end of what we consider as human subjectivity by producing a posthuman life-form as persons and things become increasingly mixed together'.[90] The resulting formations, she argues, may render legal ideas of the sovereignty of the free individual obsolete, as we are all rendered objects in this process. 'The affirmative aspect of this development', Käll contends, 'is that it may help us reconnect with those that suffered from preceding forms of colonialism and capitalism; that is, those who were previously considered non-human, and those who still remain as such'.[91] With the proprietor now being a diminished status, perhaps it is time to abandon ownership altogether and to find less destructive ways of relating to each other and to the non-human life we call land.

Acknowledgements
This article has benefited from feedback from Nadine El-Enany, Emily Grabham, Tanya Serisier, Bernard Keenan, Karen Crawley, Connal Parsley, Fiona MacMillan, Sarah Hamill and anonymous reviewers. It remains imperfect and all problems and mistakes are mine.

[90] Käll, "The Materiality of Data as Property," 11.
[91] Käll, "The Materiality of Data as Property," 11.

Bibliography

Allon, Fiona. “The Feminisation of Finance: Gender, Labour and the Limits of Inclusion.” *Australian Feminist Studies* 29, no 79 (2014): 12–30. https://doi.org/10.1080/08164649.2014.901279

Anderson, Stuart. ‘The 1925 Property Legislation: Setting Contexts’. Edited by Susan Bright and John Dewar. *Land Law: Themes and Perspectives*, 1998, 107–28.

Arneil, Barbara. *John Locke and America: The Defence of English Colonialism*. Oxford: Clarendon Press, 1996.

Baker, Amy Castro. “Eroding the Wealth of Women: Gender and the Subprime Foreclosure Crisis.” *Social Service Review* 88, no 1 (2014): 59–91. https://doi.org/10.1086/675391

Bennett Moses, Lyria and Brendan Edgeworth. “Taking It Personally: Ebb and Flow in the Torrens System’s in Personam Exception to Indefeasibility.” *Sydney Law Review* 35 (2003).

Bernasconi, Robert, and Anika Maaza Mann. ‘The Contradictions of Racism: Locke, Slavery, and the Two Treatises’. In *Race and Racism in Modern Philosophy*. New York: Cornell University Press, 2005: 89-107.

Bocian, Debbie Gruenstein, Keith S. Ernst and Wei Li. “Race, Ethnicity and Subprime Home Loan Pricing.” *Journal of Economics and Business* 60, no 1–2 (2008): 110–124. https://doi.org/10.1016/j.jeconbus.2007.10.001

Brace, Laura. *The Politics of Property: Labour, Freedom and Belonging*. Edinburgh: Edinburgh University Press, 2004.

Bratton, Benjamin H. *The Stack: On Software and Sovereignty*. MIT Press, 2015.

Carruthers, P. and Natalie Skead. “A Law for Modern Times: The Electronic Conveyancing National Law, Forged Mortgages and Immediate Indefeasibility.” *Property Law Review* 7, no 1 (2017): 4–23.

Carruthers, P. and Natalie Skead. “From Immediate to Deferred to No Indefeasibility for Some Registered Mortgages.” *The Australian Law Journal* 94, no 2 (2020): 93–95.

Chun, Wendy Hui Kyong. *Control and Freedom: Power and Paranoia in the Age of Fiber Optics*. MIT Press, 2006.

Christensen, Sharon. ‘Electronic Land Dealings in Canada, New Zealand and the United Kingdom: Lessons for Australia’. Murdoch University Electronic Journal of Law 11, no. 4 (2004).

Clayton Utz. *Certificate of Title Solution for Concurrent Electronic and Paper Conveyancing* (NSW Land Registry, 2012).

Constance, Andrew. *Second Reading, Real Property Amendment (Electronic Conveyancing) Bill 2013*. NSW Legislative Assembly Hansard, November 14, 2013.

Cooper, Davina. “Opening up Ownership: Community Belonging, Belongings, and the Productive Life of Property.” *Law & Social Inquiry* 32, no 3 (2007): 625–664. https://doi.org/10.1111/j.1747-4469.2007.00072.x

Davies, Margaret. ‘Queer Property, Queer Persons: Self-Ownership and Beyond’. *Social and Legal Studies* 8, no. 3 (1999): 327–52. https://doi.org/10.1177/096466399900800303

De Goede, Marieke. “Mastering ‘Lady Credit’: Discourse of Financial Crisis in Historical Perspective.” *International Feminist Journal of Politics* 2, no 1 (2000): 58–81. https://doi.org/10.1080/146167400407019

Dowie, Lisa. *Clicks and Mortar Industry News from Around Australia* (email newsletter). September 8, 2019.

Edgeworth, Brendan. ‘Recent Developments in the Torrens System in Australia’. In *Land Registration and Title Security in the Digital Age: New Horizons for Torrens*, edited by David Grinlinton and Rod Thomas. Routledge, 2020.

Fitz-Gibbon, Desmond. *Marketable Values: Inventing the Property Market in Modern Britain*. Chicago and London: University of Chicago Press, 2018.

Fitzmaurice, Andrew. *Sovereignty, Property and Empire, 1500–2000*. Cambridge University Press, 2017.

Grabham, Emily. *Brewing Legal Times: Things, Form and the Enactment of Law*. University of Toronto Press, 2016.

Graham, Nicole. *Lawscape: Property, Environment, Law*. Abingdon: Routledge, 2011.

Gray, Kevin J, and Susan Francis Gray. *Elements of Land Law*. Oxford: Oxford University Press, 2009.

Green, Kate. “Citizens and Squatters: Under the Surfaces of Land Law.” In *Land Law: Themes and Perspectives*, edited by Susan Bright and John Dewar: 229-256.

Hall, Alicia. *Trends in Home Ownership in Australia: A Quick Guide* (Parliament of Australia Research Paper, June 28, 2017).

Hammond, Celia. “The Abolition of the Duplicate Certificate of Title and Its Potential Effect on Fraudulent Claims over Torrens Land.” *Australian Property Law Journal* 8, no 81 (2000): 1-20.

Käll, Jannice. ‘The Materiality of Data as Property’. *Harvard International Law Journal Frontiers* 61 (2020): 1-11.

Keenan, S. *Subversive Property: Law and the Production of Spaces of Belonging*. Abingdon: Routledge, 2015.

Keenan, S. “Smoke, Curtains and Mirrors: The Production of Race Through Time and Title Registration.” *Law and Critique* 28 (2016): 87–108. https://doi.org/10.1007/s10978-016-9194-z

Maurer, Bill. “Forget Locke? From Proprietor to Risk-Bearer in New Logics of Finance.” *Public Culture* 11, no 2 (1999): 365–385. https://doi.org/10.1215/08992363-11-2-365

McClanahan, Annie. *Dead Pledges: Debt, Crisis, and Twenty-First-Century Culture*. Stanford University Press, 2017.

Offer, Avner. *Property and Politics, 1870-1914: Landownership, Law, Ideology, and Urban Development in England*. Cambridge; New York: Cambridge University Press, 1981.

Ott, Julia C. *When Wall Street Met Main Street: The Quest for an Investors' Democracy*. Cambridge, MA: Harvard University Press, 2011.
Park, K-Sue. "Race and Property Law." In *The Oxford Handbook of Race and Law in the United States*, edited by Devon Carbado, Khiara Bridges and Emily Houh: C6.S1–C6.N88 Oxford University Press, 2022.
Pike, Douglas. "Introduction of the Real Property Act in South Australia." *Adelaide Law Review* 1, no 2 (1961): 169–189.
Pottage, Alain. "The Measure of Land." *Modern Law Review* 57, no 3 (1994): 361–384. https://doi.org/10.1111/j.1468-2230.1994.tb01946.x
Pottage, Alain. "The Originality of Registration (1995)." *Oxford Journal of Legal Studies* 15 (1995): 371. https://doi.org/10.1093/ojls/15.3.371
Pottage, Alain. "The Materiality of What?" *Journal of Law and Society* 39, no 1 (2012): 167–183. https://doi.org/10.1111/j.1467-6478.2012.00576.x
Rogers, Dallas. *The Geopolitics of Real Estate: Reconfiguring Property, Capital and Rights*. Rowman & Littlefield, 2017.
Rogers, Edmund. 'The Impact of the Australian Torrens System on the Land Transfer Debate in the United Kingdom, 1858-1914'. *Australia and New Zealand Law and History E-Journal* 4 (2006): 125–32.
Rose, Carol. *Property and Persuasion: Essays on the History, Theory and Rhetoric of Ownership*. Boulder, Colorado: Westview Press, 1994.
Rosier, Peter. *Understanding National Econveyancing*. LexisNexis Butterworths, 2013.
Shaw, Joe. "Platform Real Estate: Theory and Practice of New Urban Real Estate Markets." *Urban Geography* 41, no 8 (2018): 1–28. https://doi.org/10.1080/02723638.2018.1524653
Simpson, A.W.B. *A History of the Land Law*, 2nd ed. Clarendon, 1986.
Sonter, David. "Case Note: Mercantile Mutual Life Insurance Co Ltd v Gosper." *University of New South Wales Law Journal* 15, no 2 (1992): 546–550.
Sugarman, David and Ronnie Warrington. "Land Law, Citizenship, and the Invention of 'Englishness': The Strange World of the Equity of Redemption." In *Early Modern Conceptions of Property*, 111-143. Oxford: Routledge, 1996.
Thomas, Rod, Rouhshi Low and Lynden Griggs. "Australasian Torrens Automation, its Integrity, and the Three Proof Requirements." *New Zealand Law Review* 2 (2013): 227–262.
Tay, Ying Ying. "The Demise of Paper Certificates of Title and the Future of E-Conveyancing." Bell Legal Group. September 1, 2014. https://web.archive.org/web/20201117120229/https://belllegal.com.au/demise-paper-certificates-title-future-e-conveyancing/.
Taylor, Greg. *The Law of the Land: The Advent of the Torrens System in Canada*. University of Toronto Press, 2008.
Vismann, Cornelia and Markus Krajewski. "Computer Juridisms." *Grey Room* 29 (2007): 90–109.
Vismann, Cornelia. *Files: Law and Media Technology*. Stanford, CA: Stanford University Press, 2008.
Weaver, John C. *The Great Land Rush and the Making of the Modern World: 1650–1900*. McGill-Queen's University Press, 2003.
Whitehouse, Lisa. "Homeowner: Consumer or Citizen?" In *Land Law: Themes and Perspectives*, edited by Susan Bright and John Dewar: 183-205. Oxford University Press, 1998.

Primary Sources

ARNECC. "Electronic Lodgment Network Operators." https://www.arnecc.gov.au/resources/links/electronic_lodgment_network_operators
Australian Council of Governments. "National Partnership Agreement to Deliver a Seamless National Economy (2008)." http://www.federalfinancialrelations.gov.au/content/npa/other/national-partnership/past/seamless_national_economy_NP.pdf
New South Wales Register General's Guidelines. "What is a Subscriber?" https://rg-guidelines.nswlrs.com.au/e-dealings/faqs/general/what_is_a_subscriber
Office of the Registrar General. *Discussion Paper—Certificates of Title: The Next Evolution* (Office of the Registrar General, NSW Government, 2018).
Office of the Registrar General. *Position Paper—In Response to Submissions Made to the Discussion Paper, Certificates of Title: The Next Evolution* (Office of the Registrar General, NSW Government, 2019).
Office of the Registrar General, NSW Government. "Cancellation of Certificates of Title Webinar." https://vimeo.com/586067621/eddee12b1e
PEXA. "5 in 5 with AIC National President Shane Jacob and PEXA CEO Marcus Price." Filmed August 14, 2019. https://www.youtube.com/watch?v=ifGNQxx8Zy8&trk=organization-update-content_share-video-embed_share-article_title
PEXA. "Investor Relations." http://web.archive.org/web/20201215223651/https://www.pexa.com.au/investor-relations
Petinos, Eleni. *Debate on Real Property Amendment (Electronic Conveyancing) Bill 2015*. NSW Legislative Assembly Hansard, August 26, 2015.
Real Property Act 1900 (NSW).
Real Property (Computer Registration) Amendment Act 1979 (NSW).