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Illegal Evictions? Overwriting Possession and Orality with Law's Violence in Cambodia

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Abstract

The unfolding of a juridico-cadastral system in present-day Cambodia is at odds with local understandings of landholding, which are entrenched in notions of community consensus and existing occupation. The discrepancy between such orally recognized antecedents and the written word of law have been at the heart of the recent wave of dispossessions that have swept across the country. Contra the standard critique that corruption has set the tone, this paper argues that evictions in Cambodia are often literally underwritten by the articles of law. Whereas 'possession' is a well-understood and accepted concept in Cambodia, a cultural basis rooted in what James C. Scott refers to as 'orality', coupled with a long history of subsistence agriculture, semi-nomadic lifestyles, barter economies, and—until recently—widespread land availability have all ensured that notions of 'property' are vague among the country's majority rural poor. In drawing a firm distinction between possessions and property, where the former is premised upon actual use and the latter is embedded in exploitation, this article examines how proprietorship is inextricably bound to the violence of law.

Keywords: Cambodia, dispossession, law, property, violence

SATAN, n. One of the Creator's lamentable mistakes, repented in sackcloth and ashes. Being instated as an archangel, Satan made himself multifariously objectionable and was finally expelled from Heaven. Halfway in his descent he paused, bent his head in thought a moment and at last went back. "There is one favor that I should like to ask," said he.

"Name it."

"Man, I understand, is about to be created. He will need laws."

"What, wretch! You his appointed adversary, charged from the dawn of eternity with hatred of his soul—you ask for the right to make his laws?"

"Pardon; what I have to ask is that he be permitted to make them himself."

It was so ordered.

- Ambrose Bierce (1906/2003, p.138) *The Devil's Dictionary*

True, This!

Beneath the rule of men entirely great,

The pen is mightier than the sword.

- Edward Bulwer-Lytton (1839: 52) *Richelieu; Or the Conspiracy*

INTRODUCTION

One of the foundational components of anarchist thought, as outlined by Pierre-Joseph Proudhon (1865/2011), was the distinction drawn between property and possession. Proudhon related property to the Roman law concept of 'sovereign right', where a proprietor could 'use and abuse' *his* property as *he* wished, so long as *he* retained state-sanctioned title.¹ In short, property in Proudhon's reading can be defined as a juridico-institutional means for exploitation. More recently, Hardt and Negri (2009, 5) have argued that the predominant contemporary form of sovereignty 'is completely embedded within and supported by legal systems and institutions of governance,' which is a formal organization of power 'characterized not only by the rule of law but also equally by the rule of property.' This integral relationship between sovereignty and property compels us to acknowledge that the origination of *homo sacer*, as an accursed figure of Roman law (Schmitt 1922/2006), came not simply through his exclusion from civil rights before the law, but specifically through his very lack of proprietary means. The figure of *homo sacer* is, according to Agamben (1998, 7), the embodiment of bare life, or 'life exposed to death', precisely because he may be killed, but not sacrificed. *Homines sacri* are therefore defined by lives, and so too deaths, that do not count. No longer regarded as a 'deep' metaphysical or transcendental entity before the sovereign laws of God, the individual is now, before the sovereign laws of man, considered a 'superficial' entity endowed with property, defined not by *being*, but by *having* (Hardt and Negri 2009). In other words, to have political significance before the law and to be included in the sovereign order, that is, 'to count', one must hold property.

Proudhon contrasted this supposedly God-given, sovereign right of *property*—viewed as an affront to the liberty, equality, and security of the community—with *possession*, which cannot be mobilized for exploitation as it is based on actual use. So a house that one lives in is regarded as a possession, while a house that is rented becomes a means for exploiting others and is thus considered property. While

¹ It was only males who were afforded such rights, which in itself tells us something about the discriminatory origins of property.

property attempts to mobilize the means of production as a natural, sovereign right of an individual (i.e., a proprietor), Proudhon (1840/2011) argued that this was an illegitimate form of use that constituted a form of theft from the commons. This is not to say that a means of production should not exist, which is of course impossible, but rather that such means should not belong to a sovereign proprietor as a so-called ‘natural right’. Instead, everyone connected to the said means of production should share in the bounty and surpluses it produces. Moreover, this is not to suggest that everything should be shared. Your possessions are your own based upon their continuing actual use. So for example, if you have a plot of land that you maintain to sustain your existence, it is your *possession* based on its actual use. If you employ others at wages to work on this land for your own profit, or simply speculate on its value without actually using it, it becomes *property*. If a group collectively works on the plot of land and all involved benefit from its use, it remains a possession, but is expressed in a collectivized form. Property is thus defined by its mechanism of exploitation, which makes it fundamentally different from possession insofar as it relies on coercion, exclusion, hierarchy, and most notably, enforcement (or law) to maintain its viability.

This anarchist notion of actual use as the only valid form of title is also a hallmark of so-called ‘primitive’ or ‘preliterate’ societies (Clastres 1974/2007; Scott 2009). It similarly remains widespread in contemporary Cambodia, where literacy rates are still relatively low compared to other countries (UNDP 2009), and the unfolding of a juridico-cadastral system is at odds with local understandings of space, which are entrenched in community consensus and existing occupation. In contrast to such traditional spatializations, changes to the land tenure system in Cambodia were introduced when the Cold War ended in 1989, as the Cambodian government attempted to make the country more attractive to foreign capital (St. John 1997). Despite this preparatory development, public use of state-owned land went unchallenged throughout the 1980s and much of the 1990s (Slocomb 2010). Yet the capstone to Cambodia’s political economic transformation and rapid neoliberalization (Springer 2010a) was the promulgation of the Cambodian *Land Law* in 2001, and with its enactment, significant land reform was implemented and widespread land conflict ensued. This new piece of legislation is clearly the most important written document vis-à-vis land in the country, as it outlines the legal framework upon which property may evolve. Yet the interpretation of the 2001 *Land Law* with respect to existing ideas of actual use has created significant confusion within the Cambodian public sphere, particularly among those who have faced so-called ‘illegal’ eviction. Consequently, high-ranking government officials and military personnel have become emboldened by what they view as a *carte blanche* to capital accumulation in the form of land.

Such conflict has not gone unnoticed by a range of civil society actors. Yet rather than challenging the legislation that has gravely worsened the strife of the Cambodian poor by spawning a seemingly endless wave of forced evictions, the nongovernmental organization (NGO) community and the World Bank in particular have looked to formal land registration and marketization as key means to improve land tenure security in Cambodia. Unfortunately instead of mitigating land conflict, this approach has significantly increased the vulnerability of Cambodians to landlessness by intensifying the need for written certification to prove ‘ownership’. With the refashioning of traditional landholding patterns through a market-based model, the motivation to acquire land in Cambodia is no longer concerned with sustenance, but is instead now primarily related to profit, where speculators seek to ‘get ahead’ (i.e., to gain ascendancy or to exploit) via the accumulation of land transformed into property. In recent years vast amounts of land have been converted to tree plantations across Southeast Asia (Hall 2011), which has resulted in significant labour fragmentation and displacement that intensifies urbanization as rural peoples are stripped of their foothold on the land that has traditionally sustained them (Li 2011). In Cambodia this pattern unfolds through well-positioned power brokers who have begun *dispossessing*—literally nullifying the possessions of everyday Cambodians—en masse by imposing their own supposed proprietorship.

Whereas *possession* is a well-understood and accepted concept in present-day Cambodia, a cultural basis rooted in what Scott (2009, 221) refers to as ‘orality’—rather than ‘illiteracy’, which calls attention to ‘a different and potentially positive medium of cultural life as opposed to a mere deficiency’—coupled with a long history of subsistence agriculture, semi-nomadic lifestyles, barter economies, and—until recently—widespread land availability have all ensured that notions of *property* are nothing if not vague among the country’s majority rural poor. These circumstances are not dissimilar to the patterns found elsewhere in Southeast Asia, where the historical record confirms that legal formalization of land ownership was largely contemporaneous to the coming of a profit-oriented outlook initiated by European colonialism (McCloud 1995). The key difference is that in Cambodia the concept of ‘actual use’ over ‘proprietorship’ has arguably even more validity, as patterns of landholding were complicated by forced exurbanization under the Khmer Rouge and the post-Pol Pot resettlement patterns that saw thousands of individuals and families attempt to return to their homes, only to find them destroyed (Tyner 2008). The devastation wrought by years of war not only necessitated settlement into vacant plots previously occupied by victims of the genocide, but also encouraged the re-adoption of communal living by extended families to reflect pre-Khmer Rouge organizing principles. In such a context marked by alternative spatialities based on actual use, we can view the creation of property as an explicit imposition. Likewise, it is within such a geographical context that the integral pairing of primitive accumulation and law seek to find traction. The objective is clear: forcibly evict those individuals presently occupying a desired parcel of land and simultaneously legitimize this violent and exclusionary claim to space through a litany of ‘official’ written documents that make little sense to all but those who spend several years studying a codified set of precepts, conventions, and precedents, and virtually no sense to those who come from a cultural milieu characterized by orality. This is at once the methodology of primitive accumulation and the harsh power of law. The consequence of this unholy union is that, despite the common characterization of Cambodia’s eviction cases as ‘illegal’, most dispossessions actually proceed through the written articles of law.

Recent accounts of land conflict have argued for class and power to take center stage in analyses of agrarian change (Khan 2004), and while I agree on the importance of such a focus, I am keen to modify this slightly in emphasizing violence and law, and particularly their intersections. This shift in focus follows Peluso and Lund (2011, 667), who recognize the relationship between class structure and land control as the lynchpin of agrarian studies, yet are keen to highlight a series of emergent frontiers, including ‘new legal and violent means of challenging previous land controls’. Moreover, the conflict between orality and law is not unique to Cambodia, and I hope to demonstrate a wider resonance to my argument than my chosen case study. One can easily draw a connection to the plight of First Nations peoples in British Columbia, where Sparke (2006, 16) has demonstrated how oral traditions have been cast as illegitimate in ‘a Western juridical field that conventionally accepts only written and cartographic documentation of territory’. Similarly, the contemporary situation in Cambodia is not without historical precedent in other locations where agrarian change has been underpinned by primitive accumulation. For example, Terzibaşoğlu (2004, 159) argues that within the context of late 19th century and early 20th century Anatolia, existing oral traditions and landholding practices were ‘sidelined in the face of land registration and the increasing primacy of title to land as proven by official deeds’. As Marxist historian E.P. Thompson (1975) has observed in his account of the British Black Act, these legal struggles are indicative of how law often works not to codify customary practices, but to criminalize them. The processes of agrarian reform that see antecedent systems of landholding transformed into property regimes through land titling accordingly signify a profound shift in the existing moral economy of those locations being drawn into a capitalist order.

Against the historical backdrop of colonial power a number of critical studies have interrogated the contemporary context of liberal peacebuilding in the wake of so-called ‘civil wars’ (Cramer 2006),

emphasizing the detrimental results that come from framing ‘peace’ as inextricably linked to the securing of markets (Paris and Sisk 2009; Pugh et al. 2008). Within this literature attention has centered on ‘greed’ and ‘grievance’, where scholars like Collier and Hoeffler (2004) have examined the role of preexisting egalitarianism and social cohesion in any prospect for peace. On the other side of this debate are scholars like Harrison and Huntington (2001), who—in advancing a capitalist morality—complain that existing cultural mores and traditional norms act as impediments to economic liberalization and ‘development’. While Thompson (1971) was correct in originating the concept of a ‘moral economy’ to counter the notion that there was no legitimizing rationale behind popular rebellion as a response to economic hardship—or as Scott (1976) demonstrated, to agrarian reform—what is fundamentally at issue is not simply a grievance rooted in a particular cultural understanding. Rather, what is needed is an appreciation of the underpinning principle of capitalism itself, namely primitive accumulation, which is always and necessarily violent (Marx 1867/1976; Wood 2002). Similarly, recent writing on land-grabbing has recognized how this particular brand of violence draws distinct parallels with the violence that is central to processes of state formation (Grajales 2011) and the legal frameworks that sustain governmental control (Scott 2009). Through political technologies, institutions, and legal forms—most notably property—government attempts to convey a message that ‘society must be defended’ against its enemies, or those ‘Others’ who would threaten its ostensibly peaceful order (Foucault 2003). As the violence of law is both sanctioned and mystified through such technological and institutional procedures, particular political rationalities are (trans)formed, thereby enabling people to be governed as subjects (Foucault 1988). The supposed ‘rightness of property’ therein becomes ingrained, and as with all historical forms of enclosure, property regimes accordingly help to create and sustain a discrete geo-body constructed not only by technocratic regimes for managing land, but also through a biopolitical project that geographically bounds subjectivities to capitalism (Malhi 2011).

The argument that follows is based on periods of research undertaken in Cambodia in 2006, 2007, and 2010, involving in-depth interviews with over 100 participants, including NGO directors, international financial institution staffers, politicians, diplomats, and ‘everyday’ (read ‘extraordinary’) Cambodians who have found a way to live through unimaginable violence. The central research focus was on understanding perceptions and experiences of violence in contemporary Cambodia, but this criterion was not imposed on participants, as interviews were instead conducted as a flexible and reflective process. Although I speak Khmer, which helps me in building rapport, I continue to work with an interpreter in Cambodia to assist me in picking up on cultural cues, to negotiate the politics of my ‘outsider’ status, and also as a measure of mutual learning and reciprocity. In terms of translation, I have presented the participants words exactly as they were spoken to me, either by my interpreter or by the participants themselves. In doing so I am engaging a ‘foreignizing translation’ strategy, which highlights the translated nature of the text, as opposed to the dominant ‘domesticating translation’ strategy which seeks to render the translation process invisible and thereby reinforces ethnocentric readings of the translated material by prioritizing the cultural and aesthetic values of the target language/audience (Venuti 2000).

I begin by contextualizing Cambodia’s recent upsurge in dispossession by situating this phenomenon within the ongoing evolution of the country’s landholding practices and by interrogating the most recent legislation on property. I then seek to illuminate how accumulative practices proceed through the power of the written word, which is not to suggest a lack of materiality, but is instead attentive to the spatio-temporality of dispossession by recognizing law as an assemblage co-constituted by violent ‘acts’ and written ‘deeds’. This is followed by an analysis of the written word of law, where I attempt to reveal the arbitrary, violent, and harsh principles that guarantee its sovereign authority. Finally, before offering some final thoughts in the conclusion, I examine the ethical vacancy of property as a system that not only ignores orally recognized antecedents, but polemically advances

a capitalist ‘moral order’.

THE LAW OF THE LAND: ACQUISITION BY PLOUGH, SWORD, AND PEN

The epidemic of dispossession that has swept across Cambodia in recent years is framed within the context of the country’s deepening neoliberalization. Cambodia’s neoliberalizing processes have been, on the one hand, led by the aims and ideals of the international donor community since the United Nations (UN) sponsored transition of the early 1990s (Springer 2009, 2010a), and on the other hand, readily taken up by local elites as a kleptocratic means to enhance both their wealth and their hold on political power (Springer 2010b, Springer 2011a). The result of widespread liberalization, privatization, and deregulation is a speculative industry that has produced a swath of land title assignments, procured through questionable means, and a corresponding number of bloody evictions and violent land-grabs. Both NGO monitoring (CHRAC 2009, 2010; LICADHO 2009) and the reporting of the Cambodian courts (Supreme National Economic Council 2007) confirm that the number of land conflicts has risen steadily since the 2001 *Land Law* came into effect, while over the past fifteen years, private investors have purchased an astounding 45 percent of Cambodia’s total land area (Global Witness 2009). LICADHO (2009), one of the most prominent human rights organizations in the country, reports that in the 13 Cambodian provinces where it maintains offices, over 250,000 people have been affected by land-grabbing and forced evictions since 2003. In 2008 alone, according to a report by Amnesty International (2008b), a further 150,000 Cambodians were at risk of forced relocation nationwide. During the first half of 2010, more than 3,500 Cambodian families—totaling around 17,000 people—were affected by land-grabbing in 13 provinces (Human Rights Watch 2011). A report by Bridges Across Borders and Centre on Housing Rights and Evictions (2009) further reveals that many vulnerable households have been arbitrarily excluded from the land titling system, effectively denying these families protection against land-grabbing and any chance of adequate compensation for their expropriated land, circumstances that both exacerbate and actively produce conditions of poverty.

In almost all instances these dispossessions have been backed by systematic impunity for Cambodia’s ruling class, comprised of Prime Minister, Hun Sen, and his inner circle of clients (Global Witness 2007), which has unsurprisingly angered a growing number of Cambodians:

If Hun Sen keeps on going with the land-grabbing, then it will happen like the 1970s. Lon Nol’s regime [fell] because of the same thing. So now the victims that I work with say if anyone leads a force to fight against the rich men, they will go into the forest [like the Khmer Rouge did] and if someone provides them with the rifles and weapons, they will struggle to fight. They want to kill them like the Khmer Rouge because they get angry. Around the country the people who are affected by the land-grabbing, like the indigenous people, one time they had the bows and arrows to fight with the police. They went to hide their group in the forest and when the police tried to arrest them, they shoot the police. ... Maybe the leaders that have a lot of bodyguards and a lot of military in their hands think that nobody can do anything to them. ...but if he’s a good Prime Minister, no need for bodyguards. ... If he makes good things for the public, the public will protect him (Interview, Sia Phearum, Secretariat Director, Housing Rights Task Force, 5 August 2010, Phnom Penh).

While Hun Sen’s paranoia is well documented in his frequent addresses to the nation that assert

his iron grip on power (Cheang Sokha 2007, “Hun Sen: Nobody can topple Hun Sen” 2008), and through his symbolic gesture of declaring ‘war on land-grabbing’ in early 2007 (Yun Samean 2007), the implications vis-à-vis law have been negligible. Evictees continue to have virtually no recourse, as their ‘ownership’ claims are not reflected in official documentation or legal entitlement, but in traditional understandings of possession relating to actual use.

Given the extent to which violence has been a defining feature of Cambodia’s recent past (see Chandler 2007; Kiernan 2008), the guiding principle behind Cambodia’s contemporary neoliberalizing processes might be summed up by the axiom, ‘when there is blood on the streets, buy property’. Yet this is only part of the story, as—from the vantage point of capitalism—there was first a need to create property in its absence, which quite literally meant writing it into existence. Although Cambodia had developed its own sophisticated writing system long before the arrival of Europeans, dating back to at least 611 AD, written Khmer was not widely used outside of literary works and only became standardized, recognized as the ‘official national language’, and widely disseminated following the country’s independence from France in 1953 (Herbert and Milner 1989). So while the most ancient legal codes known, which date back several millennia, were written to enable emergent states and their class elites to both legitimize and exercise class-based power over the non-literate (Clastres 1974/2007), the application of the written word to property really only began to make ‘sense’ in Cambodia when the idea of property—as it is known today and in the terms of exploitation that I have defined it—arrived via its colonial encounter with France (1863-1953). Prior to the arrival of the French, under traditional Khmer feudalism and in keeping with Cambodia’s monarchical tradition of *Devaraja*, the cult of the divine God-king (Chandler 2007), land was vested directly in the sovereign as a divine inheritance (Ricklefs 1967). Yet within the observance of *Devaraja*, wherein the monarch is revered as celestial, actual use was nonetheless widely acknowledged through the traditional Cambodian concept of ‘acquisition by the plough’ (Russell 1997). This is not to romanticize or suggest a benign character to pre-capitalist social relations, as the feudal system in Cambodia was characterized by a rigid spatio-hierarchical structure. The population was divided between the urban minority in the capital, the residents of small towns (*kompong*), rice-growing villages surrounding the towns, and the inhabitants of the wilderness (*prei*) villages (Chandler 2007). Within this spatial matrix, the God-king and his bureaucracy represented the apex of power, while peoples living in peripheral areas and landless slaves signified the nadir. In the case of the latter, it is thought that many worked the large estates held by the king and a few important nobles (Thion, 1992), and it is here that we can see a historical antecedent to the contemporary making of *homo sacer* in Cambodia as the propertyless ‘Other’.

While all land, at least in theory, belonged to the sovereign during Cambodia’s feudal stage, in practice the cultivation the land, or possession, was afforded recognition. The 1884 *Land Act*, implemented by the colonial administration, changed the land holding structure in the country by introducing the concept of exclusionary ‘ownership’ in land, which served as a guarantee for the investments of French settlers, stating that ‘the land of the Kingdom, up to that day the exclusive property of the Crown will cease to be inalienable. The French and Cambodian authorities will proceed to establish private property in Cambodia’ (cited in Thion 1992, 29). A cadastral mapping and registration system soon followed in 1912, which was reinforced with exclusive and definitive ownership rights decreed under *Article 74* of the 1920 *Civil Code* which indicated ‘the rights of possession in matters of real estate only converts to the rights of ownership after being listed on the Register’ (cited in Russell 1997, 103). While the ‘acquisition by the plough’ was seemingly maintained through *Article 723* of the 1920 *Civil Code*, which specified that ‘in matters of real estate, the holder becomes legitimate when there is peaceful possession of unregistered land, in public and in good faith, continuously and unequivocally, for five consecutive years’, in the actual practice of law, written documentation of registration in land began usurping any sense of ‘good faith’ in orality.

Within the last 150 years, Cambodia’s form of government has changed repeatedly, from the

traditional Khmer feudal system, to the French colonial administration, to a constitutional monarchy, to a republic, to agrarian socialism, to a Vietnamese client government, to an independent state, to a UN transitional authority, and finally to the supposedly ‘democratic’ system government we see today. The implication of such variation in government is that the landholding structure also went through dramatic changes. While it is beyond the scope of this article to offer a fine-grained analysis of the land tenure changes under each of Cambodia’s successive regimes, the summary shown in Table 1 affords a sense of how legislation on landholding has changed considerably during a relatively short period, culminating in the most recent legislation, passed by the National Assembly on 20 July 2001 and formally adopted by the Cambodian Senate on 13 August 2001. Alongside this newly promulgated *Land Law*, the Cambodian government launched a Systematic Land Registration (SLR) programme that aimed to provide support for the privatization of land by integrating the poor into a formalized cadastral registration system. Corresponding with a desire to open the country to global flows of capital, the World Bank has been a primary driver of land registration in Cambodia, contributing a major component to the SLR in the form of its Land Management and Administration Project (LMAP) launched in early 2002. The stated aim of the LMAP was to improve land tenure security and the promotion of land markets by establishing institutions and a regulatory framework for land administration, followed by the issuance and registration of titles in targeted provinces (World Bank 2011). So (2009) suggests that while the SLR offered opportunities to convert oral claims into written documentation, the programme ultimately failed because villagers did not exchange land titles when land was bought and sold, meaning that updated cadastral records quickly fell into disuse. Villagers neglected to swap deeds because they believed maintaining harmonious relations with commune chiefs, who had traditionally overseen land exchanges, better protected their claims. What this suggests is that poor Cambodians had little understanding for the significance of both land titles and the recently adopted *Land Law*, as their understanding of land holding continued to be rooted in notions of possession as opposed to property.

Table 1. Cambodian Land Law Chronology

Year	Government	Legislation	Implications
Up to 1863	Pre-colonial Era	NA	<ul style="list-style-type: none"> • Land vested in sovereign as divine inheritance • Recognition of actual use via ‘acquisition by the plough’
1863-1953	French Colonial Administration	1884 <i>Land Act</i>	• Established alienation of land as private property
		1912 <i>Cadastral Authority</i>	• Mapping and land registration system introduced
		1920 <i>Civil Code</i>	<ul style="list-style-type: none"> • Reinforced exclusive and definitive ownership rights • ‘Acquisition by the plough’ maintained in principle
1953-1970	People’s Socialist Community (Independent Rule)	1956 <i>Constitution</i>	<ul style="list-style-type: none"> • Specifically provided for the protection of private property rights • Beginnings of legal land accumulation
1970-1975	The Khmer Republic (American Influence)	1972 <i>Constitution</i>	• Continued recognition of private property rights
1975-1979	Democratic Kampuchea (Khmer Rouge Regime)	1976 <i>Constitution</i>	<ul style="list-style-type: none"> • Abolition of private property and destruction of all records • Agrarian collectives introduced

1979-1989	People's Republic of Kampuchea (Vietnamese Occupation)	<i>1981 Constitution</i>	<ul style="list-style-type: none"> •Land vested in the state •Policies of collectivization and solidarity groups
		<i>1985 Sub-decree No.6</i>	<ul style="list-style-type: none"> •Prohibited purchase, sale, or rent of land
1989-1991	State of Cambodia (Independent Rule)	<i>1989 Constitution</i>	<ul style="list-style-type: none"> •Reintroduced private property rights
		<i>1989 Sub-decree No.25</i>	<ul style="list-style-type: none"> •Granted ownership rights over houses to the people
		<i>1989 Council of Ministers' Instruction No.3</i>	<ul style="list-style-type: none"> •Abolition of ownership rights existing prior to 1979 •Definition of three categories of land use (housing, cultivation, and concession) and set limits for individual allocation
1991-1993	United Nations Transitional Authority in Cambodia	<i>1992 Land Law</i>	<ul style="list-style-type: none"> •No set limits to individual land claims •Ownership rights restricted to housing only •'Temporary possession' rights eligible for conversion to exclusive ownership after a period of five years uncontested use •Non-utilization of land for a period of three years constitutes abandonment
1993-Present	The Kingdom of Cambodia (Independent Rule)	<i>1993 Constitution</i>	<ul style="list-style-type: none"> •Broader interpretation of legal ownership rights with regard to tenure security
		<i>2001 Land Law</i>	<ul style="list-style-type: none"> •Extended private ownership rights to residential and agricultural land •Ownership requires certified government document known as a 'title certificate' – 'temporary possession' and 'acquisition by the plough' nullified •Creation of a single Cadastral Registry to record all land in the country •No limits set on non-utilization – opened land to speculative economy
		<i>2010 Foreign Ownership Law</i>	<ul style="list-style-type: none"> •Ownership rights on housing extended to foreigners

Source: Adapted from Russell 1997 and Sar Sovann 2002.

One of the most peculiar passages in the 2001 *Land Law* appears in *Article 38*, which states that 'In order to transform into ownership of immovable property, the possession shall be unambiguous, non-violent, notorious to the public, continuous and in good faith'. Aside from the continuing dubiousness of 'good faith' and notoriety with respect to orality versus written documentation, *Article 38* appears to only recognize the nonviolent acquisition of property. This is of course scarcely the case in existing practice, as the violence meted out in legally dispossessing the Cambodian poor is easily recognized as violence, a quality that is acknowledged and well documented among both domestic and international human rights organizations (CHRAC 2009, 2010; Amnesty International 2008a; Kothari 2007; LICADHO 2009). Law ostensibly resolves this apparent paradox through the very logic of its own constitution, or at least that is what we (the subjects of law) are encouraged to believe. This is because law denies the violence of its origins (Benjamin 1921/1986), as well as the disorder engendered by its ordering, by proclaiming the force it deploys to be 'legitimate' (Sarat and Kearns 1992). Violence thus constitutes law in three particular senses: first, it gives law—as the regulator of coercion and force—a reason for being (Hobbes 1651/2008); second, it supplies the occasion and method for founding legal orders (Derrida 1992); and third, it provides a means through which the law acts (Weber 1919/2002). In short, the law seeks to achieve the monopoly of violence. Rooted in such

understandings, the 2001 *Land Law* accordingly proceeds as an erasure that operates through an ongoing and codified sense of denial, as it completely obscures the violent origins of property as primitive accumulation (Blomley 2003, Springer forthcoming, Tolstoy 1990/2004). Put differently, law turns a blind eye to the violent seizure of possessions premised upon actual use ('acquisition by the plough'), and in this neglect it thereby legitimizes the institution of property (at its originary moment of primitive accumulation, 'acquisition by the sword', and once evolved into an entrenched legal institution, 'acquisition by the pen').

This whitewash is made explicit in *Article 38* of the 2001 *Land Law* when nonviolence is qualified as follows:

The possessor shall occupy the land non-violently means that any possession originated through violence is not considered [to] conform to the law. However, if violence is used against third parties that try to get the immovable property without right to do it, such violence does not interfere on the possession initially peacefully acquired.

A critical reading of this qualification reveals two related erasures: first, the originary violence of property (primitive accumulation) is ignored as it is assumed that peaceful acquisition of property is possible, specifically through law. Second, it sanctions the use of violence by those deemed by law to be the 'true' proprietors. The law responds to such criticisms through *ipse-dixitism*, meaning it simply asserts that its own violence is legitimate (i.e., the sovereign principle of the monopoly of force), so that it should not be considered and is consequently no longer seen as violence. Thus, if violent dispossession occurs through the strictures of law, that is, if it acts only upon and through the written deeds of ownership it produces, it is considered neither violent nor in contravention of law. In other words, the stroke of the law's pen underwrites and thereby attempts to erase the violence of property from view (Blomley 2003).

ACCUMULATION BY TEXTUALIZATION: THE SPATIO-TEMPORALITY OF DISPOSSESSION

Poststructuralist and postcolonial authors have, through the application of Foucault's (1970) conceptualization of discourse, amply demonstrated a nexus between speech performances, the written word, and a variety of other textual formations (see Butler 1997, Said 1978/2003). Heightened awareness for the power of discourse has similarly led scholars to become more acutely aware of how the world is represented (Duncan and Ley 1993), and the authorial positionality of so-called 'experts' (Mitchell 2002). Although contributing much to this general framework of understanding, Derrida (2001) has nonetheless sought to emphasize the difference between speech and writing insofar as the written word is an enduring textual form that remains effective, despite the absence, death, or lack of immediate presence of its author. In applying this to law, we can recognize how orality is superseded by the written word, even in situations where possession is documented by the physical presence of human beings on land. The present pattern of systemic dispossession in Cambodia repeatedly demonstrates that actual occupation and use is of little consequence, as a written document indicating ownership trumps any and all other concerns. But while 'we need to attend to the link between words and violent acts', Blomley (2000, 96) appropriately reminds us that 'a legal claim that is purely textual is not sufficient. It must be enacted on the ground'. So while powerful, state-based elites use the formal authority afforded by written texts to justify (at least to themselves) their practices of dispossession, even when relying on oral traditions and normative practices, such actors have little difficulty organizing power in such ways as to effect deprivation, subjugation, and exploitation. This is

the nature of sovereign authority, violence is always at its disposal. The power of writing vis-à-vis property then is the power to obscure sovereign violence, as the written word allows for the re-interpretation of violence on the sovereign's own terms by sanctioning, securing, and structuring it within the discourse of law. The etymology of *law* itself hints at the importance of the written word and the permanence it offers, coming from the Old Norse *lag*, meaning 'something laid down or fixed'.

The situation in Spean Ches village, Sihanoukville clearly demonstrates that violent acts backed by sovereign authority, such as forced expulsion, intimidation, surveillance, imprisonment, shooting, and dispossession are integral components of the performance of property. In the early morning hours of 20 April 2007, more than 100 heavily armed military, municipal, and civil police blocked access to the village and ordered the residents to leave immediately (CHRAC 2009). Having nowhere else to go, villagers obviously refused. Over the next several hours the number of armed police swelled to more than 300 personnel, armed with AK47s, truncheons, electric batons, and tear gas. The siege began with police firing warning shots into the air, and while this successfully terrorized the village children who ran to the nearby beach to escape, many of the teenage and adult males fought back with stones, sticks, and knives, but were quickly subdued and arrested (Amnesty International 2008b). Those residents who refused to come outside were literally flushed, burned, smoked, and crushed out of their homes as police lit fires, used water cannons, and drove an excavator through their dwellings. Police themselves documented the violence of the eviction with photographs, which a sympathetic officer leaked to the villagers, who subsequently shared them with me asking that I 'show them to the world' (see Figure 1).² Before noon the entire village was razed and their belongings were looted or destroyed, including fishing nets, 16 motorcycles, and two generators.

FIGURE 1: Spean Ches Eviction



In demonstrating how evicted peoples, or those who do not *have*, are rendered as *homines sacri*, villagers recounted the eviction in Spean Ches as an extremely violent and merciless assault:

² Villagers also shared these photos with LICADHO, who have posted them to their website at: http://www.licadho-cambodia.org/album/view_photo.php?cat=36

On 20 April 2007, the police come to surprise us. No one gave us any warning about this. They came at 6:00am, and there were about 150 soldiers, military police, and police; three kinds of different uniforms. They have an ambulance come with them, because they know they were going to hurt people. Why would they bring this here if they didn't want to hurt us? ... They threaten with gun, shoot at us, and destroy our houses. They evict us using water, spraying us from a truck. And if someone is inside they come out, and they use the machine [excavator] to destroy the house, and start fires, and when the people get outside they catch and start hitting and shooting. They didn't ask us to leave that day, they didn't talk, they just come and use violence against the villagers. ... When they start at 6:00am the people shout loudly to announce please let us live here and talk to us nicely. But they don't listen, when they see us trying to talk to them and shouting for them to stop, they just shoot. And then after we are all very scared, they stop and sit and eat their lunch. Then after lunchtime they call more army people to come and use the gun, and they block the road so other people cannot come to the village to see what they do to us. Some journalist and human rights organizations try to come, but they don't allow them near our place. ... They don't care where we go after this. They didn't tell us where to go, just to leave, so all we could do is live on the side of the road here. I couldn't even bring any clothes or anything that I own. I lost everything. ... They hurt a lot of people, they don't care. They hurt men, women, and children. They didn't kill anyone, but they hit an old man and he was bleeding a lot through the nose and had to go to hospital. (Interview, Farmer and Fisher, Female, Age 43, 20 June 2007, Sihanoukville).

I tried to talk to the chief of the army and ask why they come here to destroy our homes? I tell him that we are poor, we do not have any power to go against [them], and no one owns this land. We were here a long time, and if someone owns the land, they would come and tell us in 1979 that the land belonged to them and that we could not stay here. But until now, no one has ever come to say anything to us. ... I try to talk to the police, but they don't say anything except "you lose, you have to leave here". ... They have sticks to electrocute us and guns, and they also have an ambulance and a big car with an arm [excavator] to destroy our houses, and lots of other army equipment. And they have bottled gas to make fires on our houses. ... then I heard one of them call on his thing like a phone [walkie-talkie] to someone else to ask for more people, to hire them to come and kill us all. ... they use the guns to shoot the ground and air to threaten us. They told us that if we shoot like this [pointing straight], we will kill you all. The army and soldiers use the shields to protect themselves and they use the water from the truck to spray the people, but I think the water was mixed with gas because it wasn't normal. ... One child they hit, her father was carrying her and they went to hit him with the stick but they hit the baby instead and broke her arm. The arm is not normal anymore. She can't move it. ... They hit the men. They hit the women. They hit everyone. They even hit people on the head. These are not good men, they are crazy (Interview, Farmer/Fisher, Female, Age 48, 20 June 2007, Sihanoukville).

While these testimonies clearly indicate that it is not just textual 'deeds' that make property available to action, but also the material and often violent 'acts' of local social actors (Blomley 2000),

in this case the Cambodian police, it is important to recognize just how much the written word reinforces the availability of violence as a resource for law. This does not negate the idea that one of the fundamental mechanics of law is how it materially spatializes violence by sanctioning acts of exclusion, confinement and expulsion (Delaney 1998). Instead, it gives charge to the notion that once the physical violence of primitive accumulation settles and begins to fade from view (that is, it is conceptually rendered ‘primitive’)³ the law of property remains, where so too does violence—poised to be unleashed through the juridical arm of enforcement when and where law’s written codification of property is challenged, transgressed, or disavowed. This is why Perelman (2000), Glassman (2006), Hart (2006) and others have argued for a conceptualization of so-called ‘primitive’ accumulation that is properly attuned to and cognizant of its ongoing effects. It is because of this recognition of primitive accumulation as a contemporary and continuing tenet of capitalism that Harvey (2003) has redubbed it as ‘accumulation by dispossession’.

The majority of the villagers had either been born in Spean Ches or had lived on the land for the last 25 years, having cleared the forest themselves, cultivating the land into small farms. When I visited the village in June 2007, residents told me they chose the site after the fall of the Khmer Rouge because it was vacant at the time, offered easy access to fresh water, and was close to the sea so they could fish. The village had been registered with the Commune Council of Mittapheap district in the mid-1980s, but only 17 of the resident 105 families ever received written land titles, largely owing to a culture of orality, where ‘acquisition by the plough’ and actual use continue to reflect Cambodian understandings of possession. Although oral claims can be converted into written certifications through commune chiefs, who play an essential role in Cambodia’s political economy of rule, representing the fulcrum between villagers’ exposure to predatory capital accumulation and the confirmation of legal title, they typically charge large amounts of money for certifying the claims of villagers. The courts consider these certifications, yet the weight of a commune chief’s evidence depends on complex and contextually situated factors, where some evictions may be successfully headed off as powerful interests mobilize in support of villagers, and others will proceed unimpeded. Unfortunately, as was the case in Spean Ches, villagers often cannot afford the fees required by commune chiefs to acquire legal title, a very common complaint among poor, marginalized, and recently evicted Cambodians (CHRAC 2010; LICADHO 2009).

When I returned to the former village site three years later, in July 2010, I found residents still living in makeshift shacks along the side of the road adjacent to the land where their homes once stood. After three years in limbo, villagers repeatedly informed me that they had little hope in facing off with those who held certificates of ‘ownership’, and little faith in the law:

The first time the commune chief invited me to talk to him [was] in 2007 before the eviction and [he] told me that the land I was living on is the property of other people, I asked him “why are you the one talking with me and not the owner?” I never saw the owner of the land come to talk to me and what happens now is that they know this land is worth a lot of money and it is by the beach. You see these hotels coming up? So now they make this new *Land Law* and issue this certificate to say you own the land but to be able to buy this certificate, you have to know the top ranking officials and he will write for you. So this is what happened, someone got the idea that they can easily take this land and make money off of it to sell later on and all they have to do is know Hun Sen or someone in the courts and get him to write the certificate that says now they own the land. And now they can take it from the people, easy. This is what I told to the

³ Or as Adam Smith (1776/2007) was keen to refer to it, ‘previous’ accumulation.

commune chief. ... but the authority they blamed me for not making the certificate after living there for so long. I had no money and no time because at nighttime I went out to the sea to fish and nobody talked about this issue. ... If we need the certificate, why did the commune chief not make the certificate when we first moved on this land? (Interview, Fisher and former Farmer, Female, Age 51, 24 July 2010, Spean Ches).

I don't understand why the government [uses] guns and burns the houses of the people ... why doesn't the government love its people? The government says that Khmer love Khmer but why they don't allow the people to live on their own land? During the eviction, the [land registration] documents were burned when they burn our houses, so now they come to do census and we have no proof. ... But the land value increases so they grabbed the land from us. It used to be a land with the forest, and the people had to remove the trees, so we are the ones who cleared the land. Nobody claimed the property, no need to say this is property of one, and this is property of another. I've been here for a long time and cleared the land to build the house, and at that time, nobody came to tell me "this is my land," and now they come to take the land and say that it is theirs. Now they just lie. The rich person knows the top ranking official, so they go and pay them some money and they make the certificate that says that they own the land. So this is like using the law to steal from the people (Interview, Porridge Seller, Female, Age 43, 24 July 2010, Spean Ches).

These sentiments suggest significant conceptual clarity in appreciating law's relationship with power and violence, precisely because they have seen first hand how law has not only failed them, but also harmed them. In other words, the dispossessed are able to recognize the essence of law for what it is: the obscured application of organized violence to compel widespread obedience to the whims of the powerful (Tolstoy 1900/2004). They are able to do this precisely because evictees have lived through and experienced law in its most fundamental form. So while at a societal level the idea of law goes largely unquestioned, those subjected to the explicit violence of law are able to easily recognize its arbitrary nature. And yet, lamentably, once the power of law's violence has been demonstrated through processes such as forced eviction, the threat of law's application is often sufficient to mold a sense of ignominy and deference before law.

The lack of written documentation had not been an issue of concern to the majority of the villagers, as their usage was 'continuous and in good faith' for over 25 years. As such, the timing of this eviction is revealing: coastal land prices began soaring in 2005 due to both oil exploration in the Gulf of Thailand just off the coast of Sihanoukville (Global Witness 2009), and a boom in the tourist industry as the islands off the coast were leased to private companies to develop upscale resorts (McDermid and Cheang Sokha 2007). Beachfront property, only a few hundred meters from the village, was subsequently earmarked for the development of five-star hotels (CHRAC 2009). These happenings signal a shift towards profit-oriented speculation, where acquired land is transformed into property, an institution capitalism regards as a principal resource in securing one's advantage over others. What is unfortunately not well understood is just how coercive property actually is. Hay (1992, 169, my emphasis) argues, 'The coercive impact of law is the [most] important element for those who, in fact, are the most direct victims of its violence, the poor', where 'the legitimation of *the word* [of law] is most compelling to those predisposed to believe it, who share it, who articulate it.' This is why law functions at the nexus between discourse and text, continually refracted through citational chains to support its replication, but it is law's anchoring in the written word that endows it with 'truth'. This criticism alone is not enough to condemn law, nor is it enough to enable us to recognize law as

violence (Benjamin 1921/1986). To achieve this sort of critical insight, we must continually be reminded that law is, as the Spean Ches eviction demonstrates, literally *written* by and for those who are the beneficiaries rather than the victims of its violence. Put differently, while it is a common critique to suggest that what is happening in contemporary Cambodia is a result of the corruption of law (see CHRAC 2009; Un 2009), this view fails to appreciate that law is both the will of the sovereign and subject to the interpretation of those most empowered by its ordering.

SO LET IT BE WRITTEN: THE LAW IS ARBITRARY, VIOLENT, AND HARSH

Article 30 of the 2001 *Land Law* has been at the center of property debates in Cambodia, as it indicates that ‘Any person who, for no less than five years prior to the promulgation of this law, enjoyed peaceful, uncontested possession of immovable property that can lawfully be privately possessed, has the right to request a definitive title of ownership’. This particular article is typically interpreted to mean that any five-year span of uncontested use translates into ownership. However, as the law states, uncontested use must have been for a minimum five-year period prior to the promulgation of this law, meaning usage must have originated no later than 1996. Following implementation of this law the legal validity afforded to actual use of the land has been revoked as a means to entitlement. So for example, a family who has been living on a parcel of land uncontested since 1997 up to the time of this writing in 2011 has no legal entitlement without official written documentation, regardless of the witness testimonies they can produce attesting to the truthfulness of their claim to actual usage. Moreover, *Article 30* explicitly states: ‘*has the right to request definitive title of ownership*’. This does not mean the deed will actually be given, but is a decision to be *arbitrarily* decided by the courts. My use of the word ‘arbitrary’ here is not inconsequential or unconsidered. In contemporary usage arbitrary usually refers to two related ideas, the first being those outcomes based on random choice or personal whim, while the second relates to unrestrained and autocratic use of authority. The words ‘arbitration’ and ‘arbitrary’ are both derived from the Latin *arbiter*, meaning ‘judge’ or ‘supreme ruler’. Taken together, these etymological and contemporary connotations reveal the illusory-cum-sovereign nature of legal arbitration, and so too should compel us to recognize the violence which sustains the interpretive power and thus the ‘authority’ of law.

Residents of Sambok Chab commune in central Phnom Penh learned this lesson the hard way on 6 June 2006, when they were subjected to one of the largest and most violent forced evictions since the 2001 *Land Law* took effect (Amnesty International 2008a; LICADHO 2009). Many of the evictees received no compensation and were effectively rendered homeless, while others, still not wanting to leave their homes, eventually received new plots of land in Andong village, 22 kilometers from the city center, because they had some kind of formal written documentation indicating their usage:

The government gave me land to live here [at Andong] because I lived at Sambok Chab for over 10 years and have papers to show this, so they exchange for this land here. ... They evict me from Sambok Chab because they say it is government land now. I don't know what they want to do with that land... the government did not explain this, they just tell us to move out. I didn't want to come here, but they forced us to come here. They tell us that if we don't agree to come here, that we will have nowhere to live because they are taking the land in Sambok Chab. If we don't agree to come, we have no choice, they will force us anyway. If we come here, then we get land. If we disagree and still try to stay there, they will force us out and not give us any land. The police did not hit us or use violence against my family because we agreed to come, but for some

people who disagree, they use violence to make them move. This is not fair for them to use violence against the people (Interview, Homemaker, Female, Age 55, 11 June 2007, Andong).

We lived in Sambok Chab for over 10 years, since 1996 we lived there. No one told us before that we could not live there, so we made a house, but now they tell us the land [does] not belong to us. The lawyer told us that the *Land Law* says that if you live somewhere for 5 years and nobody says anything to you, you can keep the land, but right now we cannot do anything. Nobody wants to listen to us or help us, so we just move. If we try to go against their policy, they will put us in jail. Three people who went against this policy are now in jail. They did not do anything wrong, they just did not want to move out and kept staying there. It is not fair to take them to the jail, but the city hall tell them that they are person who tried to destroy the public order so that's why they take them to jail (Interview, Photographer, Male, Age 30, 11 June 2007, Andong).

As this participant reveals, law enforcement officials forcibly and arbitrarily detained several community members for transgressing 'public order' (Amnesty International 2008b). But what is meant by 'enforcement' and 'order'? We can begin to understand by first recognizing that law is maintained as an apparatus of violence that disturbs, interrupts, and rearranges preexisting relations and practices in the name of an allegedly superior order (Benjamin 1921/1986). That order demonstrates its 'superiority' in ferocious displays of force, and in subjugating, colonizing, and 'civilizing' acts of violence (Sarat and Kearns 1992), all of which can accordingly be understood as preserving the order of the property regime itself (Springer 2010a). So through the clarity of deconstruction, as opposed to the obfuscation of rhetoric, we can appreciate that what is to be understood about 'enforcement' and 'order' is that those who resist law's violence come to know it intimately. Yet unlike the people of Sambok Chab, Cambodia's evictees are frequently not so fortunate, coming not only to know law's violence, but to be placed entirely at its mercy, having been abandoned by it. By being propertyless, by not *having*, the dispossessed are exposed as *homines sacri*, lives that do not count before the law, precisely because the burden of proof to actual usage in forced eviction cases falls entirely on the occupant, which, with the cards stacked against them in a system that privileges the written word over oral testimony, is a nearly impossible task.

In most instances, as *Article 30* of the 2001 *Land Law* predicts, evictees will be squared off against another individual who holds a written document of ownership:

In case the granting of a definitive title to ownership is subject to an opposition, the claimant has to prove that he himself [sic] fulfills the conditions of peaceful, uncontested possession for no less than five years over the contested immovable property or to prove that he purchased the immovable property from the original possessor or his legal beneficiary or from the person to whom the ownership was transferred, or from their successors.

Proof in this sense refers to the occupant being able to offer some form of written documentation, which seems like a severe demand given that Cambodian society is still predominantly rooted in orality. Yet the Latin phrase *dura lex sed lex* (the law is harsh, but it is the law) reminds us that such severity is not to be forgotten, 'For, in its severity, the law is at the same time writing. Writing is on the

side of the law; the law lives in writing; and knowing the one means that unfamiliarity with the other is no longer possible. Hence all law is written... writing directly bespeaks the power of the law' (Clastres 1974/2007, 177). In effect then, the intention of *Article 30* is not to support the legitimacy of actual use and the cultural basis of Cambodian orality, but to discredit it:

The problem is that evicted people stayed for a long time already but they don't have the land title because it's expensive. ... So when the government comes and says "this land is land of the government", you have to go away, even if the people say they've stayed there for a long time already. So if this private [business] person would like to get this land, they bribe the official and they get the land title. And when they go to the court, the court never implements the *Land Law* properly because if they implement the *Land Law*, then they would come and interview the neighbors and the local authority to find out if the families have lived there for a long time. And they can see if they've planted, for example, mangoes because mangoes take 5 or 6 years to grow. Ask questions and investigate! But they never do that (Interview, Pung Chiv Kek, President, LICADHO, 5 August 2010, Phnom Penh).

The interpretation of the law, which is the *arbitrary* right of the sovereign, is that the written word takes precedent over any claim to possession that might come to light through conducting an investigation that seeks to establish the facts by collecting oral testimonies. In short, the dictum 'so let it be written, so let it be done' represents the crux of law vis-à-vis property, where should possession not be written through the criteria set by the juridico-institutional order, as in practices of actual use based on mutual and orally communicated recognition, the law works to ensure that such forms of ownership are undone.

In this sense, the Cambodian government's SLR programme and the associated LMAP of the World Bank only intensified the burden of *written* proof that is now placed on Cambodians. While initially these projects were justified as a means to convert orality into legality, there is significant cause for cynicism. With forced evictions on the rise, Cambodian human rights groups increasingly complained that many poor and vulnerable households had been *arbitrarily* excluded from the titling process, denying them an opportunity to legalize their land claims. Such exclusions were said to have deprived these households protection against land-grabbing and adequate compensation for their expropriated land, often thrusting them into conditions of extreme poverty (Bridges Across Borders et al. 2011). In August 2009, the World Bank finally acknowledged publicly that the project's 'Involuntary Resettlement' safeguards had been breached, to which the Cambodian government responded by abruptly ending its agreement with the Bank on LMAP. Amidst intense criticism and intensified eviction related violence, the World Bank charged its Inspection Panel to investigate the failure of the LMAP. The findings were damning, suggesting that there were both breaches in operational policies and a failure to properly design, implement, and supervise the project, which directly contributed to the tribulations that poor Cambodians are now facing. The Bank was said to have failed to act on information when problems arising were first brought to its attention, and actions taken since were deemed '*too late to prevent the harms now being done*' (Inspection Panel 2010, vi, original emphasis).

The World Bank's focus on land reform is derived from an almost purely economic model of markets (Khan 2004), which draws parallels to the 'new institutional economics' (NIE) and its ontological argument that idealizes and *a priori* assumes markets as given, natural, and universal (Ankarloo and Palermo 2004). Although employing neoclassical tools to explain capitalist institutions, NIE recognizes particular asymmetries and imperfections in the operation of markets and therefore

seeks to extend its view of economics through a focus on the legal frameworks that motivate economic activity. The motivation is to provide solutions to market failures by introducing non-market institutions, which consists of legitimating state intervention in the economy insofar as it can create and enforce a 'proper' legal environment for capitalism (Hart 2002). Working within the NIE framework, North et al. (2009, xi) attempt to show 'how societies have used the control of political, economic, religious, and educational activities to limit and contain violence over the last ten thousand years' by focusing particularly on the role of institutions in patterning 'social orders', which they suggest mitigate violence. Within Cambodian studies, Peou (2007) has used a similar approach, employing what he calls a 'complex realist institutionalism' to explain the limits of international democracy assistance for peacebuilding. While Peou's study is appropriately critical of neoliberal institutionalism, I take a much more radical approach to democracy (Springer 2011b) and accordingly have reservations with the potential hierarchies that remain hidden within all institutions, including even the most progressive attempts at institutionalizing peace and democracy. Yet what is most notable with respect to land-grabbing in particular is that—like North et al. (2011) and the entire NIE literature—the World Bank overlooks the possibility of 'extra-economic coercion' (Hart 2002), which is to deny the historical origins of capitalism as primitive accumulation.

One could reasonably argue that this theoretical blind spot is a primary reason behind the LMAP fiasco. Yet analysis within the human rights sector has repeatedly pointed to violations of law as the primary culprit in eviction related violence (CHRAC 2009; LICADHO 2007), an argument popularized by property rights poster child De Soto (2000), who contends that the greatest 'failure' of the global south is the lack of rule of law to uphold private property. In this view, the World Bank's culpability in the violence is framed as good intentions gone awry due to local breaches of law, a belief that will surely be compounded following the Bank's August 2011 announcement that future funding to Cambodia has been frozen due to ongoing irregularities. No mention is made of how the World Bank actively spearheaded the conditions in which primitive accumulation could escalate as land became increasingly commodified, even as the Inspection Panel (2010) identified a lack of support for poor communities due to incomplete or inadequate implementation of the project, which left residents vulnerable to claims on their land. Similarly, little attention is paid to the way in which it is the purview of the sovereign, as the creator of law, to continually (re)interpret this law on its own, *arbitrary* terms. Orality accordingly helps to define the propertyless *homo sacer*, where the inability to write is a key criterion for the sovereign's coding of 'savagery' in opposition to its own supposed 'civility' expressed as law.

Harris (2004) argues the law provides a comprehensive framework for recalibrating land on the sovereign's terms and without reference to indigenous antecedents. It is this very process of recalibration that the SLR and LMAP sought to engage by creating a structure for property law, wherein notions of possession would be progressively rescinded. So while it is typical to critique Cambodia's evictions as 'illegal' perversions of law (Amnesty International 2008b; CHRAC 2010; LICADHO 2009), in most instances this well-meaning appraisal is factually incorrect. While the 2001 *Land Law* revokes the oral antecedent of 'acquisition by the plough' as well as the provision of converting 'temporary possession' into property via five years of uncontested use, the SLR and LMAP were purposefully designed to facilitate and disseminate awareness for conditions wherein, following an initial period of allowable registration, oral precedents would no longer be honored. *Article 6* of the 2001 *Land Law* specifically indicates that 'Only legal possession can lead to ownership', where legal possession is now categorically defined as a written certificate of entitlement, endowed by the Cadastral Authority. *Article 34* further designates residents without such written title as 'illegal occupants', where not only is compensation unwarranted by law, but it is completely within the scope of law to forcibly remove such individuals. Thus, the insistence that forced evictions in Cambodia are necessarily 'illegal' is both naive and unhelpful. What is actually needed is a more critical appreciation

of law's violence.

SUBVERTING ORALITY WITH MORALITY: THE POLEMICS OF PROPERTY

Having lived on their land uncontested for five years (and in many cases much longer) prior to the enactment of the *Land Law* in 2001, the evictees of Spean Ches, discussed above, have a strong case for legal ownership. Yet when villagers attempted to use their orality as a measure of 'good faith' to persuade the Cambodian courts to hear their side of the story and recognize that their possessions were 'notorious to the public', this effort was unsurprisingly thwarted without qualification, as their lives did not count because of their perceived—or more accurately preconceived—lack of proprietorship:

I feel hopeless because when I try to submit the paper to the court, they do not allow and push me away. They said if I want to do, they will file a case against the people in the village. In Cambodia, when you are poor you get hurt, and can just look and cry when the rich people take the land, because no one will do anything. The rich people don't offer to buy the land, they just look and say 'this is my land', and then take. And when I try to go to the court for help, they not accept this, they threaten that they will file a case against everyone in the village because we don't have papers to prove we own the land (Interview, Farmer and Fisher, Female, Age 38, 21 June 2007, Spean Ches).

This participant has vividly captured the heart of primitive accumulation that has informed the parallel projects of colonialism, state formation, and the property system since their synchronous dawn (Springer forthcoming). By noting that the villagers lack the papers to prove ownership and hence the court's refusal to hear their case, this participant has learned firsthand how vital the written word actually is to law, where writing represents the very pivot upon which accumulation by dispossession turns. Beyond looking and saying 'this is my land', the colonialism-state-property complex writes this expression of ownership down, and in this 'act' of writing (literally a legal act), the sovereign power of law is born.

Undeterred by legal intimidation, the people of Spean Ches sought the help of a local human rights organization, only to be faced with the undoubtedly frustrating obstacle of persuading a lawyer that their oral histories should be taken into account. Predictably, given her inculcation in the precepts of law, the lawyer assigned to represent the community had a much different view of the circumstances, forwarding an emphatically legalistic view where the power and authority of written documentation were privileged over the orality of the people she was meant to represent:

Of course they stay there a long time, but they stay on the road, not the land, and after city hall fixed the road, they moved to stay over there. The owner of land has a certificate to show he owns the land for over 5 years already. The people say they stay there 10 or 20 years, but they don't have any proof. This is difficult for them to have any proof, but all the people live on the road. Of course they live there in 1985, but not on the land, on the road. Only 17 families that live over there have a certificate from the authorities saying that they live over there, all the other families don't have any papers. ... I don't believe the rich owner of the land, but I don't believe the people either. But they are my clients so I have to believe them. The people told me this, they told me that they lived on the road before. This is the government's responsibility, not

the owner of the land. Some of the people say they don't have the certificate because they lost it in the fire [when their homes were burned by police during the eviction], or it was too expensive to make, but this is just the people talking. The way we investigated only 17 families have paper for the land, so the government is only responsible for those 17 families. ... This is not the fault of the owner, it is the fault of the people because they use to live on the road (Interview, Human Rights Lawyer, Female, Age 27, 21 June 2007, Sihanoukville).

The legal-property-writing nexus is so entrenched in this lawyer's thinking that she appears to express more sympathy for the so-called 'owner' (i.e., the evictor), than for the evicted community. Likewise, the inordinate focus placed on the location of where the evictees' former dwellings were situated—framed by the lawyer as the most important factor in determining this case—further speaks to the discrediting of actual use as a legitimate form of land possession. No consideration is given to the fact that the land now in question was located immediately behind the former houses situated along the road, and was used extensively for wood collection, rice fields, vegetable plots, and animal pens. Therefore, regardless of the physical situation of their dwellings, it is irrefutable that the people of Spean Ches village 'lived' on this land, as it nourished their bodies and sustained their lives.

This sort of privileging discourse that surrounds property and the ostensible entitlement to it raises the questions of ethics, and where the poor are situated within its matrix of morality. Property is so often regarded as being intrinsic to human thought and action, serving as the regulative idea behind both the state and the rule of law. Yet such a conceptualization is not a historical foundation drawn from the depths of time immemorial. Rather, property is better understood as an ongoing practice of citationality, through which 'it produces the effects it names' (Butler 1993, 2) and wherein such performativity envisions ethical obligations that constitute a particular type of 'moral order' (Hardt and Negri 2009). Locke, 'the protocapitalist thinker par excellence' (Gidwani 2008, 24), helped to articulate the foundations of capitalist morality by specifying the value-creating practices that capitalism evokes vis-à-vis property claims. Locke rejected the idea that morality is a relative human construct contingent upon both time and space, and so in attempting to rationalize colonial dispossession in the Americas, he advanced the idea that property is a God-given, natural right and should belong to those who can put it to its 'best possible use', which in his mind meant enclosure (Locke 1690/1980). Locke argued in favor of the capitalization of land, which was considered 'valuable' because it could be used to produce saleable commodities. It is therefore important to note that there is a substantial difference between an argument based on 'best possible use' and an argument based on actual use. The former is a labour theory of *property* that enters in particular normative ideas about what constitutes the most productive use with particular respect to the functioning of capitalism (Gidwani 2008), while the latter makes no such distinctions and aligns ideas of use to *possession*, which Proudhon placed entirely outside of capitalist relations in accordance with his anarchist philosophy.⁴ He rejected Locke's assumed natural right of property, arguing that possession cannot be justified by supposing a God-given, sovereign right:

The proprietor, the robber, the hero, the sovereign—for all these titles are synonymous—imposes his will as law, and suffers neither contradiction nor control; that is, he pretends to be the legislative and the executive power at once. Accordingly... property

⁴ As the first person in history to declare, 'I am an anarchist', Proudhon (1840/2011, 241) is also considered a preeminent godfather of socialism. His ideas were so influential in late 19th century France that it is impossible to disentangle his critique of property from the libertarian movement that resulted in the Paris Commune of 1871 (Archer 1997).

necessarily engenders despotism... Property is the right to use and *abuse* (Proudhon 1840/2011, 135, original emphasis).

Proudhon's intellectual project was thus antithetical to that of Locke, arguing against the capitalization of land in the form of rent, commodification, the production of marketable goods or otherwise.

Moreover, as has been pointed out by Marxist theorists, capitalist rationalizations of property as belonging to those who can put it to its 'best possible use' threaten—in an internally contradictory manner—to undermine specifically capitalist property, since the ownership of the productive capital and the goods produced in capitalist production processes do not fall to those who actually work and make use of the productive capital (see Rosdolsky 1992). The moral logic of capitalism vis-à-vis property can accordingly be considered oxymoronic precisely because the guiding template of 'best possible use' is imperfectly fashioned from an uneven and exploitative social formation. Nonetheless, because capitalism (particularly under neoliberalism) is similarly entwined within a discursive metanarrative that attempts to advance an omnipresent framework (Springer 2010c), it can consequently also be read as an ethics embedded in normative assumptions that produce a rigid code. This capitalist protocol is based upon a supposedly 'objective' right and wrong that takes one particular vision of spatio-economic organization (i.e., property) among innumerable competing possibilities and attempts to impose and uphold it as a universal standard by which the actions of everyone—in all spaces and at all times—should be judged. But judged by whom? When we ask this question, we reveal that the supposed 'ethics' of property is nothing more than the *arbitrary* morality of the sovereign. As with all morals, those that underwrite property serve the purpose of authority, attempting to define and direct the choices we make, where in spite of individual volition, they must not be violated because they are considered absolute and inflexible. Property simply *is*, and we are not meant to be able to detect its intolerant functions or exploitative foundations.

To Levinas (1969), ethics are not concerned with the justifiability of human action. If typical understandings of ethics—'moral ethics' in Levinas's view—are concerned with goodness and right conduct where normative and universal standards are raised, then Levinasian ethics are concerned with undoing such normative and universal standards. This distinction between ethics and morality that Levinas alerts us to is important precisely because capitalism claims a particular morality for itself, and yet this morality—when subjected to a critique that makes clear its underlying violence—is far removed from what many would consider ethical. Ethics, for Levinas, 'is the *mise en question* of liberty, spontaneity, and cognitive emprise of the ego that seeks to reduce all otherness to itself' (Critchley 1993, 5). The ethical is therefore not the construction of normative values, but an empathetic embrace of alterity that enables 'access to external being' (Levinas 1963/1997, 293). Ethics, understood in these terms, is therefore at once both solidarity with the 'Other' and the aesthetics of critique. By 'aesthetics', I follow Rancière (2006, 13), and mean to say the

delimitation of spaces and times, of the visible and the invisible, of speech and noise, that simultaneously determines the place and the stakes of politics as a form of experience. Politics revolves around what is seen and what can be said about it, around who has the ability to see and the talent to speak, around the properties of spaces and the possibilities of time.

So when property—as a distinct, spatialized 'moral order'—advances the particular economic model of capitalism through the auspices of law, it in fact also relies upon polemics in building consensus around predetermined spatial properties and temporal possibilities. Such spatial fixity and

temporal stasis promotes the invisibility of the violence that sustains property and stifles dissent, so that property literally functions by *silencing* the disaffected and dispossessed. Thus, through the very apparatus it maintains, property necessarily has deleterious consequences for cultures rooted in orality.

While the 2001 *Land Law* appeals to ‘good faith’, this is revealed as mere rhetoric when we recognize that the polemicist, the law, and the sovereign are all one and the same:

The polemicist . . . proceeds encased in privileges that he possesses in advance and will never agree to question. On principle, he possesses rights authorizing him to wage war and making that struggle a just undertaking; the person he confronts is not a partner in the search for truth, but an adversary, an enemy who is wrong, who is harmful and whose very existence constitutes a threat. For him, then, the game does not consist of recognizing this person as a subject having the right to speak, but of abolishing him, as interlocutor, from any possible dialogue (Foucault 1984, 381-382).

Through the ‘distribution of the sensible’, or the established order that determines what can be sensed, thought or felt (Rancière 2006), the configurations of domination and subjection that property enables go unchallenged, facilitating the structural blindness necessary for property to function and disallowing the orality upon which other spatio-temporal epistemologies are based. And yet there is hope in the aesthetics of critique to forge a new and ‘infinitely demanding’ ethics of commitment (Critchley 2007) that does not call us to action based on the *authorial* command of ‘good’ versus ‘evil’, but is instead rooted in the constant critique and reflexive interrogation of our own positionality vis-à-vis the plight of the propertyless ‘Other’, which might—when nihilism is replaced with empathy—allow for the creative invention of new forms of affinity beyond the politics of difference (Day 2005).

CONCLUSION

What is legal is not necessarily ethical, and what is ethical is not necessarily legal. This is a hard lesson learned as the discourse that surrounds law continually attempts to conflate these two very distinct concepts. To be clear, my argument is not that *all* forced evictions are legal, and it should be acknowledged that some incidents in Cambodia are actually illegal as adjudicated by the Cambodian courts inasmuch as they are determined to violate some aspect of the rules set forth in the 2001 *Land Law*. The fact that local human rights organizations, the international donor community, or various scholars point the finger and suggest a particular incidence of eviction in Cambodia is illegal is entirely meaningless and misunderstands the nature of sovereign power. The authoritative decision of the legality or illegality of a forced eviction is not in the hands of concerned observers or popular perception, which suggests a certain vigilantism. Rather, such pronouncement is exclusively in the hands of the Cambodian court as the institution vested with the sovereign authority to arbitrate the law. The courts may accordingly willingly accept forged land titles, which actually renders these fake documents *legal*. This is not to say that land titles (fake or otherwise) are fair, just, unproblematic, or ethical but such is the contradiction of law and its reflection of the interests of the powerful. The determination of legality being vested in particular institutions and individuals simply speaks to the arbitrary nature of sovereign power, which is both law-positing and law-preserving, meaning sovereignty is simultaneously the creator and the protector of the prevailing political and legal order. It matters not if land is obtained through force, theft, fraud, violence or ‘unlawful’ means, so long as the courts recognize the outcome, the act of legally sanctioning unscrupulous activity is what explicitly *makes* it legal. This is what primitive accumulation is all about.

In examining the contemporary realities of land-grabbing, forced eviction, and the creation of a

juridico-cadastral system in Cambodia, this article has sought to recognize how the transformation of appropriation (the taking of possessions) into property (a mechanism for exploitation) is fundamentally made possible through the written word of law. Thus, despite the mantric calls for increased ‘rule of law’ in Cambodia (see Etcheson 2005; LICADHO 2007), it is for good reason that such preoccupation should not be considered a benign concern for the improvement of Cambodian society, but rather, an imposition that serves to entrench property rights (Springer forthcoming). To put it bluntly, law is the imprimatur of the conqueror, while the written word is its mystifying guarantee. It is the presumptions and strictures of law that make it possible to render the Cambodian poor as *homines sacri*, lives that do not count, which positions them as ‘squatters’ on land they possess, and therefore legitimizes the mobilization of force against them when their interests (i.e., livelihood and life itself) come into conflict with the interests of capital (i.e., speculation, greed, and accumulation). As Weber (1919/2002) notes, law would not be law without the monopoly and mobilization of violence that guarantees sovereignty. Thus, for Cambodia to be considered as a ‘functional’ state within the contemporary milieu of Westphalian (neo)liberalism, it must reproduce the forms of violence that sustain existing power relationships, namely and most importantly property. This might prompt us to consider which is a more frightening proposition, a ‘failed’ state where violence is explicitly recognized as illegitimate and thus may potentially be overcome by solidarity, resistance, affinity, and the will to transform social relations into something altogether more collectivist and egalitarian, or a ‘functioning’ state wherein nationalist sentiment disrupts negotiations of sovereign authority and the law that supports it, so that violence becomes an entrenched, codified, and banal mediation of social affairs? In the former, we can easily recognize and understand dispossession as a perverse and malevolent violation, whereby warlords and bullies expunge individuals of their personal belongings and force them from their land (Cramer 2006). In the later, the idea of sovereign authority transforms bullies and warlords into ‘statesmen’ or ‘stateswomen’, wherein the ensuing dispossession becomes literally *underwritten* by law.

It is this ‘silent and daily functioning’ of sovereignty, law, and property, processes of euphemizing conquerors, legitimizing violence, and overwriting possession, that makes them ‘extremely difficult to recognize, analyze, and challenge’ (Hardt and Negri 2009, 5). And yet we can easily appreciate the privileged position of property in our political imagination when we examine possession and property in their negative sense. When one speaks of *dispossession* it is well understood that they mean the taking of something, usually land, from someone else who is already and actively using it. But what does it mean to *disproperty*? The term is scarcely recognized as a legitimate word. This should tell us something important about the logic of property itself, and the ingrained platitudes that encourage us to view it as an inalienable, natural, or God-given right. Dispossession, while frequently considered regretful and at times even worthy of our sympathy, is nonetheless given an air of legitimacy, as the process of deprivation does not necessarily transgress law. Disproperty, in contrast, appears as a misnomer, precisely because it contradicts an institution that is closely bound to notions of sovereignty and very clearly backed by the force (i.e., the violence) of law. In this light I want to conclude with Godwin’s (1793/1842, 310) eloquent words, which although written over two centuries ago about a context very different from contemporary Cambodia, nonetheless still hold true:

Law we sometimes call the wisdom of our ancestors. But this is a strange imposition. It was as frequently the dictate of their passion, of timidity, jealousy, a monopolizing spirit, and a lust of power that knew no bounds. Are we not obliged perpetually to revise and remodel this misnamed wisdom of our ancestors? To correct it by a detection of their ignorance, and a censure of their intolerance?

By questioning the precept of *dura lex sed lex* and reflecting upon the processes through which primitive accumulation is sanctioned, we are able to reveal the intimate relations between property, violence, and law. Such a critical position runs counter to the ignorance and intolerance of the contemporary ‘moral order,’ yet it embeds Cambodians more thoroughly within a framework of egalitarianism, collectivism, and actual use, practices that have been—until the recent advent of property—orally handed down to them through countless generations.

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About the Author

Simon Springer is an Assistant Professor in the Department of Geography at University of Victoria, Canada. His research agenda explores the political, social, and geographical exclusions that neoliberalization has engendered in the global south, emphasizing the spatialities of violence and power. He cultivates a cutting edge approach to human geography through a theoretical edifice that foregrounds emerging thematic concerns within the discipline by incorporating both poststructuralist critique and a radical revival of anarchist philosophy.