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Repossessing the Republic: Markets, Morality, and Distressed Property in Ireland

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Repossessing the Republic: Markets, Morality, and Distressed Property in Ireland

DISSERTATION

submitted in partial satisfaction of the requirements
for the degree of

DOCTOR OF PHILOSOPHY

in the Department of Anthropology

by

Nathan Thomas Coben

Dissertation Committee:
Professor Bill Maurer, Chair
Professor Julia Elyachar
Associate Professor Lilith Mahmud

2019

DEDICATION

To

My grandfather, Tom Lynch

When the black herds of the rain were grazing,
In the gap of the pure cold wind
And the watery hazes of the hazel
Brought her into my mind,
I thought of the last honey by the water
That no hive can find.

Austin Clarke
"The Lost Heifer"

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ACKNOWLEDGMENTS

In a March 14, 1960 episode of the American family sitcom, *Father Knows Best*, titled "Bud, the Speculator," Bud Anderson, the teenage son of the upper middle-class Anderson family, gets a loan of fifty dollars from his father, Jim, in order to buy stock in a new copper company. The stock, which was promoted by a customer at the gas station where Bud worked, turns out to be a fly-by-night scam. Bud now needs fifty dollars to repay his father in two weeks. When Bud gets laid off while the gas station gets renovated, he can only muster five dollars out of the fifty dollars he needs. Jim tells him that he's not worried about the repaying the debt for now. But Bud feverishly insists that he is responsible for his mistake and fritters away to make the money in short time.

On the final day to come up with the money, Princess, Bud's sister, offers Bud forty-five dollars she had been saving for a new dress, but he refuses it. It's *my* debt, he insists, and I'm going to fix it by the end of tonight. Then, miraculously, that evening his friend Eddie from high school comes to offer him forty-five dollars for his guitar and sports equipment. "Bud Anderson has paid his debt and redeemed himself," Bud will say to himself, imagining his own individual entrepreneurialism, moral righteousness, and good luck saved him. What he never finds out is that Princess had given Eddie her forty-five dollars and asked him to quietly broker the deal and restore Bud's pride. Bud never finds out. He will continue to think of debts as individualized referenda on the soul of the debtor. He will continue to regard the relations of kinship and friendship that he unknowingly animated in his struggle (Princess asks Bud, "Would it ever occur to you that I might want to help you because you're my brother and that if I ever needed it you might do the same for me?") as mere externalities, outside the scope of finance and debt.

In the process of researching and writing this dissertation, there is a long list of people who have extended credit—their belief—to me. Without them this project would be unimaginable, and, unlike Bud, I hope to recognize here, however meagerly. The semiotician and philosopher Charles Sanders Peirce defined "inquiry" as the struggle to turn the irritation of doubt into belief (1955). In helping realize inquiry that follows, the following people have at some point, knowingly or unknowingly, aided in redirecting that irritation of doubt away from myself, and helped me struggle towards belief:

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ABSTRACT OF THE DISSERTATION

Repossessing the Republic: Markets, Morality, and Distressed Property in Ireland

By

Nathan Thomas Coben

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Professor Bill Maurer, Chair

This dissertation comes out of an effort to understand the ways people in rural Ireland made new political, legal, and social arrangements when the threat of home repossession became a very real possibility in the wake of an unprecedented real estate crash in the country. Because of the way Irish nationalism emerged in response to the evictions of Irish tenant farmers in the 19th century, the current-day threat of repossession, in which the Irish state often owned many of the loans in threat of repossession, posed a political and social problem to the Irish republic.

In order to examine this problem of property and politics colliding in culturally and historically specific ways, I spent the bulk of my ethnographic research in Irish courtrooms where repossessions of homes were sought by lenders, and in which indebted homeowners marshaled whatever resources they had to either engage with banks to maintain possession of their home, or keep possession by defeating the banks with legal tactics (a much harder proposition). I primarily used observational and interview-based methods of data collection to gather information in and around Irish courts to get a better sense of what people were up to in

response to the distressed states of their home ownership and of their faith in the political project of the 21st century Irish republic.

What I found developing in rural Ireland, and particularly in the border counties of Ireland, was that people were generating a whole host of new ideas, relationships, inequalities, and ideologies around property. These were sometimes new forms were often atavistic and shrouded with a sense of historicity and traditionality. Findings include: the growth of a renewed early modern concept of the equity of redemption, new patron-client forms of “friendship,” Herculean efforts to move property around to secure possession of a family home, and opportunistic scams that promised to disappear mortgage debt. The virtues and good-faith intentions of actors in each of these paths of conduct range widely, so I take them on their own terms as different models of social action—the material and discursive practices through which people leveraged ideas and relations about their world (whether viewed very locally, globally, or conspiratorially) as means to achieve temporary, relational ends.

INTRODUCTION

> I firmly believe that when the history of this [decade] and the last decade comes to be written by social and economic historians, perhaps with postgraduate students applying their minds to it, the fascinating element to which they will commit most writing and thinking is how we maintained social cohesion throughout this period and how society kept its solidarity. They will consider how we did not have civil disobedience or, effectively, have trouble on our streets…The conclusion can only be that we have a very deep-rooted democracy, with fundamental solidarity among citizens.
>
> —Joe O'Reilly, Teachta Dála [member of the legislature] for Cavan-Monaghan, Quoted in the Anglo-Celt, October 29, 2015

> When we consider the challenges of Ireland's "recovery" – a term which in itself would deserve close study – it is clear that what is required is not just financial adjustment and a lifting up of enterprise and innovation, but also a revitalisation of our moral and intellectual foundations, a new collective discourse, and a new set of institutional practices, including academic practices.
>
> —Michael D. Higgins, President of Ireland, Speech, Economy and Society Summer School, May 11, 2015.

In the summer of 2015, I began long-term fieldwork in Ireland to examine the social and political transformations inaugurated in the wake of an unprecedented financial and banking crash. In my first week, I attended a weeklong series of seminars and discussions for postgraduate students at the Economy and Society Summer School, hosted by the Centre for the Study of the Moral Foundations of Economy and Society at University College Cork. That is the setting in which Michael D. Higgins, the President of the Republic of Ireland and a former sociologist and Labour Party TD (member of the Dáil, the Irish legislature), delivered the epigraph above as part of a speech to a room of graduate students and faculty members of various Irish social science and humanities departments. Delivering an opening speech fell squarely within the duties of an Irish President, who is effectively a figurehead representative for the nation and who must not be seen to be overtly partisan or political.

In an early moment of serendipity for me, Higgins extemporaneously recalled during the speech his time at the University of Manchester, where he was in conversation with the Manchester school of anthropologists that included people like Ronald Frankenberg—whose pioneering anthropological studies on contemporary British society followed in the footsteps of Arensberg and Kimball's seminal ethnographic research in Ireland (1968)—and Max Gluckman, one of the leading political and legal anthropologists of the 20th century, whose work I was familiar with during my coursework in my PhD program. The anthropologists had asked Higgins to present his research on Ireland to them, an idea that was exciting and novel to him: how strange, he had thought then, to present the Irish alongside Melanesians or the Nuer (paraphrasing). The encounter left an impression on Higgins. In an earlier speech inaugurating the research center that hosted the summer school, he reflected on the oddity that while anthropology had illustrated the "infinite complexity" of people once thought to be primitive because of their material wealth, economics had treated the individual in "complex society" as exceedingly primitive, isolated, and brutal:

> He or she has become an abstraction within an uncontested platform. The moral economy approach thus powerfully undermines the limited, abstracted, "abbreviated view of man" as mere *homo economicus*. It invites us to reassess the relevance of moral sentiments such as care, trust and friendship, and to reassert the centrality of principles of mutuality, reciprocity, redistribution and cooperation to the flourishing of our social and economic life.[1]

Given how eloquently and thoughtfully this and the rest of the speech were crafted, it seems unfair to contend that this itself might present a limited view of economy, moral or otherwise. But there are also important reasons to interrogate the given terms of moral economy, as much as economic recovery, which might only reinforce assumptions that such moral

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[1] https://www.president.ie/en/media-library/speeches/recovering-possibilities-discovering-the-rich-promise-of-a-moral-foundation.

economies, informal and "solidary" economic practices, were indeed categorically separate and secondary to the financial economy (see Bear et al 2015). That is to say, a turn to moral economy presumed that finance represented a categorically distinct world of unreality imagined by capital that could be opposed to a real economy of social beings. There are many ethnographic accounts of finance that emphasize the social relations that finance builds on and imagines (e.g. Zaloom 2006, Ho 2009, Miyazaki 2013). Nevertheless, it is worth taking up Higgins's point to consider what else was people were up to other than just performatively bringing about the restoration of an economy (Higgins also cites Callon 1998). Trust, friendship, reciprocity, and mutuality, as Higgins mentioned, were some of the other things people were up to. The question remains how those relations link up with those of economic recovery. This dissertation provides an ethnographic account of ways people forged those linkages.

This dissertation can be seen to respond to Higgins's call to question the presumptions of "economic recovery" and the shocking lack of imagination it illustrated as the main political project of successive Irish governments—but it is also an effort to redress that putative, analytic opposition of a financial world of empty signifiers and airy concepts, and the "real world" of material relations. Here, I want recover a sense of capital as a lived mediator for which human relations can be held responsible in producing, reproducing and maintaining a variety of different values: the home is a kind of capital, for instance, and simultaneously so many other things. The home is both prized (valued for what it can do for you) and appraised (having a value set on something) (see Dewey 1939). What I present are different modes of "action," or praxis, which join the abstract and ideational to the material to make the property-stuff that is both an abstract claim (title) and very material reality (home and hearth), an asset in a spreadsheet, and the central node of family life and household economic practices.

Joe O'Reilly's epigraphic quotation, on the other hand, does pose an important question: how did these things hold together when property was very much in crisis, and had held such a central part of the Irish political imaginary for so long? The answer will not be "social cohesion" but it is worth asking how did the very notion of property in land, the practice of the mortgage, and the markets built upon those formulations, come crashing down? Why did an "avalanche of repossessions" that was forewarned by homeowner advocates since the crash to the present time of writing (2019) not happen all at once?

In analyzing an economic recovery in terms of "action," I mean to turn from an examination of crises in terms of abstract and abstracting engines and logics—whether we mean economic crises, political crises, or anthropological problems—to some of the activities, ideas, and relations that people undertake as they strive to channel their environment "in new directions…pregnant with connections" (Dewey 1960:23). The openness of action to new possibilities should not be understood as a utopian, or even particularly optimistic, account of the ways that moral sentiment, commercial activities, and legal histories around the possession of land can be drawn on to make commensurate differences out of a potential future of permanent dispossession. Some of the results of actions taken by people I met who struggled to make financial economy commensurable included scams and conspiratorial movements that had the potential to crystallize into right-wing populist anti-statism. The point is not to glorify social relations and moral economy in contradistinction to the market, which is also made up of social relations and operates according to its own moral precepts. Rather, the goal here is to better understand how the continual unfolding of social life is a vibrant part of how people turn immeasurably big and abstract concepts—unchanging and eternal ones like mortality, the cancellation of obligations, damnation, redemption, Christ, and capital—into familiar and probabilistic modes of action that wed concepts with material relations and send them out into the world, pregnant with connections in the face of irredeemable disconnection.

Background to "recovery"

At the outset of my research, I had proposed to conduct research to examine the ways that a real estate and banking "crisis" challenged the moral and political bases of property in Ireland. The Celtic Tiger, which was the name given and widely used for Ireland's period of economic growth beginning in the 1990s, represented an historical anomaly. It was not the first period of prosperity for the former British colony, but the prosperity was more sustained and endogenous than any known before. The Celtic Tiger's prosperity was considered healthy economic growth for the better part of a decade until an unsustainable real estate bubble increasingly came to define the Irish economy. In trying to understand a crisis—in this case a dramatic transformation to the social life of property seemed to challenge the central place of the home in the Irish cultural and nationalist imagination—I figured I had an anthropological problem.

Specifically, my plan was to conduct research on the hollowed-out and vacant "ghost estates," mostly unoccupied or unfinished housing developments that were unsightly remnants of a speculative bubble in real estate that lead to a significant and problematic housing surplus. But by 2015 the crisis was starting to be spoken of in the past tense and most of the true ghost estates had been plowed under (at present a housing shortage is the front page news in Ireland). The keyword seemed to be "recovery": the Fine Gael-led government at the time was boasting at having succeeded in delivered it and much of Ireland was contending that recovery never made its way down the country. By 2016 a general election seen as a referendum on the so-called recovery proved indecisive: the ruling party was returned with too slim a margin to govern by themselves, and no government was formed for another 63 days.

The ambivalent path of economic recovery actually began before the crisis did. On September 29, 2008, Finance Minister Brian Lenihan announced a bill that would later prove to be a watershed moment in Irish fiscal history: the state was guaranteeing all of its financial institutions. Like the establishment of the FDIC in the United States, which was introduced during the Great Depression to assure people during moments of financial unrest that their deposits in their bank were ultimately backed by the government (preventing a run on the banks), the Irish government's "blanket" bank guarantee act (the "Credit Institutions [Financial Support] Act 2008") was meant to produce calm. But the 2008 bank guarantee was not primarily meant to calm account holders. Instead, it was primarily directed at international creditors who had loaned money to those banks and purchased shares in the banks. It was a total guarantee that covered liabilities of €440 billion in six financial institutions, or ten times the national debt. It turned out to be a less-than-informed gamble, as those financial institutions were either in worse financial shape than they were reporting, or than they knew. By 2010 the state was compelled to either nationalize or bankroll four of those six institutions, and by 2013 the cost to taxpayers for the guarantee had run up to €65 billion. In order to pay out those kinds of sums that were far beyond what the state collected in revenue, in 2010 Ireland took on €85 billion of debt from a party of creditors called the Troika, which included the European Commission, the European Central Bank, and the International Monetary Fund.

Economic hardship, uncertainty and recession were not at all unprecedented experiences in Irish history—in fact, the prosperity that preceded the 2008 crash was what was historically anomalous. Nor was it novel for the Irish state to initiate a program of cuts to public services in response to the fiscal situation that followed. Since the adoption of fiscal policies put forward by civil servant T.K. Whitaker in 1958 (“First Programme for Economic Expansion, 1958-1963,” referred to as the “Grey Book”), the Irish state observed a policy that entailed cutting expenditures on “unproductive capital,” which referred primarily to social housing, and creating tax-friendly incentives to encourage investment. Investment was solicited from foreign industrial capital, first, and financial capital, later (marked, in particular, by the establishment of the International Financial Services Centre, a tax-free zone in the Docklands area of Dublin). After the 2008 crash, “vulture capital” became the characteristic new kind of investment the Irish government sought out; that is, investment from the financial firms that specialize in purchasing “bad” assets, like mortgages awaiting foreclosure, in bulk and at a discount. This latest development became a central part of state fiscal strategies because of how it had staked itself to domestic financial institutions in the early moments of international panic about the markets.

If cuts to public spending were not themselves new, the introduction of vulture capital was: those cuts were now being made as part of liquidation, the process of selling off assets during the complex legal process of dissolving companies called “winding up.”[2] In this case, the liquidator was a Fianna Fáil-led, then Fine Gael-led, government.[3] The assets they were selling

[2] “Winding up” is different than “unwinding,” which is a term reserved for closing out from a financial position (see Riles 2004). It works just as well to describe Ireland’s moves post-2008: the state had taken a “long position” on Irish banks, “margin calls” were being made in the form of having to nationalize those banks, and so the state tried to find a way to counter all those margin call losses by “unwinding” from that long position by “floating” nationalized banks to investors and selling tranches of assets to willing buyers. Although both involve complex legal processes, I will stick with “winding up” here because it more directly concerns the interstitial legal machinery of reassigning property rights in assets—factories, contracts, fixtures and fittings, etc.—to do the finance.

[3] Those are the two main political parties in Ireland, neither of which align neatly on an ideological spectrum of left-rights politics. They derive from an opposition about the signing of the Anglo-Irish Treaty that finalized the Irish War of Independence and formally established the partition of six out of nine Ulster counties into Northern Ireland and the twenty-six remaining

off were primarily debt instruments, like regular homeowner mortgages and major commercial loans to developers.[4] Those debt assets were major liabilities for the hard-hit, part-nationalized, Irish financial institutions, meaning they could not make new loans and do other investment banking as freely while saddled with those debts. And the Troika, now heavily invested in how Ireland's recovery, wanted Ireland to shape its economy in such a way that it could make good on the considerable loans it had taken on. This would lead to recommendations about how Ireland should govern through its debts, but since the austerity planning of these institutions closely aligned with Irish government's own fiscal tendencies, most of the recommendations were wholeheartedly welcomed and anticipated by Irish governments. Being on the "same page" with the Troika gave Ireland more "persuasive" flexibility in how it carried out its austerity cuts as compared to other "peripheral" European counties, like Greece (see Hick 2018).

As the state was playing liquidator, the companies being dissolved were the newly state-financed or state-owned institutions. Some of those institutions were very literally liquidated: the remains of the famously cavalier, and once best-performing-bank-in-Western-Europe Anglo-Irish Bank were merged with the remains of Irish Nationwide Building Society and reanimated as Irish Bank Resolution Company (IBRC), a zombie bank always intended for liquidation, which swiftly began two years after formation. That is to say, all branches of those banks closed and IBRC remained as a bank-like entity only in the sense that it owned a bunch of financial agreements, which it was designed to sell as quickly as possible to bidder who take on the most.

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counties into the Free State of Ireland (to later officially become Ireland, or, unofficially, the Republic of Ireland). That enmity led to an almost immediate Irish Civil War and the creation of a two-party state shaped by a historical dispute on the signing of that treaty.

[4] Irish Water was created with language that insured it could be privatized. Irish Water proved extremely controversial, as water already was a public utility for many and was paid for through general tax funds. But now, as a separate utility could not only demand a separate revenue stream, and command administrative fees for governments workers, it could be sold to private interests (or borrowed against).

Those bidders on really debt that was really “non-performing”—which often just meant a mortgage in which the homeowner had lost their job and was no longer making full payments on it, for maybe two years—were often North American “vulture funds,” private equity hedge funds that typically buy bad debt with a plan to either make 30% profit from the bargain price they paid for it, or sell it elsewhere in 3 years time (although that is only one version of the plan, to give a sense of the turnover and their interest in Ireland). The more distressed a mortgage was—that is to say, how long the borrower had been behind in their payments—the more likely it was to be bought and managed by vulture funds. But the lion’s share of the new state-owned assets were not literally liquidated like those of IBRC. They were, instead, kept as problematic assets in the now state-backed and nationalized institutions. But those state-owned or -backed entities were now under the same pressure to get rid of these non-performing debts that were dragging down their balance sheets. That meant two routes: selling distressed debts to vultures, or turning those liabilities back to assets.

But how does a creditor turn a debt that is not producing revenue into an asset (i.e. how to turn debts into performing assets from non-performing liabilities, which, via European regulation about banks being overleveraged, banks cannot have too many of if they want to originate new loans)? If that debt is “secured,” which means that there is some set of valuable things attached to the debt (collateral), then you seek “relief”: for mortgages, creditors seek “repossessions” (foreclosures in the United States). In other words, the creditor wants to take possession of the home so they can sell for money now. This is where a financial crisis becomes a legal process writ large. In the case of Ireland there was pressure from the Troika and outside NGO agencies like the Organization for Economic Co-operation and Development (OECD) to repossess property in a prompt way, so as to lighten the burden of liabilities on those banks and get them back to better performance. The outside pressure to repossess collateral on loans also has to do with risk profile: if a country is hesitant to repossess property, for whatever reason (ideology, inefficacy, moral sentiment) to the commercially-minded observer that sends red flags and alarm bells, not only because it suggests that buying debt in that country is a bad bet, but because collateral is an essential part of the financial economy, a big reason why techniques of writing and finding jurisdictions for private contract techniques has become part of global governance (see Riles 2010).

The idea of economic recovery presupposed a coherent, singular Irish economy that could ail and be rehabilitated, brought back to balance, paradoxically, by encouraging a new boom-and-bust cycle via international speculation in cratered Irish property markets. That recovery therefore represented a remarkable amount of wealth, assets, and liabilities would change hands. That great transfer of wealth did indeed occur over the last decade, incentivized and celebrated by Irish governments.

Such a massive change between two states of ownership meant that economic recovery was bound to become a legal process. Ownership is, after all, a kind of legal fiction that stands for how people possess and exclude others from wealth. A whole host of legal mechanisms therefore had to be marshaled by different parties to mediate this new transfer of wealth and all the attempts that people made to maintain ownership of what they had before the crash. Commercial properties, from the offices of small firms to the factories, head offices, and skyscrapers of business empires, would be put into receivership and liquidated. Residential properties, homes, would be repossessed. Slowly, mortgages that were not immediately repossessed might be renegotiated. Personal insolvency for debtors would be introduced to the country.

Each of these legal processes comprises an undergirding set of mechanisms that make possible the image of a “free market” in land. Each process entailed different venues and different sets of rules and constraints for addressing how to deal with distressed property. Whereas the world of finance would presume that these debts in default were simple matters of rubber-stamped processing, issues with possession and repossession of land have almost always been problems taken seriously by some jurisdictions in common law countries. Those questions about possession of distressed mortgagors refracted through several different jurisdictions and filtered through different methods of engagement. My main research objective was to observe sites of tense “friction” (Tsing 2005) between the problems of fiscal and financial calculation and other modes of commercial, moral, and social calculation that the mortgage arrears crisis and the state’s position in it incited.

Fieldsite

Courts were an important point of contact for how I met people who became friends and interlocutors during the course of collecting data, and beyond. For one year, I was based in Cavan, the central town in the county of the same name. While there I began attending hearings of the Civil Motions List in the Circuit Court, which is where creditors applied for repossessions in mortgage arrears cases—cases where indebted homeowners were falling behind in their payments. I soon began traveling outside of Cavan to attend similar hearings in other circuit courts. For nine months after that, I was based in Dublin, where I could be centrally located to attend more of these hearings in different parts of the country. Because Cavan is a predominately rural county, travel by public transit to other rural counties usually involved going through Dublin anyways.

Cavan has no rail service—most other counties in the country do have some limited access to railways—although it once did. Looking at a map of towns (rather than villages) in Cavan can provide a rough outline of the old railway, as many of those towns were villages that grew by being next to the railroad. All three out of nine counties from the historic province of Ulster that remained in the (southern) Republic of Ireland after the 1921 partition of Northern Ireland, had once been serviced by the Great Northern Railway, as had the six counties of Ulster that became Northern Ireland, between the 1870s and the 1950s. During that span of eighty years or so, the Great Northern Railway was an important connector for Cavan and neighboring Monaghan, another Ulster border county in the Republic to economic centers in the north and to the south. While the railway lasted a few decades after partition, ultimately the border and customs proved inconvenient and costly for the rail service, and it was eventually liquidated, further isolating a northern border region that had been hit hard by partition.

The railway history exemplifies the way the material history of the border region was shaped by a sense of political and infrastructural abandonment from two states. Because the area was one in which questions about what the republic was were seen as open and contentious, I was interested in the way that the financial crash's concerns about sovereignty would play out there. Those sovereignty concerns ranged from the borrowed conspiratorial language of the Sovereign Citizens in North America, spread mostly online, to more mainstream critiques of Ireland's loss of economic sovereignty as a condition of European Union membership.[5] But in Ireland—and in the border region in particular where it was especially animated as an unresolved

[5] It is not a matter of any controversy to say the latter: at a keynote speech I attended in Dublin of the former Governor of the Central Bank, Patrick Honohan (whose tenure spanned from 2009 to 2015) pointed to that lack of sovereignty as part of the constraints that he had in dealing with that crisis and the subsequent Eurozone crisis (i.e. by not printing having control of their own money supply, the Central Bank of Ireland had fewer tools at hand for dealing with its own economy).

tension—the sovereignty of the Irish state and the Britain's presence on the island had been matters for debate and armed conflict at least as far back as the 1921 Anglo-Irish Treaty, which ended the War of Independence with Britain but ceded six of those nine counties of Ulster to the United Kingdom.

The political institutions that emerged from that moment point up the unresolved question of what kind of republic Ireland should have, and what its boundaries would be. Today, Ireland's two largest political parties emerged out of dispute about the legitimacy of the treaty. The third largest, Sinn Fein, a political party that stood with the Irish Republic Army, could also claim its origins in the treaty's illegitimacy, claiming that the Provisional IRA was a legitimate military organization of an occupied territory. Military campaigns were viewed as a tool to bring Britain to the table to negotiate the terms of leaving Northern Ireland. After the 1998 Good Friday Agreement that inaugurated the IRA's ceasefire, Sinn Féin began to take seats in the Northern Irish Assembly and in Ireland's lawmaking assembly, Dáil Éireann. Sinn Féin's first serving member of Dáil Éireann, Caoimhghín Ó Caoláin, was elected from the Cavan-Monaghan electoral district. That district also produced current Minister of Business, Enterprise, and Innovation, Heather Humphreys, who came from Ireland's only Protestant-majority settlement (Drum, in Monaghan), which also has the only branch of Ian Paisley's Unionist-aligned Free Presbyterian Church in the republic. Humphreys is not a Unionist, but her party that came out of Pro-Treaty side (Fine Gael) for decades wanted to shelf the question of a reunion with the north for any foreseeable future. Today, both call themselves republicans, but what that means differs for each.

Broadly speaking, Irish "republicanism" refers an anti-colonial nationalist project to bring about an independent republic in Ireland that extends over the whole island. But it has its roots in the political movement centered on achieving secure property rights and ending what it identified as feudalism by another name. Anne Kane (2000) argues that in the late-19th century, the Irish Land League synthesized the three main pillars of Irish nationalism that had to that point been separately advocated for, but not yet brought together: religious emancipation, national self-determination, and property rights. Most agrarian Irish people (and the vast majority of Ireland was agrarian) were tenant farmers who held land under English and Anglo-Irish landlords who were often "absentee," because they usually lived elsewhere and provided very little to their tenant farmers in the way of protections or improvements, but exacted crippling "rack" rents on their tenants through their hired agents. They were given a much wider berth in Ireland to raise rents and evict tenants at will than in England. The goals of tenant movements like the Land League, then, was most immediately to provide "3 F's": fair rent, free sale, and fixity of tenure—on other words, they wanted the protections and benefits of freehold tenure, given that they worked the land, improved the land, but lived with shocking uncertainty from day to day (almost any rent was unfair as few Irish tenant farmers had enough surplus to enter the money economy). What was particularly appalling was that this uncertainty went virtually unchanged even after those conditions had directly resulted in the emigration and death of millions of Irish people during the Irish famine in the late 1840's. Under Michael Davitt's leadership in the Irish Land League in the 1880s, the goals of political determination over the island were forged with the struggle to deliver secure, certain possession over land.

Today, most of the literature on Irish nationalism and republicanism, especially from outside Ireland, focuses on Northern Ireland. My goal was to situate an examination of that central tenant of Irish nationalism, property rights, in a part of modern Ireland where the liminal and uncertain of the Republic of Ireland's nationalism remained an explicit part of political dialogue.[6] That is to say, my goal was to conduct fieldwork in a place in which negotiating territorial and proprietary dispossession was a familiar part of the social repertoire for action.

In the second half of the main dissertation fieldwork, I was located in a Dublin suburb, which served as a hub to travel to jurisdictions all over the country to compare the kinds of courtroom activities I observed in the Cavan phase of research. While my observations outside of the border region would usually be more confined to the courtrooms I was primarily visiting, the similarities I found in most courts where creditors sought repossessions on mortgaged homes encouraged me to broaden my analysis at parts. Nonetheless the border counties were a huge part of how I couched my observations and analysis. Since the June 2016 Brexit vote, the places and people that make up what will be Europe's newest land border have only become that much more centrally implicated in the imagination of a future not just for Ireland, but for the European project.

Border lord: Sean Quinn

Sean Quinn played a large part in why I chose to conduct the bulk of my fieldwork in County Cavan in the Republic of Ireland—a landlocked county that runs alongside a geographical barrier in the difficult to pass Lough Erne riverine lake system, and a political barrier with Northern Ireland. It is a county with an abundance of beautiful lakes and *drumlins*, egg-shaped hillocks, which has nevertheless rarely ever inspired the kind of romantic interest in Irish society as the westernmost counties. Sean Quinn is not a pseudonym—he was, and

[6] This is not to say that elsewhere in the non-border counties of the Republic of Ireland there are not avowed republicans. Only that the questions left by partition were immediately about those counties where partition cut off hinterlands from market towns, border roads, family connections that lay on both sides of the border, and continued to religious denomination as categories of ethnic belonging.

continues to be, a well-known figure in Ireland who was once the country's richest individual and whose business empire operated out of Cavan, which had otherwise often failed to attract industrial investment and which had also been left economically challenged by the partition between the six counties (out of nine) of Ulster that became Northern Ireland, and the rest of the republic.

But by the time I was beginning preliminary fieldwork in 2012, there were protests in the streets of small towns in Cavan, where his supporters called for "natural justice" in defense of him. Soon after the crash began to take shape, with credit freezing here and there, it became apparent that his speculative gambles in buying up derivative shares in Anglo-Irish Bank, one of Europe's fastest-growing and least prudent banks, were leading to his undoing and accelerating the undoing of whatever was left of the Celtic Tiger economy. And yet, while the consensus around the country, at least in the print and television media, was that he was a roguish villain who deserved punishment for the pain he inflicted on the Irish economy with his short-sighted greed, many of the people whose jobs would disappear when his business empire was put into receivership because of his imprudence were out marching for him. Why? I knew the answer would have a lot to say about the area that he was from, the ways he conducted his business, and a very real sense that a future without him meant a weaker future for the region.

Rather than proceed from *homo economicus*, I am introducing the story of Sean Quinn as a sort of Ur-text for the models of action that I present in this dissertation. His story provides background on the place where I conducted research, and foreshadows many of the tactics that interlocutors used to try to retain family wealth in the midst of threats of repossession. His subject position as agrarian *culchie* (a somewhat pejorative term for someone from outside of Dublin) man is also what makes him an apt starting point for the modular economic actors I develop from the activities of (predominately) provincial men I interviewed and spent time with in conducting this research. In starting from a single Irish man, the goal here is to develop an understanding of how economic activities that are often identified as modified versions of some universal "capital" or "capitalism" are inherently unstable, gendered, classed, and culturally produced activities—the point is absolutely not to re-naturalize that particular model as a universal. Unlike Daniel Defoe's Protestant, bourgeois Robinson Crusoe, whose story of remaking bourgeois society on an island helped naturalize the striving of bourgeois Commercial Man (and subjugation of indigenous people) as a universal, Quinn built his industrial and commercial empire on an island full of historically sedimented subject positions, loyalties, social networks, and inequalities that could be profitably navigated, but ought not be universalized.

Sean Quinn began his professional life as a gravel farmer in Fermanagh, an Ulster county in Northern Ireland that borders Cavan from the north. Although Fermanagh is in Northern Ireland, the three Ulster counties of Fermanagh, Cavan, and Monaghan together comprise the "drumlin belt," an area whose geological character was indelibly cast by receding glaciers at the end of the last Ice Age. As the glaciers sloughed off to the ocean, they dragged with them oblong mounds of clayed sediment—forming the convex drumlins—and concave hollows ("Cavan" comes from the Irish *an cabhan* for "the hollow") that filled in as loughs and bogs (of peat). A farm whose greatest produce was sand and gravel was not unusual for the area, but what was unusual was Quinn's achievement in turning the gravel into an engine of growth. His biographers, Gavin Daly and Ian Kehoe (whose informative and detailed book Quinn derided, it should be noted) point out that this was not a bolt of genius:

> There were other people doing the same thing locally and it was difficult to make a living at first. Quinn needed to add some value, so he borrowed £100 sterling, sank a well and started to wash the gravel on site before selling it on. He undercut

other suppliers and made use of his GAA [Gaelic Athletic Association] contacts. People liked him and trusted. They wanted him to succeed. (2013:11)

Normally, as Quinn did at first, a farmer with gravel would have to bring their gravel by wheelbarrow or truck to someone who would wash it for a price to make the gravel and sand usable in the manufacturing of cement and glass.

The pattern of this success would be repeated over and over for Quinn: his ability to operate in a new market was the product of alliances he built and could draw on in his drumlin belt locale and his passionate participation in the sporting world, especially the sport of (GAA) Gaelic football, which is so preeminent in most parts of the drumlin belt it is often referred to only as "football." Although the GAA, which was established in a late-19th nationalist project to produce a "muscular Catholic" anti-colonial alternative to Victorian English sport (see McDevitt 1997), operates through sports, it feeds into and out of local politics and economy. It remains one of the oldest and most trusted political institutions rural Ireland, modeling stability, redistributive financial practices, and participatory democracy. For men like Sean Quinn who strike it rich, giving back to the local (parish) GAA club is a must, in part because the GAA is a large part of producing them by giving them their networks of friends—political and economic partners who provide help in monetary and non-monetary ways—and allowing them to demonstrate both their soundness and their cunning. Someone who knew Quinn related to me his early love of horse racing, which could also be seen in the approached and took risk in his business.

By the time of the crash of the so-called Celtic Tiger economy in Ireland in 2008 and 2009, Quinn had amassed a fortune of over €6 billion from a business empire based just on the Irish side of the border in Ballyconnell, Cavan, which conquered gravel then cement, insurance, hospitality, glass, real estate, and finally and fatefully, financial derivatives. For several decades, Quinn demonstrated a Midas touch—no matter what kind of material he came across, he could turn a profit. Part of the trick was seeking out imbalances that existed in the Irish business world and offering a different formula—usually high-quality production with low prices for consumers—which effectively butted into, and eventually overtook, state-protected monopolies in cement, glass, and insurance. While Quinn owned large commercial buildings all over the world, especially in Eastern Europe, the height of his rise was most evident in how he transformed that border region of Cavan, Fermanagh, Leitrim, and Monaghan. Trucks emblazoned with the Quinn logo filled the roads. In a move that resembled that early investment in a well for his quarry, Quinn powered his factories by erecting giant wind turbines on the border drumlins, transforming the landscape to reflect the scale of his enterprise. And he opened up the Slieve Russell Hotel—a stately, handsome facility that was a pastiche of an English 18th and 19th century manor. Whereas the GAA club is an inward-looking interface for public life in rural Ireland, the hotel is an outward-looking interface for public life: it is not only for outsiders to stay there, but to impress outsiders, where they will dine, meet for lunch carveries, have tea, and so on. In the 20th century many notable Irish hotels were built into existing the manorial "big houses" of English and Anglo-Irish lords. Quinn built his own big house, a place for the outside world to come and pay their fealty.

For the large part of his business empire's reign the hard border between Northern Ireland (in the United Kingdom) and the Republic of Ireland to the south, was a nuisance. His cement trucks had to wait that much longer at the border, held up by armed British soldiers who checked vehicles for weapons, contraband, fugitives, and so on at bottlenecked checkpoints created after the British military cratered any serviceable Irish border roads. The British military posted at the checkpoints had a reputation for being heavy-handed in their scrutiny of border denizens. Many people who eventually became supporters of the more actively Republican Sinn Fein political party (in the sense that their political goals were aimed at the reunification of the six counties of Northern Ireland to the Republic of Ireland) could trace a moment of political clarity to the feeling of being humiliated as soldiers tore apart their car checking for smuggled goods. It only added to Sean Quinn's legendary rise that one of the early stories about him, recounted by Colm Toibín (1994), involved physically knocking down a British soldier while they were not allowing him to cross the border for a funeral. According to the story, the details of which Quinn did not deny, his outsize importance in the region was so great that he never faced any consequences from the authorities for it.

In 1998 the Good Friday Agreement began a process of demilitarizing border crossings, which was completed by 2005. By the time I was in the area in 2015 and 2016, people were so used to talking about the border as an almost imaginary line that was progressively dematerializing, that very few took the possibility of Brexit seriously until the vote happened. But the obstacles presented by the border were also precisely the kinds of imbalances that Quinn thrived on and which border people for whom there is little else in the way of local industry looked to as a way to make marginal gains: borders, formal rules, and conventional business wisdom were all barriers that set up the constraints created risks, which were the conditions for new ventures.[7] For insurance, that meant creating a business that settled small claims promptly and which insured young drivers, which the monopoly of Irish insurance companies would not do.

[7] Not long after the Brexit I spoke with a man who found cheap items around the country and in England and sold them for slightly more in his vintage/thrift store. He was from one of the border counties. I mentioned that I hoped the vote wouldn't mean the return of the hard border (because of the possibility of remilitarization). His good-natured reply was that he hoped it did, there was a lot of money to be made from it (because of the smuggling). Of course, most people do not want to see the return of the hard border, but the point is that border introduces unevenness that certain operators see as opportunities.

All this time, Quinn continued to conduct his business by demonstrating loyalty and generosity to the area from which he came in the terms familiar to the popular classes of agrarian Ireland. He did not become a tax exile, he did not send his children to fancy schools in Dublin, and he did not outsource jobs elsewhere. In terms of how he broadcast his personal wealth: if the large home he built for his family and the Mercedes sedans he drove indexed a very comfortable life for his family, it was only a matter of degree, not kind. All his children worked for him, as well as his extended family. Although his stated intention to “live poor and die rich” was a self-effacing exaggeration, most of his ostentatious purchases were business dealings not personal indulgences, although his business operations were never far-removed from personalistic decision-making that responded to loyalty, localism, agonistic competition, and unsteady alliances (Daly and Kehoe 2013:36). He did not present himself as anything beyond an extremely successful Irish countryman when, in fact, he was one of Ireland’s first, if not the first, billionaire.

By the fall of 2012, Quinn was bankrupt and in prison for being in contempt of a court order not to transfer assets from his company to other entities. His risks had caught up with him. The source of his undoing was primarily for his speculative investments known as Contracts for Difference (CFDs). A CFD is a way that an investor can speculate on the share price of a business without actually being a shareholder in that business, at least at first. Like betting at the racetrack, the money you put down on a horse is directly tied to the performance of the horse—if the horse places you get money back—but independent of actual ownership in the horse. Unlike a bet on a horse at the racetrack, you only need to put down a small portion of money up front. If the company’s shares increase in value above the price that you have bought them at (the “difference” in Contract for Difference) by a predetermined point the investor reaps those rewards. If the company's shares decrease in value by that point, the purchaser has to pay the difference (a "margin call").

The benefits that Sean Quinn saw in buying CFDs instead of shares were related to the fact that the investor, like the horse gambler, does not have ownership in the underlying assets. Like most derivatives, it was a side bet.[8] The first benefit was that by not owning shares in the underlying asset, the investor did not have to disclose their investment to the state, or even the company itself. The second benefit was that non-disclosure meant not having to pay "stamp duty" the sort of tax that incurs on a transfer of wealth like a home, a business, or company shares: if you were not buying the business outright, it means you did not have to declare and pay tax on it.

The racehorse that Quinn was enamored with was Anglo-Irish Bank, at the time one of the fastest-growing financial institutions in the world relative to its size. The bank would later become notorious as one of the most stridently imprudent and unethical financial institutions in recent memory. Its ignominy was immortalized by the 2013 release of the "Anglo Tapes," recordings made immediately before the 2008 blanket bank guarantee, in which officials at the bank could be heard cynically discussing how to misrepresent the institution's insolvency—its insolvency would have to seem serious enough to demand billions of cash infusion from the state but not so wildly insolvent, as it was in fact, that it should be let to fail on its own (see also Carswell 2011). But in 2006 its share prices were soaring, and Quinn sank millions and then billions into CFDs on Anglo. A year later the share prices were falling, in large part because Quinn's purchases had encouraged people to bet against the bank's share prices. As the prices fell, he had to pay out more and more margin calls, and he felt more and more emboldened to

[8] For a thorough account of this see Daly and Kehoe (2013: 43-46).

buy CFDs in the bank. In September 2007, Quinn met with heads of the bank to discuss his position in the bank, which they were shocked to learn represented one-quarter of the company's shares through CFDs (Daly and Kehoe 2013:53). The bankers ended up illegally lending Quinn over €2 billion to help cover his now overleveraged business empire and bolster their endangered stock price.

As a result of the crash and Anglo's nationalization into the liquidation company, Irish Banking Resolution Corporation, Quinn would be pursued for those loans for years. The bulk of his 2013 biography concerns the drama around attempts by state-financed institutions to collect on those illegally made loans. What ensued after the fall of Anglo-Irish was a long, still ongoing pursuit of all the assets that Quinn had put into a business group under the name of his wife, and eventually the names of his five children, and Quinn's simultaneous pursuit to regain all the parts of the business that had put into receivership and were now being run by (mostly non-Irish) new companies. His goal was to put the assets, especially the overseas assets in the Ukraine and Russia, which included office buildings and other commercial real estate, out of reach of his creditors. Working with his nephew Peter, Quinn set about mirroring his company in the Indian Trust, which was attached to the Cranaghan Foundation, then stripping its assets and liquidating them through a complex ring of shell companies that he was essentially the beneficial owner of. In a trust, the legal ownership of an asset is separated from the enjoyment of that asset and then assigned to a trustee, often lawyers or administrative figures, while the enjoyment of that asset is the "beneficial" or "equitable" ownership assigned to the beneficiary, which can be the same person that created the trust. In many different variations, that is essentially what Sean Quinn's assets were passing along to him: beneficial ownership. But in order to get their name off the paperwork, eventually a new beneficial owner was found for a tower in Russia: Yaroslav

Gurnyak, a sporadically employed railworker (Daly and Kehoe 221). The way the assets moved was through creating new entities all over the world that would loan money to the company with all the assets in it, and then, by virtue of not being paid, liquidate that formally indebted company and move the assets on. Essentially, these were made up loans and debts that were created on paper to formalize liquidation and stay one step ahead of the state's liquidators. The state eventually caught up with the Russian tower Belize, where they put Gurnyak on the stand via videolink from Russia. Eventually the Quinns were found to have violated a court order, an injunction to keep them from moving their assets as they were in their legal battle with the state liquidators. That was how Sean Quinn was imprisoned in 2012.

A judge that summer said that the complex schemes to keep property out of the hands of their creditors "reeked of dishonesty and sharp practice."[9] "Sharp practice" is a term reserved for less-than-good-faith maneuverings that are judged to be immoral. Sean Quinn's actions were definitively those of the *cute hoor*, a person in local politics who "perpetrates" *strokes*, which J.P. O'Carroll (1987) defined as actions meant to demonstrate "pull" and instill "confidence" in them from local supporters: "The 'stroke' justifies the aspirant's claim to the loyalty and support of the local constituents. Their use of the term acknowledges the validity of that claim" (82). The *cute hoor*, then, is a term of admiration for those who can demonstrate their pull through strokes: "Humor, style and imagination are all convertible into power" (82). But the cuteness of one community's *cute hoor,* which is recognized as sitting "on the margins of social acceptability" slips into "sharp practice," O'Carroll writes, especially when authorities, like the civil service, are unimpressed by what demonstrations of local "pull" amount to.

[9] "Judge Slams Quinn Family's Dishonesty." *thejournal.ie,* July 25, 2012. Accessed August 28, 2019. https://www.thejournal.ie/judge-slams-quinn-familys-dishonesty-533601-Jul2012/.

By the time I was in Cavan, beginning in June 2015, Sean Quinn was in a consulting role with the now-separately owned Quinn Group by his former protégé who he had trained up from the local area, and it looked like he was well on his way to winning back his empire. Shortly thereafter, though, he had left his role and supporters were sending bullets in through the postal service to rivals they felt had betrayed Quinn. While the jobs at the insurance company, now (the American) Liberty Mutual, were soon moved out of the area, the other new proprietors of Quinn businesses like the hotel, the cement factory, and the insulation factory, faced regular threats, walk-outs, and protests from local people who continued to demonstrate their fierce loyalty to Quinn. Not all his support in the region was as fierce as in the area of Cavan and Fermanagh where he was most locally based, but it was widespread. People liked him, even though he was not particularly warm and fuzzy.

Any supporter, of whatever degree, would admit he made mistakes, but they weren't sure that those mistakes outweighed what he had provided to the region. Others pointed to questionable morality of the state hounding him for unfathomably large debts (around €2.9 billion total) on loans that were illegally made by that same entity in its former life. This was part of the Quinn family's defense, as well as maintaining that those loans to Sean Quinn were not attached to the Quinn Group, which his five children were formally, and he argued substantively, in charge of. Some supporters would say he was tricked and that his biggest mistake was the day he came across the Dublin-based menaces of Anglo-Irish, (his most vocal supporters, especially, insisted on that line) but most people that I spoke with would admit that he had fallen on his own accord. Because ultimately what they liked about him was that they could recognize his flaws: he had fallen like they had, and even if his failings had led to the loss of jobs in the region and greater economic hardships due the collapse of Anglo-Irish, the last thing he would ever do was intend to betray his people, his friends.

This is essentially what was meant by the "natural justice for Sean Quinn" rallies held for him as he served his time in Mountjoy Prison. The clear intention of asking for "natural justice" is that a morality beyond the court is taken into account in judging Sean Quinn. But "natural justice" was also an apropos use of a legal term of art. In that narrow sense it is less tied to "natural law" than it seems, comprised of two core concepts: a right to be heard (*audi alteram partem*) and a right to an unbiased hearing (*nemo judex in re sua*) (Schauer 1976:48). This made sense for Quinn's particular case, where he not only wanted to have his side of the story told in court, to paraphrase him and his family, but wanted to remind the courts and the public that there was conflicts of interest in the state's pursuit of him.

In addition to that narrow version there is one that gets to a broader sense of "equity," that principle and measure of judgment in English law, that also once had its own separate jurisdiction, that there should be affordances to deliver a flexible and justice more fair, decent, and *conscionable* in its results in particular instances that lawmakers could not have foreseen. In a famous judgment by 18th century jurist Lord Mansfield deliberated on the legal action of "money had and received," in the case where the question was whether a man who paid part of a debt (let's say £20 out of £26) with the stipulation that the rest of the debt (£6) be forgiven, could get Mansfield's court to reverse a previous judgment that the creditor won ordering the remainder of the debt (£6) be paid to the creditor regardless of what was said before. In a "sloppy" use of the term to mete out what probably just seemed fair in the case of a quasi-contract, Mansfield stated, "In one word, the gist of this kind of action is, that the [creditor], upon the circumstances of the case, is obliged by the ties of natural justice and equity to refund the money" (Evans [1802] 1998). In that sense, "natural justice" is was meant to index a sense that the law should not by virtue of technicalities create situations that would produce unconscionable consequences. It was once used interchangeably with "natural equity" and "laws of nature" and it was used in this sense in British Africa, while it was narrowed in England, where the phrase "repugnant to natural justice and morality" became the standard to judge how and when to confine "customary law" (Caplan 1964:120-121). In that broader sense "natural justice" could tie either to a very contingent and particularist sense of fairness in equity, or a primordial and teleological morality in "natural law" (Blackstone: "Upon...the law of nature and the law of revelation depend all human laws"; *Commentaries* *42).

The "natural justice" that his people were calling for in 2012 was almost definitely a mix of the technical sense and the sloppy sense. The moral order of the universe was never far from the discussion of the rise and fall of Sean Quinn. In his rise from a gravel farmer, and in his undoing at the hands of institutions that were saved by the state, he was one of them, a commoner who couldn't get a loan when he started but had them throwing money at him in the Celtic Tiger, who had greed and ambition, but not notions. "Notions" in Irish parlance are high-minded pretensions. The implication is that someone with notions thinks they are better than their station in life. The term has become parodied to the point of mawkish cliché in Irish social media, but the distinction suits Quinn and models one of the great virtues that people in the region all recognized: he was loyal to his people—this mattered, especially at a time when state-funded financial institutions were actively pursuing repossessions on relatively smaller loans of those same people. The talk about loyalty and local reinvestment belonged to a rhetorical genre, to be sure, but it wasn't phony: all of his success rested on uneven reciprocity, smart plays based on probabilistic risk-taking gained from small advantages in information, and rewarding those who supported him.

In quotes given to journalists at the time, which I read at a hotel in Virginia, a plantation town in the southern part of County Cavan (having no idea the day before about what was happening in the northwestern part), protestors said in no uncertain terms that they had been abandoned by the state, and felt a closer kinship to a Protestant farmer from Fermanagh (not meaning the Catholic Quinn) from the border region than they did any "jackeen" from Dublin (a pejorative term; "jack" comes from the British Union Jack, implying dubious nationalist commitments, "-een" is an Irish diminuitive). The statement indexed Ireland's peculiar class and ethnic categories. It operates on the assumption of sectarian enmity, suggesting that it would be strange to feel unity with a Protestant, especially in a context in which bombings had plagued the border region between the 1970s and 1990s. But it suggested that the political and financial capital in Dublin was so far removed, and the national project of realizing the horizontal and united "imagined community" of the republic was so fledgling, that people would embrace petty sovereigns who could make promises of securing wealth and meting out generosity in ways the state was failing.

Quinn had very little interest in party politics, but the disillusionment with the state, coupled with sense of moral order that provided results, especially when a repossession and mortgage arrears crisis was at hand, portended the perfect ingredients for far-right populism.

The patterns in the Quinn story will come up time and time again in this dissertation: *cute hoorism*, fealty to local patrons nearby rather than distant powers, grounding legal disputes in a other kinds of moral orders, the centrality of family to the reproduction of capital, and so on. While Quinn is a border figure *par excellence*, so many of these themes speak to stances to economy, finance, and state law that would be recognizable all over Ireland and beyond: they are politics from the margins of the state (Das and Poole 2004), not necessarily defined by territory, that take cognizance of marginality so that it can be leveraged for other purposes.

But the margins is also a center to ground motivations and connections in resolutely provincial ways. The superordinate view that can identify political and economic marginality vis-à-vis the state, which has brought the border region's marginal territorial position to a wider public consciousness with Brexit, does not really hold all that well in action. Writing about the atavistic desire to ground social action away from the state, the writer Seán Ó Faoláin suggested an historical connection to Gaelic political and social organization that did not identify with either "Society" or "the State":

> This [Roman] idea [of Society and the State] never appealed to the Irish…When individual rights are bestowed by the State the gift is double-edged. It may be an improvement to from domestic despotism to state paternalism; but it is, undeniably, easier to fight one's own battle with one's father than to fight it with some remote 'father', and it is, so to speak, *more fun*. (1980:45)

"Fun" here indexes serious play, and agonistic competition, that pervades all sorts of economic activities. To have that sort of attitude to an institution like the state is to regard it as a temporal and relational form that can be a means to other ends, not a teleological end in itself.

Creative destruction

Before becoming interested in the story of Sean Quinn, I had proposed to conduct research on "ghost estates," empty or unfinished homes pocking the rural Irish landscape after the real estate crash. The ghost estates were so numerous for a variety of reasons, but most obviously a glut of surplus that demand could never meet: there was money in building homes in the short term, and because credit was so cheap for home loans during the bubble, purchasers were just expected to buy up the homes.

The unsightliness of these homes lent itself to an aesthetics of a kind of "abandonment porn" as I have heard it referred to elsewhere. Internationally, photos of ghost estates circulated, eliciting a kind of morbid fascination with the form of the empty home. The international fascination with ghost estates had little do with what actually happened to the homes: people were fascinated by the spectral quality of a gutted or unused home. The pictures were salient symbolic pieces for a market bubble and bust that hinged on turning the "productive" value of the home as locus of the household economy (*oikos*) into a source of speculative exchange value. Those images circulated so broadly and with such intrigue because they seemed to carry a moral rebuke, as if these empty indices of spoiled plans were *memento mori* for the hubris of the market in subverting the moral basis of the household.

Karl Polanyi ([1944] 1957) had once made the idea that there were three fictitious commodities—labor, money, and land—central to his argument about the marketplace's great global coup against the social relations and needs that had once premised the market. These commodities were fictitious in the sense that only through legal fictions or similar political contrivances could their "natural" potencies geared towards production be redirected towards exchange value. As a commodity, land (and by land I refer to real property inclusive of homes) was fictitious specifically because land is environmental: land provides the means sustenance, shelter, and the means for society to reproduce itself. The ghost estate was a kind of corruption of that Aristotelian vision of the home as the source of moral belonging and economic production for human needs. Here, the capriciousness of the market had hollowed out of all the home's productive value. It felt good to circulate those images, to have something to point to and see *where* the invisible hand of the market had become visible, flawed, and rebuked.

They would make perfect symbols for critiques of neoliberal capital like those of David Harvey (2007), for whom neoliberalism is the dogma of creative destruction. They represented the inevitable consequence of capital: "creative destruction," a term coined by Joseph Schumpeter (1942) to describe the relentless momentum of capital to cannibalize older modes of production in favor of new markets and industrial forms. The term had a basis in Marx and Engels, too, as a way to describe why capitalism, as a historical phenomenon characterized by an unprecedented concentration and volume of productive forces, seemed to result in widespread crises, panics, and famines—that is, moments in which production seemed desperately inadequate:

> In these crises a great part not only of the existing products, but also of the previously created productive forces, are periodically destroyed…There breaks out an epidemic that, in all earlier epochs, would have seemed an absurdity—the epidemic of over-production…The productive forces at the disposal of society no longer tend to further the development of the conditions of bourgeois property; on the contrary, they have become too powerful for these conditions, by which they are fettered, and so soon as they overcome these fetters, they…endanger the existence of bourgeois property.(2000[1848]:250)[10]

By the time that Engels was translating *The Communist Manifesto* with Samuel Moore in 1888, bourgeois attitudes towards land—that it was just another form of wealth on the marketplace, and the moral imperative to observe contractual agreements was paramount—were indeed "unfettering" property as a productive locus. Polanyi recognized this precise move to commercialize land (a later one in England than others) as the first step in the detachment of the

[10] The use of the word "fetters" is appropriate, as it is the same metaphor of carceral technology that was used as a measure of conscience in equitable jurisdictions to help protect mortgage property from being foreclosed on in cases where the landed gentry had neglected to pay their mortgages. See Chapter 2 of this dissertation for more.

“body economic” to its productive and social roots. The image of the ghost estate circulates so well (moveable and detached from any sense of the communities it comes from, I might add) because it illustrates what seems so characteristic of modern capitalism, and yet so hard to make visible: hollowness, absence, decay.

“Creative destruction” is certainly one way to think about real estate and the Irish crash, and it does help explain some of what happened and continues to happen in an Irish that is simultaneously experiencing a new real estate bubble and still sorting through the detritus of the last in courtrooms, government inquiries, and international markets for “bad” debt. For all that the ghost estates seemed to say about the past to an international audience, their lived reality revealed relatively little about the nature of the period of Irish history that followed the crash. Many of the most problematic ghost estates were indeed razed (problematic in the sense that they were too poorly or partially built and were being weathered by successive winters in hazardous ways) but, in fact, many “ghost estates” remained standing in the border region, which had some of the highest proportion of ghost estates in the republic (see Kitchin, et al. 2009). People continued to find uses for empty or abandoned homes—informal housing that someone took rent from, or to a Circuit Court to repossess the property attached to a mortgage deeply in arrears (meaning past due payments) and claim the property was vacant. It would not infrequently turn out to be the case that it was not vacant, even in cases where the mortgage holder, the homeowner, no longer lived in the country: there were instances of opportunists telling people in need of housing, seasonal mushroom workers in Monaghan, perhaps, that they would rent the home out to them as if it was theirs. The tenant would continue to make payments to this person until the day the Sheriff came to do what they expected was a mere formality of eviction.

In other words, there were other, complementary, ways to think about the destruction that emphasized the continuous social life of property: as bourgeois capital and as an object inescapably "fettered" by history. By that I mean that creative destruction carries with it a history of capital that can be plotted totally independently of the specific places and times in which property becomes an essential mediator in everyday life. The contention of this dissertation is that real property, and freehold tenure in particular, have never been simple bourgeois forms in Ireland. The destruction of that property and its aftermath—"economic recovery" and eventually a new cycle of boom-and-bust—must also be reckoned up with the specific landscape of social relations, history, and legal forms which form and formed by property. This is not to repudiate accounts of dispossession, per se, but suggest, following Yanagisako (2002), that accounts of late capital as determinative engine of social history treat things like kinship, culture, and nationalism as dependent variables. Capital becomes a kind of pathology that cannot itself be explained via cultural concepts, "overlook[ing] the cultural forces that incite and shape capitalist production and capital accumulation" (4).

Empty houses are good symbols for creative destruction, but by observing and analyzing how possession is put into motion and maintained, I suggest we can appreciate the vitality and dynamism of indeterminate social relations. These chapters move, then, from empty houses in the introduction to the one I visited occupied by the Yankee in Chapter 5. Capital in this view is not a closed system but bundled set of achieved methods of valuation, signification, and social action. Borrowing Weiner's idea of "inalienable possessions" (1993), I argue that these methods of probabilistic action which depend on entrusting others is a generative, albeit often infelicitous, source of how political authority, hierarchy, and wealth are promulgated and possessed.

Action: a working definition and four models

In order to establish that and lay out a roadmap for the rest of the chapters, I will have to give an account of how I am understanding and using the term "action." *Praxis* is quite close, although it is often taken as mere practice—just doing things—in opposition to *theoria*. In a philosophical inquiry into *praxis* and action, Bernstein (1971) suggests that if *theoria* was a considered, rigorous thinking, *praxis* was less a sense of just practically doing stuff, but doing stuff well (*eupraxia*), maybe more like a law practice which does stuff according to (one hopes) a set of professional standards, ethics, legal theories, and so on.

John Dewey turned to a study of "social action" in 1935 in an effort to try to understand and respond to the failure of liberalism—as a set of political, economic, and social philosophies—that had produced a crushing depression, the massive inequalities of industrial capitalism, fascism, Nazism, and the makings of war in Europe. The current situation, he wrote, called for "intelligence as the alternative method of social direction" (64). For Dewey, the question of intelligence was the same as social action: an inquiry to ask, "What is to be done?" as much as, "How should we be thinking about the current state of events?" Conversely, "action" was something like intelligence in motion. In a classically pragmatist way, Dewey's "intelligence" was a product of an evolution understood as the deeply contingent and non-teleological path of chance mutations in conflict and collaboration with an environment of mutating others.[11]

[11] Elizabeth Bishop, influenced by Dewey's evolutionary poetics (and queering them; Giragosian 2016), in "At the Fishhouses": "It is like what we imagine knowledge to be: / dark, salt, clear, moving, utterly free, / drawn from the cold hard mouth / of the world, derived from the rocky breasts / forever, flowing and drawn, and since / our knowledge is historical, flowing and flown" (1983:66)

For Charles Sanders Peirce thinking was also a kind of action. His "conduct" acted similarly to Dewey's intelligent "social action." Conduct was a particular kind of habit, consisting of "would-be's," actions taken in case certain circumstances occurred, in which the past, as a "storehouse of knowledge," can be used base that conduct (in Bernstein 1971:185).[12] Calling attention to conduct emphasized, for Peirce, that individuals were not passive spectators of knowledge, but were actively involved in achieving signification—they inquire into their world with an eye towards future conduct, thus becoming part of the intrinsically social ground through which knowledge is produced. Their "would-be's" are never fully realized by actual events, especially as they can only draw on the past in anticipation of the future, and so there is always a remainder.

The four ideal-typical models of action that I propose here are not intended to present a typology that encapsulates and corresponds to any kind of social action. But they represent patterned, habitual kinds of "conduct," such that the legal and economic things people do with the stuff we value is properly social, in the sense that they presume the existence of another, whether they are figured hierarchically (in the sovereign model) or as a placeholder (in the mere custodial model), and all the constitutive elements entailed in the action (the stuff we value, the roles involved, the end-purposes of the activity) are themselves undergoings in a social milieu.

In this respect, these models of action presume a world that is "yet-to-be-achieved" in Bakhtin's terms. "No object, no relation," he writes in *Towards a Philosophy of the Act*, "is given [in the world-as-event] as something simply given, as something totally on hand, but is

[12] In Hiberno-English the subjunctive "would be" is particularly in keeping with this version of habit, where even past events are rendered into statements about conditional conduct ("I would have seen him"). This vernacular reliance on "would" often annoyed law courts because they would not say in the past tense that they had, in fact, "seen" or "met" or "recognized" a particular person. Less to the point, the Would Be's were also a late 80s, early 90s alternative rock group from Cavan.

always given in conjunction with another given that is connected with those objects and relations, namely, that which is yet-to-be-achieved: … "one ought to…," "it is desirable that…" (1994:32). The kinds of ought's, ends, and desires that motivate action and give shape to the

Action establishes the very distinction between means and ends—for instance, whether or not capital is an end itself, or a means to other sorts of oughts and ends. Dewey identifies that distinction as "temporal and relational" (Dewey 1939:43), by which he means that the distinction between means and ends holds as long as it is organized around an object of desire and the means to achieve it. But once an end is reached, however that matches up with the desired end, the former end becomes a potential means to reach other future ends. As with Peirce's "would be's" the slippage between what can be achieved and the oughts, ends, and desires of an undertaking is a generative remainder. Like the shortfall of a debt that keeps creditors and debtors attached, or the bit of the sacrifice of "attribution" that remains unburned, maintaining that remainder keeps alive a social relation pregnant with connections, set against the threat of permanent disconnection.

I will briefly outline the four following models before introducing each chapter in this dissertation:

In the ***sovereign model***, formal authority and substantive enjoyment of things of value are cleaved and re-distributed in a stratified new hierarchy. Formal authority is created with the expectation to protect, while substantive enjoyment is distributed upwards in the form of rents and loyalty. In other words, it is a way of doing things by imagining and enacting a new stratified hierarchy of protection and obligation that is shielded from others. If that is how things can get done, then "confidence," the title of the chapter where I describe this model through the example of a trust, describes the attachment between the parties, at least to begin. That is, confidence is an attachment of faith in another that is self-aware about its removed status from other forms of hierarchy.

In the ***orphaning model***, formal authority and substantive enjoyment over things of value are cleaved with the intention of deferring assumption of authority as much as possible. In other words, it mirrors hierarchy, then hollows out and defers authority so that the untethered enjoyment of things can be relatively unimpeded.

In the ***brokerage model***, formal authority and substantive enjoyment of things of value are cleaved with the intention of creating a proxy. While protection may still be the service that is asked of the proxy, the relationship extends, rather than shield, personhood through the proxy to new resources and domains that he or she cannot access without the proxy. In other words, it is a way of doing things by empowering another to act as someone else. Rents and loyalty may still be paid to the broker figure with formal authority, but the relationship is not valorized as hierarchy, but as an attachment that looks like an uneven, patronistic "friendship," which gives the chapter in which I describe the brokerage model its name.

In the ***mere custodial model***, formal authority and substantive enjoyment of things of value are cleaved to create a formal alibi with the intention of reuniting them. Like the orphaning model, the separate formal authority is minimal and limited with the goal of leaving substantive enjoyment unimpeded, but the reasoning and the purpose is different: i.e. to reunify the two as soon as possible (in the orphaning model, the two may remain cleaved, and different parties may enter the equation after the initial goals are achieved). In other words, it is a way of doing things by detouring formal authority through another's personhood, which is lent only for formality's sake. "Trust" which gives the name to the chapter in which I describe this model, is the attachment that the seemingly minimalist model engenders and refracts.

Chapter outline

This dissertation is broken into two parts. Part 1 consists of two chapters that provide the details of the conditions for the models of action that I develop in Part 2. Each chapter is titled after a kind of social relation that are conventionally thought of as auspicious connections in one way or another. This is partly underline that while much of the material that I examine in these chapters is economic or legal, the focus of my analysis is on social relations. It is also partly to underline the ambivalence of these relations—how they are found in unexpected places (e.g. the chapter titled “Kinship” describes working in the civil service), and how they present in unexpected, and often less-than-auspicious ways (e.g. the chapter titled “Friendship” describes uneven, patron-client relations). The progression of the subject matter in each chapter has been plotted along a path of increasing intimacy: we begin in a land registry where the home and the mortgage are dealt with as data to be slotted into title, then they become a court case, then an asset in a trust, and then an “inalienable possession” that is deeply tied to the organization and reproduction of the family.

In Chapter 1, titled “Genealogy,” examines the production and maintenance of title to real property in Ireland through a process called Torrens title registration. Title registration was an innovative way of making property relations streamlined into a simple formula where data could be simply input: title registration was advertised by 19th century reformers as the end of arcane medievalism in property law that centered around tracing genealogy upon every transfer of a home or a field. Rather than unleashing a purely rational legal administration on this deeply familial form, I examine how the problem of kinship that property both incites and mediates became inflected in that civil service administration itself. Drawing on the concept of “thinking infrastructure" (Bowker et al. 2019) I look at how the problem of family and kin relations becomes persistent noise to the infrastructure of property, a dreamlike condensation of seemingly oppositional modes of making relations.

In Chapter 2, "Redemption," I outline the problem that court cases for indebted homeowners in post-crash Ireland posed for an Irish political community in which freehold tenure had long been enshrined as a key pillar of nationalist and moral belonging in rural Ireland. The result was a kind of stasis, defined as an irresolvable tensions and ambivalent threshold between *oikos* and *polis*, where public servants who found themselves in an impossible situation used inaction as a way of keeping possibilities open for people facing eviction for their considerable unpaid debts on their homes. "Redemption" is both an -emic financial and legal term for the full repayment of a mortgage loan, and also a theological concern about the fate of the soul that, I argue, is part of the moral calculus that comes out of this stasis. I take seriously the medieval Christian development of Purgatory—once envisioned as a physical place that many medieval Christians thought lie in a cave on an island in the Irish border region—as a way of thinking about the active inaction of those courts and the possibilities for different kinds of redemption that it kept alive.

Part 2 addresses with forms of social action that developed out of the milieu of stasis. In Chapter 3, "Confidence," I juxtapose the "sovereign model of action" with the "orphan model of action" because both carve out a niche for a hierarchical authority figure. The sovereign model fills that niche with someone figured as a petty sovereign enlisted to shield the new relation they have enacted along with their new beneficiary. Conversely, the "orphaning model," which takes its name from a common tax avoidance strategy used by firms that speculate on distressed mortgages in Ireland, figures that niche as an absentee position of hierarchy that allows wealth to move freely and without publicity. Both cases that I take up involve trusts, and both are deeply concerned with not fully disclosing the details of the relations they produce or else they will not work. “Confidence” is both a term that is practically synonymous with the trust in legal history, it can be a probabilistic stance towards the future, or it can be faith that substitutes for experiential knowledge: it can be a confidence game. This chapter is, in some ways, the cynical flipside of Chapter 5, “Trust.” But the point is not to label anyone in particular as a scammer. The modular juxtaposition between the legally sanctioned orphaning model and the pseudolegal sovereign model, however, should relativize the amount of money taken from indebted mortgagors by the latter with the amount of money shifted out of the country without taxation from pursuing repossessions against those debtors by the other.

The case study for the sovereign model in Chapter 3 developed in different directions over the course of my fieldwork in Ireland, and one of them became a new kind of trust that modeled a “brokerage” relation. This chapter is concerned with, and titled after, “friendship” as an inherently unstable and uneven patron-client relationship extensively modeled and analyzed in mid-century Mediterranean ethnographic literature. The case study I examine is one in which a local figure who was involved in Sovereign Citizen rhetoric started to shift the trust from one of protection to one of representation: he figured his position as trustee over wealth as a workaround to allow him to speak in court for the indebted borrower. As with “confidence” and “redemption,” “friend” can be a legal category, in this case a “McKenzie friend,” someone a litigant is allowed to have next to them in court supporting them but not legally representing them. As with all titular keywords, the point isn’t to do analysis by wordplay. Rather, it is a move in keeping with a focus on “action” to resituate the techniques of law and finance within a social field that unevenly feeds into “semi-autonomous social fields” (Moore 1968) of law and finance.

The final chapter, Chapter 5, is titled “Trust” and in it I present the Yankee, a man who is trying to turn two—that is, two considerably indebted homes, which he and his wife each brought into the marriage—into one. That one is the family home, and the goal is to sell it to himself through a series of favors and exchanges such that he can restore possession of it without any mortgage on it. It is a dangerous move that involves sacrifice, agonistic competition, the domination of the household, extended kin relations, and lots of trust, in the broadest sense of the word. But it also involves a more narrowly styled (in the vain of legal practice) trust, which he creates even though it the deal it works within is technically unlawful. This trust that sits in a safe and hopefully never needs to actively do anything, like act as evidence, but it is nonetheless a hugely important material instantiation of the tremendous action he has undertaken. Even in talking about with me, I became entailed in it in ways that I couldn’t expect. The model that I develop in this story is the “mere custodial” model because all it asks the form of authority it develops to do is just sit there as a placeholder, and lend its personhood as an alibi for another. I conclude this final model, by reflecting on the creative energy and imaginative force of the Yankee, drawing attention to the relative lack of imagination taken by successive Irish governments that could have forestalled a situation in which people were sensible and tactful unlawfulness was the best option for so many to not be repossessed.

In the conclusion to this dissertation, I think about “sacrificial destruction” (in contradistinction to creative destruction in this introduction) and the Bakhtinian grounding of action in the acknowledgment that there is “no alibi in existence” to think about the ethics of action.

CHAPTER 1

Kinship

In this chapter I examine the bureaucratic and legal activities civil servants engage in as they make ownership, kinship, and the state itself, into intelligible and materially meaningful social facts. The observations are drawn from three months of preliminary fieldwork I conducted in the Irish Land Registry, which is a "Torrens title registry," which means that it is an archive which not only documents and reflect who owns what land, it actively produces "title" according to an actuarial methods of reading and process documentation about land.

The end product of a Torrens title registry, as touted by its 19^{th} century campaigners, was to free title to land from the iterative medieval legal process that had historically constituted title to land. The genealogical method that had once constituted title was supposed to wither away with the introduction of title registration, and aristocratic reservations about upsetting the special status of land by making it just another commodity, were supposed to wane. But if concerns about family and history mediated by property were to be sublimated in the end product, I observed how the means by which title registry was to make and maintain that static, synchronic version of title, was replete with displaced concerns about family and genealogy.

My argument is that unexpected persistence of genealogy revealed, like a dream, how concerns about the possession and title of real property as an intensely moral, secretive, familial, and nationalist touchstone in modern Ireland were not waning, vestigial remainders of un-commoditized land. Rather, concerns about uncertainty in transfer attached to possession were being displaced upon bureaucratic infrastructure that translated land in a stable, narrow, and public object.[13]

The new entrant (1)

Almost every department I visited during fieldwork at the Land Registry offered to show or even give me a copy of an internal institutional history, *Land Registry Centenary, 1892-1992*, that celebrated one hundred years of the civil service organization dedicated to recording and guaranteeing title to landed property in Ireland. As I got to know more and more of the civil servants who worked in the organization, I could recognize the pictures of them two decades earlier in the black-and-white group photos of the different departments, athletic clubs, arts societies, and social clubs. Part of why people were recognizable was that the entire corps of the Land Registry had, between the economic crash's first shockwaves of 2009 and the summer of 2013, gotten older and older, as a hiring freeze, emigration among younger people, and the departure of the most junior staff came with cuts to public spending. There were still some young people in the offices, but most of the staff I spoke with started somewhere in the civil service at some point in the 1980s, during a deep recession period when working in the civil service was seen as a felicitously stable source of income. The rich social life that the Registry had once played host to now seemed to consist only of the Social Club and their periodic social night at a hotel bar, which the young leaders of the Social Club were kind enough to invite me to. Because so much of the older generation of civil servants now had quiet family lives in the outer suburbs

[13] If we were to keep with the dream metaphor, I would insist that these preoccupations were manifestations of anxieties about wealth, finance, and moral codes relating to property that are at once very contemporary in how they manifest, but also critically fundamental to finance capitalism's cleaving of theological and secular understandings of contingency and calculation (see Maurer 2002).

of Dublin, and the younger civil servants who were from outside Dublin would go to the home place on the weekend, the hotel bar played host to a younger but smaller crowd than would have been true in the 1980s.

The Irish civil service is a public institution *par excellence*, especially in its imagination of itself as an institution that insists on not formally recognizing status, but formally recognizing and adding value as a public insurer to private property. The Irish Civil Service has indeed been a source of social mobility and stability for generations of entrants into the civil service in Ireland, making home ownership possible for those who would otherwise not have the social or financial capital in their families to do so.

Despite its refusal of recognizing older forms of social status, the hardbound centenary publication revealed some of the unresolved internal tensions of status and hierarchy internal to the world of the state and civil service. The black-and-white photos of the Dealings and Records sections of the land registry show large groups of smiling, casually posed civil servants in their summer clothes. The relative gender parity in those groups is striking. In the middle of the book there are several color printed pages with photos of stamps, surveying materials, and the group photos highest ranking civil servants: the Chiefs, Superintendents, Principals, and Assistant Principals. The Golf Society is also awkwardly included in the color photographs alongside the executive class of civil servants, whereas all the other sport and social clubs are relegated to the monochromatic back pages. There is little mention of trade unions in the book at all, so any unacquainted reader would have to assume that the continued glories of the department was either independent, or in spite of, the achievements of organized labor.

As the rank descends in the color pages, more, but still relatively few, women are included in the colored photographs, indexing a lack of gender equity in the older generation of

Chiefs. While the Civil Service has long offered career breaks for retaining staff, especially for those who wanted to pursue degrees or certification that could earn them a higher pay grade, or leave to emigrate while keeping the option to return, it had a history of curbing women's employment until the 1970s. In fact, the "marriage bar" in the Irish civil service, which had existed since the 1930s but was reaffirmed in the Civil Service Regulation Act (1956), was only ended in passage of the Civil Service (Employment of Married Women) Act in 1973.

The centenary book includes an essay competition, whose winning work of fiction is titled, "The New Entrant." The page-and-a-half long story renders entry into the bureaucracy of the civil service as an idyllic acquisition of a new officious kinship. The essay describes a schoolboy entering the Land Registry knowing little about its functions or inner-workings, and his school friends knowing even less about it than him. But, as they begin to own property themselves, they begin to become apprised of the work he does for the state, no longer asking frustrating questions about the (separate) Land Commission or the (imaginary) Department of Lands.

If entry into the Irish Civil Service entailed the acquisition of new institutional genealogies, that social reproduction of the office and its camaraderie depended a balance of anonymity and secrecy with its mission of publicity. After qualifying in his civil service examination, but before the new entrant knows his destination, he is initiated into the public life through secrecy:

> Eventually the group was led back to the room from which they had first emerged about an hour earlier. Placed before them were forms headed 'Official Secrets Act'. As the ink from the pen flowed on the space of the form marked 'Signature', visions of top-security posting flashed into the young man's mind. Official Secrets Act, to this young innocent, conjured up images of secretive jobs in a section of the Department responsible for the Secret Service or a survey of prisons [or] tunnels. (1992:85)

To this day secrecy is an element of one's induction into the Civil Service. One of the questions put to candidates in interviews for positions in the Civil Service is about whistleblowing, and with the Edward Snowden affair taking up international headlines in the Summer of 2013, the issue of secrecy in the civil service and what I thought about whistleblowing was a common topic of conversation during my time there.

Just as entry into the public service depended upon a respect for public secrets, the ideology of the civil service also could reframe the anonymity of individuals within the organization as the basis of a cohesive office culture: "He had been puzzled lately by the fact that young people experienced some difficulty with simple terms like setting up, settling and folios but seemed at home with bits, bytes, data bases, and information technology. Perhaps he should not generalise about new staff, after all, there were many of them whom he had never seen or met" (86). The aging new entrant, thankful for the introduction of flexi-time which allows him to tailor his daily schedule to "meet the remains at church," gradually loses contact with his old school friends as he becomes more and more embedded in the collective life of the Land Registry. The essay ends with the old new entrant taking on the role of host to a new new entrant, passing the baton from one generation to the next. Such is the life cycle of the civil servant and the reproduction of the civil service as the family of the state.

The new entrant (2)

Heading into my second summer of preliminary fieldwork in Ireland, I had arranged to conduct research in the Property Registration Authority of Ireland. The PRAI was a state organization that included the Irish Land Registry and the Registry of Deeds, the two key ways that the transmission and title of real property, was bureaucratically recorded and, in the case of the Land Registry, insured by the state.

My days in the office were roughly 9 to 5, and primarily based in the Land Registry, where civil servants in different departments generously gave me the rundown on how their section carried out their specialty functions. One week I might be in First Registrations, where formerly unregistered property—often parcels in towns and cities, like homes in residential estates—was entered into the Registry, which meant compiling and reading through the history of deeds and transactions relating to the land in order to make sure it was not too risky for the Registry to guarantee that title. Or, I might sit with mapping for a day, where Marty would describe his involvement in the massive and internationally spanning digitization of the Land Registry's Ordnance Survey Maps.

The access I was granted was exceptional in many ways, and the hospitality I received was remarkable, although it made sense for why I was there: the organization was invested in recognition for its value to the public, which is hard to do for infrastructure, often defined by its lack of visibility when things are working, and the attention it draws when things are not (see Star 1999). Different than most of the classical infrastructural configurations—roads, railways, pipes, cables, etc.—which most evidently circulate material and more indirectly and tacitly facilitate ideological and social imaginaries, the Land Registry is an exemplary "thinking infrastructure," which refers to apparatuses that join together faculties of tracing, valuing, and governing (Bowker, et al 2019). In other words, epistemology was a critical part of its infrastructural position as was the way representations of those epistemologies were expected to materially mediate property. If infrastructures are backgrounded things that only become foregrounded once they break down,[14] then I thought that an infrastructure that maintained real property as a legal, economic, and political fact might be a highly charged site of efforts to restore normalcy. Because I was interested in the contemporary response of the registry's work to the crash, my research could speak to the important value the Registry had provided, at no cost,[15] to the National Asset Management Agency in adding a new layer of tenure to the visual apparatus of the Register so the state could actually see all the property attached to the loans it had taken ownership over during the crash.

When the state guarantee of all the Irish financial institutions resulted in buying up all the assets (including loanbooks full of mortgages, commercial loans, debentures, floating charges, etc.) it was a small cadre of civil servants in the Land Registry who headed a project to tirelessly enter massive tranches of especially big and "toxic" debt assets, mostly developer loans that were going to NAMA. Those civil servants, working over Christmas vacation, not only entered in all this new information (which, one presumes, often referred to mortgages that should have been but never were registered in the first place) but created a new, blue NAMA layer of "netting" in the Ordnance Survey-produced digital maps used in title registration.

That services were without cost was meaningful. It would be standard for costs to accounted for, if not estimated and billed, even though the money ultimately came out of the same general fund. Even if the money all came from the same pot how it was distributed

[14] I would not define infrastructure this way. In many cases infrastructure is something that is only recognized once you have to pay a toll, or a stamp duty in the case of a title registry.
[15] It might seem odd, but the idea of one state organization charging another for services is not for nothing: even though it is just the reorganization of funds within the same state coffers, when each organization is audited by a comptroller for the services it provides to the public for the revenue it generates, those figures matter. This incentive produced some absurdities after the crash: for instance, there were times that a by-then-nationalized bank might sue the Land Registry for compensation on a mishandled registration, which different that the same general fund was not only being fought for, but in the process the state was paying fees to the attorneys it had to hire for costly litigation.

mattered because each organization had to show that it produced good value to the state relative to its budget: this could effect executive careers, future budgets, and public criticism. So the Land Registry were really helping out another governmental organization and hoping they would later accrue benefits from the goodwill they earned by helping out with the free registration and custom-made layer to their digital map. That visual layer on the map, the colored "netting", which basically is a lightly patterned skin that fills into the borders of a parcel of land on the digital interface, was color-coded to denote different kinds of land tenure in the digital map. A new netting therefore signified the visual rendering of a new kind of relation that the State was guaranteeing in order to render visible to the state the lands it now owned underlying debts to. This is a key to registration: it is not rendering a pre-existing title visible, it is positively producing title as an irreversible state-guaranteed fact.[16]

Before I left California for summer fieldwork, my father, a recently retired criminal defense attorney, insisted that I dress properly for the environment of legal administration, or at least how he imagined it. We debated whether or not I should look like a criminal defense attorney from the 1990s, with a baggy Navy blue suit and black shoes (his idea), or something I thought resembled the livery of an outside researcher, something like corduroy trousers and a button-down shirt with a cardigan.

On my first day in the Land Registry, I wore a generational compromise—a chocolate brown suit with a purple shirt—as I shook hands with civil servants. Among the men who worked there, a Polo shirt tucked into khakis was the most dressed up any of the men were. The

[16] If it was wrong to do so, there will be repercussions (they might have to pay damages, for example), but the newly registered information stands until a new dealing, perhaps a court order, modifies it.

exception to that was the executive class of civil servants, and the legally trained Examiners and Registrars, all of whom garnered a higher salary and dressed more as my father imagined. But most of my time was not spent with them. I had clothed myself in unearned pretensions, which most people were too polite or embarrassed for me to point out.

My desk in the Land Registry was in an office where a civil servant named Fred inducted me and acted as my shepherd. The men in that office—although the Land Registry was more balanced in gender, everyone permanently in this office was at that time a man—were from a generation of working class Dublin that had largely been displaced by the boom, which had turned former villages that the city had absorbed into fashionable loft apartment buildings. The civil service had provided a stable and modest path for social mobility that was hard to find in the Ireland of the 1980s, when they first would have come into the civil service. Most men and women had come into the Registry during that time, in part because of the hiring freeze and cuts to public services that followed from the crash—civil servants of that generation had worked long enough to retain their positions, but not long enough that they were ready to stop working, especially if they now had to contend with a mortgage, or an extra mortgage, or a holiday home in Albania, in negative equity, as many did.

Fred was something of a bureaucratic autodidact in the Registry, quietly accumulating esoteric knowledge of all kinds in the bureaucracy to make himself indispensable. While it might not be easy to be terminated from a civil service post, civil servants are at pains to put themselves in position to control their own destiny about where they work, which can either be done through getting external qualifications in law (for example) or by accruing institutional knowledge. Fred could be devastatingly witty when he picked the right moment to let you know, but his default stance was to observe others.

My default from the first day was to ask questions about every little thing, no matter how inane. Halfway through my first, overdressed, day in the Land Registry, Fred asked me a question: “You know, I spent some time living in America, where are you from?” It turned out that like many in his generation, he took a “career break” from the civil service in the 1980s to temporarily migrate to the United States. When I told him I was from California, he said, “Oh yeah, I spent some time in California. Where, exactly, are you from?” Santa Cruz, California, I said. “Oh yeah, I’ve been to Santa Cruz. That’s near San Francisco, right?” “Yeah.” “What year were you born?” “Well, I was born in 1985 so I might not’ve even been born yet,” giving him the set-up he was looking for. “You know, I think it was 1985 I visited! What’s your mother’s name again,” he asked, beaming from ear to ear, while the men in the office received his joke with the best laughs I heard all summer.

Fred’s joke is about bureaucratic particulars, showcasing a very Dublin, very homosocial (all five of us in the room at the moment were men) and masculinist playfulness about the contingency and provisional status of kinship from the very heart of bureaucracy that renders the dense polyvalent clusters of history and kin relations that constitute real property in Ireland as a rationally inscribed and confidently guaranteed title that is intelligible on a map. In the joke’s playfulness, Fred also models a deep ambivalence about family relations: the performance and content of the joke index the ability to read intimacy into an otherwise overly formal acquaintance. But it also suggests that he could casually father me and abandon me and then our only relationship would be as mere acquaintances, and I would just be a funny kind of new entrant, standing there with an IRB-approved informed consent info-sheet for a human subject in my hand.

Property and kinship

Across cultural and historical contexts, concepts and practices about property in land, or real property, are deeply entwined with questions about the social organization of families, wealth, and authority. One of the most powerful effects of property forms is how they make those uneven patterns of social organization seem so natural. Take, for instance, the English estate and primogeniture, the impartible transmission of fee simple landholding in common law history. The English paradigm, and law, for centuries was that an entire estate would be passed down to the oldest male heir when the patriarch died. Primogeniture simultaneously shaped gender, what counted as kinship, land's status as a special kind of wealth, political enfranchisement, and the reproduction of political power in English society.

Further afield from Ireland, the role of the estate-like *tabinau* [17] on the island of Yap was so authoritative in the way families delegated familial and economic roles, and personhood, that Schneider (1984) questioned the very utility and very existence of kinship as a cross-cultural analytic. Likewise, the estate in land is a dense junction of relationality that can only appear discretely commodified, adjacent to, but not interlaced with kinship, through a constellation of bureaucracy, jurisprudence, and markets. Schneider's critique of kinship leveraged the *tabinau* as something that looked like economic relations that amounted to property in land to call into question the stability of kinship as a coherent analytic, ushered in a serious rethinking of kinship.

[17] The *tabinau* eludes easy definition, which led Schneider to refer to it as a "cultural unit" and describe it both as a corporate landholding unit made up of a patrilineage and virilocal group, and as irreducibly *tabinau*, a voice of authority which emanates from land and reverberates to far-reaching concerns beyond patrilineage. However classed, the *tabinau* organizes the completion of the land's expression of itsef by giving names, offices, duties, and social personhood to the people who emanate from the land and who currently reside there. For all its taxonomical difficulties due to its cultural specificities, it is hard to reflect back on the Anglophone "estate" and see it as any more easily defined delineated as a unit of economy, law, kinship, and so on, despite centuries of legal efforts to the contrary.

Property in land, however, remained a fairly coherent, substantivist analytic for anthropology. The metaphors of "bundles," upheld a substantivist category of property as a nexus of other social values, activities, relations. If property was in transition, so were social relations. Questions about the stability of property were happening in law (see Grey 1980). When anthropologists did problematize property itself, they were inclined to find new objects instead of land: intellectual property rights, financial devices

Influenced by Weber's analysis of rational authority, we tend to look at bureaucracy as a stable and stabilizing force, once that inscribes, centralizes and canalizes social relations into archived facts. In its own operation it is marked by a refusal of the links between the familial, the personalistic, and the status-based to public institutions. On their surface bureaucracies reflect an image of frustrating and aloof "social indifference" (see Herzfeld 1993); a failing public institution is one evidently rife with partiality, status, nepotism, or undue influence.

That sets up a tension between formal associations and familial associations when you examine the bureaucratic administration of real property. To produce stable social and legal facts about real property (insofar as they are paper iterations and stable as the paper and the paper archives that comprise them) as a nexus of value, familial attachment, and political status means taking on, ordering, and therefore eliding things that make good Weberian bureaucrats squeamish. In familial associations, land is a special kind of wealth that distributes value diachronically, from generation to generation. It also distributes value synchronically: different familial associations have different levels of access to the use, exchange, and social values attached to land (while these hierarchies of rights are articulated especially when someone dies without a will and biological children, that is also precisely when they are most unstable). Even if the intention of a bureaucracy of property in land was to translate land from an object of a special kind of wealth, which conveys status and familial responsibilities from generation to generation, into a synchronically flattened commodity hollowed out of its special status in the Irish social landscape, that does not mean land will effectively be emptied of those entailments. Instead, that flatter commodity-asset version of paper is a new social fact, with repercussions and risks that might seem incommensurable compared to other facts about the land. Making and maintenance of title by registration is one, rather efficient way to attach a set of new interests (e.g. lenders or civil servants the occupants might never meet) in land and to convey those and other interests—all the relations, responsibilities, duties, offices, senses of personhood that convey alongside land. Disarticulated and re-articulated through registration, land is figured through a nationalist grammar of possession and attachment (see Maurer 1997).

I use "convey" here with some intention of spelling out a point about registration as a kind of infrastructure of publicity. The language of "pipes", particularly "dumb pipes", is an apt metaphor in western liberal contexts for the perception of infrastructure as merely a vessel with which to aid the circulation of people, production, or capital. But critical looks at infrastructure have also pointed up the key distinction between being *mediator*, which can be a position for of influence and rent-seeking leverage, and being an *intermediary*, a "dumb pipe" position of more passive in-between (see Maurer, et al. 2018). Legal and bureaucratic infrastructure is at pains to balance the position of mediator/intermediary carefully: to act in the interests of clients and the organization, but also to make that in-between position invaluable and essential. There is perhaps no better image of this then the civil servant who makes themselves indispensable and untransferable by becoming jack-of-all-trades, accumulating institutional knowledge, so that new transfers and entrants are reliant on their esoterica to keep the office functioning. "Conveyance" captures that ambivalent position as both mediator and intermediary: it passes along wealth, but it also demands access to rituals, language, certifications, and forms that will allow that wealth to change hands. That is to say, "conveyance" is at once a metaphor for the transmission of all the wealth, status, and personhood attached to land as it moves between parties or generations, like how we convey ideas, and it is also the literal, technical verb that denotes what the Land Registry records, guarantees, archives, and communicates as public knowledge.

Does a title registry merely serve as a vessel, though? No, because just as the materiality of those pipes and the stuff they convey has garnered attention in critical looks at infrastructure for its irreducibility to docile matter through docile infrastructure conveying property entails a world of legal conventions, statutes, bureaucratic processes *both material and discursive* that make the mere maintenance work of conveyance one which will not always take the fastest route to delivery. The stuff that goes through the proverbial pipes has to amble through the sedimentation of common law histories, Irish political histories, and the social histories of each piece of land and the families on it, that awaits registration. The same legal concepts and histories that produce the channel also produce the noise.[18]

One of the distinctions to be drawn between the way a title registry would advertise itself and the collective impact of all the tasks involved in the everyday life of that registry has to do with function. A title registry would insist publicly that its value is through the functional use that it provides the public: this helps justify budgets and fend off the occasional newspaper column by a certain kind of free market ideologue who suggests the registry should be privatized

[18] Kockelman (2010) takes a Peircean perspective on channel, cybernetics, Serres' parasite, to think about the relationality of the "black boxes" that make up channels. Larkin (2008) has demonstrated how the noise in those channels becomes aesthetic form in media and part of a political understanding of breakdown that provides an important counterfactual to the definition of infrastructure-as-background-until-it-breaks-down. Anand (2011) analyzes the relationship between the building of political and hydraulic pressure in municipal pipes, in which lack of efficacy can be the precondition, if not background, to the political everyday.

(as in many states in the US, in which the same functions of recordation and guarantee of title are facilitated by county registrars and private title insurance companies, respectively). But if you take the collective life of the infrastructural, a lot of it looks more like what Elyachar (2010) calls "phatic labor," a constellation of various works concerned primarily with asserting an effective channel that includes, in this case, the state. That is to say, a lot of the work of the infrastructure is to establish and maintain communication itself. In the case of the Registry and the other civil services that feed into its work, consider the following as forms of phatic labor: the sending up of airplanes to photograph the earth, a team in India that helped transition the paper maps of the Registry into a digital infrastructure, the IT teams in Ireland that maintain the digital infrastructure, the mailroom that takes in and separates checks from paperwork, the sealed cartons that carry sealed dealings from the registry that authorized them to the storage facility that houses them.

All of these are establishing channels through the movement of wealth is possible, but they are not wholly open channels: a digital infrastructure has to have locks and keys in order for certain people to get access to the data in the objects attached to different features in the map, and to keep others from seeing that information. Similarly, the channel from Registry to storage facility is a closed channel. All the channels aggregate to establish and maintain a sense that "the Registry" is a node through which all channels relating to property flow. That phatic infrastructure channels social action through categorical thinking, encouraging some formations and constraining others, but its purposes tend to be more immediately about maintaining the channel, which usually means acting with actuarial prudence in keeping with the registration's insurance ethic.

In opening these channels of property, running them through its headquarters, and tirelessly maintaining those channels, the infrastructure is responsive and relational. In this chapter I will examine how, for instance, in order to maintain "title" as a concept that works, the Registry has to reckon up relational forms (family, property, title, possession) in unfamiliar grammars. Because property is not just a flat asset passing through a dumb pipe, but a relational form that is deeply implicated in kinship (and kinship deeply implicated in it) passing through nodes of bureaucratic phatic channels, those channels do kinship labor, perhaps unexpectedly.[19] Much of this chapter is devoted to unpacking that entanglement developed between the canalization of kinship and the familiarization of infrastructure.

Possession

For a nation where the acquisition and maintenance of possession of land and tenure was seen as the basis of the republic, but where laissez-faire attitudes towards the market and more mobile speculation on land and industry became embraced as the epitome of good governance in the second half of the 20th century, what would be the limits of rethinking the nexus between property and economy in the so-called "economic recovery" of a precipitous financial crash? Possession was the hallmark of post-independence Irish political life: according to J.J. Lee, it provided an almost eschatological endpoint (it could be imagined as lasting forever) around which Irish families organized and it provided a set of ethical constraints and vested interests.

[19] There is a memorable passage in career civil servant and novelist Flann O'Brien's posthumously published *Third Policeman* (1988[1967])where the Sergeant tells the anti-hero that, based on atomic theory, a lifetime of riding bicycles bumping up and down on rocky hills, "get their personalities mixed up with the personalities of their bicycle as a result of the interchanging of the atoms of each of them and you would be at the number of people in these parts who nearly are half people and half bicycles" (88). It seems hard to imagine that much of the civil service's personality rubbed off on O'Brien during his long tenure in it.

But after government-led efforts to "economically expand" beginning in the mid-20th century, housing and "possession" began to wane, as a financial system interested in performance eventually produced a bubble that exposed possession to risk of losing forever.[20]

In his seminal *Ireland 1912-1985* (1989), J.J. Lee famously framed the key political dialectic of modern Ireland as one between possession and performance. The possessor principle was the dominant political and social ethos, he argued, embedded in Irish social structure from the tumult of the 19th century. The performance principle was characterized by economics-trained and international market-focused reform introduced as a fixture of Irish governance in the mid-century government of Seán Lemass. Lee classes both agrarian landholders and civil servants as part of the possessor class. Possession of land ownership, in particular, and its historical importance in catalyzing Irish nationalism, structured the dominant ethic and desire of Irish political economy both in agrarian and bureaucratic settings according to its "the rational preoccupation with security" (1989:392). Lee took possession in Irish social history as entailing temporal extremes:

> The time horizon of possession was eternity. The time horizon of pastoral agriculture was very short term…The structure of the Irish cattle industry, with animals passing through several hands in quick succession, made for short-term calculations. The time horizon of the farmer therefore tended to oscillate between the very long term, symbolised by the hoarded savings for the daughter's distant dowry, reposing undisturbed at minimal interest rates in the bank, irrespective of the fluctuating fortunes of the farm, and the very short term, reflected in the mentality of the fair day and the 'bargain'. There was relatively little scope to develop a sense of the medium term, or of the idea of goals to be achieved through accumulated regular effort. Reward came more from 'strokes' than from sustained labour. (392)

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[20] "Furius, my small estate, my charming villa, shall never be swept away by the south wind, nor the west wind, nor the raging north, nor the little breeze from Asia, but, O, a mortgage, fifteen thousand, two hundred pieces of gold, here is a blast, a storm that carries ruin and the plague," Catullus, Poem 26, translated by Horace Gregory (1956:36).

Lee seized on Seán Lemass's government, and T.K. Whitaker's role in it, as the first implementation in government of the performance principle over the possessive principle; dispensing with the sacred cows of the civil service and the early decades of the independent Irish state. That new dogma of global performance was introduced during the Seán Lemass years of the Irish miracle and is best known and embodied in the "First Program for Economic Expansion," a white paper also known as the *Grey Book*, authored by T.K. Whitaker. Whitaker, a civil servant, had become Sean Lemass's Secretary of Finance at a point of deepening economic despair when he proposed what was a radical departure from protectionism for Irish political economy in 1957.

By substituting the performance principle for the possessive principle, Lee credits Lemass with overturning "the dominant ethos not just of a generation, but of a century" (390). But Lemass himself was not particularly inclined towards economics or new models of political economy. His willingness to experiment and bring in Whitaker was in part from an "obsession" about the continued problem of the emigration of young people from Ireland. In 1958, the Irish Times warned that the "success or failure" of Whitaker's Grey Book would be "measured by emigration figures" (359). After a period of surprising economic growth was achieved during the Lemass years, the trend of emigration was eventually reversed for the first time in over a century between 1961 and 1971. Whitaker became so lauded for developing this new dogma of political economy, he would eventually be named Irish Man of the 20th century.

I say "dogma" because that is exactly what Whitaker chided the Department of Industry and Commerce and the Department of Finance for in the so-called Grey Book titled *Economic Development.* Taking them to task for their attachment to older, protectionist ways of economistic thinking, Whitaker wrote, "the greatest fault lies in pursuing a policy after it has proved to be insuitable or ineffective" (quoted in Lee 343). It is with some irony, then, that the paper would go on to embody the unquestioned wisdom of governance of Irish political economy up to the present. The doctrine of cutting ties "unproductive capital", which meant social housing and lowering corporate taxes, continues to be the framework for what either major party's Minister of Finance works within, no matter how effective or "insuitable" it seemed to unprecedented new circumstances, in spite of claims from opponents that its initial success was just mere luck, as Irish economic performance improved during a period when it was unremarkable for nations to experience growth (354).

By 2013, when I was conducting research in the Irish Land Registry, the Celtic Tiger's celebrated reversal of the net migration loss had once again reversed, and in a big way. It was the fourth year in a row that over 27,000 more migrants left Ireland than entered.[21] For perspective, that period was the first net emigration period since the late 1980s, when a Programme for National Recovery was implemented to reverse the course of a deep, bleak recession period. This was also the year that the Irish tourism lobby branded 2013 the year of the Gathering, an attempt to "bring back" descendants of the Irish diaspora who were once again willing to spend money after the Global Financial Crisis. At the airport on my way out of the country, there was a kiosk with a poster of John F. Kennedy with repeating audio from the kiosk that reminded American tourists that United States and Ireland were closely linked, and that there was a precedent set for investing in the future of Ireland in its times of need.

As it happened, North American investment *was* just beginning to make waves in the Irish market, as the commercial realty executive outlined: REITs were beginning to buy up Irish residential and commercial property. American tech and biopharmaceutical firms were once

[21] These numbers are from the Central Statistics Office of Ireland, and were not limited to Irish nationals. Net emigration of Irish nationals was slightly higher in 2013 (35,200) than the total.

again starting to expand their operations in Ireland's tax-friendly environment.[22] "Vulture funds" were buying off the large tranches of mortgages in arrears from the Irish Banking Resolution Corporation (IBRC), a company set up to liquidate the holdings of Anglo-Irish Bank. The new property market was being reconstituted, to be sure, but something in this recovery made it different in scale and character to any old "market intervention". The change in possession was so wholesale (transfers were done in "tranches", large portfolios of thousands of assets at a time, repossessed property) and so international in character (the Celtic Tiger boom drew international investors to Irish banks, but was intensely, incestuously, domestic in speculation on Irish real estate), that any attempt to simply reassemble of the market would entail the reorganization of society: an entirely new class of interests would be embedded in Irish society through real property. And yet here were attempts to once again, just as Whitaker had done, justify and effect that looming, dramatic reorganization of society by real property liquidation and speculation through the language of returns.

Social partnership

The Centenary book with the essay competition was published soon after the emergence of "social partnership" in Ireland. After hard-hitting recession in the 1980s and tumultuous battles with public sector labor organizations in that decade, the 1987 Programme for National Recovery initiated a new era of centrally organized labor relations with the state under the banner of social partnership. The era of social partnerships would later be one of the factors credited as creating the conditions for the Celtic Tiger growth of the 1990s, which later turned

[22] Ireland's status as a "tax haven" is controversial. The OECD, for instance, does not regard it as a tax haven. A recent paper from American academics for the National Bureau of Economic Research, however, called Ireland the world's largest corporate tax haven, with more money shifted to it in 2015 than all the Caribbean islands combined (Tørsløv, et al. 2018:26).

into the real estate and banking boom of the early '00s. It was praised in many quarters, including union leadership, but has since been reevaluated as a co-optation of labor that eventually narrowed and weakened rank-and-file union membership. Social partnership was a mechanism of industrial relations characterized by "voluntarist" participation by trade unions in broader economy, providing trade unions with "significant institutionalised power to be considered a 'social partner' in the organisation of Ireland's new political economy" (Regan 2012:5).[23] That new political economy of that period was increasingly open, European, and "tax competitive". In the same year (1987) that the Programme for National Recovery instituted social partnership, the Single European Act was passed in anticipation of Ireland's entry into the single European market. It was also the same year that Ireland inaugurated the International Financial Services Centre (IFSC) as a special economic zone that had European approval to offer low corporate tax rates to financial service firms. By 1998, each of these new projects from 1987 were being widely celebrated as responsible for unprecedented economic growth and prosperity in Ireland: Ireland was a fixture and poster child of the single European market (entered in 1992), the IFSC truly became a center for international financial services even as the state lowered its own corporate tax rates to be just about the same, and social partnership was credited with stabilizing industrial relations between trade unions by collectively negotiating gradated pay rises in industrial sectors (the partners) through "the political executive of the state" (2012:5).

By the time of the 2008 of the late Celtic Tiger crash, two of those three projects were still fixtures in the self-image of the Irish economy, at least from the standpoint of successive

[23] The "voluntarism" of the labor union is not precisely the same as the Italian kind described by Muehlebach (2012), but the juxtaposition is a fruitful one: Irish "social partnership" reflects diverse attempts in the twentieth century to wed Catholic and explicitly anti-Communist "social justice" principles to national economic performance. Both may ultimately support and look like neo-liberalist governance, but in being articulated through other moral, religious, and nationalist vernaculars, will ultimately branch off in their continued development.

Ministers of Finance: European markets and loans were relied upon for the bail-out of the Irish fiscal state, and the entire nation had become what was only once specially zoned tax haven of the IFSC. But social partnership, which is now credited with dramatically lowering trade union density in Ireland (Regan 2012), did not survive the crash. Trade unions for the Irish Civil, some of the most organized and successful labor organizations in the state, had to take cuts in new austerity agreements like the Haddington Road and Lansdowne Road Agreements. By the time that I was in the Land Registry, the morning and afternoon tea breaks had been reduced to one before lunch.

The tea break is often a punchline about civil servants in popular culture, which often casts the civil service as a wasteful and inefficient locus of needless formalism, concessions to organized labor, and guaranteed pensions. I often heard these tropes from civil servants themselves who were sensitive about the less-than-flattering public perception of their abilities, especially as public sector pay rises and pensions in general were in some corners being retrospectively scapegoated for the fiscal mismanagement of the state in the post-crash "economic recovery" period.

The critiques of the civil service are commonplace, and longstanding, but might have first been given political weight during the rise of so-called "vocationalism," an anti-socialist Catholic social doctrine based on Pope Pius XI's 1931 *Quadragesimo anno* encyclical that called for a principle of organizing states such that they mediated labor, government, and industry, while working to lift up the key components that constitute a state: private property, families, and the Christian teaching. Vocationalists turned towards the corporativist organization of society as a holistic social and economic solution to the "misus[e] of capitalistic techniques of production for anti-social ends" (Coyne 1934:186 in Wall 1954:148). E.J. Coyne, S.J. who was one of the leading advocates for vocationalism, developed comprehensive models of social organization whereby a National Vocational Council would deftly parlay the interests of spontaneously and voluntarily formed (not state-mandated) groups of vocational interests (not only trade unions, but craftspeople, generally) into the repair of the "organic" form of society.

One of the ways that longtime Taoiseach (head of government) Eamon de Valera managed to address the clamoring of the influential clergy and advocates of Catholic social theory in Ireland is now a familiar technique in Irish governance for "being seen to be doing something" without committing to actively doing anything: appointing a commission or a government inquiry dedicated to investigate and advise on some matter. The Commission on Vocational Organisation's 1943 *Report* ended up being written primarily by the same E.J. Coyne, who used it as a platform not only to presenting an entirely new scheme for restructuring the governance of Irish society, but to take aim at the young state's bureaucracy for presenting an obstacle for the repair of the social organism. In J.J. Lee's words, the *Report*, "denounced in terms that would become familiar a generation later, the anonymity, irresponsibility, and incompetence of 'bureaucracy', by which it specifically meant the Irish civil service. The inherent 'rigidity' of the service led to a refusal 'to create a new precedent or to experiment', and fostered 'a lack of personal responsibility and of inducement to produce results'" (1989:275). Although de Valera succeeded in keeping vocationalism and its grandiose goals of reorganizing Irish social order at bay, 20th century Irish history was marked by successive attempts at disassembling a strawman of the state's stagnant, unimaginative approach to managing Irish political economy, where the Civil Service was a favorite whipping boy.

Vocationalism was a proposal to radically shake up Irish governance towards performance, and it only differed from later international market attempts in how explicitly moral and religious its interpretation and prescription for the anti-social uses of industrial capitalism were. At the very time of Lee's writing, the new era of social partnership in concert with an open European market and low corporate tax environment were recasting the principle and ethic of the possessor class—which he saw as responsible for middling Irish mediocrity—as remnants of an antiquated, protectionist, and superstitious past. The tension in Irish history between possession and performance, and the corresponding tension in iterations of real property as speculative commodity object and possession as a constitutive, moral act of household production and subjectivity formation, continues to reverberate. It did not subside, but intensified after the crash of the Celtic Tiger and the self-assurance of the Irish performance. The security and familiarity of the Civil Service is at once geared towards stability, and yet, in a single European market, also feed on the instability of exchange, and feed its instability through by producing title.

Title registration

The copy that I kept of *Land Registry Centenary* bears the mark of the seal of the state of Ireland, and the first chapter is a genealogy of registration in Ireland by John Murphy (1992:1). In it, he traces the historical development of the institution as a developing tension between the publicity, which was necessitated in the alienation of property after the *Statute Quia Emptores* (1290), and secrecy, which was created by medieval ancestor of the trust, the *use*, which created equitable interests in land that could not be seen by those owed feudal dues—"Secrecy in English conveyancing thus became established. There were many attempts thereafter to address the problem the problem but to no avail" (2). Because the Irish Land Registry adopted Torrens title registration, which guarantees the title it produces, the tension between publicity and secrecy is especially vital to deciding what what can be made visible as a public thing and what cannot. Corresponding to the binary of publicity/secrecy are legal/equitable interests. Legal interests, like *fee simple*, which is the highest form of land ownership below the Crown, can and will be registered and guaranteed by a registry, but equitable ones, like the interest of a beneficiary of a trust, will not be registered. In that sense registration makes secrecy in property through elision, marking off certain relational forms as *terra incognita*.

Ireland actually has two coexisting systems of registration: the Registry of Deeds, established in 1707, and the Land Registry, established in 1892. Elizabeth Cooke neatly defines the difference between what a deeds registry does and what a title registry in terms of "protective" and "dispositive" functionality:

> A **protective system** records ownership and/or interests in land as a way of settling their relationship to each other; it affects priority, *but not the actual existence of the interests*. A **dispositive system** exercises a much tighter grip upon its users *by regulating the very existence of property rights*, as well as their priority.

By "regulating the very existence of property rights," Cooke means that the "dispositive effect" of registration is that it does not just recognize title, it presumes to make title. That is why institutions like the Irish Land Registry are also called "title" registries and tend to be synonymous with dispositive systems, while "deed registries" like the Irish Registry of Deeds tend to be merely "protective systems"—they can provide documentary evidence to support the claims of litigants, such as a bank and borrower, but does actively make title a *fact*.

Established in 1707 the Registry of Deeds is an artifact of the rise of banking and finance in the late 17th century and an artifact of colonial experimentation after a century of conquest in Ireland. Pocock (1985) suggests that the 1690s introduced an entirely new form of property that necessitated new discourses on the relationship between politics and wealth. By the time the deeds registries were being established at the start of the 18th century, the ability to speculate, mobilize, and circulate capital extended to the old inalienable wealth in land, as well as the status and political system predicated on that landholding. The Irish Registry of Deeds merely records the existence of deeds of transfer, indenture, and so on, making a copy called a "memorial" that it archives without passing judgment on the relationship between that representation of what property relations are like and the state of title. Registries were thus bureaucratic responses to the problem posed by Defoe and Mandeville about the relative virtue of a market that facilitates Commercial Man's pursuit of his individual interests at the cost of expedient vice in that pursuit. A little bit of publicity, provided by an archive that records the interested parties of land deeds, and the sequence in which those deeds occur, would install a trustworthy, witnessing third party who could claim no partiality or bias. The frenzy of the market could be given order, the inclination towards lying, deceptive, unethical vices of commercial man could be cultivated into orderly virtue (see Hirschman 1977).

As part of the Penal Laws that punished the native Irish for their rebellions in the preceding century, the commercial public brought into order by the measured publicity of the Registry of Deeds was by no means an inclusive one. The 1707 inauguration of the Registry came after a century of English-led plantation, conquest, and war in Ireland that created a landed gentry that did not have the same political interests in the inalienability of land as the aristocracy in England did. After a century of incredible upheaval and violence in the turnover and undoing of native forms of land tenure in Ireland, the Registry stood not only to cultivate the commercial class's vices into virtues, but to further formalize the sectarian-based stratification of allowable legal actions with property. The preamble to the act of Irish Parliament that established the Registry of Deeds reads: "For securing purchasers preventing forgeries and fraudulent gifts and conveyances of lands tenements and hereditaments which have been frequently practiced in this kingdom especially by Papists to the great prejudice of the Protestant interest…" While it may have other features that have allowed the institution to survive three centuries, the registry's potential as a surveillance or auditing tool for state revenue has never disappeared, although the kind of political field in which that fiscal governance fits changes over time.

The Land Registry, on the other hand, was created at the end of a 19th century in which Irish land tenure became implicated in the horrors of the Irish Famine that left over a million dead and drove millions more to emigrate. That state of land tenure during, but particularly after that point in history became a political embarrassment for a British Empire that was expanding its influence globally and yet seemingly unable to keep its oldest colony from unthinkable calamity and agrarian despotism. There were powerful voices in Westminster, particularly in the office of the Exchequer, who saw the famine through a prism of providentialism and political economy that took the horror as a sign from God to economically and politically reorganize what to it was an inscrutably backwards agrarian society.

The Irish Question, which became a fixture in political economy discourse of the 19th century, referred to the cruel conditions of Irish tenant farming families who had less protection from eviction than elsewhere in the Commonwealth and yet also could have more demanded of them than anywhere else. It was also a problem of modernity: as industrialization had encouraged Victorian thinkers to dream up concepts like civilization and culture as innately progressive human projects at for English society was the leading exemplar, how could the internal colony of Ireland have seemingly regressed so much from the 18th century? How could this nearby, quasi-internal nation have been so badly mismanaged that its countryside had been allowed to stay barbarous, or had even further been "barbarized" by bad administration?

Thinkers like Ricardo, Mill, Maine, and Marx all found ways of dissecting the Irish Question and proposing answers to how to provide relief to the beleaguered Irish tenant farmers from the material conditions of their tenancies. Sir Robert Torrens, who campaigned all over the world for his registry system that operated like double-entry bookkeeping and guaranteed title, promoted the system in his native Ireland as a way to relieve the tenant farmer from the lazy and absentee landlords who were not incentivized to make improvements on their land. Torrens' arguments in the 19th century quasi-nationalist paper of record, *The Freeman's Journal*, which unsurprisingly resemble the promises current day liberal ideologues like Hernando de Soto (2000), suggest that the 19th century failure of the commercial revolution to rise all tides in Ireland, after a century of boom in 18th century and the 1801 Act of Union, might just need a more proactively insuring, more thorough, more inclusive publicity to "catch up":

> "In Ireland, where agriculture constitutes the one grand source of prosperity, the primary means of employing and maintaining the population; the means whereby greater certainty may be given to title to land…whereby its transfer may be facilitated, and the investment of capital on its improvement encouraged…constitute a vital question involving the well being not only of those directly interested in land and production, but also the rest of the community…The antiquated system [of conveyancing] operates as an incubus, repressing the aspirations and the energies of the people, discouraging investment of capital on the land, and causing all classes to move in the transaction s of their affairs with the slow and painful motion of the paralytic or manacled slave rather than with the freedom and rapidity with which the same transactions are conducted in countries where conveyancing by registration prevails. (Freeman's Journal, February 6, 1864, in Murphy 1992:4).

Less because the vigorous campaigning of Torrens, the Land Registry succeeded largely because of its coupling to agrarian, even populist reform that responded to decades of organized struggle exemplified by the Irish Land League and its boycotts. After a false start in the 1860s, the current Registry was successfully implemented alongside the indirect redistribution of land that British administration was compelled to carry out in the latter part of the 19th century. It gave simple and secure title to new titleholders—the tenant farmers who had the right, on the foot of the Land Purchase Act, to buy the freehold title to the land the family had worked for mostly absentee landlords. Those former tenant farmers had little in the way of money capital, so their purchase of their title was facilitated by Land Commission, which loaned them the funds to do so on the basis that the new title, and the loan that made the purchase possible, were registered in the new Land Registry.

The two registration systems—the protective registry of the Registry of Deeds and the more robust bureaucracy of the dispositive Land Registry—continue to coexist and are now merged under the Property Registration Authority, because there is still a lot of unregistered land in Ireland. Urban areas tend to still have high concentrations of unregistered land, while the vast majority of agrarian land is registered. Once land is registered in the Land Registry, it will never again become unregistered (although there may be outstanding unregistered easements, rights-of-way, beneficial interests, and so on). Over 98% of the land by area in Ireland is registered (significantly less in terms of parcels), and that number has been increasing faster in the last decade as "compulsory first registration" mandates that any new transfer of land for value (e.g. selling a home) must result in the \$500 (not counting solicitor's fees) application to the Registry to establish a good "chain of title" over the last 60 years before creating a new "folio" in the Registry for the land—essentially a one-time process of a bureaucrat doing the old legal research work of conveyancing to bring the registry's version of title up-to-date.

Think of a "folio" as a kind of file folder that is uniquely associated with that parcel of land as it is. Deeds that are entered into the Registry to do stuff to those folios are called "instruments", and can change the information that the folios contain, but the folio usually remains stable unless it is being "merged" with another folio's land or "partitioned" into two or more new folios. Today, you access a folio by going online and searching a digital map, and then clicking on an “object” on a parcel of Irish terrain—the maps have been produced for the Land Registry by the recently decommissioned Ordnance Survey Ireland since its inception—that looks like a little colored dot on the map. Each parcel has a cross-hatching or shading called “netting” that visualizes the kind of land tenures registered on each parcel.

There are three principles of registration in a dispositive system that Theodore Ruoff, the Chief Land Registrar of England and Wales from 1963 to 1975, offered as central to the Torrens-title registration: the mirror principle, the curtain principle, and the insurance principle (Cooke 2003:9). The mirror principle means that the registry shows title as it is recorded and guaranteed. It is not meant to connote precisely accurate representation as much as selectively precise and performative representation: whatever is mirrored is part of title and whatever is title is mirrored. Beyond that, certain types of interests in property might be better left not mirrored: equitable interests like those created by trusts are the big elephant in the room for what does not become mirrored. Trusts are headaches involving years of litigation, costly legal fees, high standards of evidence, family disputes that are rarely repairable after court, and above all, equitable interests that are not, in fact, legal rights. That is where the “curtaining principle” of title registration helps. It circumvents having to recognize particularly murky territory, and in doing so constitutes one set of relationships as secrecy against the more narrowed publicity of properly legal relationships. Registries in common law jurisdictions will often curtain the precise details of equitable interests in land, only registering an indexical notice, because equitable rights are not-quite-legal and mirroring them could have the effect of making them effectively state-guaranteed, or indefeasible, and therefore more-solid-than-equitable. The yardstick for registration is said in the literature to be only what a potential purchaser would need to know about the title—a notice warning that there is a trust, but no information about it, for instance—but because trusts can be so mutable in the assets that they deal with, there is a lot left to the imagination and due diligence. Registering equitable interests therefore sets up a key paradox that curtaining defers: because registration does not merely record stuff, but actually insures it and produces it as legal, once recorded, an equitable interest might be transformed into something more permanent and binding, basically a legal interest (Cooke 2003:26).

As has already been implied, “insurance” refers to the liability the state assumes when it registers title, which informs the parameters of what registries will mirror or curtain in title, and generates an actuarial logic to the bureaucratic management of title. The insurance principle captures an important tension in registration: Anglo-American estates, especially, are messy and indiscrete concepts (Cooke 2003 uses the metaphor of a “flaky pastry” for the estate) but what Registries will ultimately mirror as title is something quite simply and narrowly confined to legal title because that is what can be reasonably insured, whereas equitable interests are so unpredictable and expensive when it comes to litigation, that it would be imprudent from an actuarial standpoint to mirror those interests in title. The result of these principles is “indefeasible title”. That means that if the registry transferred the land prematurely and someone came into it by fraud or flaw, the new, registered purchaser would still hold the title. Once it is registered it would take registering a new conveyance (a legal transfer, such as a sale or a Judge’s order) for the registered owner to change on the folio.

As an ideal, indefeasible title means that the Land Registry that does “not merely record, but defines and generates title” (Cooke 2003:10). But that generative recordation of *title* is often confused with a recordation of *property relations*, as such. The Land Registry guarantees all the title it registers “up to but not inclusive of the boundaries.” This is a source of confusion for many: How can you guarantee title but not the boundaries? Is property not defined by its boundaries? The image that comes to mind is a sandwich with the crust torn off. The problem is the slippage between "property" as the material, cultural and economic object that people know outside the Registry, and "title" as it becomes realized in the folio, through a constellation of representational forms that can be triangulated to produce "mirrored" title. Guaranteeing the boundaries themselves is out of the question because of the litigation the state would be implicated in, but is also not the point: it is the rights that inhere in the mirrored title folded into that folio that the Land Registry guarantees.

Because of the simultaneous existence of registered and unregistered land, the Land Registry is continuously in the process of generating new title to unregistered land that must be registered because of a sale for consideration. As it did to land in general, Torrens title registration inaugurates significant transformations to Ireland's how property is thought of, once registered. The dream for reformers in the 19th century, like Torrens himself, was for a way to record and insure title that would disabuse the legal world of its attachments to what it portrayed as an arcane magical thinking of feudal ritualism. Torrens wrote, in a polemic against the old system for its "insecurity, costliness, delays, complexity, and cumbrousness":

> These evil conditions have a common origin in the retrospective or dependent character of titles under the existing system. Such a chain is not stronger than its weakest link. Each fresh transaction induces a fresh element of uncertainty. On each such occasion the ancestral parchments must be examined, and an abstract of the dealings during the preceding forty years [or longer] prepared for that purpose. (1882:17)

Prior to the Registry, conveyancing was a process that ritualized the mysteries of life and land rights into a kind of magico-legal exercise of conjuring genealogical "chains" of interests in the land at every death and alienation. Conveyancing conjured up "chains of title" in which title was mythically anchored in some original and exclusive possession of the land, as a way of papering over gaps of uncertainty that happen upon every transfer of land (Pottage 1995). Keenan (2019) call Torrens title registration a “radical temporal dislocation” to the way that the old regime constructed title. The linearity of chains of title were taken for granted in Torrens title, which was concerned with showing and guaranteeing the currency of title, not its historicity.

The critical literature on title registration tends to quite rightly situate it as part and parcel to a global social dislocation and fictionalization of land-as-commodity, that builds on a Polanyian critique of “one big market.” Because commodities are, in the Aristotelian tradition of Polanyi, defined as object produced for sale on the market, land can only be made a commodity through an act of fiction, an epistemological disjuncture from its natural status ([1944]2001: 75). Polanyi does not discuss land registration in any substance, but he is particularly concerned with changes in common law and statute that, by the Industrial Revolution, shed their political and social commitments to land as a special kind of wealth, and sought to “mobilize” those attachments as goods on the market. Polanyi sees three stages of the subjection of land to a global market: the first, is its mobilization and commercialization, and the second is its re-orientation for production for the market, and the third stage is instituting the first two stages in the colonies. Registration at once both neatly fits into this story of social dislocation by providing the epistemological framework for making land fictitious, while also telling a slightly inverse story where, as Bhandar (2018) argues, it is through colonial projects that is made imaginable.

Both the critiques and promises of bureaucratic authority echo a progressive narrowing of obligations and duties recognizable in Maine’s famous conclusion that movement of the “progressive societies has hitherto been a movement from Status to Contract,” with family dependencies gradually dissolving as individual obligations grow. Modern land registries are products of, on the one hand, classic liberal efforts to free land from the practices and institutions of *ancien régime* families, and on the other, colonial reformers who saw land as a critical point of governance and intervention at which to either bring Status-based subjects and their into markets, or just their land. Maine's work was preoccupied with just such a tension between colonial policies of "gradual progressivism" (Mantena 2010) and a response to the profound transformations of industrialization on British society (see Stocking 1987). In that sense, registries were often set up with such an imperial liberalism in mind, that wended progressivist, social evolutionist presumptions with the tools to make land into a fictive commodity, first abroad in colonial laboratories (see Bhandar 2018), and then eventually at home, against the wishes of the well-established legal profession concerned about losing their prominence in the practice of conveying land from one generation to another, and from seller to purchaser. It is fitting that in giving his view on the prehistory of land registration and the development of a "public" which would act as witness to private transactions of wealth, S. Rowton Simpson wrote in his long-time authoritative bible on the topic:

> In the days when communities were small and close knit, and people knew their neighbours and all about their affairs, an oral declaration and the handing over of a turf or twig were sufficient evidence of the transfer of land. Some such symbolic act performed in the presence of witnesses upon the land itself was adequate to safeguard not only the purchaser but also any third party who might have an interest in the land…But, as society becomes more complex….mere oral enquiry in the neighbourhood of the land is no longer adequate to prove ownership; nor will third parties know when there is a dealing. The person who appears to be the owner may in fact be the owner, but, if he has bought the land, he will have obtained ownership not by a public ceremony but by virtue of a written document which has been privately negotiated and seen only by the parties to it. (1976:13)

If this reads a bit like 19th century political economy, that is probably not a coincidence. The reformer responsible for promoting system of land registration that exists in the commonwealth and former commonwealth nations, Sir Robert Torrens, was the Anglo-Irish son of the founder of the Political Economy Club that John Stuart Mill and Jeremy Bentham frequented, and he campaigned for his economistic rethinking of the legal process of land conveyancing in those same terms.

That is only one of a number of origin stories for registration and I offer it here only because it speaks to a foundational concern of Maine that continues to reverberate for the anthropology of law: that the translation of obligations, duties, responsibilities and values into the register of "law", whether situated in contexts of bureaucracy, litigation, or legislation, is a socially transformative process. So, when I describe the "ongoing translation" of land from a special form of wealth to one of flattened commodity, I am describing something that, in translating, also produces something alongside the flat commodity form. While a fictive commodity in land might be the result, concerns about status and kin in property rights are re-articulated in a new grammar. To take back up the example of primogeniture: If land can now descend bilaterally and partibly if someone making a will wants it to be, is that the end of land's special place in mediating kinship or a different kind of slightly more elective mediation of kinship?

Key to understanding the transition to capitalism from whatever came before it and exists around it, is the making of capital, which is property, and usually real property (e.g. land, factories, fixtures and fittings). For every legal modernization effort, like Torrens registration, to make that kind of capital more subject to contract (i.e. easily alienated, borrowed against, speculated on), which implies independent, equal, individuals, there are also attempts to keep that capital dynastic, to transfer status from generation to generation, to use that capital to impart political and social status to families. Yanagisako (2002) notably described and analyzed capital as a tense co-production of industrial commerce and family itself. By acting as arbiter to the succession and conveyance of wealth, status, and familial belonging through rights in land, the registry is doing something along those lines, actively effacing its work as cultural or historical.

Appeals to public good and inclusion made by land registration systems worldwide are often expedient rhetoric for implementing administration that will make alienating, borrowing against, and losing land easier. It was in Ireland in the summer of 2013, while I was in the Land Registry, that the G8 conference dedicated to tax evasion and transparency also served as the catalyst for "Land Transparency Partnerships" between African nations and Euro-American nations that would use registration and cadastres to protect African countries from "foreign land grabs" (the UK was partnered with Tanzania; the State Department of the United States, which does not have a land registry, was partnered with Burkina Faso).

The political expedience of registration as a dubious byword for transparency, security cannot therefore be disregarded, but in the case of the Irish Land Registry the rhetoric of security of tenure ought to be considered alongside its initial establishment as a mildly restorative (albeit not precisely redistributive) institution. Although its success is couched in a language of free-moving capital and investment enabled by certainty and security of title, its establishment marks an odd agrarian, nationalist concession to the decades-long agitating and organizing by the Land League that insisted that land reform involve public finance, debt secured against the home place, and registration with a new centralized bureaucracy in Dublin.

Michelle Norris (2016) argues that Irish social welfare policy has, at least since those Land Purchase Acts, been indirectly channeled through real property ownership. While there has been a growing tendency to critique Irish fiscal and public governance as neo-liberal, the virtuousness and utilitarian ideologies behind real property ownership still seem to be centrally operative to the way the Irish state conducts its business with citizens. If the "performance principle" that J.J. Lee hoped would rescue Irish politics from mediocrity did indeed become paradigmatic of state planning, there is still a strong "possessor principle" in an Irish popular culture shaped by the 19th century's successive crises caused by landlessness and emigration, and that planning must continue to yield to and subsidize the vested interests of possession (especially in the form of strong farmers and the farming lobby, which melds acquisitive possession with performance-oriented "progressive farmer" techniques).

Even when the logic of the Registry mimics Austrian-style neoliberal axiomatic wisdom, like when executives for the organization would name-check the work of Peruvian popular economist Hernando de Soto for my benefit, the assumptions of economic and public good were couched in a much longer arc of reconciling a nation of money-poor agrarian freeholders with the virtues of a market economy. Property-based welfare, which Norris argues is at the heart of the Irish welfare state and its reforms, is still very much attached to the registration of land ownership in Ireland. Being a registered owner is still a criterion of many farm grants such as the annual general farmer payment, or grants for dairying, or for making improvements like ditches, or for special initiatives like beekeeping.

Upon telling new people about my research interests, people all over Ireland often cited Bull McCabe's tragically jealous love of land in John B. Keane's *The Field* ([1965] 1991) as exemplary of Irish cultural attitudes towards land and acquisition. Many of the people who recommended *The Field* to me were thinking as much of the Hollywood film starring Richard Harris and Tom Berenger as the play. In that film, Tom Berenger plays an Irish American named Peter who can and does outbid Bull McCabe for a field that the Bull has rented for decades and warned everyone else in the town not to challenge him for. The play is as much about how the Bull's feverish love of possession tears him apart from his family, from intimacy, from moral conscience, ethical action, and obedience to the law. The 1990 film version only further emphasized the new international investment and development ethos: instead of an Englishman who wants the field to build a cottage for his ailing wife, Tom Berenger's Peter needs the field in order to bring hydroelectricity and industry to rural Ireland. From the time of the Lemass-era play to the single European market-era film, the Bull was cast more and more as a relic of the past, an embodiment of the inscrutably backwards attitude of the rural Irish farmer towards possession, at the expense of kin and community.

And yet, during my time conducting fieldwork in the rural Irish border region between 2015-2017 it was not uncommon to see the Bull reinvented as a talisman of pride. In pitched battles about compulsory state purchases of farming land in Monaghan to erect pylons for an all-island electrical project called the North-South Interconnector, local activists fixed posters of Bull McCabe to the posts of road signs at crossroads, a warning that the locals would die before giving up their land. Locals in Cavan would use his face on signs to do with bitter feuds over the receivership and administration of the former billionaire Sean Quinn's transferred empire.

That the Bull McCabe migrated from a figure meant to critique myopic and fatalist attachment to land, to a figure of culturalist defense for possession indexes a shift in the balance between possession and performance, status and contract, not the demise of the formers. If land is made into an abstract object on the register, made visible to the public and the market, wiped clean of all its secrecy, intrigue, and social subjecthood, where do all the secrets and relations go? Do they really vanish into thin air? If they did, what would a Registry have to do?

Title

If I had known better that title registration was designed to vanquish the genealogical process of conveying title, I might have appreciated the irony of leafing through kinship charts in an Irish Land Registry office. Róisín,[24] a career civil servant who I sat next to on the days I spent in that office during fieldwork in 2013, was one of the civil servants in the Land Registry assigned to handling “adverse possession” applications of so-called squatters seeking title. These kinship charts were primarily for Róisín’s aid, to help establish all the interests (and risks) there might be behind each application, before entering a new name into the Registry. While the performative aspects of office work was an easily recognizable part of the institution—they were not merely recording descriptions about some title that existed out there in the world, but they were making title as representatives of the state—the ironies often escaped me.

In Ireland, “adverse possession” is a doctrine that allows for someone to be recognized as having rightful title to land if their possession is “inconsistent with the title of the true owner” (Wylie 1985:849). J.C.W. Wylie, the canonical editor of Irish land law textbooks that many civil servants would have a copy of in their office, notes that the doctrine is one of the “most controversial features of modern [Irish] land law,” while also playing a “vital role in regularising informal transfers of ownership,” giving the example of the death of a farmer without probate, but dispute about how to divide the estate (Wylie 1985:848). Based on what Irish judges ruled, the Land Registry treats an adverse possession as a transfer in land, so that if the “squatter”, who is often just the descendant of the deceased titleholder, has possessed leasehold land for 12 years, they will be recognized as the new leaseholder, and all the other interests in the estate (the freeholder, easements, rights-of-way) will remain the same.

[24] Róisín is a composite character with a pseudonym. Her work is representative of a handful of individuals who work on these cases, of which there can be hundreds of open applications at any given time. There will be very little personal information included beyond how her theories of the work and engagements with applicants and attorneys does reflect a situated individual vis-à-vis their “office”, and the ramifications of the principles of registration colliding with Irish land tenure history.

So the irony might now be clearer to the reader and the author both: here was an office in the Torrens title registry that was lined with cabinets full of genealogical sketches scribbled on spare computer paper and pinned to ongoing applications for title based on physical possession to the exclusion of the registered titleholder.

My guide in adverse possessions, Róisín, explained, almost apologetically, the existence of "adverse possession." They were a part of common law real property that was necessary and could not be eliminated. On second thought, it might be a particularly Irish development, she reflected. As Wylie notes, the most common applications for adverse possession, at least the ones that could be accepted in the Land Registry, were those in which the applicant was a descendant of a registered owner who had died generations ago without probate.

No one had seen the need to spend the fees to update the register. It is unclear whether that is because everyone was in essential agreement about what should happen with the land. Instead, not registering the new tenant might have been what forestalled disputes. A neighboring nephew who was close to a bachelor uncle might be better off asking for forgiveness from his cousins years down the road, rather than asking for permission from everyone in the first place to occupy the land after the death of the uncle.

These simple descendant-claimant applications could often spiral into messy and fraught battles in "equity" land law cases. Perhaps that neighboring nephew was only seen by his cousins, aunts, and nephews to be leasing the land after the bachelor uncle's death, not possessing it as such. A generation later, the daughter of that nephew might be the one needing to show she was the registered owner of some agrarian land for a farm grant or a loan. But maybe she married a man from a family none of her cousins liked, and maybe she was actually letting her brother in-law use the land for silage. Now she had to re-open the past with family and make something permanent out of an arrangement others would prefer to regard as casual. To do so, she would have to demonstrate a continuous chain of adversely-held, exclusive possession that gave her title to that land.

Her application would be evaluated on the basis: a) she could show she held the sole, exclusive occupation of land; (b) that she had *animus possidendi*, possession against or inconsistent the property rights of the registered owner; and (c) she had been in possession for longer than 12 years (more if it is public land). *Animus possidendi* sounds particularly confrontational, and it can be, but one of the tricky things is that in order for someone to have possession for twelve years has to do with shared knowledge of the possession. In her application, the nephew's daughter would provide affidavits that might seem to respond to classical early modern natural rights theories of property, exemplified by Hugo Grotius, in which the basis of claims to land were based on expropriative acts of marking off and making improvements to land (Tuck 1979). Back in the office, Róisín would assess affidavits describing how the applicant had gone with her father to pull flax from the field, or pasture cows, or dig up rocks and build hedgerows, and send in attached photographs of repairs made to fences, horticulture next to hedge rows, a "No Trespassing" sign on a gate. All of these indexes, all very partial and so easily manipulated as to be meaningless on an individual basis, collectively would point to how the claimant had physically inscribed their exclusive enjoyment of the land into the land.

But before Róisín could convert the application into an "instrument", which confirms an amendment of the Registry in the name of the applicant, she has to make sure none of the cousins, sisters, brothers, uncles, aunts, etc. have any substantive objections. Maybe the youngest brother of the bachelor uncle would object to say that when his brother died he told nephew (the father of the applicant) that he could use the land because he had none of his own for silage, but that he himself had kept possession by mending the fences and changing the locks every other year. In that case, Róisín would probably reject the application, directing them to take it up in a Circuit Court, where it can become a years-long equity case.

This work of notifying kin is to make sure the thing the Registry is guaranteeing would not result in them being brought to court. So, in order to work out who exactly needed to be notified that someone is laying claim to the property, Róisín would draw family trees to and from the point of the registered owners. On a blank piece of paper with the folio numbers for all the current parcels involved, and any former parcels that were part of the folio, Róisín would jot down kinship charts where the "ego" was the current (often deceased) registered titleholder on the land and all the relations considered "kin" would likely end up being anyone who might possibly have had an outstanding interest or claim in the land. Róisín would need to know and mark her kinship chart the following information about any titleholder:

(a) Are they alive? (markings on the kinship chart: "ob." or "obit." If there is a record of their death, written with date of death; note will be made if there is a death certificate, "d/c"?)
(b) Did they marry an unregistered spouse? Is their spouse alive?
(c) Did they have children? Are they alive?

If registered titleholder died:
(a) If they died, did they died with a will (marked as "testate" or "intestate");
(b) If they died with a will, has a "grant of probate" to the personal representative of the estate (the executor) been added to the Section 49 application file (marked by "P" or "no gr.")? These will detail not only their death, but also give an indication as to the fate of the land after their death.
(c) If they died without a will, have "letters of administration" for the heir been added to the Section 49 application file? Similar to the grants of probate.

If the registered titleholder was unmarried that will be marked with "bachelor" or "spinster" or some shortened form for the otherwise old-fashioned terms. If they were married:
(a) Was the spouse registered (presumably not if it needs to be stated)
(b) Did the spouse died before the registered titleholder or was the spouse a widow/widower? (marked as "W")

(c) If a widow or widower, did the spouse continue to live in the home (as a grant of probate or letters of administration might detail)?
(d) Did the widow or widower re-marry? Did they have children after the death of the registered titleholder?

For all of the children in the following generation after the registered titleholder, most of the same questions for the registered titleholder would be needed, including whether and when they "departed the land". This would be marked with "dep." and hopefully there would be additional information written next to their name, like the year and destination for their departure. An entry into the kinship chart might have looked like this:

"10X issue: …(9) Mairead Brady (w) (t) ob. 24/3/1984 d/c (P)
dep. on (m) Ciarán Brady
|
5X daughters…>to UK>40 years."

What it means: Mairead Brady was the ninth of ten children in the generation below the registered titleholder. She died a widow with a will and testament. Her recorded date of death was March 24, 1984, with a copy of the death certificate furnished by the applicant, as well as a grant of probate. She had five daughters, all now living in Britain, suggesting that she may have emigrated with her husband when she departed the land upon marriage.

Once Róisín had mapped out all the kinship of the estate of the titleholder, she would send notices to all those parties she could get contact information from. The notices would state that the applicant claims that they have been in sole beneficial occupation and succession for 12 years and have therefore "statute barred" the recipient of the letter and anyone else from the fee simple, unless the person receiving receipt can "show good cause to the contrary" within 21 days or so.

She would also send those notices to neighbors and registered titleholders of parcels that were partitioned from the folio in question. Looking at one of the fullest versions of a (redacted) kinship chart in his notes, it took me a long time to realize something very important about the neighbor who was registered as the current titleholder to the formerly adjoined parcel of land: Róisín had recorded them as having died several years before the application was started. The application would not be able to proceed unless Róisín could better know who had a substantive interest in that adjoining land, and contact them to make sure they did not dispute the claims of the applicant. But that would require an entirely new sheet of paper and new kinship chart for a parcel that was not even being updated. While the lapse in registration was being addressed in the present, in order to address that lapse, Róisín would now have to chart out a whole new family.

Some of the kinship charts were extensive, systematic and orderly, and they would end up being "pinned" with an awl to the accumulating stack of forms, correspondences, affidavits, and survey maps that composed the application. And even when that application became an instrument transferring freehold title to the applicant, those charts served no direct legal function. They were very hard for anyone else to digest, and in any case not required or reviewed by the Land Registry.

But the kinship charts were there for a very particular person: for an individual bureaucrat like Róisín to do her actuarial due diligence to make sure that what they register coheres to a probabilistically low-risk instrument. In doing so, Róisín pooled together interests in people and interests in land, and then reorganized them according to the actuarial probabilism of the register. The kinship charts are extensive marginalia, artifactual indexes of the co-production of property and kinship that happens in the bureaucratic suturing of the gaps of registration (the structural need for possession claims). But even as fossilized marginalia stuck deep in the crust of the Land Registry's vaults they become part of the archaeological record of title, fixed to the instrument that transformed a beneficial squatter into a legal freeholder.

In other words, this kind of epistemological work is a byproduct of the insurance principle of registration, in which the representations that are made are mirrored guarantees of title. The recording of property in the Land Registry very clearly *does* something, not only *describes* something, and doing something always is subject to capriciousness of chance. This capriciousness would lead Róisín to exhaustively document the parameters and whereabouts of the estate's kinship *as it pertains to the land*, but it also would direct Róisín to be particularly circumspect about "stranger" cases, those applications in which the applicant was a "stranger to the land" having no discernible kinship-based claim for being in possession.

The exemplary stranger case was one in which a neighbour assumed control over a field or a portion of jointly-held "commonage" land, neither asking permission nor receiving acknowledgment for their assumption of sole beneficial possession and occupation of the land. As the term itself implies, stranger cases like these will more quickly alert Róisín to the possibility that the claimant is "chancing his arm" than family cases. "Chancing his arm" and "chancer" are not terms exclusively used in Ireland but are heavily associated with Irish vernacular speech. The folk etymology puts the phrase's origins in a medieval siege in a Dublin cathedral that ended with a gesture of good faith: one belligerent sticking a vulnerable arm through a hole in the door to the besieged to offer a truce. But as it is commonly used, and as Róisín uses it, it means someone who is acting in bad faith, who is sticking their arm through a hole in the door and seeing if there is anything in it for themselves. Specifically, Róisín's concern is that a chancer is either making a flawed claim that they think they can get away with, or making a potentially valid claim but the possession itself is suspect.

In the former case, if applicants were not forthcoming in their correspondence about their relation to the current registered titleholder, proof of their beneficial occupation, or contact information for neighbours, Róisín would wonder if this someone chancing their arm, seeing if they could turn an extended leasing agreement with an owner who is at some kind of remove into a freehold title. She would then direct them to put a notice in the newspaper of largest circulation in the area, which would alert any potential objectors to the Land Registry, and then send in a clipping of that newspaper notice, which she would add to the application file.

The case of a potentially valid but worryingly (from the perspective of the insurer of title) bad faith occupation would be a little less straightforward. Roisín related a good example that involved land for a holiday home in the west of Ireland. There had been an adverse possession claim made by the very same man who had sold the land thirteen years before, or one more than the statutory minimum, to a couple from Germany. For there to be adverse possession, an applicant needs to demonstrate *animus possidendi*, the intent to bar someone else, particularly the titular owner, from the land. Did the claimant really develop an intent to bar the holiday home buyers from their home just one year after he sold it to the couple? Did they miss their first summer of holidaying and that suddenly suggested to the seller that he should take it back (maybe!). The applicant also claimed to have no contact information for the couple he sold the land to. If the Germans were contacted and they could claim to have either a) visited the land once in that time period, or b) allowed the original seller to casually re-occupy the land in the intervening period, then Róisín would have to reject the application and let the man pursue it before a Judge. There were affidavits made by the seller/applicant, but they were short. So Róisín would ask a series of small questions and request supporting documentation. In cases where she sees something that triggers her suspicion of an applicant's story of having been in possession, such as in a family case where the applicant claims not to know if their siblings have children when the sibling lives in the same parish as them, she says, "I wouldn't be happy with that," leading her to more inquiry. Ultimately, Róisín made decisions by asking herself, "Am I comfortable registering this and exposing the organization to the uncertainty of a potential chancer's bad faith application here?"

The probabilistic method of registration guides everyday work in the office. In my observations of the land registry, where decisions procedures or applications might call for discretion, they went to departments that were specialized to handle those more detail-oriented applications and added discretion as to whether to accept that application and make it an instrument or refer it up the chain to an Examiner or Registrar of title. "Discretion" is hardly an emic term, and if a civil servant felt they had to use discretion on a form, they might be just as likely to reject it altogether.

The problem of chance is part of the logic of accounting that the Torrens system came from: the registration of shipping liabilities and maritime insurance. The rise of commercial society in the Netherlands and England was so premised on shipping and maritime commerce that drawing on that system of registration was indeed seen as beneficial for the market-driven goals of a Torrens system. The Elizabethan statute that created a Policy of Assurance collectivized risk in the state in such a way as to encourage risk-taking and trade among individual, especially younger merchants who did not already have the capital and means to succeed in competing in risk-averse trade routes (Statute 43, 1601), "It cometh to pass, upon the loss or perishing of any ship, there followeth not the undoing of any man, but the loss lighteth rather easily upon many than heavily upon few…whereby all merchants, specially of the younger sort, are allured to venture more willingly and more freely (in Hopkins 1867:30-31).

Over two centuries later, the point of producing indefeasible title was not remarkably different: the young merchants were purchasers wanting to venture more willingly and freely; either in their acquisition of property or, just as likely, in their speculative lending on it. To bring that about risk would be shifted from the adventurers themselves to a state-based system that wanted to encourage that adventuring because it wanted to raise the bourgeois land speculator, as maritime insurance had done for the mariner. The maritime insurance origin story of the registry is not so much about the rendering of property as empty abstract space but making it a ship, which is a form of capital that has specific properties of mobility, cargo capacity, and imperialist reach that differ from what land held. Torrens himself advertised the sensibility of his project by its practical usage in shipping and maritime insurance. Bhandar (2015), in particular, notes the degree to which Torrens title metaphorized land transactions as shipping endeavors and figured them in a calculus of double-entry bookkeeping.

Robert Torrens, who would promote title registration as a modernist reform to inscrutably feudal English property, himself recognized that copyhold was effectively the title by registration, "though on a limited scale and encumbered with many obnoxious conditions of feudalism" (1882:9). For Torrens, the publicity that the external storage of an archive created ideally was to displace the uncertainty, messiness, and political favor that kinship and status attached to land entailed, displacement of kinship and status in land.

And yet, here was Róisín doing bureaucratic work translating not only between the older genealogical and kinship-obsessed property norms and the market-driven, contract-based norms that were promised, but even between the fact of bare possession and the syntactical rules and bureaucratic conventions through which property coheres as a discursive legal object.

The genealogical dimension of Roisín's bureaucratic work is not the norm of the land registry, although it is very similar in spirit to "First Registration" where civil servants turn unregistered land into registered land for the first time. In First Registration, chains of title also need to be constructed and examined in order to make an entry on the register. Both First Registration and in Adverse Possession necessitated modes of translation: from the grammar of conveyancing-based title into the grammar of the Torrens title, from the transmission of possession serving as the basis of title, to the stasis of a ledger with amendments made therein. But unlike First Registration, Adverse Possession strictly has to do with land that already has Torrens title, so the translation is not exactly from one language to another.

Adverse possession entailed a translation from registered title to registered title that was more dreamlike, where the deep grammar of possession, its uncertainty and mystery, re-emerged to pronounce property back into the world with an entirely separate vocabulary of registration. Pottage's analysis (1995) of the displacement, rather than the vanquishing, of uncertainty of title to "gaps" in registration might have predicted that it would necessary that the uncertainty of transmission that was once anchored in possession would need to find resettle somewhere. Somewhere in a title registry dedicated to insuring risk, there would need to be the old grammar of genealogy and possession to suture gaps between the temporality of common law estates and a bureaucratic milieu that formatted property as nicely wrapped folio, or bundles, of rights.

The result was an unexpected condensation of forms. All the strata of paper—forms, affidavits, correspondences and declarations, a kinship chart—accrete to give a physical heft to the comfort and confidence that is needed to turn an application into an instrument. Otherwise the application will either sit on a shelf until the correspondences with solicitors will produce better substance, run out of time and get rejected, or get deferred up the chain to a higher ranking or more appropriate office.

The heft was a material index for the diligence of the bureaucrat, the density and thickness of the instrument signifying something meaningful about the quality of work done. When I point to some of the more winnowed dealings on the shelf, awaiting more information, Róisín winced and said of a retired co-worker, “Pauline wasn’t much for instruments. She didn’t requisition previous instruments from [the storage facility in] Santry if a case had been previously rejected or abandoned or something. Her dealings wouldn’t be as thick as Donny’s or mine. Hers wouldn’t be as thick.”[25] The implication is that her retired co-worker was not doing as much diligence in sniffing out and inquiring into all the loose ends in an application. While the Registry often narrows the scope of title to protect itself as the insurer of title, in this case narrowness means not looking closely enough. The too-thin dealing lacks the due diligence to probabilistically assert anything. Possession has to be properly materialized in Róisín’s office to correspond with its purported materialization “on the ground”—they need a good heft, they need the right words, they need the right signatures attached to the right words—like the expropriative acts that early modern natural law theorists were convinced made possession, like fences, ditches, or ploughed fields, they need to demonstrate the presence of exclusion, of those who will not be allowed to enjoy the land.

So the instrument becomes the key document that catalogs all the slippage between categories and the material artifacts that weave through the words of the different parties and

[25] In previous drafts and paper presentations of this material, I had not included this quotation because it was from a notebook I had misplaced and then later found. The same idea was communicated without the quotation, but I include it now to thicken the description.

bind them with a metal pin after they have been punctured with an awl. This is what binds the state's position between buyers and sellers, families and land, creditors and debtors, bureaucrats and chancers. The instrument is a byproduct of translation that hinges between different grammars of possession. Each grammar—the genetic and diachronic, and the synchronic and bureaucratic—makes land comprehensible and transmittable in fictive ways. But the question of "for whom" shifts with the different ways of doing so.

Even the mailbag that Róisín sends newly approved instruments out from the Dublin office becomes enlisted in the actuarial methods of the Land Registry. Those approved instruments go from the Land Registry to the storage facility in Santry. These now have the authority of law, and a guarantee as to the information contained therein attached to them. The state backs these documents. Losing them or unduly altering them when they were mere applications would be regrettable, to be sure, but as they were not yet legal facts, their movement is less charged and anxious than as approved instruments.

How do you make sure that between the two points of departure and arrival they have not been sullied? By ritualizing the courier service within the organization. The mailbags look like big rectangular soft-shell coolers. There is a long zipper running along the top flap, and at the end of the zipper there is a shoe that receives a plastic clip once the zipper is pulled shut. The shoe and plastic clip make a lock and key mechanism that is easily broken by the recipient of the shipment, but indicate to them whether anyone has opened the bag in between the two sites. If the plastic seal is broken, none of those pinned sets of paper can be entered into the storage facility or the register. The process of application must begin anew. It rarely, if ever, happens, but the point is that it is enough of the vigilance implied by the way state bureaucracy takes up its probabilistic work compels these rituals, these concerns about parasites that generatively produce new infrastructures for purity.

Conclusion

This chapter has explored the predicament between the relational form of the family and the state in a site that maintains the intermediate relational form between those relational forms. It is a story, in part, about the way state reproduces itself (e.g. a civil service that stabilizes and authorizes the property form and the duties and roles it entails), and the ways that families reproduce themselves (procreation is only one way). Real property is a nexus of concerns about making unstable things perduring from generation to generation, or seller to purchaser.

I have shown how the civil service is not only a mode through which property is purified of those elements that are illegible to the bureaucracy and make its transfer more unwieldy, but a site that requires its own methods for reproducing and purifying itself. At its heart, this uneasy tension between the form of the family and the form of the state comes down to different modes of organization that generatively offer "enemies" and "parasites" for rituals to purify (see Kockelman 2010), to have something insure against, to reproduce itself as it reproduced the relational form that acted as a nexus between family and state. Rather than subsume or minimize kinship by turning the nexus of property into a static commodity form, the state's administration demonstrated concerns about its own reproduction and non-biological kinship. As long as it was a "thinking infrastructure" (Bowker, et al. 2019) concerned with both epistemologically and materially tracing, valuing, and governing property, the kinship and possession the infrastructure was set up to minimize were bound to be displaced in the dreamlike noise of genealogy and an *animus possidendi.*

CHAPTER 2

Purgatory

"An onslaught in the courts," was how a credit counselor for the MCAA (Money and Credit Advisory Agency), an independent state agency in Ireland, described the future that the Circuit Courts Civil Motions List "evolved by accident" to forestall via *ad hoc* mediation of the widespread and long-term mortgage arrears still commonplace after the banking and real estate crash of 2008. Those lists, which I will refer to as County Registrar's Courts, are comprised of "mortgage arrears cases" between creditors and mortgagors (i.e. borrowers) who fall behind in their mortgage payments. Because they were neither lawmakers nor judges, the County Registrars who oversaw these courts found themselves in the impossible situation of either betraying the moral basis of Irish nationalism by granting repossessions and carrying out evictions, or overstepping their bureaucratic office by denying the contractual right of the creditor to seek "relief" in the collateral form of the home. The *de facto* mediation that I observed "evolve" between 2015 and 2017 was brought about by a careful use of "discretionary forbearance", which extends time for borrowers via adjournments in cases when there is hope for engagement between them and their creditors, modeling a new Irish socio-legal iteration of "equity of redemption" that tries to reckon the morality of contract and freeholder status through the bureaucratic extension of hope.

The socio-legal afterlife of Irish property, since the crash of 2008 that ended the so-called Celtic Tiger boom of the 90's and early 00's, has been a critical, if prolonged and ambivalent watershed moment in Irish history. The mortgage arrears crisis has now been in and out of Irish headlines for almost a decade. The highpoint for mortgage arrears was in September 2013, when 12.9% of all mortgages in Ireland were in arrears over ninety days (which is the time when creditors can seek repossession of the home). Throughout the post-crash period, advocates for indebted homeowners pointed to the bail-outs and protections given to banks and developers and warned that without corresponding protection and relief (e.g. write-downs) for mortgagors, there would be a “tsunami of repossessions”. Creditors indeed sought repossessions at historic levels, and the hope for redemption (i.e. full payment or discharge of the mortgage charge) was often very distant for many homeowners in deep negative equity. But the expected tsunami of granted repossessions still did not materialize despite the lack of proactive legislative protections for borrowers. In lieu of legislation, stasis: it was not uncommon for individual cases to be adjourned every three or six months for years and years, and extremely rare for lenders to be outright denied. My friend, the credit counselor, called the productive stasis, in which MCAA credit counselors became liaisons between the court, the borrower, and the creditor, “an Irish solution to an Irish problem.”

This unexpected caseload of mortgage arrears in the low-level County Registrars Courts made their once sleepy jurisdiction a key chokepoint in the translation of one crisis into the next; where the state’s fiscal dilemma of managing the “toxic assets” it took on in the bailout was displaced into smaller and less headline-capturing dilemmas.[26] With the long-anticipated “tsunami of repossessions” on the County Registrars’ doorstep, the only means of moderating full-scale dispossession was provided by a tacit concept of “the equity of redemption” that was at once embedded in the mortgage form and vernacularized to suit the dilemmas of Irish debt. “Equity of redemption” and “equitable right to redeem” are two concepts that allowed mortgages to become a subject to the general principles of equity rather than just the rule of law. Equity is a

[26] It is hard ignore the connection to the rise in homelessness, especially, even if that more directly stems from evictions of tenant renters. The eviction of renters does not garner national attention, or equitable intervention, as a political problem like repossession.

once-separate jurisdiction in the English and Irish jurisprudence that is now fused with the common law. As a jurisdiction was realized as the Chancery, a court that had Chancellors, rather than judges, applying the “King’s conscience” to individual cases. Whereas the common law is characteristically based on precedent, written contracts, and custom, equity demanded fair play and conscionable results in cases where the common law’s normal ruling would be less just than (traditionally) a custom-made, non-precedent-setting ruling.

From its beginnings, the measure of “conscionability” in equity jurisprudence has been attached to religious morality. Since the Norman Conquest, English sovereigns had Chancellors oversee their sovereign conscience where petitioners sought extraordinary results in peculiar circumstances that courts of the common law were not used to dealing with (Maitland [1908] 1968). Those early Chancellors who oversaw the jurisdiction of the King’s conscience were ecclesiastics, usually Bishops. A common formula for petitioning to seek relief from them was, “For the love of God and in the way of charity,” often with appeals to “that peerless Princess his Mother,” or for “His sake who died on the Rood Tree on Good Friday” (222). The petitions acknowledged that, in contradistinction to a court of law, the petitioner was not entitled to any result, and had no prior legal right, but was asking the Chancellor to spare time to consider that a particular justice[27] might be done to recognize an equitable right that might be read backwards into unusual circumstances.

Irish land law textbooks separate the “equitable right to redeem” from the “equity of redemption” (e.g. Coughlan 1998:354; Wylie 1985:12.05). The former denotes the right attached

[27] This notion is Aristotelian, as discussed below, very likely brought to bear on medieval law through Aquinas’s notion of particular justice—“The Philosopher reckons particular justice to be specially about those things which belong to social life…Since justice is directed to others, it is not about the entire matter of virtue, but only about external actions and things, under a certain special aspect of the object, in so far as one man is related to another through them” (*Sum* II-II, Q. 58, A. 8; Bigiongiari 1953)

to the mortgage to repay the balance of a mortgage in "reasonable time" even after the legal date for redemption (the scheduled date of payment). The latter denotes that right turned into an asset, and also familiarly connotes the value of that asset.

Both terms index the way a jurisdiction of equity would see the mutual duties and obligation implied by a mortgage, as distinct from how the mortgage contract would be written and enforced in law. That is to say, when we ask, "How much equity do you have in your home?" we are asking into the monetary value of the right to redeem, called the equity of redemption. When we "build equity,"[28] in an asset like a home over time, we are becoming closer and closer to outright owning it with each payment. If I only owe €20,000 on my mortgage of €100,000, I have €80,000 in equity in that home. If I sell the home right now, the amount I can expect to receive from the sale price is a proportion of the equity (so 80 percent of, say, €200,000). At law, I, the borrower or Mortgagor, would not have legal possession until I had fully redeemed the original loan amount (€100,000). I might live in a mortgaged home for 25 years, but never have legal possession as long as the bank physically held the title. In equity, however, that would seem absurd, and I would be recognized as having something quite like possession, scaled down and less certain but still valuable, earned by virtue of the progressive redemption of the loan (80 percent paid) and the fact that the bank really only had a right to relief if I did not pay them (when or how is the issue) and had no intention of actually using or living in the home *as a home* (they might use it as an asset to further financialize). Torrens title

[28] To demonstrate the far-reaching migration term, probably most immediately through tech venture capitalism, at the time of writing, "sweat equity" had become popular in basketball circles to talk about how secondary and tertiary players on a roster could earn themselves a place in regular rotation through hard work in front of coaches at practice. The implication is that despite being brought in with low expectations and a small contract, they might earn more minutes in a game than a role player with a bigger contract, who would accordingly expect a bigger role.

registration (see Chapter 1) simplified the legal fiction by reconfiguring the bank's loan and right to relief as a "charge" on the title, but the attitudes and concerns of the once-separate English jurisdiction of Equity still animate the mortgage as we know it in common law jurisdictions.

As it was in legal history, the equity of redemption can be both financialized ("Apply for a home equity loan!", where the equity is the asset borrowed on; "I'm in negative equity") and can also reconcile financial accountancy with the moral accountancy. As I demonstrate in this chapter, the two cannot be wholly divorced. I will refer to the equity of redemption in this twinned sense; by counting qualitatively and quantitatively the concept can both make a space for hope and observe the constraints of contract.

Based on ethnographic fieldwork in which I conducted courtroom observation and collected interview data with legal practitioners, lay litigant mortgagors, credit counselors, and public servants, in this chapter I describe and analyze socio-legal stasis in which the finality of solutions by either repossession or redemption was continually deferred. I argue that the stasis was in equal measure a problem of financial and moral accounting, where deliberate but discreet *inaction* was paradoxically reshaping Ireland by slowly, painfully sorting out whose possession is morally worthy of redemption and whose will eventually be repossessed.

In describing and analyzing the problem, or stasis, outlined above, this chapter considers the following question: Why, in 21st century contemporary Irish courtrooms, do we find the early modern English concept of the "equity of redemption" alive and well, vernacularized (Merry 2010) as an "Irish solution to an Irish problem"? Sugarman and Warrington (1995) characterize the rise and fall of the English equity of redemption as a kind of socio-legal storytelling in which the landed class redeemed the honor of English society. If that storytelling helped broker a merger between the values of the aristocracy with those of the rising bourgeoisie in England, what kind of story of class, commerce and morality in the Irish republic might the more bureaucratically discreet Irish equity of redemption be telling in these provincial courtrooms?

In answering that question, I show how a tacit but reanimated equity of redemption shaped the "Irish solution to an Irish problem" by considering questions of contracts and finance alongside moral accounting for conscience, contingency, and faith in redemption. In doing so, I argue that the equity of redemption provisionally reconciles the dissonant moral registers of the mortgage contracts and the nationalist figure of the Irish freeholder.[29] However, because of the discreet bureaucratic character of discretionary forbearance, the Irish equity of redemption can only defer resolution and redemption (moral, political, and financial): it set both the moral limits and justifications for repossession at the "ambivalent threshold" of prolonged stasis (Agamben 2015) where the morality of markets, law, family, and Irish nationalism indecisively met.[30]

Background

As part of an internationally-funded bailout of Irish banks, the vast majority of the nation's private loans became publicly-owned. The pursuit of mortgage arrears cases became a matter of fiscal policy. Public fiscal governance was now effected through private homeowner debt to an unprecedented degree. Decisions of whether to repossess homes, or sell mortgages to "vulture funds" who would, were political and fiscal decisions by state agents. The state was so directly implicated, and yet was so indirect in claiming responsibility for the process, regarding these as simple issues of enforcing private agreements.

[29] Leasehold and fee farm grant notwithstanding, "freehold" vernacularly refers to the status of conveyed by owning real property.

[30] The doorway connotation of "threshold" is apt here. In their landmark ethnographic study of rural Ireland, Arensberg and Kimball (1968) described creditors nailing notices of unpaid debts to debtors' doorframes was a way to publicly shame farmers into payment. A similar procedure is still used as substitute service of civil bills of possession.

That international bailout money from the Troika (IMF, the European Commission, and the European Central Bank) came with strings: debates about how mortgages in arrears should be legally processed in Ireland became a matter of international concern. In March 2018, for example, the OECD's economic survey of Ireland paid particular attention to the "judicial inefficiencies" in repossessing family homes (it requires a court order), suggesting that the slow speed of repossession proceedings (1 ½ years, they estimated) was a key reason why Ireland's otherwise good economic prospects were "clouded with uncertainty".

Critics of the "judicial inefficiencies" of home repossession, both internationally and within Ireland, equated courtroom delay with a lack of proper, speedy functioning. From the distanced view of the courtroom as a strictly functional space to work out market problems, normative (even formalist) questions about repossession were pushed to the margins. What I observed in those courtrooms and gathered from interviews with practitioners, however, was that delay was positively normative. Gresham Sykes writes of courtroom congestion and delay that, "'Delay' suggests some extra or unnecessary time beyond a normal or reasonable amount, but what is normal or reasonable is far from clear" (1969:329). The question of what "reasonable" time, is at the heart of the equity of redemption, loaded with tensions between the morality of markets, home ownership, the precepts of Equity and Law, and Irish nationalism.

Between the summer of 2015 and the spring of 2017, I visited the public County Registrar's Courts in sixteen different jurisdictions, concentrating on the rural midlands and border counties. The beginning of my fieldwork in 2015 coincided with the initiation of a pilot program encouraging MCAA's presence in the courtroom where it had not already "evolved by accident" to be the case. The program was eventually rolled out and advertised as Abhaile (Irish for "homeward"), a scheme to assist distressed homeowners. The Abhaile Scheme provided something that appeared like legal aid in the form of a "duty solicitor" who advocated on behalf of indebted homeowners but which fell short of actual legal representation. MCAA employees usually acted as liaisons between borrower defendants and duty solicitors, whose presence overall gave a semblance of balance to the systemic legal imbalances in the creditor/debtor relationship.[31]

Before the glut of mortgage arrears cases, the office of the County Registrar had once been seen as an enviable and cushy job with steady pay and relatively light work. They scheduled appearances before Judges, administered the paperwork of civil bills, grounding affidavits, discovery motions, and so on. With the exponential rise of the mortgage arrears caseload, the County Registrar's Court went from an intake court to a "court of first instance"[32] in substance, where the County Registrars administered the Circuit Court's jurisdiction for granting repossessions "if it sees fit."[33]

The decision to schedule a borrower with a date for a Judge became a *de facto* order for possession. The vast majority of County Registrars I observed instead adjourned cases if there was some possibility of reaching an agreement (often advocating on behalf of the MCAA). If mortgage arrears cases were transferred to a Circuit Court Judge, a borrower defendant was most likely to be asked, "Did you borrow the money…? And did you pay it back…?" before promptly granting an order for possession. County Registrars, on the other hand, kept cases within their court while asking that the borrower-defendants demonstrate some act of "good faith" engagement. What that looks like varies from Registrar to Registrar and from case to case, but

[31] See FLAC's report (2014) on these imbalances.
[32] A distinction at stake in a European Court of Justice ruling that demands judicial attention to "fairness" in individual mortgage contracts. Case C-415/11, Mohamed Aziz v. Catalunyacaixa, 2013.
[33] Section 97 of the Land and Conveyancing Reform Act (2009).

often involved partial payments and some acknowledgement from the borrower-defendant that they would seek out a third party like the MCAA, or avail of the Abhaile Scheme, to work towards a formal loan remodification, called an Alternative Repayment Arrangement (ARA).

While the vast majority of borrower-defendants were self-represented “lay litigants”, creditors usually had representation via a chain of sub-contracting. Creditors contracted with a large firm, typically in Dublin, Cork, or Galway, who then sub-contracted with local solicitors’ firms and practices in the rural counties to act as “local agents” for the creditor (hiring barristers became more common over the course of my fieldwork). The subcontracting created gaps in the chain of communication between borrowers and creditors.[34] Inevitable breakdowns in communication between the Arrears Support Unit of the creditor, the creditor’s solicitor, the local agents, the borrower, and the local branch employees with whom they might be in contact, gave an important pretense for the County Registrar to mete out discretionary forbearance in the form of adjournments.

The County Registrar’s Courts in which I observed the equity of redemption exercised were all largely semi-rural and rural.[35] I attended the County Registrar’s Court in Dublin several times, which was known at that time to deny audience to duty solicitors and MCAA representatives involved in the Abhaile Scheme, and rejected the notion that the court should function as anything other than an intake court for the Dublin Circuit Court Judge. In courts that I attended elsewhere County Registrars might first break their silence after the listing of

[34] The Mortgage Arrears Resolution Process (MARP), part of the soft law Code of Conduct for Mortgage Arrears (CCMA), outlined but could not enforce regulation of communications between borrowers and lenders.
[35] “Rural” is not an analytic term here. However, one lay litigant activist in a rural border county speculated that differences between Dublin and other counties could be because the city is “more anonymous…like, we know where
[they] live”.

particulars by the plaintiff's solicitor by asking the borrower-defendant, "So, what's the story, here?". In striking contrast, the Dublin County Registrar might have responded to a lay litigant's story about their difficulties negotiating with the creditor with something short like, "That is between the borrower and the bank." On the other hand, the Master of the High Court (the High Court's analog to the County Registrar), differed in his discretion to most County Registrars. He spoke to print and broadcast media about the need for legal mediation for borrower defendants and was recently singled out for demonstrating a reluctance to expedite repossessions.

In 2017, that Master of the High Court caused a stir when he suggested to the Irish Times that it was a lack of legal sophistication that worsened the mortgage arrears problem:

> So we have a County Registrar…obliged…without the defendant present, to look at the mortgage contract and see if it's fair. Does she have the skills to do that? No. Is there any case law to help her? No. Does she have any idea what she is doing? No. So what is happening is she sees there is no defendant in court and makes the order. (*Irish Times,* January 2, 2017)

He added that the legal questions involved in a possession order were "not as clear-cut as county registrars think they are." His comments were puzzling to anyone familiar with the County Registrar's Courts outside of Dublin because many County Registrars there had been frustrating local solicitors by not repossessing owner-occupied residences even when borrower-defendants were absent, which was often, with the justification that the MCAA might reach out to them or there might otherwise be some hope for something to be done about the mortgages.

Part of the puzzlement with the Master of the High Court was that he was dedicated to "leveling the playing field" between debtors and creditors. In this, he was quite unlike the County Registrar's Court in Dublin, and echoed the language of advocates who appealed to the government to redress the inherent imbalances of the debt, evident in the lack of access to third-party mediation, the absence of any policy that mandated debt write-downs, the legal flimsiness of guidelines that governed mortgage arrears processing by creditors, the re-magnification of social inequalities in repossession, and the formal prerogative given to creditors rather than mediators as to what options borrowers could pursue in renegotiation (see e.g. FLAC 2014). Following scrutiny the Master of the High Court received for "striking out" a civil bill, the President of the High Court removed all mortgage cases from the Master of the High Court's list in January of 2019.

County Registrars therefore had to exercise discretion in both senses of the term (i.e. being free to make choices, and being cautious about how one does so) in order to manage the impossible situation of observing the demands of the bureaucratic office at the same time as saving face locally and doing right by Irish nationalist ideals, as well as Catholic social justice norms. I knew individuals who proactively shaped the path of mediation with the MCAA to forestall full-scale dispossession not seen in their locales since the evictions of tenant farmers in the 19th century. While they would be discreet about their involvement for professional reasons, discretion was an imperative in all dealings with mortgages.[36]

Due to the bureaucratic imperative to be discreet about moral calculus, the equity of redemption as I saw it developed as middling modernist institution (see Rabinow 1995), in which bureaucratic officialdom could only partly detach and objectify property as an autonomous legal category subject to the calculus of the payment schedule. The English early modern equity of redemption emerged as a full-fledged equitable estate in land from relief given to borrowers on a case-by-case basis. The contemporary Irish equity of redemption was also formed into a pattern through uneven and particular discretion. What was different was that the distressed mortgagors in the Irish courts were common people, and the administrators of relief were duty-bound not to

[36] Maitland held that the mortgage deed was one long *suppressio veri* and one long *suggestio falsi* (1909:269).

“be seen to be doing anything.” That is, they could not advertise that they were making an “equitable intervention” as that would conflict with their quasi-judicial office. That meant that their inaction could only be understood and discussed as delay and inaction, rather than as a kind of relief to the mortgagor in the form of forbearance. So the common people would still feel aggrieved—no public agent could be seen to be intervening on their behalf, but they would not yet be repossessed.

In the middling way the courts intervened while making their intervention look almost incidental; inaction was key to walking this tigthrope. The result was neither full-scale dispossession, nor proactive intervention (equitable or otherwise)—a smaller and steadier flow of repossessions through the Circuit Courts developed instead. Even that stream of dispossession took on a moral ordering: first to be repossessed were abandoned or empty homes, then investment properties, then owner-occupied homes where the borrower refused to engage through the MCAA, then, maybe, even the owner-occupant who performed their contrition well enough by filling out series and series of Standard Financial Statements and demonstrated their faith the intermediate process of mediation.

In the much different context of Italian secret societies, Lilith Mahmud (2014) addresses embodied practices of “discretion” that demand of initiates a careful fine-tuning of simultaneous revelation and concealment, the result of which she terms “spaces of discretion”—“liminal site[s] of intimacy hidden in plain sight amid the profane” (30). Courts are mostly not secret societies,[37] but the discretionary forbearance of the Irish equity of redemption, and the pairing of a discreet moral accounting of equity alongside financial accounting of contract, spatialized debt

[37] Accusations of Freemasonry are not uncommon in some lay litigant circles, nor are the entirely unreasonable, if untrue, given the legacy of sectarian exclusion of Catholics in both the Irish legal profession and secret societies.

as an indefinite and intermediate “space of discretion”. What hid in plain sight was a kind of moral deliberation and calculation about the fate of the indebted soul, which has always been intimately, and discreetly, tethered to the forms of calculation and speculation called finance.

Methodology: stories and how to tell them

An Irish finance journalist who spent considerable time in the courts for high profile debt cases after the crash had told me at the beginning of my research, “There’s an important story going on [with mortgage arrears] but it’s not an easy one for [newspapers] to write.” The mortgage arrears crisis was difficult to cover perhaps because if the slow-moving tsunami was coming, it was hard produce a sense of perspective from atop the wave. Repossession and adjournment became an everyday socio-legal Purgatory that lacked an angle to the story, but was transforming Irish society and class throughout the country. The tens of thousands of small, common stories lay litigants bring into court are harder to aggregate for a journalistic story than the numbers the Central Bank of Ireland provided.[38]

Ethnography, however, can be rather be good for charting the swells and undercurrents in everyday settings that appear placid on the surface. One longstanding way of ethnographically telling stories about law has been through the trouble case (see Llewellyn and Hoebel 1941). Like a research question, the trouble case is defined as a stasis finding a thesis, a resolution that reveals something about the way people tacitly value and think through process itself.

The courtrooms I observed were as defined by what was not resolved as much as what was. But the trouble case often starts from the assumption of resolution, working backwards to clarify tacit norms. Parties walk away with some sense of their grievance being addressed, an

[38] Francesca Comyn’s superb longform examination of the Laois County Registrar’s Court in the *Sunday Business Post* (July 9, 2019) stands as a notable but rare exception.

institution becomes reified through its sanctioned power to resolve. In contrast, in the stories that follow there is little in the way of resolution to work backwards from. There is a point of hope, "redemption", which organizes action, but unless they are voluntarily surrendering their home,[39] people do not much walk away at all. Even when they do seem to walk away with a new arrangement, whether they realize it or not, they are walking in a long arc back into court. If their stories—and most County Registrars will listen to stories with varying degrees of patience—are trouble cases, they are trouble cases that come from, and return, to stasis.

This last point is critical to mediation: Alternative Repayment Arrangements arrived at in this late stage of mortgage debt tended to either be just as financially unsustainable as the existing mortgage (capitalizing the arrears without sufficiently extending the term of the loan), or a new social and political arrangement from a mortgage altogether. During fieldwork, the path most creditors seemed to prefer to offer to borrowers was the "split" or "warehouse" mortgage, which halved payments for twenty years and aggregated the other half into one big lump sum due twenty years later. These negotiated arrangements help comprise a new class of life estates and *vifgages*, the "living" pledge to the "dead" pledge of the *mort*-gage, effectively amounting to new feudal arrangements.[40] As "financialization" literature suggests finance has become a more and more autonomous regime of calculative reasoning on social relations, when debts come due and relief is sought, somewhere on the margins of the ledger concerns about moral conduct and the fate of the soul hold court.

Rather than draw conclusions from resolutions of stasis, the stories that follow illustrate

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[39] This is often due to the fatigue and stress of constant letters in the mail about their arrears. Even then, it is not uncommon for creditors to not accept voluntary surrenders, and it is made virtually impossible when a former co-signing spouse now lives in another country. In Ireland, a "short sale" will not erase the remaining debt, which will stay attached the borrower as a personal debt.

[40] See Westbrook 2013.

how the static threshold formed at the equity of redemption was used, its prehistory, the grammar of freehold in Ireland in which it was vernacularized, and what futures it could shape, rather than foreclose, by how mortgage debt is managed in Ireland.

Once a mortgage, always a mortgage

At the head of the courtroom where the County Registrar's Court sat, the seal of Ireland, a harp, and a Latin phrase were fixed on the wall: "JUSTITIA FIRMATUR SOLIUM" from Proverbs 16:12.[41] In English the proverb reads, "It is an abomination to kings to commit wickedness, For *the throne is established by righteousness*" (KJV). As was standard, the County Registrar took her seat and reminded the courtroom that the MCAA (the Money and Credit Advisory Agency) was in court, as was an Abhaile Scheme-provided duty solicitor for borrower-defendants who could not afford legal representation.

The number of repossession cases on any given list would depend upon the size of the county, how often the court met (e.g. monthly, twice a month, twice a week), and the level of negative equity in the county. During the first calling that day, the Clerk read out, "Number 22, Ireland Alliance Bank DAC versus Paul McKenna." The representation for the creditor plaintiff (technically the "applicant") then stood up and relayed their client's directions to the County Registrar. Sometimes even with an outstanding civil bill for possession, the creditor did not push for a repossession, and instead sought an adjournment, ostensibly for negotiations. If they sought an order for possession, they would read off the financial facts: the balance of the loan owed, the last payments made, the total amount of arrears, if it was unoccupied, history of written

[41] This courtroom was not the courtroom for this case: the details of several sittings and jurisdictions have been combined with other sittings and jurisdictions to make any individual cases less identifiable.

communication with the creditor, and how many times the matter had appeared on the list previously.

The distressed borrowers in the County Registrars' Courts tended to be people who drew down their mortgages during their prime working years, and most worked in industries that were either decimated in rural Ireland or re-concentrated in Dublin. Many were too old to retrain themselves for a new economy, and could hardly fathom the social and financial costs of relocating to Dublin for work. Among a certain generation, those who could or would emigrate probably already had. The continued debt had reshaped families of all ages in Ireland, often resulting in separations. The new reality of family separations proved difficult for the partner (usually a woman) left with the home, who faced repossession and eviction but could not even renegotiate the loan without her partner's cooperation.

Like many on the list, Paul McKenna was absent, but the case proved troublesome for the County Registrar. A bank sought to proceed with an order for possession on a house where the court had curiously already granted one. Before the barrister could read off the payment history, the County Registrar cut her off. What became clear was this: the bank had previously been granted order for possession against a single borrower-defendant, Paul McKenna, who had vacated the home. That order for possession was granted because the bank's legal representation had stated that the property was vacant. On that basis, the County Registrar had made an order for possession with no stay, because vacant property "must be dealt with," especially before winter. Empty or abandoned property was not uncommon, and the rationale of it being immoral to have unproductive property afforded County Registrars the opportunity to repossess some homes while keeping others in the process of negotiation.

The problem was that the property was not empty or abandoned. In fact, Siobhan McKenna, Paul's separated wife, and her children, were there to open the door when the County Registrar showed up to repossess the home. In her joint capacity as Sheriff, the County Registrar would have gone to the house with a Court messenger and locksmith in between the sitting when the order was made and the current sitting, to conduct what should have been the mere formality of evicting the purportedly non-existent occupants, and handing possession of the home to the bank. It turned out that not only were there occupants, but Siobhan was an owner-occupant who had never been served notice of the proceedings. Siobhan plausibly denied having knowledge of the mortgage arrears proceedings and even if she was aware of them, she never *could* have been legally served because she was not the registered owner. The entire basis on which the County Registrar had felt that it was fair and morally appropriate to make the order was immediately pulled out from underneath her, so she put a stay on the order, probably sensing she had been led astray by the creditors' bad faith representations.

The case had been complicated by the fact that there had been a legal separation in which Siobhan and her children in the family received legal title to the home and its attached mortgage, both of which were in her former husband's name. A possible scenario was that she and her husband went through a judicial separation, which meant they and their respective solicitors came to a "separation agreement" that a Family Court Judge in the Circuit Court would enact via a court order. Because the separation agreement would be aimed at benefiting the welfare of the children, Siobhan would have been assigned primary custody of the children and the home. The Family Court Judge would have made an order directing the husband to transfer the house to Siobhan. But someone in the chain dropped the ball and had not registered the transfer with the

Land Registry, or notified the creditor who now owned the mortgage. Despite being the *de facto* owner-occupant Siobhan's occupancy was never bureaucratically formalized as ownership.

During the long process of the separation, her husband had stopped making payments to the mortgage still in his name. Creditors were loosely obligated by the Mortgage Arrears Resolution Process (MARP) to contact borrowers and notify them of their arrears and the threat of repossession, but again there must have been a gap in communication—the creditor probably did not have Paul's current address and could not serve the civil bill on Siobhan. The creditors said in court that they were under the impression that the property was empty and abandoned based on information that a process server, who supposedly pinned a notice on the door, had reported back up the chain. Because of what was relayed in court, the County Registrar had granted an order for possession at the previous month's list because "something [ought] to be done about abandoned property."

Though the case was somewhat unusual in its complexity, every aspect of family law proceedings touched on common threads of mortgage arrears cases, and vice versa: the extreme stress of family separation exacerbated by mortgage debt, the entanglement between family law and property law, gaps along the chain of communication between various parts of the legal side of things and the families involved, the rushed and shoddy path of repossession that many creditors seemed happy to take, and the sense of mutual fair play expected by County Registrars. In fact, misinformation about who actually lived in homes was prevalent enough that other County Registrars made it a rule in their courtrooms that creditors had to submit supplementary affidavits swearing the property was visited and vacant, hoping to dissuade creditors from casually suggesting otherwise for expediency's sake.

Following directions from her client, the barrister pushed the matter by insisting that Siobhan was only a tenant, not an owner, since her ownership was unregistered. By citing *pro forma* law, the barrister provoked the County Registrar to clarify the quality of equity in her jurisdiction, "Don't go around in technicalities. This court is concerned with the practicalities of this matter. If you want to go to the High Court and ask for a judicial review [of my handling of this matter], so be it." She reminded the barrister that the plaintiffs had "at best misled" the Court, as if to say, "If you want rigid law, your conduct might also be scrutinized by rigid law." She continued, bewildered: "There's an *order* of the *court in camera* in family law to make the transfer," emphasizing the evident legality of Siobhan's occupation, "[to take a position] that takes no cognizance of the rules of conveyancing and then come around and ask for a repossession against that person…" she paused in disbelief, "…now, what sort of legal system is *that*?"[42]

The barrister replied that Siobhan was only a "notice party" to the proceedings because she was still an unregistered owner, to which the County Registrar responded, "The plaintiff keeps saying she's only a notice party…she *owns* the property on foot of a court order! This court is mystified as to why family law orders don't seem to be implemented." Explicating her recognition of the substantive possession of Siobhan, she added sharply, "This court very much feels that it acts as a *mediator*." The quality of mediation justified her reluctance to yield to the bank's point of technical legal right: "The bank only owns *an equity of redemption*," she said, suggesting they had overstepped their bounds and assumed a role as landlords. This iteration of the equity of redemption indexed the historical right of the borrower to fully repay their

[42] Maitland on common law without equity: "In some respects our law would have been barbarous, unjust, absurd, but still the great elementary rights…the rights of ownership and of possession would have been decently protected and contract would have been enforced" (Maitland 1909:19).

mortgage in “reasonable time”, and the right of the creditor to be repaid in reasonable time. Assuming powers over the property beyond getting paid in a reasonable time would not equitable. Contract was momentarily brought into line.

In describing how law fuses time and space together as a “chronotope”, sociolegal scholar Mariana Valverde writes of a generic common law civil courtroom:

> People who are losing their house to the bank because they have become unemployed and cannot pay make mortgage payments do not expect the bank to care about their welfare, and they do not expect the civil courts to make decisions by using the logic of care. The logic of debt, as enforced by civil courts, has its own chronotope, or rather shares the chronotope of the capitalist market, where everything has a price and people who sign contracts cannot escape their debts, no matter what the circumstances. The static spacetime of the contract reigns. (2016:179)

In her example the courtroom’s chronotope models a 1-to-1 relationship between contract, whose “logic” dictates, and the spacetime that coordinately unfolds and corrals activity. But the analogous courtroom context in Ireland, the County Registrar’s Court, does not model an abstract logic of contractual time, nor a logic of care. While “static spacetime” was filtered throughout the County Registrar’s Court, it did not derive from the logic of contract. Instead, stasis was an effect of bureaucratic mediation of different temporalities (Mathur 2015) and ways of reckoning debt afforded by the equity of redemption.

That modality of equity attached to the redemption of the mortgage exceeds the singular logic of agentive right (found in the contract), on the one hand, and care (or social justice) on the other. Equity’s particularist mode of conforming to the particularities of cases is also matched with its institutional application and tendency to become rule-bound, called by Roscoe Pound the “decadence of equity” (1905), the discretionary malleability of equity being undone by the strictures of technical administration.[43] Watt (2009) draws on the image of the caged birds in Dickens' *Bleak House* to illustrate that tension between the vexing confines of Equity's technical administration and equity's offer to provide an "open texture" to legal interpretation (see Hart 1961:124). As a consequence of its malleability, equity can be, but should not be, overidentified with either adherence to axiomatic esoterica, on the one hand, or socially embedded forgiving forbearance, on the other—they are two faces of the same hundred-sided dice, two separate positions of a malleable leaden rule. The caution of a leading 16th century scholar of English law should be heeded by critics of a strong equity of redemption in contemporary Ireland, which necessarily cuts many ways: "There is a difference between Equitie and Clemencie: for Equitie is always most firmly knit to the evil of the Law which way soever it bends, whether to clemency, or to severity" (from William West's *Symboleography* [1594], quoted in Watt 2018:18).

As a spatialization of equity, the County Registrars' Court has neither any singular time, nor logic, but "[supplements] existing rules of law by reference to current morality," (Clark 1883 in Pound 1905:22). The paradigms of, and rivals to, "current morality" are at stake in the drama of the courtroom, shaping action or, in the case of the Irish County Registrar's Court, inaction. This spatialization of equity's "current morality" in Irish history, resonates deeply with the spatialization of Purgatory as theorized by Jacques Le Goff as an intermediate place between redemption and damnation (1986). The path of mediation opened up by the equity of redemption, without any strong legislation, tested and rewarded faith—the good faith performances of litigants, faith in the mortgage's redemption and in the provisional reconciliation (not the cancellation) of the debt relation.

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[43] "The moral," in Pound's understanding of the decay of equity's flexible conscience, "is simply that we must be vigilant…We [must] fight for equity. Law must be tempered with equity, even as justice with mercy" (35).

The interval scale of counting up the mortgage payment schedule went alongside several accounts of time: time lost to family sickness and death, the turnaround time of the postal system, the anticipated return of local economy and jobs after the crash, the school year, Confirmations, the annual farm grant, new insolvency pilot schemes offered since the last time in court, or waiting for a legal separation to finalize. Borrowers situated missed payments in localized time through stories, and County Registrars often had time for them.

No clog or fetter on the equity of redemption

The story of debt that emerged in the courtroom also involved other financial accounts besides the baseline of monies owed. While strict contract only regards scheduled payments, the County Registrar would regard partial payments, the added value of a local auctioneer, family incomes halved by separation, the relative equity of distressed mortgagor to a vulture fund who bought the loan, engagement with credit counselors, and correspondences sent back and forth—those are all ways of counting up good faith financial activity that did not directly pay off the principal, but which County Registrars nonetheless took into account.

Even for the creditor, the repossession process was about more than full redemption; having the matter in court was a way of demanding revenue. If the mortgagor sold or surrendered the home, the remaining "overhang" debt remained attached to the borrower as an unsecured loan: a burden for the borrower that also made the loan considerably less valuable to the creditor. Creditors were often very reluctant to grant sales and even voluntary surrenders if they thought the current owner-occupants could afford to spend more on the loan. The stasis offered by the Irish equity of redemption also, then, interceded in getting the most exchange value for the homeowner, to extinguish the most remaining debt. Often the concern for credit counselors from the MCAA was to help borrower-defendants bide time for an opportunity to sell their home at the greatest profit and walk away with less money owed or some overhang for savings. The equity of redemption contended not only with the question of *if* the borrower should have more reasonable time to redeem, but also about *how* borrowers could redeem their mortgage debt.

Peter, a homeowner further down the list that day, had little hope of holding onto his home because his income had evaporated since the crash. Still, he had paid off a large portion of his loan. This frustrated him:

> [My loan is] in negative [equity], you see, and its value is €70,000 tops…You see, I live on my own, and I've realized now that the house doesn't matter the most, my health does, for my sake, for my children's sake. The thing that really bothers me is that €100,000 of my own money down. That's gone…See, I've tried to get the best price with my auctioneers because I'm in negative equity. My plan is to get this out of court and go to a solicitor's office and get maybe €90,000, tops, and they're owed €47,000. They should take clients into consideration when they do sell.…[The banks will use] their auctioneers based in Dublin. They have no local knowledge. I know a guy, and I can go to him, and he can get me the best price.

Peter no longer looking held out hope for possession long-term, he just wanted the highest exchange value for his home so, as an older man whose business closed during the crash, he could have savings to live on after repossession. To get the best value, he would need connections in town to find the right buyer. But the creditor saves on transaction costs overall by selling it in bulk via international auction, so he needs the help of the MCAA to bide time until they allow him to sell it locally. In practice, the most moral redemption of the mortgage—both in terms of local moral economy and the moral imperative to redeem as much of the monetary debt of the mortgage—is to not cede control of the sale directly over to the creditor, and to allow the borrower to draw on the local market knowledge to garner a higher price.

When the County Registrar came to Peter's case, she bristled against the bank's deep-seated reluctance to allow him to sell his own property. "Banks don't own the land. They don't own the land. They can't control the people. They shouldn't be able to say if the land should be sold or not, *they're not entitled to fetter the transaction*." The bank wanted to proceed with an order for possession saying that further arrears had risen during the time that they had refused to grant the sale. The refusal to grant the sale went through three people in the arrears support unit of the bank, stringing along the borrower, and the buyer, for months.

The County Registrar underlined her point to the bank refusing the sale by saying, "[The creditor] *cannot fetter the redemption of a mortgage* to that extent. They only own the right to money. They don't own the land. They're not landlords. They're not important people who can tell other people what to do with their land or their lives. They only have a right to collect money," to have the loan redeemed in the form of monetary payment. The interest of the mortgagee only to money is precisely the view that equity took on the mortgage, it is in substance a "mere pledge" and a personalty, differing from how mortgage contracts themselves see the agreement. We can infer here the equity of redemption's implicit recognition of the imbalance on which loans are made and its attempt to dilute that imbalance by a stasis that demands appearances of "fair play".

"The theory of clogging" is what the legal historian R.W. Turner (1933) called the principle that the County Registrar invoked against the bank with atypical verve. It has since ossified into the so-called "anti-clog doctrine" (see Burns 2012). According to Turner, because the creditor was in a position to dictate the terms of the loan, the Court of Chancery saw itself as a safeguard from allowing legalism to ramify the inherent imbalances of unchecked finance. In a kind of axiomatic reasoning that is characteristic of Equity, the principle became "crystallized into three…phrases": "'Once a mortgage, always a mortgage', 'There shall be no clog or fetter upon the equity of redemption', and, 'The mortgagor [borrower] shall be given back exactly what he has parted with'" (Turner 1931:175).

"Fettering" and "clogging" interchangeably refer to fees, penalties, and costs that might make redeeming a loan impossible or unreasonable.[44] The same County Registrar who articulated her position as a mediator would regularly make orders to suspend additional penalties on arrears where borrowers were making some payments and could signal with documentation that they were willing to engage with their creditors. In a telling move, she invoked the theory of clogging while also castigating the lender for mistaking their commercial interest in the mortgage for a status-based ("not important people") right. The moment suggested that any Irish doctrine of the equity of redemption was accountable to a national history of land tenure in which "landlordism", because of its connection to English rule, could be sanctioned as both commercially and nationalistically immoral. The "absentee landlordism" of the colonial period is so reviled in Irish public memory in large part because it gave an exploitative and arbitrary power to evict tenant farmers, without providing any of the protections for tenants or imposing any of the duties on landlords that would be customary and actionable in England and Wales.

What is different about the Irish equity of redemption, the mortgagor's right to redeem their property within reasonable time, is that it can be articulated alongside exchange. After years in and out of the County Registrar's Court in his county, representing himself as most borrower-defendants in rural counties do, Peter was grateful for the MCAA's help in guiding him through

[44] *Bacon v. Bacon* (1639): "Where the mortgagee will suddenly bestow unnecessary costs upon the mortgaged lands, of purposes to clogg the lands, to prevent the mortgagor's redemption" (quoted in Turner 1931:176, *n.1*).

the bureaucratic apparatus that he hoped would lead to the most sensible and fair outcome. Peter was candid about struggles with mental health since his business closed and his home went into arrears. Like most of the people I spoke with in the County Registrars' Courts, he wanted the crushing stress and shame to be behind him. On a modest fixed income, the resolution he was looking could not be had with a new loan with capitalized arrears and slightly increased monthly payments.

For a long time, I believed that was the only time I heard the equity of redemption openly referenced by a County Registrar. I took it as a signal instance of something going on in all of the rural motions lists that I regularly observed. But when I asked another County Registrar about the phrase, he insisted that he thought about the equity of redemption quite a bit as part of his work. I thought my leading question must have elicited his positive response, but when I went back to my notes I found him talking about equity frequently. But I had always marked those iterations of equity as *financial* equity, for instance: "They have so much equity built up in the house, it would be a shame if nothing could be done about this." What I took as mere quantitative reckoning—how much money the borrower had already paid on the house versus what they owed, and also what the creditor might have paid for the loan—now seems so obviously a moral reckoning that counts both qualitatively and quantitatively. While the Irish legal textbooks separate the equitable right of redemption from the financialized equity of redemption, in the Irish County Registrar's Court they are rather hard to disentangle, for reasons having to do with the moral registers of finance, law, and Irish nationalism.

The equitable estate

"Equity" and "redemption" both have roots in medieval legal practice and thought, and accordingly in Aristotelian philosophy and Christian theology. "Redemption" indexes Christian theology and the redemption of the soul from the confines of Purgatory. Redemption also became associated with the less-than-gracious institution of indulgences, the price that could be paid by family members to the Church for the progressive redemption of the soul kept in purgatorial stasis. The medieval Irish forerunner to indulgences was the 6th and 7th century *redemptio.* The *redemptio*, like the later indulgences helped, "Reduce the penance to be performed by the penitent on the understanding that in virtue of the Church's intervention God has cancelled or reduced his debt of satisfaction" (O'Callaghan 1966:295). In terms of the mortgage, *redemptios* and indulgences were a payment to reduce the principal on the debt of sin. With the rise of Purgatory as a medieval theologic, indulgences became an increasingly common feature of Christian life, later pilloried by Martin Luther as the epitome of the Church's corruption.

In *Nichomachean Ethics*, Aristotle presents equity as a kind of "decency" more just than the justice lawmakers can legislate for. In this sense, equity is a measure of goodness sensitive to particulars. Aristotle compares it to a malleable standard that fits the idiosyncratic contours of a mason's stones: "The standard applied to the indefinite is itself indefinite, as the lead standard is in Lesbian building, where it is not fixed but adapts itself to the shape of the stone" (84). "Equity" denotes the aspiration to provide a moral and contingent conscience in contrast to rigid formalism, as well as jurisdiction institutionalized in English history as the Chancery. As a concept, provided equity was a fertile ground for early modern "cultures of equity" (Fortier 2005). But like "redemption", which in spite of its associations with a state of grace was also connected to more dubious institutional practices, Equity was a legal jurisdiction that was critiqued for centuries as dysfunctional and arbitrary until reformers fused it with the common law in the late 19th century. Dickens lampooned the jurisdiction in *Bleak House*[45] for its almost carceral and mystical insistence on indefinitely suspending the lives of those who came to equity while Chancellors pondered arcane axioms like, "He who seeks equity must do equity".

R.W. Turner (1931) proposes that in an attempt to further his political ambitions, Sir Francis Bacon was the first Lord Chancellor to extend the relief his jurisdiction had given to forfeited bonds to mortgagors, giving political powerful land-owning mortgagors something like the "strain of mercy" that Portia gives to Antonio for his bond to Shylock in *The Merchant of Venice*.[46] Even if a foreclosure had been granted elsewhere, Equity assumed the power to put a stay on an order and give the borrower that "reasonable time" beyond the date of redemption, to redeem their debts. These exceptional cases soon became a "general relief" provided by equity that was *expected*. At common law, mortgages were steadily recognized as conveyances (i.e. the borrower gives fictive possession to the bank until the time of redemption), while in equity they were more and more regarded as "mere pledges" in which the legal interests of the lender were analogized to the beneficiary of a trust who only sort of, kind of, has a legal right to the asset in the trust. The general progression that Turner outlines is the equity of redemption moving from an exception that Chancellors like Francis Bacon made, to a recognized thing (*chose*), to a fully-fledged estate itself, all by the 18th century.

Once conceived of as an "estate in the land", it was not a far leap to treat the equity of redemption as a financial asset in its own right (as in having equity in one's home). The general relief given to, and then expected by the mortgagor (borrower) became something that "ran with the land" and which could be inherited, alienated, or further mortgaged. Equity recognized that

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[45] See Watt 2009.

[46] Turner notes that Shylock's demand for a pound of flesh in *The Merchant of Venice*, was "undoubtedly a satire on the strict enforcement of bonds", that Bacon would likely have been aware of (33, *n.2*).

the not-quite-legal, but still conscionable and reasonable, right of the borrower to redeem beyond the specified date of redemption had elapsed, was part of what comprised the estate. Estates were defined primarily through time corresponding to interests rather than territorial domains.[47] For as long as the mortgagor retained the right to enjoy and possess the land, the estate endured. If it was an equitable estate, then the principles of equity would be the measure of when it was just to say time had run out. By the 18th century, "Anything that allowed the [lender] the slightest opportunity of obtaining the mortgage property itself was, by definition, oppressive or unjust" (Sugarman and Warrington 1995:118). There was a moral inadequacy in a strict legalist reading of scheduled contractual time favored over a permanent end to the time of the estate, so often identified with mortality.[48]

The political intrigue between the interests of the landed aristocracy and an emergent class of financially savvy commercial interests that Turner points to in Bacon's extension of equitable relief to mortgagors only hints at the transformative effects the equity of redemption had in mediating between the vested interests of English modernity. In his doctoral thesis on the subject, Warrington (1982) argues that after being paradigmatic for over two centuries and ushering in a kind of uneasy settlement between capitalists and aristocrats, by the early 20th century the equity of redemption was abandoned in England because the reduction of land into "capital" meant it no longer warranted protection as a special form of wealth. By 1914, the courts conformed to a view that saw landowning less as a "privileged status of being a specially favoured creature of equitable protection, to just another form of wealth" (1982:199).

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47 Edward Coke defined an estate in land as, "A time in the land, or land for a time." (Quoted by Turner 1933:5).

48 A modern Irish law text take: "Time [to redeem] was not of the essence and in equity's view a failure to make payment on the day fixed by the contract was not a sufficient reason for permanently depriving the mortgagor of what was his property" (Coughlan 1998:354).

The creditor was no longer seen as morally questionable, in the eyes of the court, and instead instilled a commercial morality that was coordinate to the rising "moral market" of mortgages (see Maurer 2006:21-23; Burkhardt 1999). The suspicion that Chancellors once cast on the inherent imbalance in the making of a mortgage contract receded into the more familiar common law presumption of the formal equality of the contracting parties. In the contemporary landscape of international common law, Fiona Burns (2012:72) has concluded that the current interventions by equity with respect to the "anti-clog doctrine" are increasingly unpredictable and confused due not only to the impingement of contract, but legislative interventions on mortgages. In this respect it might seem all the more likely that equitable interventions would be less explicit and interventionist in the anti-clogging doctrine, as is the case in County Registrars' Courts.

The equity of redemption and social history

A simple footnote by Frederick Pollock in a 1916 edition of Victorian anthropologist Henry Sumner Maine's *Ancient Law* captures just how exceptionally pivotal the equity of redemption was, right at the moment that it seemed to be on its deathbed. In tempering Maine's social evolutionary thesis that the movement of all progressive society was from Status to Contract, Pollock wondered whether that movement had not also produced new forms of Status amidst the proliferation of Contract: "A mortgagor cannot enter into an agreement with the mortgagee which has the effect of making the mortgage irredeemable, or even tends that way by 'clogging the equity of redemption.' [But] it would be a strong thing to say that this peculiar doctrine of English courts of equity has created a status of mortgagors" (1916:185, *n.1*). But such a strong thing had been said in courts of Equity for centuries, although it was hard to notice at the time in which Pollock made his observation.

For their part, Sugarman and Warrington (1995) interpret the rise and fall of the equity of redemption as a kind of distressed genre (see Stewart 1991) of socio-legal storytelling about what it meant to be English. “To grant redemption to the landed gentry was to preserve and redeem English society as a whole,” they write, “Ultimately, their ownership interests were imagined as having a sacred quality: the preservation of the rights of the landed oligarchy guaranteed the continuance of divine favor, stability, and national identity” (128). By reconciling commercialist exchange with aristocratic inheritance*,* the equity of redemption helped inaugurate a paradigm of property as something that could be alienated and financed, while maintaining the aristocracy’s ability to convey intergenerational status, privilege, and sovereign power.

Sugarman and Warrington emphasize the paradoxical timing of the equity of redemption’s calcification into an estate. The equity of redemption protected the interests of the indebted landed gentry, while coinciding with the rise of capitalism and the financial revolution of the 1690s. The seeming paradox—the enshrinement of *ancien régime* property interests as entrenched and immobile at the very same time that all the world seemed to be composed of moveable assets to the budding commercialist—resonates with other readings of the century’s legal and political history. JGA Pocock (1985) describes the early 18th century history of political theory as a kind of tangled dialogue between different aspects of a shared tradition of political thought, translated through the economic and juridical language of property. One strand prioritized polity, the other commerce: “Both political man [associated with landed interest] and commercial man [with monied interests] were equipped with theories of property as the foundation of political personality which could not be separated from each other" (70). At the same time that morality was vested in neo-classical conceptions of the sovereign, an ancient constitution, and natural rights theories, a new paradigm of political thought vested virtue not directly in sovereigns but in commercial transaction, alienation, and exchange. Divergent sets of interests realigned themselves temporally and morally to the new iterations of history: "Once political virtue was declared to have an agrarian base, it was located in the past; and the movement toward credit, commerce, and the market was defined as a movement toward culture but away from virtue" (70).

What was to be made of real property—capital and commodity, or inalienable subject—was a pivotal tension for both emerging modes of thought among the civil and civic humanists. In this dialogic tangle, law reconciled longstanding tensions and re-articulated them in new property norms that would be exported and extended by Empire. It was in this context that the equity of redemption seemed to paradoxically arise in England at the very moment that finance was *en vogue*: the *ancien régime* needed to be defended from overextending themselves financially.[49] The distressed storytelling of the equity of redemption inaugurated a "new tradition" of inalienable real property, glorified later that century by Edmund Burke as, "a partnership not only between those of the living, but between those who were living, those who were dead, and those who are to be born" (quoted in Sugarman and Warrington 1995:122). It would also form the basis of political "rights of Englishmen", which framed political belonging as an agnatic form of inheritable property.

[49] "When all is said and done, however, there can be little doubt that most noble indebtedness, and indeed all the more spectacular examples, were caused…by personal extravagance. Some, like Henry Lord Berkeley, cheerfully went on spending beyond their income for year after year, decade after decade, content to see income reduced by land sales and swallowed up in interest charges" (Stone 1967:233).

The waning of the equity of redemption coincides with a paradigmatic acceptance of profit-seeking exchange as the basis of utilitarian social morality. “Moral hazard” became a fixture of 19th century political economy thinking in England, which broadly indexes classic liberal moral and cultural concerns that “artificially” softening the “natural” consequences of the market incentivizes people to be careless in their obligations, ultimately leading to the degeneration of civilization. In the Malthusian moment of the early 19th century, the term was mobilized to suggest that projects like the Speenhamland poor relief reforms shielded the poor from the natural outcome of their poverty (hunger) thus incentivizing idle reproduction.

In Irish popular media discussions of mortgage arrears, and side conversations with legal practitioners, “moral hazard” often came up with reference to credit and debt. In that context, it came to stand for a set of beliefs that maintain that non-enforcement of mortgage contracts according to their black-and-white terms would create a culture of non-payment: Once people feel unencumbered by their scheduled payments, creditors will recoil, and liquidity will evaporate. Moral hazard carries its own theory of society constituted by contract and an eschatological story of the collapse of social trust as bound through strict adherence to contractual forms, and virtue instilled in society through an honoring of ostensibly bilateral agreements. The creditor’s position was not wholly amoral commercialism, but aligned according to a set of moral coordinates that became defined vis-à-vis a “civil humanist” tradition emerging alongside the equity of redemption.

English property in Ireland

In addition to the puzzle of the rise of the equity of redemption at a time when commercialism seemed paradigmatic, there was the paradox of extending English property customs to places and people where English law had not been conveyed from "time immemorial." Pawlisch (1985) argues that the property-based plantation of Ireland constituted "legal imperialism". Plantation in Ireland was a kind of colonial laboratory that counterintuitively crystallized an early modern vision common law as perfectly English. In the preface to his *Report* on the Irish cases he presided over as attorney general in 17th century Ireland, Sir John Davies eloquently theorized common law property norms as fundamentally autochthonous to the land and civilization of England,[50] even as he was applying English norms to justify the dispossession of Irish commoners.

Unlike in England, neither feudal nor capitalist class categories fit Irish land history particularly well. A longstanding question in Irish historiography is whether Ireland had feudalism at all. Pre-Norman legal practices of conveyance and rank-based compensation associated with the *brehons* were not feudal. Davies (1787[1612]) famously argued, as an alibi for conquest, that Irish "barbarism" was the result of an opportunistic mixture of Gaelic and feudal ascension and conveyancing norms that afforded the Norman conquerors the most despotic of both worlds in order to concentrate control of the *sept* and its land among a single lineage. By the 19th century tenant farmers who had been historically denied freehold tenure now were at the mercy of an opportunistic blend of unusual absolutist common law protections to Anglo-Irish and English landlords that carried none of the mutual obligations or responsibilities to tenants that common to English law (see Laird 2005).

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[50] Davies describing common law's autochthony: "A silke worme that formeth all her webb out of her selfe onely" (1615:3)

After a 19th century of famine, mass eviction, and mass emigration in Ireland, Irish agrarian and nationalists like Michael Davitt called for the "fall of feudalism" in Ireland, including the boycott of rents to absentee landlords, and premised the possibility of an independent Irish republic on the precondition of freehold tenure.[51] By the time that the equity of redemption and the moral primacy of freehold tenure was waning in England, Irish tenants still under British rule had finally achieved large-scale freehold tenure. After a 19th century of agitation, Land Wars, organization, and hard-won reforms, in which Irish political enfranchisement and economic security was explicitly tied to land tenure status, the nationalist morality of substantive possession could hardly be expected to fully follow the paradigm shift to the moral propriety of contractual obligation.

By the end of the 19th century, the horrors of agrarian evictions, absentee landlordism, and mass emigration all became internationally identified with rural Ireland. Those land-based struggles gave shape to nationalist movements and republican idealism that upheld real property ownership as a key republican virtue and safeguard from the abyss associated with 19th century dispossession in Ireland. While the ideology of inviolable freeholder status was fundamentally tested by the debts of the 2008 crash, the nationalist position of the freeholder had once been achieved through public debt. Beginning in the late 19th century, state-provided agrarian loans transformed the tenant farmers of absentee landlords into freeholders by allowing them to purchase their freehold titles. People came into freehold via finance, having it as a device that enabled security of possession, not insecurity. Michelle Norris argues (2016), in practice constituted a massive "property-based welfare system" for the Irish countryside.

[51] The co-founder of the Irish National Land League, Thomas Brennan said: "You may get a federal parliament, perhaps Repeals of the Union—nay, more, you may establish an Irish republic, but as long as the tillers are forced to support a useless and indolent aristocracy, your federal parliament would be but a bauble and your Irish republic but a fraud" (Davitt 1904:149).

After a war of independence and ensuing civil war in the 1920's, the 1937 Constitution of Ireland illustrated a fundamentally conflicted right of private property in the Irish Republic. Article 43 of the 1937 Constitution begins with a rationalist natural rights theory of property: "The state acknowledges that man, in virtue of his rational being, has the natural right, antecedent to positive law, to the private ownership of external goods" (43.1.1). The constitution formulates right to private property as prior to other conventions, yet it concedes both that this right is qualified by "the principles of social justice" (43.2.1) and that the State, "may as occasion requires delimit by law the exercise of the said rights with a view to reconciling their exercise with the exigencies of the common good" (43.2.2). Rachael Walsh (2011) argues that the drafting of Article 43 was itself a reconciliation that Taoiseach (head of legislature) Éamon de Valera made between atomistic rationalist natural rights theories and Catholic "social justice" values that he saw as fundamental to the virtues of the new Irish Republic. Article 43 combined the intentions of an objectifying modernist view on property as a discrete form mediated by legal apparatus with a normative estimation of property as a mediating concept at the core of the Irish republic's social and moral life.

The borrower shall be given back what he has parted with

On a given day at the County Registrar's Court, the room offered less a sense of antimonies and more an abiding ambivalence. The Irish state, for instance, would be everywhere—it would likely own or have owned the mortgages; it indirectly paid for the contracted local solicitors; it paid the salaries of the MCAA employees and the duty solicitors on hand to speak on behalf of lay litigants borrowers; the County Registrar and Clerk were public servants; the state seal is on the wall—and yet it would also seem to be nowhere, as everyone connected with the state would speak of the court as a law and economics scholar would, simple scaffolding for negotiations between parties. But by withholding its positive force, the court in practice evolved as a kind of inert nexus for countervailing tensions between commercialist and landholding morality. An unbureaucratic bureaucracy *par excellence* (Rabinow 1995), the whole thing would be so orderly and insistent on keeping up appearances that there would be little doubt we were in the presence of law, but we would be left asking where, and what, is the state after all?

The odd ambivalence of the state's simultaneous absence and presence was particularly striking when, at the start of one list, the County Registrar announced the services of a lay litigant activist named Keith alongside those of the MCAA. Keith was loosely associated with an acephalous lay litigant group based in Dublin that often antagonized the state-financed but formally independent MCAA. Despite County Registrars' distrust of the legal advice that lay litigant groups sometimes gave borrower-defendants, many recognized that lay litigant activists, no matter how antagonistic they might be to the process in other dimensions, got people in court.

While it was strange for me to hear someone other than the MCAA announced before the proceedings began, Keith was unimpressed. As a former *garda* (police officer), he resented that people would stand out of respect for the County Registrar, a mere public servant, but he reserved greater criticism for state agencies like the MCAA: "They're all scams, and solicitors are the first to profit off of [the implemented schemes]." He saw the scheme as nothing more than a way to enrich lawyers and MCAA employees who will, "Convince you to live on nothing, go through various court processes, and then tell you after a year or more that [you] should hand in the keys," referring to a voluntary surrender of the home.

"They, the MCAA, the duty solicitor, the PIP [personal insolvency practitioner, facilitated by MCAA scheme], will all say you can get a 'new start', but you can't." He emphasized that in 2017, about nine years since the crash, most borrower defendants were past their prime working years, so starting over was virtually impossible. "They keep telling us that the jobs are returning but the economy hasn't recovered down the country. All the jobs are coming to Dublin, none of the jobs are coming out here." The prospect of what comes after a voluntary surrender is a frightening one: renters had little security of tenure in Ireland and having your credit ruined and being out of work made that prospect unimaginable for many.

Keith painted a picture of a post-crash Ireland that had not only lost its way, but realigned the interests of the previous world according to new class boundaries. He described himself as a kind of intermediary figure who can traverse worlds: he called himself a common man, but said he understood the world of courts, robes, and legal jargon ("It is meant to confuse"), all of which was totally "alien" to the common man. Yet he also fed the law, bringing people to court, as he once did professionally. He was not one of *them*, he insisted, he was a member of the world that was just as alien to "all of them in there," he said, gesturing into the courtroom, as their world was alien to the common man's. He told me how he served the world "out there", where people were hungry, on the verge of suicide, wore coats inside unheated homes, spending every penny they had on their mortgage forgoing food and heat. He pointed back into the courtroom and said there were, "two worlds colliding in there: the common people's world, and the world of solicitors who go to luncheon together, or to brunches, and they *judge* everyone; there are two colliding worlds and one is seen to be better," he paused and finished, "We are only peasants to them."

Every MCAA employee I spoke with was deeply committed to the MCAA's stated mission to prevent "homelessness, fuel disconnection, the loss of essential goods or service and the loss of liberty"—the very things Keith suggested they encouraged. Yet Keith insisted that they were at the beck and call of the other world, the world of luncheons, brunches, and judgment. Keith did not outright reject the stasis of the courts but saw it in the context of an eschatological fall rather than an anticipated redemption.

Out of a cataclysmic crash where debt spread everywhere, Keith saw the uneven legal treatment of that debt as a new stratification along the lines of generational, educational, and familial belongings. Those too old to bounce back were at the mercy of a younger generation and the courts. Those who were uneducated and unconnected to the legal profession were left to their own devices for years, and usually first found support in the lay litigant groups that encouraged them to educate themselves on the law, even if they sometimes made promises about the ability to "win" that sometimes backfired for borrower-defendants. Those who separated from their partners after the crash, when one partner emigrated to find work, or through the stress of the mortgage, were left wholly at the mercy of County Registrar's discretionary forbearance.

Stasis, which often stands for unmoving gridlock—an absence of motion and action—was seen by Keith as a slow sieve actively shaping a growing rift between the republican ideals of a nation and the professionalized everyday of the state. Agamben (2015) describes the ancient Greek concept of *stasis*, civil war, an "ambivalent threshold" of an irresolvable tension produced by the simultaneous processes of the politicization of the *oikos*, and the oikocization of the polis. That is, the *polis* produces its own alternatives to supplant the primacy of kinship, status, and householding economy in the *oikos*. At the same time, kinship and household attempt to usurp the *polis* for the purposes of the status-based *oikos*. In a more concrete and mundane context than

Agamben's abstraction of stasis, the County Registrar's Court has given audience to and indirectly transformed the disjointed and unresolved tension at the threshold of the Irish home and the fiscal state.

The equity of redemption was a rare safety net that prevented the immediate wholesale dispossession of the Irish countryside from the whims of the market.[52] It kept the stratification and collision of those new worlds orderly, telling an unfinished story about how to walk the tightrope of conflicting republican virtues bound up in property after the crash. The global financial crisis drew attention back to classic concerns of political economy: moral hazard, the enclosure of the commons, primitive accumulation, the creative destruction of the market, the double movement of market and society. The equity of redemption vernacularized the local movements of markets, turning unimaginable large-scale dispossession into slower, moral stasis.[53] The long post-crash story of mortgage arrears also clarified distinctions in and from the commoners: who was at the mercy of the court's forbearance and long path of redemption, and who managed to turn crisis into opportunity. The collision of the binary colliding worlds Keith painted—petty bourgeois legal practitioners and the salt-of-the-earth common man—was to be provisionally deferred, and in the interim a third place was created in these courts.

[52] While the equity of redemption may have inadvertently helped incubate "Sovereign Citizen" and "Freemen on the Land" rhetoric by not enforcing repossessions, thus encouraging people to think their magic codices to law worked, it can also be said to have mitigating effects as to the intensity and political traction of these populist movements. The Southern Poverty Law Center directly links the foreclosure crisis in the United States to the rise of new recruits in sovereign citizen movements (https://www.splcenter.org/fighting-hate/extremist-files/ideology/sovereign-citizens-movement). Meanwhile, Canadian home foreclosures, as in Ireland, provided a "perfect storm" of expensive legal services and weakened legal aid, which led to widespread uptake of the same ideologies (Salyzyn 2013).

[53] In this respect, the Irish equity of redemption resembles Andrea Muehlebach's (2012) analysis of the "moral neoliberalism" of Italian Catholic voluntarism.

Conclusion

Jacques Le Goff (1984) uses the term "intermediacy" to describe how the concept of Purgatory went from an abstract status to a concrete "third society" in medieval Christianity. Arguing that the birth of Purgatory was the birth of an intermediate state and a ternary logic that expanded upon the binary logic of redemption and damnation, Le Goff suggests the logic of Purgatory made sense within, and mediated between, medieval regimes of justice and finance. The debts of sin on Earth had to be accounted for, and painfully cleansed before ascension to Heaven, but Purgatory was still a place of hope for the redemption of the soul. In this regard, once it was described as a physical place, Purgatory moved closer to Heaven and hope for redemption than to Hell, reflecting "one of those not quite balanced systems that are so characteristic of feudal mentality…inequality within equality" (6).

Once imagined spatially, it was not long before suggestions could be made about Purgatory's location. St. Patrick's Purgatory, which could be accessed from a cave on Station Island in Lough Derg in Ireland was one of the most popular attributed locations for Purgatory in medieval Europe.[54] Although no longer held to be Purgatory *in situ*, it continues to the present day to be one of the most important sites in Roman Catholic Europe for pilgrimage to rigorously perform penance. Pilgrims kneel and walk barefoot on the stony grounds of the island, fast for days and take only toast without butter and tea without milk and sugar at night, and tirelessly perform Stations of the Cross, Creeds, Hail Marys, decades of the Rosary, and other Roman Catholic rites. Lawrence Taylor (1995) suggests that pilgrimage to Lough Derg has historically

[54] Le Goff credits the late 12th century account of Purgatory in the *Tractatus de Purgatorio sancti Patricii* (St. Patrick's Purgatory, located on Station Island in Ireland) as one of the first, and most influential, descriptions of a precise physical location for the concept. After describing the terrors of Purgatory, the author asks two Irish abbots about Purgatory: "One of them answered that he had never heard such things in his country. But the other one maintained that he had heard them many times and they were all true" (Henry of Saltrey 1985:74).

been driven by penance and "relief from Purgatory", which correspond to two different notions of exchange that pilgrimage offered, immediate reciprocity and unpayable debt. On the one hand, "The Irish pilgrim left something and took away the cure—immediate reciprocity. Penance, on the other hand, was in payment of a debt owed to God [and tended to] stress the one-time great pilgrimage as payment for a huge debt," that was assessed to agnatic lines as "bloodfines," or compensatory payments to kin groups for missteps (53). In the 20th century, Irish poet Patrick Kavanagh famously quipped that solicitors went to Lough Derg pray for "cushy jobs/to be County Registrar or Coroner" (less quoted: "there were the sincere as well, / the innocents who feared the hell / Of sin"; 1996:45).

The Irish equity of redemption, with its attendant concerns about the nationalist figure of the Irish freeholder, the morality of debt and possession, and a state reluctant to pass protective legislation, likewise was midwife to a space of intermediacy in the afterlife of the mortgage. The peculiar discretionary character of the equity of redemption, its simultaneous enumerative and normative counting, resulted in semi-enclosed objects of unevenness nested in equilibration: formal equality in law masking structural and practical inequalities of indebtedness; moral theater nested within flattened bureaucracy; *oikos* and *polis* nested within each other at the threshold; status receding into contract, and contract mediating status; moral accountancy at the margins of financial accountancy; new feudal forms taking rendered from the detritus of standard financial arrangements. The theological unconscious of finance (Maurer 2002) stirred with every new reckoning.

Pocock (1985:93) writes of the importance of asking into "time-creating agencies", whether they are, "institutional or extra-institutional, human or extra-human—and whether they act to perpetuate simple continuities, to perpetuate simple domains of contingency, or to create new futures." The equity of redemption, the discretion of the County Registrars, Purgatory—all create new futures through strategic inaction to not foreclose other futures. But all of them have terms of limitation. If the equity of redemption in England was an early modernist defense of aristocratic virtue in the face of a rising commercialist and bourgeois principles of contractual time, the middling legal modernism of the Irish equity of redemption sets a more modest and anxious hope that through partial payments, partial redemptions, and the normative bureaucratic power of pressing pause on the time of the market and the contract, the republic may be someday redeemed rather than repossessed.

CHAPTER 3

Confidence

> "Have you confidence in me to trust me with your watch until to-morrow;" the stranger, at this novel request, supposing him to be some old acquaintance, not at the moment recollected, allows him to take the watch, thus placing "confidence" in the honesty of the stranger, who walks off laughing, and the other, supposing it to be a joke, allows him to do so.
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> —"Arrest of the Confidence Man," *New York Herald*, July 8, 1849[55]

> At this moment I declare to you by word of mouth that I constitute myself a trustee of this watch for my eldest daughter. There is already [in that] a perfect trust in the technical sense. So soon as my daughter has heard what has happened she can enforce the trust against me…Yet it is obvious that during the interval, and that interval may be several years, she has not been placing trust in me, or confidence in me; she has known nothing of my declared intention to hold the watch in trust for her.
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> —F.W. Maitland, *Equity: A Course of Lectures*, 1909, p. 44.

The first epigraph above comes from a real-life newspaper article in reference to Samuel Thompson, a man in New York City, who asked strangers to entrust their confidence, and their watches, to him. He is the eponymous "confidence man," which served as inspiration for Herman Melville's 1857 novel *The Confidence Man: His Masquerade*. The reportage in the *Herald* coined our terms for bad faith modern trickster figures like Thompson: "confidence artist", "con man", "con artist". Melville's novel weds the petty criminal ploys to Plato's political allegory of the "ship of fools" (it takes place on the *Fidele*—Latin for "faithful"—a steamboat on the Mississippi River) and Christian allegories about the devil's temptations of the faithful. In the novel, the devil disguises himself and makes his rounds on the ship, putting to interlocutors the Samuel Thompson question ("Have you confidence in me?") when asking that

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[55] Republished in the 1971 Norton Critical Edition of Melville's 1857 novel, *The Confidence Man: His Masquerade* (page 227).

they trust that they have met him before, or that the charity they have given will contribute to its advertised purpose, or that the money they have given to a supposed broker will be paid for the purchase of stock in a coal company. When they forego faith in their own experience, they extend trust to him, place confidence in him, allured by some material or vain temptation, and they leave their soul vulnerable to damnation.

The second epigraph comes from a lecture by legal historian made in 1909 by F.W. Maitland about distinguishing between trust—a social relation that asserts that in spite of uncertain knowledge I have faith in another person's motives—and *a* trust—a lawlike instrument that is famously difficult to define, but has for centuries been discovered and rediscovered as a way to do things that law might not recognize or allow. The distinction Maitland wished to make was prompted by the early modern English jurist Edward Coke's famous definition of the medieval *use*, and by extension its historical successor, the trust, as a "*confidence reposed in some other*, which is not issuing out of the land, but as a thing collateral annexed in privity to the estate of the land, and to the person touching the land" (quoted in Maitland 1909:116). While Maitland conceded that nine times out of ten, Coke was right, that "there is not merely what our law calls a trust, there really is trust placed by me in you; *I do place confidence in you, faith*, *reliance in you*" (emphasis mine; 116). But he offered the example of his daughter's watch to illustrate how a trust opens up the possibility of a trust without confidence—she can have no confidence, that is, no trust placed in her father to keep the watch, because she does not know that it is being held for her. The example highlights how the concept of the trust—not located in a court, or even on paper, but in the speech act of my declaration—offers an imagination of something made possible that mere confidence cannot alone deliver.

The two epigraphs, taken together, shows the promise and pitfalls of Annette Weiner's concept of keeping-while-giving (1992), the paradox in exchange in which designating certain possessions as inalienable, such as family heirlooms like a father's watch, is a critical part of how objects obtain the kind of social personhood that makes their exchange valuable. In keeping his watch in trust for his daughter Maitland is not merely protecting its inalienable value, he establishes it. People occasionally have to give things for a time in order to receive them back again, Weiner writes. The confidence man's offer that his interlocutor might ultimately keep their watch while temporarily giving it to him, on the other hand, plays on his victims' optimistic desire for a social trust to be the basis of exchange, a utopian deliverance in which the morality of the golden rule acts as the mechanism to effect the paradox of keeping-while-giving. The confidence that will satisfy the desire for a keeping-while-giving does not need to be as altruistic as that, although Melville's Satan often wins the confidence of his marks by asking for their charity—but what is at stake in the confidence of the trust and the confidence of Melville's devil is the same: a mechanism that engineers social relations across gaps of uncertainty in such a way to achieve paradoxical, sometimes too-good-to-be-true, results.

In Part 1 of this dissertation I looked at the establishing of the grounds of social action through infrastructure that creates property as a nexus between family and the state law (in Chapter 1), on the one hand, and the courts that provided conscionable inaction that kept many distressed homeowners in a state of purgatorial stasis, on the other. In Part 2, I introduce four models of social action, all of which I describe by looking at trusts. As ideal-typical models of action, the category of "a trust," the term we associate with legal practice, and "trust," the social phenomenon. What might begin as a proposed proper trust, from the standpoint of a professional lawyer looks only like misplaced trust, or confidence, in a scam. That it stands halfway between legal categories of thought and the social relationship it is named after is precisely why engaging in trust-like activities accrue value.

In this chapter I look at two models of action that were organized via trusts. One of these trusts first grabbed national attention during my summer of preliminary fieldwork in the Land Registry in 2013 one that offered distressed mortgagors—people who were in financial hardship and were currently failing to make timely payments on their mortgage—the promise of giving "legal" possession of their home to a trustee, while maintaining beneficial interest in the home, which would mysteriously be cleared of the troublesome mortgage charge. The other trust was in operation at the time but did not grab national headlines until several years later, when it came to light that it was being quite efficaciously being used by law firms to help American private equity firms, also known as "vulture funds", move money made in Ireland from investment in toxic Irish mortgages back to the United States, under the guise of charitable trust. Trusts, which, to legal and regulatory eyes, often look like intensely secretive and suspect concoctions, in this chapter are indeed the building blocks to quasi-secret societies—para-political constellations that stand apart from the state or turn it inside out.

I am juxtaposing these two models of action because, while they both carve out a niche of hierarchical authority: while one is figured as a sovereign who actively protects wealth from flowing, the other is figured as a hierarchical figure whose absent presence allows material wealth to move without hindrance. Ironically, it is the first, the sovereign model of action, for which my case study is one that state law would not recognize as valid. Both examples that I use to demonstrate the models of action are opportunistic, finding a profit in the hardship of others.

I argue that in engineering authority via these trust forms, the petty sovereigns who both proclaim their protective power, and those who demonstrate and absent presence are also developing a social condition of confidence, in addition to a lawlike one. That social confidence offers itself as a solution to the problem of mutual unknowability about another's intentions, and the proliferation of uncertainty and associations that are dependent upon that uncertainty. Simmel (1906) calls confidence the hypothesis in the future conduct of another, distinct from another type that we call "faith of one person in another," which belongs to the category of religious faith. He concedes that in fact, it is "probable that in those social forms of confidence, however exact or intellectually sanctioned they may seem to be, an element of that sentimental or even mystical 'faith' of man toward man is hidden" (450, *n. 1*). It is in that mixed sense of confidence as an empirical hypothesis for future conduct, and a faith that suspends experiential knowledge that I argue both of these modes of action depend upon to realize their ends.

The argument in the chapter that develops through a synoptic glance at how you can engineer confidence as a relational form through the trust, is that when you redirect that project of restoration—of a market, of confidence, of possession—you do not merely restore, keep things from changing hands or exchange, but when articulated through trusts and equity you produce new forms of authority and political association, new associations of unequal reciprocity based in the specificities of confidence each trust solicits.

The man in black

One night after observing a local political party's meeting in a hotel I ran into a friend who, when I asked if he knew anyone that was going to the other side of the county who I could get a lift from, introduced me to a man all dressed in black who was also going that way. The man drove me back to the county town in a black luxury sedan with one headlight crawling ahead of us on the winding country roads he had to drive. The unlatched hood of the luxury sedan was permanently ajar. As we lurched around the endless bends in the road home, an automatic bell from the dashboard kept dinging over and over because the hood would not shut.

Over the dinging I told him about my project and he told me about his, and we talked about medieval trusts. He advertised the provenance of the trust to his clients as a medieval form used to hold land for knights who left on crusades. The story strongly resembles a favored origin story for the birth of the mortgage. One of the more current theories about the origins of the medieval *use* is, in fact, located in the history of the Crusades, but suggests a different direction to the development: that coming into contact Islamic *waqf'* was the source inspiration for Franciscans who wanted to find a way to hold property inter-generationally and collectively without owning material possession of that wealth in life (see Gaudiosi 1988). But the man in black's version of the Crusades story, in which knights about to crusade created it, gave his trust a millennialist, Christian genealogy and moral purpose, and indexed forms of righteous sovereign authority vested in that Christian morality that predated the modern nation-state.

I asked him about the by-then-discredited Kilkenny Trust, the "private trust in private". He balked a bit, but said there was nothing wrong with the form that the Kilkenny Trust used, just that the trustees were weak, having no idea what they were doing or how to direct the trust and protect its beneficiaries. He insisted that if the trustee (he never explicitly said he was the trustee) knows what he's doing, "the trust cannot be penetrated by any man, beast or creature on Earth." "He can do anything," he continued rehearsing his sales pitch.

Background: "Trust and confidence"

The essence of any trust, Gary Watt argues (2018), is the separation (and distribution) of legal possession to an asset from equitable possession *in the same asset*. Trusts distribute the former, legal interests, to "trustees," who are "entrusted" to act on their legal ownership in accordance with the trust agreement. Legal possession was premised on *seisin*, the legal fact of actual possession of land. That is to say, in most cases, if you could show you had possession of the land, that was a better claim to it than promises. But as we saw with the mortgage and the equity of redemption, a number of legal fictions had arisen since that time that granted legal possession to parties like creditors who only enjoyed actual possession of the paper title and the right to exercise a foreclosure on the land in the future, not the present enjoyment of the land referred. This is why Courts of Equity read into the mortgage a set of rights that were less-binding-than-legal but more closely described the enjoyment of property than the legal fictions did.[56]

Trusts distribute equitable interests to "beneficiaries" who enjoy the assets in one way or another while not having legal control of the asset. That also means equitable owners are not totally vulnerable to the liabilities and burdens associated with legal ownership. Trusts are "children of equity," the once-separate jurisdiction in England and most common law nations, which was guided by a measure of "conscionability" that ostensibly bent to the particular conditions of the case before it. Trusts are therefore not-quite-legal instruments that entail not-quite-legal (but a high standard of care) "fiduciary" duties on trustees and bestow "beneficial" or "equitable" rights on the beneficiaries of the trust.

To illustrate the basics of this split, think about the homeowner who has no mortgage: I own the home outright and have full legal possession of the title to that home and the equitable

[56] Turner (1931) devoted a chapter to the jurisprudential equivalence between the mortgage and the trust, as both forms splinter rights that equity recognized from those that common law courts recognized. The trust, which was reforming after the Statute of Uses 1536 provided a model for the equitable thinking that went into clarifying the mortgage a legal fiction that still had to be responsible towards the equitable rights of the borrower-occupant.

right that more or less describes that I substantively enjoy it. That is, I live in it, make jam from the apricots in the backyard, maybe I even rent out a spare room. There is—at least there seems to be to the homeowner's senses until the slightest trouble case emerges—little noise between how they enjoy their property and how the law classifies their right to enjoy it. Now, what if we separated those rights? I give you, my trustee, the legal right to the home, but I keep the equitable right to enjoy the home as the substantive possessor. Depending on however we draw up the trust, and whoever I am, I may still live in the house, I might still make jam from the apricots in the backyard, I *might not* be able to legally rent out the spare room without your name being given to the rental board, but I can probably admit people into the home as I please (all conditional on the trust document!). In the Land Registry, on the title, you are the registered owner, and you are in the managerial role of administering to the legal affairs of the property. Your role can run the gamut in terms of how closely involved you are: from being made a caretaker, or even a sovereign (as in the United States Trust Territory of the Pacific), to just being a mere signature on a piece of paper, a trustee can fulfill a variety of functions. In this respect function and form are relatively independent of each other when it comes to the constants of the trust.

If we are concerned with the home, in particular, we can say you probably do not enjoy the property in any lived sense beyond the administrative fees you earn as trustee. If you, the trustee, sold the home without telling me, the beneficiary and resident, against the conditions of the trust you agreed to, you would almost certainly be violating your fiduciary duty (the standard for the duty of care that a court of equity evaluates trustees by). But if a court found that you acted conscionably, because the document allowed a reading where the money you got from the sale to use on me in other ways was up to your broad discretion, well, you would be the legal owner who had the right to do that, and I would be out in the cold because once I settled the trust in the first place, I no longer had an actual legal right to it.

For every one of these heuristic hypotheticals I presented above there are all kinds of exceptions and alternate versions of the powers entailed in the trust because the trust, like equity, is an exceptionally fluid and malleable concept (more so than contract, whose "rules about rules" are fairly fixed and standard. The other constant, besides the separation of legal and equitable interests in the same asset, is that the trust has a trinitarian structure of three offices: the trustor, who we have so far skipped over, the trustee, and the beneficiary. The last two are hopefully now adequately outlined above, but the first could be anybody. It could be, and often is, someone who the beneficiary has no knowledge of (think *Great Expectations*), and the beneficiary could be someone who does not even exist yet (think of charitable trusts, which are not exempt from the rule against perpetuities, but can nonetheless be set up to endow future generations with wealth managed by trustees). In terms of the people that occupy these roles, the trustor can also be the beneficiary. The beneficiary can also be the trustee. The trustee can be the trustor. But the same person cannot be all three, without sharing at least one position with at least one other.

So fluid and plural in all other respects, even our epigraphic friend Maitland, the eminent legal historian, characterized the trust less as a single instrument whose development could be traced chronologically against a backdrop of political and economic transformations, and more as a nomadic idea that re-takes the stage every now and then when people find they can split the atom, so to speak, of equitable and legal possession, they then "discover a great deal can be done with an idea" (1909:26).

In taking a cleaver to familiar property relations, the trust recomposes it back in a triadic aggregate between Trustor, Trustee, and Beneficiary. The imagination runs wild.

What this idea helped to do over the centuries was not just navigate around the problems we often associate with trusts of death and taxes, so to speak (e.g. Friedman 2009).[57] The trust's splitting of possession between legal and equitable possessions also helped navigate political interference and forfeiture during civil wars and other political conflicts, and foreclosure of mortgaged lands, which is the principle concern of this chapter. "One might defeat one's creditors in this way. I incur debts; my creditors…come to seize my land; they find that I have not got any land to seize, and you must not seize the land of X, Y and Z, because A owes you a debt" (26). It is in that context that we see it again stepping onto the scene in Ireland around 2013, the deepest point of the real estate and financial crash of 2008.

Throughout the history and prehistory of the trust, people have turned to this three-part structure that cleaves legal and equitable rights to accomplish things that were, strictly speaking, unlawful (that is, that a court of common law would a court of the common law would not recognize as legal, but a court of equity, like the Chancery, might). A trust could enable you to achieve testamentary powers (willing your possessions in an intended-while-living sort of way) and alienation when each was legally proscribed, and it could allow one to avoid taxation. The early modern jurist, Edward Coke, wrote that the medieval *use*, forerunner to the trust, had two inventors, "fear and fraud; fear in times of troubles and civil wars to save their inheritances from being forfeited; and fraud to defeat due debts, lawful actions, wards, escheats, mortmains, etc."

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[57]Daniel Defoe popularizing the term in his largely anti-Catholic 1726 work, *The Political History of the Devil*: "I doubt not that he has thought it for his purpose to paint his *Cloven-Foot* so lively in the Imaginations of many of our People, and especially of those clear sighted Folks who see the Devil when he is not to be seen, that they would…make Affidavit too, even before *Satan* himself, whenever he sat upon the Bench, that they had seen his Worship's FOOT at such and such a Time…Things as certain as Death and Taxes, can be more firmly believed: the Devil not have a Cloven-Foot!" (capitalization amended to reflect earliest printings that emphasized "FOOT"; 1840:246). The attention to the Devil on the Bench is likely an allusion to the "Chancelllor's foot" critique of the Chancery's casuistry by John Selden a century earlier.

(quoted in Jones 1995).[58] Of the many things the *use* could do, one thing that was sure to make it a powerful rival was depriving the Crown of revenue in the form of feudal "incidents", basically inheritance taxes. Incidents were paid upward along the feudal chain on the transmission of property when a vassal tenant died, and a new tenant, customarily the eldest son in most parts of England, assumed his place. Because *uses*, like trusts, were usually constructed in such a way that there would be multiple, rotating trustees, thus keeping legal possession from transferring, that meant no death of those filling the office of legal ownership, and so no feudal incidents up the chain. No death, no (inheritance) tax. As individual trustees died the corps could simply be replenished.

The widespread popularity of the use posed a very real annoyance, if not an existential threat, to the Crown by the time of Henry VIII. The *use* helped deprive the Crown of feudal incidents, helped amass wealth in the hands of the aristocracy, and kept land relatively safe from the threat of escheat or forfeiture if a civil conflict broke out. Henry VIII tried to make medieval use redundant by fusing equitable and the *seisin* of legal possession back together in the Statute of Uses 1536 (1634 in Ireland). The formulation of legal language was key to how the Statute of Uses sought to obviate the *use*, and ultimately failed to do so. The first thing to note is that the term *use* is not from "usage" or "usufruct" but from *ad opus*, and practically just means to hold on behalf of another. That split between beneficial/equitable rights and legal rights in the *use* hinged on the phrase *to the use of*. Without that addition to a conveyance, legal rights and equitable rights are the same—"I, John, give to Roger the lands of Blackacre…": so far Roger

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[58] Part of what is being discussed here in escheat and civil war is critical to early 17th century Ireland, in which the land of Gaelic Earls escheated to the Crown when they rebelled against it. The Crown only had the power to do that once it had converted the tenure of that land to common law freehold through "surrender-and-regrants"—the Gaelic Chief surrenders the land to the Crown upon the condition it is given back in common law form.

owns and enjoys Blackacre. But when you add that phrase "…*to the use of* Daniel," suddenly Roger has a fiduciary duty to Daniel, who has an equitable right to enjoy the lands of Blackacre in whatever terms the conveyance will go on to outline. The Statute of Uses essentially said that the beneficiary was actually still being given part of the legal ownership, so if A grants land to B to hold to *the use of* C, B and C were essentially held joint legal possession in the land.

While the statute was a fiscal success for rechanneling wealth into the state from the petty fiefdoms that had emerged, it was popularly received as an audacious and retrograde attack on the rights of tenants of most statuses, as it essentially enforced a primogeniture that had by that point had become accustomed to a testamentary power encouraged by the *use* (see Baker 2019:276). The response to this new statute was to add further chains to the legal speech acts. The "use upon a use" became one way (see Jones 1993) in the immediate following decades of trying to get around the statute. Often, these chains of additive "to the use of" were not only for mischief so much as control over what a succeeding generation ought to do with land and how they should hold it to the use of their parents, younger siblings, and so on. This new "use upon a use" became a trust as one of the formulae for getting around the statute was to a new phrase: "I, John, give to Roger the lands of Blackacre, to the use of Daniel, *in trust* for Rachel" (Simpson 1986:200). One contemporary legal commentator noted that this "bastard use" being called a "trust" echoed the true name of the original *use*: *trust and confidence* (2018:10). By the end of the 17th century, this newly revived *trust and confidence* no longer bothered with the first part of the formula, the "to the use of Daniel," and went more directly from John, to Roger, *in trust for* Rachel.

The *trust and confidence* quasi-etymological history is probably dubious, but dovetails with contemporary understandings like Coke's of the trust as the intertwined with confidence. As for origins beyond that, the historical and metaphysical priors for the medieval *use* are very much up for debate—not only in the epistemological sense, but different trusts model different priors, anchoring their confidence and authority to different social, linguistic, and cosmological grounds. Pollock and Maitland settle on a feasible history beginning with the Franciscans in the crusades[59] that afterwards catches on a like wildfire because the idea behind separating beneficial and legal ownership of property is so fruitful for so many diverse purposes.

Vernacular connotations of confidence from everyday speech agree with Coke's reading of confidence, that is, faith reposed in some other: by "confidence" we mean faith in another's intentions ("to have confidence in"; Simmel's "hypothesis of future conduct"), trust in our mutual understanding of the boundaries between public knowledge and privacy (a "confidante" to whom we "confide", something "said in confidence"), a measured interval that indexes a statistician's satisfaction with their calculations, and a vulnerability to exploit another's faith ("a confidence-man" or a con-artist). The word etymologically indexes the force of full trust in another. One kind of confidence can transform into another, turn an acquaintance into a trusted friend (in Simmel's terms, turn the quality of knowledge in them from a "that" to a "what"), turn a trusted friend into a confidante, or lay the groundwork for a confidante to become a sucker.

This chapter explores this synthetic form of confidence—a method of faith and mutual hypothesis—as the basis for social relationships with and around law, markets, and the state. I take the trust—which we often think of as an aggregate form of dynastic or charitable wealth, but

[59] "We should be nearer the truth if we said that, to all seeming, the first persons who in England employed 'the use' on a large scale were, not the clergy, nor the monks, but the friars of St. Francis" (1898:231). The Franciscans' mendicant disavowal of property rights as a form of *dominium* (see Tuck 1979) makes them a good candidate for enthusiastic adopters of the *use* since they would want to be able to have equitable rights to friary lands while they could assign benefactors like the city of London or powerful lords as legal rights holders *to the use of* the Franciscans in perpetuity.

it far more malleable and indeterminate in what it can do—as a technique of socio-legal confidence. Whether they are the trusts used by law firms and private equity funds, or by roguish confidence men, trusts are technically not legal instruments, but fiduciary arrangements. Trusts developed alongside the English jurisdiction of Equity, not common law, and therefore create equitable rights not legal ones. Equity merged with the common law in the late 19^{th} century in most Common Law jurisdictions, but when trusts are involved they still call forth the axiomatic rules and prescriptions of the equity.

The sovereign model

Suppose you are a civil servant in the Registry of Deeds. The Registry of Deeds is an archive that records the existence of conveyances of "unregistered" real property—that is, transfers, mortgages, inheritance of land where the title is not produced and guaranteed by the Torrens Title Land Registry (see Chapter 1). No matter what your position in the Registry of Deeds, you are not there to suss out the merits or demerits of the underlying title in the land being transferred, because you are not assuming responsibility on the part of the state that everything is on the up and up.

There are formal barriers to registering a conveyance that have to do with not providing information appropriately (the appropriateness of some of the information itself may or may not be verified). You must provide a deed for the thing you want to register: a deed of sale, or a mortgage deeds, for instance. That deed must be stamped by Revenue to show that you paid the "Stamp Duty" on the transfer, a sales tax for land conveyances. The application will ask for the names of the solicitors, their businesses, the contact information of the principals in the transfer, and approximately the same geographical information that locates the land in question as is listed on the deed. If an application has all that filled out sufficiently, the Registry of Deeds creates a "memorial," a facsimile of the information that only notes the existence of a transfer.

The obstacles before you are not nearly as rigorous as you would need for a "First Registration" of the property at the Land Registry, for instance. In fact, because the services the Registry provides are seen to be less useful the Land Registry's, a good portion of the current day visitors to the Registry of Deeds are tourists, history buffs, genealogists interested in going through gargantuan old vellum books of indices, "abstracts", and memorials.

But suppose, now, you have a customer wearing a black overcoat and sunglasses that he does not take off. He comes to the desk and demanded to speak with you because the employee at the public desk will not take their application. You soon find out that the employee at the public desk had explained that you cannot submit an application for a transfer of land to yourself. You try to explain as much to him, and that the deed he is looking to transfer to himself not at all the kind of deed that the Registry of Deeds accepts, least of all because there is no Stamp Duty paid on the transfer.

The document that says on its cover page that it is for the William Magnus Hunter Private Trust in Private. As if the document were land itself, and its cover page store-bought signs warning against trespassing at the gate, the trust spelled out to any potential reader that the contents and terms of the William Magnus Hunter Private Trust were by no means for public consumption: bold lettered warnings of "Strictly Private And Confidential" and "NO Unauthorised Rights Of Access" underneath a family crest.[60] You read through what you can in

[60] I am basing this hypothetical document and trust on the information made available publicly and to myself from people familiar with the trust, the Charles Adolphus Allen Trust. For the people who posted a PDF of that document online, it was the unreasonableness of the trust, the unlikelihood that it could withstand even cursory scrutiny from a legal practitioner, that justified

the document but nothing coheres. You find a few key notable idiosyncracies about this trust. As the man in front of you continues to say, it has been witnessed by a notary public, which means that it is a private agreement that the state must recognize, and that Revenue has no right to involve itself with this transfer because it is strictly done in private. You read that the trust subordinates all claims and debts that are not from the Grantor/Trustees to those of the Grantor/Trustees, essentially meaning that if the bank were to ask for what it is owed, the Trustee could say, well, the Trustee has priority to the trust assets based on these other claims, regardless of the sequence of establishing those claims and debts. All rights, recourses, and remedies involving the trust, rather than going to a designated court of equity, for instance, go to "all venues and jurisdictions of the Universal Community Trust (UCT)", which is a UK-based legal skeptic/conspiracy group. Characteristic of Sovereign Citizen and Freemen on the Land ideology and rhetoric, it also states that, "The law of the Trust shall be the agreement of the parties under Natural Law."

As you look over the vexing paperwork, the man gets more and more upset, shouting at you that you must oblige him because of the 1877 Judicature Act means that your deed can only be judged in Equity and you have no sovereign authority to dispense with that judgment. He might even shout that he is a flesh and blood man, and that name you see repeated on the application is not the label of his corporate person, which means you do not have the authority to deny his application.[61] You have legal training through the local college, a law degree subsidized

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the trespass past the first page. Even if I do not regard the document as particularly legally efficacious, I would be a little more cautious in contextualizing my own trespass here:

[61] "Flesh and blood man" and "corporate citizenship" come from the lexicon of Posse Comitatus and sovereign citizen ideology and it was not uncommon to encounter in Ireland with regards to mortgage debt along with claims to having appeared "conditionally" in court under the coercion or duress of the state. See Evans (2012) for a discussion of the "flesh and blood defense" as a problem of self-representation in the United States.

by the Civil Service for your advancement in the organization, and you recognize some of the statutes, rules, and concepts he mentions, but you cannot understand how he is trying to put those together.

Later, you hear from your friend and former coworker, who now works in the Land Registry, that they have had a lot of registered titleholders visit their public desk and ask for certified copies of their folios (the now-digitally rendered packet of information about title based on the individual parcel, and organized by parcel) and their mortgage instruments (the deeds to their mortgages).[62] The original sets of these documents are stored in the Santry, a Dublin suburb, and they are not available to the titleholders in any capacity. The closest proximity you can get as a titleholder is a certified copy of each, for €40, each. Even so, the documents themselves are besides the point of registration: as discussed in Chapter 1, the facts of ownership as they are stated in the Register, the information itself, guarantees your title and the "mortgage charge" your bank has with your home as security.

Nevertheless, your friend and former coworker tells you that people are coming in and asking for these documents with a frequency that significantly exceeds what they normally expect. As your colleague describes it, individuals and couples are coming to the public desk shadowed by a man who keeps on his sunglasses while the couple engages with the public desk staff. He seems to be monitoring the situation, ready to jump in and remind them what they are supposed to ask for. One couple might have had floating charge (a loan where the security is fluid but "crystallizes" at a certain point during the agreement) that included all of their investment properties such as their home, a shop, and a medical center, and now they needed to

[62] Presumably this would not be idle chatter, which might fall under unauthorized communication from the Civil Service, but rather be a kind intra-organizational (both housed in the Property Registration Authority Ireland) cross-referencing of concerns about a shared problem.

make sure, with the help of their friend in the corner, to request certified copies of the folios and the instruments. He walks over and whispers something in their ear when he notices them falter on whatever intentions they have entered into the Land Registry with.

Are these strange men coming into these two real property bureaucracies one and the same? Are they different men that are part of the same project? And what on Earth do they want with these certified copies?

When that same week at lunch your friend and former coworker gives you a clipping from that day's newspaper titled, "Get legal advice before putting homes into €1bn trust, borrowers warned."[63] You start to get a better idea when you read, "The operators of the trust are understood to claim that they have spotted a loophole in mortgage documents and other paperwork that allows them to put assets beyond the reach of banks." Later your colleague texts you the URL of a blogpost by lending industry advocate who is decrying this so-called private trust in private as the con artistry of snake oil salesmen and the wish fulfillment of magical thinking.[64] He has sat in on one of their pitch meetings to the deeply indebted—often people with multiple properties whose money and futures are tied up in a wide range of assets with plummeting market value.

What you take from all this is that the trust has these key components:

1. The client purchases the certified copies of the folios (describing their title) and the instruments (describing their debt instrument) for all the properties they want to put in the trust.
2. The client brings those to their contact in the trust, who goes over the paperwork with them and introduces them to a notary public, whose participation will validate the agreement.

[63] Charlie Weston in the Irish Independent, August 6, 2013.
[64] Karl Deeter, "The Kilkenny Trust that Makes Your Mortgage Debt Disappear" (https://www.mortgagebrokers.ie/debt-reduction/the-kilkenny-trust-that-makes-mortgage-debt-disappear/)

3. The client pays a €250 fee to the associate of the trust (perhaps €170 minus the €80 for the two certified copies).
4. That notary public witnesses the client sign over their legal rights to the properties, thus ratifying it and putting it in the jurisdiction of the Universal Community Trust.
5. The client now has a 999 year lease on the property with a ground rent of €100 per year. They are now a tenant of the trustee(s), who has the power of attorney to act on their behalf.
6. The trustee, or an appointee of the trustee, now has the legal authority over the trust and so he removes the debt from it. More importantly, now that it is in this trust, it is not in any court of law's jurisdiction anymore, so it cannot be enforced.

You think through all this and you say, "It's all nonsense! What sort of world does this even describe?" You piece together the following: it is a world that is fundamentally structured by private contracts, strongly legally pluralist in its free-floating jurisdiction untethered from territory, and dependent on the confidence in (resolutely) private individuals to manage your real property interests for you and act as your protector. You know this, this is feudalism! You wonder if you have entered some kind of wormhole. But in an historical context where modern fiscal governance had been transformed into an exercise of managing private contracts, and where the state seemed eager to reposition itself away from a position of protection, it hardly seems fair to imply this new feudal imaginary is some kind of vestigial hangover rather than a contemporary response to the right conditions for it to ripen in.

Over the course of my fieldwork I would frequently come into contact with arguments and instruments that bore rhetorical and ideological similarities to this trust. What they almost all had in common was skepticism about the state's morality, and therefore authority to enforce its law, and the suggestion that all the institutionalized codes, statutes, civil servants, and courts comprised an epiphenomenal strata of professionalized monopoly of law, beneath which lay a deeper, more primordial, or more natural law.

All kinds of attempted affidavits, writs, pleadings and so on put together by lay litigants[65] swayed by this line of thought demonstrated the degree to which certain precisely phrased appeals to other jurisdictions, statutes, or laws were presented as keys which could unlock this underlying law. In one redacted grounding affidavit I was shown by a practitioner, a man identifies himself as "*a man of Eire and homemaker*," and then proceeds to list a series of rights that the man, who is in fact a defendant in a mortgage arrears case, reserves against the court officials who in their "acting roles" as authorities "trespass against us". He further reserves the right to immunity from the court's jurisdiction as per Pope Francis' "MOTO PROPRIO", effective the 1st of September, 2013, which means that "the Golden Rule of Law is now operational and in full force: the Golden Rule of Law that nobody is above the Law and that All are Equal before the Law. And so it is Done, Issued and Ordered…." That language was not imagined up by this particular Man of Eire, but was likely copied off the internet: a brief search found templates created for use in two different American states. The "Man of Eire" tag also comes from the preexisting "Freeman on the Land," with *Éire*, the Irish-language name for Ireland, often replacing "Land". The appeal to ecclesiastical law has relatively little to do with any specific religious values—a *motu proprio* is like an executive order from the Pope, and in this case Pope Francis declared that the Vatican would have a criminal and penal jurisdiction in the case in which members of the Holy See or other Vatican constituents were victimized by organized crime. More important is the symbolic order that the appealed to jurisdiction indexes: the Roman Catholic Church stands in for a jurisdiction older, closer to God, and more universal than that of the Irish (or American) state.

[65] That is the term in Irish courtrooms for litigants, whether defendants, plaintiffs, respondents, or applicants who represent themselves but have no legal training. They are also called self-representing litigants (SLRs) in legal scholarship.

One of the most popular arguments, which I heard both in person in cases before Judges, in print in reporting of cases, and from lay litigant advocates themselves, was that mortgages were the false creation of money, which was proscribed by the Statute of Frauds Ireland [1695], and therefore the contract that they were seeking relief from (that is, the repossession) was itself fraudulent and illegal. People on message boards and Facebook pages for lay litigant advocate groups that held to this line of thought even shared as proof of this concept a video that the Bank of England uploaded to YouTube about the how money was created in a modern economy.[66] Once again, the distrust in fiat currency, tied to the question of the bank's behavior vis-à-vis mortgage repossessions, echoed conspiracy theories common to extreme right wing movements in the United States.

The "false creation of money" line of argument was a prime example of what plaintiff's legal counsel, and often judges, would call "vexatious" and "frivolous" arguments. They were meant to confuse and belabor the normal routine of courtroom procedure. One case that was cited to throw out this kind of argument was (coincidentally-titled) Freeman v Bank of Scotland & Ors., in which one line of argument the Freemans advanced was that the creation of currency. The judge found that to be fanciful and vexatious, and threw it out, which set a precedent for others to do the same. However, the Freemans also contended quite reasonably that the bank sold their mortgage without their consent, which contradicted the Central Bank's Code of Conduct. That was not a fanciful argument, but one that did not win them anything (they were held to still owe the money).

I have also heard the Freeman decision cited by legal representation for creditors in relation to claims about securitization, which is the process through which the equity of a loan is

[66] "Money creation in the modern economy." Uploaded by Bank of England, March 12, 2014. (https://youtu.be/CvRAqR2pAgw)

bundled and sold in a large portfolio like the mortgage-backed securities made famous by the United States financial meltdown. Those kinds of transfers are common and typically the new buyer of the equity keeps the originating lender, the bank, as the legal service provider (like a trustee). Lay litigants will sometimes claim the bank cannot show them a copy of the original mortgage because they have sold it on—in fact, it is probably lodged with the Land Registry but that does not mean the banks are not cutting corners. Even as the issue of securitization is paired with sometimes fanciful arguments about the rights of the bank to seek a mortgage where the borrower stopped making payments, that does not make it groundless. Adam Levitin (2013) argues that that the vastness of the wealth involved and frequency at which securitization occurred made a new normal for how to consider foreclosure in this millennium. The "too big to fail" problem meant that the banking industry wanted legal systems to reconsider their certainties about whether it really mattered who "owned the mortgage" when they made an application to foreclose on it. But in Ireland these sensible questions about securitization, about the metaphysics of owning "the paper" or promissory note of a loan but not the loan itself, which were rarely asked well by lay litigant advocates given their lack of legal training, and which are paired with really bizarre arguments, were characterized as the same line of magical thinking.

Since 2012, these kinds of arguments have become known to many in the legal world as Organized Pseudolegal Commercial Arguments (OPCA), although they predate that label by decades (at least), especially in the United States. The term was coined in an expansive and influential ruling by Canadian jurist J.D. Rooke in the divorce case *Meads v. Meads*, in which a husband, advised by his "guru" (as Rooke called him) on his rights as a Sovereign Citizen and Natural Man, refused to pay spousal or child support in a British Columbia court case.

Each element of the acronym was important for Rooke in order to classify the phenomenon: that they were organized established that it was a coherent body of thought and activity and that they were pseudolegal, designed more to impress clients than judges, spoke to its lack of legibility in courts. But "commercial" cuts two ways: the arguments are often contradictory in their commercialism: on the one hand, they repudiate "commercial activity" in ways that trace the conspiracy thinking that conform to Arendt's (1953[1948]) theorization of political anti-semitism, in greater or lesser degrees of intensity and explicitness, in which the governments of nation-states have been corrupted by the commercial interests of shadowy supra-national networks of Jewish families. In contradiction to that anti-commercialism, however, is the centrality of inviolable contracts over the authority of states to interfere or enforce them. That incongruency (we would normally think of contract and commerce as easy bedfellows) is explained in some ways by the fact that OPCA's couch contract in natural law, and their basis is almost always mythologically or morally prior to the state as the grounds in which contracts can be understood as valid. But "commercial" in OPCA also refers to the fact that the arguments themselves are circulated commercially from "gurus" to "customers" (i.e. not "clients").

Rooke employs particularly colorful language for the "gurus" and the arguments they peddle. He likens them to Dante's "evil counsellors", who opportunistically advised others to engage in fraud, and "falsifiers" (perjurers, counterfeiters, impostors, etc.), who comprised the eighth circle of hell [§669]. In an analogy that resonates strongly with James George Frazer's about magic, he compares their arguments is medieval alchemy: "They promise gold, but their methods are principally intended to impress the gullible…Any lack of legal success by the OPCA litigant is, of course, portrayed as a consequence of the customer's failure to properly understand and apply the guru's special knowledge" (§78).

J.G. Frazer's classic analysis of the "public magic" echoes very clearly with two key elements of the OPCA business: first, if the spells of the wizard conspicuously fail, there is a series of explanations for why it failed that help support the epistemological consistency of magic. Second, the honest wizard who believes in his supernatural powers is doomed to lose face when practicing his magic publicly, but the knavish wizard will already have at hand his explanations for its failure, locate failure in the iterative performance of the magic, not the underlying nature of magic itself. Frazer sees these figures as ancestral despots, who become so skilled at convincing a public as to their powers, that they insinuate themselves into the political organization of society:

> For when the welfare of the tribe is supposed to depend on the performance of these magical rites, the magician rises into a position of much influence and repute, and may readily acquire the rank and authority of a chief or king…The acuter minds perceive how easily it is to dupe their weaker brother and to play on his superstition for their own advantage. (1960:52)

We can see similar concerns about the link between magical thinking and nascent political charisma is at stake in fate of the souls onboard the *Fidele* in Melville's *Confidence Man*,[67] the fate of the polis with passengers on Socrates's ship of fools, and Weber's theorization of charismatic authority, which is grounded in, and must be maintained by, miraculous acts by special figures. Rooke, while detecting a political germ to the opportunism of the OPCA movement figures, suggests that they can as easily be associated with "extreme" left-wing as far right politics. It may be correct that the language of distrust in the state's legal legitimacy and the political anti-semitism of conspiracy theory is largely independent of any single strain of political ideology (in which case, the metaphor of left and right wing might evidently not be

[67] Rooke quotes from William S. Burroughs' *Naked Lunch* (1959) to offer a very Melvillian warning to the gurus of the OPCA customers: "Hustlers of the world, there is one Mark you cannot beat: The Mark Inside" (§671).

good to think with). And Irish cases do tend to be less obviously extremist and right-wing than in North America. However, it is misleading to suggest they are both left and right wing, when the tendency has long been for these OPCA arguments to implicate themselves in political movements that are easily identified with, and mobilized in, right wing extremism. Some of these groups in the United States are extremely, conspicuously right wing (e.g. Posse Comitatus) Those American movements are, as in Ireland, often buoyed by financial crises that result in widespread home foreclosures.[68]

What the headline to the newspaper clipping ("Get legal advice…") and the blogposts and columns that followed the trust did not really make clear was that this *was* legal advice for many people. Even when the hysteria around the trust died down and seemed to disappear, people took and found the idea of it useful as a way of beating the banks. And the people who got taken by the trust, which they will have stopped hearing anything about two years after they did it, still expressed less anger towards the trust than to the country's financial institutions and the state that inherited them. "It was worth the try," they told me, and "it got people to feel a sense that they could fight the banks and stand up for themselves." The man in the shades represented not only a bit of legal advice for a portion of the population—whose trust in solicitors was an all-time low, and whose access to legal services was also made incredibly difficult by home finances—but it was also the beginning of their "Natural Law" legal self-education.

[68] The Southern Poverty Law Center, for instance, draws that connection for contemporary US movements: https://www.splcenter.org/fighting-hate/extremist-files/ideology/sovereign-citizens-movement. Atkins (2011:198) discusses the 1980s farm foreclosure crisis (which also spawned Farm Aid) as a boon to the recruiting efforts of the Posse Comitatus organization, which freely took ideas from Nazism and survivalism.

No longer speaking in this hypothetical subjunctive, we might step back and say a few things about this national news headline-grabbing development from the Summer of 2013. It seems deeply insensible and predatory from the perspective of institutions that preach transparency such as print media, advocacy groups, and property registration bureaucracies. This object of the trust is deeply opaque and illegible, incoherent even, and when you look for clarification in it you only get more vexing mysticism. To be sure, there was every reason to be skeptical about pretty much everything about the trust—that it would ever be recognized as a legal transfer into a trust by a court, that it was there to support the interests of the distressed borrowers, that their vision of "Natural Law" was somehow a key to the universe, that the confidence it solicited from the indebted was made in good faith. But the position of regarding this as an aberrant scam failed to take seriously the potency of how disaffected so many had been made by the state's market-based response to the financial crash that put individual borrowers last in the triage. That perspective also failed to take seriously the most urgent motivation for people to enter the trust, which was independent in their belief in the underlying cosmology of Natural Law—delay, which as demonstrated in Chapter 2, could be a tool to try to gain some leverage with a lending institution that held all the power, and whose interests in repossession aligned with the state's program of economic recovery (and that creditor/lending institution was often a nationalized or independent state entity). If you made the title look sticky, like it was involved in ongoing litigation and a group that might turn an eviction into a media spectacle, proceeding swiftly with repossession might look less appetizing. Lastly, the view of this as a mere scam also failed to take seriously the potency of the political imagination of the trust, and how it would continue to blossom for opportunists again and again as the basic conditions of the post-crash indebted landscape changed very little for distressed borrowers from that time (2013) to the time I was completing fieldwork in Circuit Courts across the country (2018).

As “financial literacy” and “legal literacy” were concerned, the language of deficits was a familiar way of explaining how people got into deeply unsustainable mortgage debt during the property bubble years of the Celtic Tiger boom, approximately the turn of the millennium to the crash in 2008. It would not be too strong a thing to say that financial and legal literacy were also in short supply in the financial institutions during that period, when it became normal to offer no money down mortgages to first time buyers. Debts are also credits given, and how they are given, under what guidelines the ongoing creditor/debtor relationship is managed, and who receives a financial safety net from the state, is as much a problem of “moral hazard” as the putative “strategic defaulter” who turns to the trust to not pay their unsustainable mortgage debt and delay the legal machinery of repossession. And while it is part of my argument that borrowers were not innocents but rather subjects with their own complex and broad repertoire of understandings about law, finance, and the local settings like bank branches and solicitor’s offices where that actually happened, if their plight could be explained by legal and financial illiteracy, why would governments multiply that deficit by prioritizing the legal machinery of repossession (which itself got very sticky) and not prioritizing legal aid or write-downs for individual borrowers?

This model of action asks for confidence in, and payment for, the protective abilities of some authority figure. The trustee in this case is defined by their role in shielding the beneficiary from other previous liabilities and obligations because the trustor/trustee/beneficiary relationship is naturally, morally and jurisdictionally, if not historically, prior. Like a feudal vassalage between lord and tenant, this is an agreement that is made that will entail a series of future exchanges between the two parties, binding them together for (almost) a millennium. There is little sense, as we will see with the next example, that when the trustee acts on behalf of the beneficiary/trustor, the trustee is acting *as* the beneficiary, doing their best to approximate their personhood in a legal vernacular. Rather, they are free by their status as the legal owner to act in whatever manner is necessary to fulfill their obligation to shield the beneficiary/trustor.

The orphaning model

The question of "confidence" was at the heart of how successive Irish governments undertook to cut a path of economic recovery in the aftermath of meltdowns in Irish property markets, finance, banking, and most sectors of employment. It was not precisely confidence between a government, or a state, and its subjects that was the focus, however. It was the restoration of the international community's confidence" in Irish property markets that was chief among all the available economic approaches considered by the Irish state to tackle the problem of the vast commercial and residential debt it took on in 2008 via a disastrous "blanket" guarantee of wildly insolvent Irish lending institutions. Trusts were instrumental in that process of restoring confidence.

Many in the United States became familiar with the premise of mortgage-backed securities (MBS) in the aftermath of the global financial crisis. In the United States, the story of abstract instruments that parsed and distributed shares in the value of a loan agreement went mainstream. The confusion associated with these instruments provided a narrative of increasing abstraction to help diagnose crisis backwards: whether it was a special series of podcasts of *This American Life*, an episode in *South Park*, or a major feature film like *The Big Short*, post-mortems on what led to the crash were widely available, and the story of how something as mundane as a mortgage could be aggregated with other mortgages, assessed for its risk, sliced into tranches, valued, insured, bet on, and so on, became a good story for *what happened*.

What is odd about the story of the Irish financial and real estate crash, and the story of Seraphina and the many other "Special Purpose Vehicles" that arrived on Ireland's offshore shores, was that these kind of arrangements were not part of the diagnosis of *what happened*, but part of the prescription given by Irish governments. The goal was to publicize to the world that they could take advantage of tax-friendly codes and be a key part of *what happened next* for Ireland. These sorts of derivative instruments were enlisted as part of the solution of "economic recovery" at the very same moment when they were closely identified as the scandalous cause of the collapse of the Global Financial Crisis, particularly in American accounts.

Now, a decade later after the American public was somewhat scandalized by the multiplicity and speculation to which individual mortgage was subject to, it is worth revisiting what those devices were. They matter for my purposes because they played a supporting role in Irish governments' fiscal policy for addressing its own crash. Those devices also matter for this chapter because the response by lay litigant (self-representing litigants) advocates and activists in Ireland to mortgage repossessions was informed by the international news about robo-signing and foreclosure crisis in the United States, and some of the arguments that homeowners fighting to keep their homes from fore being foreclosed upon used in the American context.

What came to light was that standard mortgages were involved in convoluted swaps and transfers that the borrower never knew about. It emerged that markets could parse the apparently simple relation of debtor/creditor in a mortgage into several different positions. The mortgage had only appeared simple and coherent. The mortgage-backed securities (MBS) in the United States that bundled up and transferred the "paper" of thousands of mortgages—the notes of assignment in the paperwork you sign as a borrower—and in so doing split up the role of "lender" into multiple parties: an originator of the loan (often a retail bank), a mortgage servicer, interim owner(s), and the foreclosing party (Mosson 2012).

So, you want to buy a home. You go to your bank, you apply for a loan. Your bank gives you an offer sheet that you sign, as well as a deed, and the bank "originates" the loan (accruing an originating fee, a down payment, and, in the American case, money for private title insurance for that) by giving you the money to buy the home. In exchange you give them the title to the home until you redeem the full balance owed (in a non-title registry jurisdiction). In the interim you make payments that, depending on how the payment is structured in your mortgage contract, combine the interest owed on the sum and a portion of the principal, the amount loaned to you in the first place. In that capacity the bank "services" your loan. If you fail to keep up payments they have the right to foreclose on the property and re-sell it to recoup as much value of the original loan as they can. In that capacity the bank acts as the "foreclosing party".

In recent history, all those functions of lender/creditor would normally be fulfilled by the same party: a bank. But that is a model of banking finance where banks made money by collecting interest payments on a mortgage loan over the course of the agreement: the bank gets a nice stream of revenue from assets that perform, and if the borrower falls behind in their payments, the bank can foreclose or repossess the asset and sell the property, which probably has increased in value. But that is a 30-year agreement, which is not the kind of time frame that most financial institutions have an interest in seeking out, and it's not how banks made money during the booms in the United States or Ireland. In many cases, almost automatically upon originating the loan they would sell some of its rights to the mortgage. What bundling and selling the servicing rights at discount prices to portfolios of newly originated loans offered banks was a chance to record a positive on the balance sheet immediately.

I have discussed "vulture funds" at some points in previous chapters, but it is important to not confuse the transfer of a mortgage with the securitization. When "vultures" buy portfolios of mortgage contracts they are buying the whole kit-and-kaboodle. They are now the owner of the mortgage, full stop. But in securitization you are making that ownership multiple. That should sound familiar now in light of the equity of redemption in the mortgage and the trust.

Let's unpack that a bit more: recall from Chapter 2 that the equity of redemption inferred in the mortgage contract that there was a legal possession of the home, which by a strange legal fiction the lending bank kept (literally holding the deed until redemption), and an equitable possession of the home, which the homeowner kept. Equity read the mortgage that way because it seemed unconscionably absurd to treat the homeowner as someone with no possession of the land they lived on, collected apricots on, maybe even rented out. In that case, the home or the land was the security, the collateral that would either fully convey to the lender when the borrower did not make their payments, or convey back to the borrower when they paid all of them. For a mortgage-backed security, add another level of equity: now the mortgage itself—not the land, but the financial and legal instrument—has an equitable interest that is separable and transferable from legal ownership over it. A bank can create this new legal instrument with its borrower, and then create a distinct equitable right to the enjoyment of the profits of that mortgage: in this case, the apricots are the monthly payments. By taking thousands of those equitable interests in mortgage and bundling them together and classifying them with a high rating, perhaps a higher rating than actually reflects the risk of those collective loans, banks can make money while retaining, depending on how they are structured, certain rights to the loan, which means they can still make money on the foreclosure of the home or a portion of the repayments (see Poon 2009). As Levitin (2013) emphasizes, many of the assumptions that underlie the securitization market were just that: assumptions that the industry made and expected law to follow suit.

Mortgage Electronic Registration Systems (MERS), a private company set up to keep track of all the transfers beyond the point of origination, was set up in part to actively convolute (and monitor) ownership of a mortgage further by acting something like a secondary trustee. More than simply stating ownership, MERS could be assigned an agent of the trustee servicer of a MBS, while the other parts of the mortgage continued to change hands without having to be re-recorded or taxed. While MERS claimed to be a public registry system that complemented that of the county land registries, it did not require legal title or its transfer to be reported, and when it did list legal title, what it often listed was a trustee not of bundled mortgages, even, but a trustee of other distinct trusts that held mortgages (Levitin 2013:679). This meant that MERS, ostensibly just a voluntary recording system, acted as the "agent of an agent (the servicer) of a trustee for the ultimate beneficiaries of the mortgage" (679).

As the actual paperwork of the mortgage became an afterthought as the loan offer sheets were separated and moved around in America, it suddenly became difficult to produce evidence to show the court that there had been a loan and that the lender there in court maintained the legal right to foreclose the property. Rather than drop proceedings and be faced with the "too big to fail" prospect of having millions of unenforceable mortgage contracts on its already toxic books, many in the banking industry started to pay people to take of the problem, which meant paying other people to fudge paperwork. This became known as "foreclosure gate" or the "robo-signing" scandal in the United States. In court filings, banks would produce paperwork that sometimes was dated after default, and signed by people who had never worked at the bank in any real capacity, often deliberately forged, averring that there had been a loan, and everything stated was correct and true. The banking industry continued to impose its assumptions on the legal system, and in the aftermath of the financial crash assumed that law would simply catch up and recognize that in the face of a “too big to fail problem” (Levitin 2013), as they proposed it, paperwork was an absurd formality compared with the substantive issue of a borrower needing to pay what was owned on a loan (looking past the other substantive issue of being able to prove they who they owed it to).

Trusts were therefore played an important, but characteristically unheralded, part of story of financial abstraction in *what happened*—how a simple debt on a home could be sliced into several different rights, packaged and financially speculated on in several different ways, and structured in several different instruments simultaneously. Recall Maitland’s daughter: for there to be a trust, she does not need to know the watch is held in trust for her for there to be a trust. Likewise, the borrower, even the lender, even the system created to register transactions of the mortgage, does not know the details of the multiple lives that debt is living. It flourishes beyond the extent which knowledge can be recalled and collated about its lives.

After its ill-fated blanket guarantee, the concern of Irish governments, state agencies, and liquidation corporations was to find purchasers for the distressed debts they had assumed as part of their unprecedented blanket guarantee of Irish financial institutions, and to find purchasers for the underlying property to which those debts were attached.

For the latter, the underlying debt, new legislation was introduced in 2013 (The Finance Act, 2013) to shore up the real estate buying market by allowing for mostly North American-head quartered to Real Estate Investment Trusts (REITs) to acquire bottomed-out Irish real estate. For the former, successive Irish governments looked to liquidate, or float (sell) its majority shares in, the financial institutions it now ran or financed, respectively. Those hard-hit financial institutions were loaded with “non-performing assets” like mortgages and commercial loans where there was little hope that repayment was likely and repossession meant a long and potentially expensive legal process (see Chapter 2). The path that successive Irish governments chose to take was finding bulk rate buyers for their Celtic Tiger-era loanbooks. To this day these institutions are still selling off portfolios for nine- and ten-figure sums to predominantly American private equity hedge funds.

Those funds are incentivized by the laissez-faire regulatory ecology of Ireland that has actively encouraged, especially in the wake of the global financial crisis, a derivative market in debt. Legislative changes to the Finance Act had been made, from 1997 onwards, allowed for the creation of specially taxed “Special Purpose Vehicles” (SPVs) through Dublin’s International Financial Services Center. Those SPVs and similar structures helped catapulted Ireland’s “shadow banking” sector to the third largest such sector in the world (Bloomberg report). The Irish Debt Securities Association, in a 2016 advertisement pamphlet to investors, bills Ireland as the “leading jurisdiction for SPVs, structured finance, and securitised structures,” and particularly emphasizes the fact that Ireland weds a welcoming regulatory environment provided by Irish law to a profile of a “legitimate” western European nation.[69] As a member of the EU and the OECD, and signed up OECD and EU tax information sharing arrangements, Ireland could be seen to be a perfectly legitimate and juridically stable place for an international fund to use SPVs. (Its membership in creditable international agreements is also the reason, it is thought, that the OECD does not single out Ireland as a tax haven).

[69] https://www.idsa.ie/wp-content/uploads/2016/12/IDSA_Securitisation-Industry-in-Ireland.pdf

The brochure also informs its readers that SPVs are simply companies set up with specific and limited purposes, and have been around for 400 years. The simple purpose of most Irish SPVs is to move money internationally with as little taxation as possible, and in Ireland it is attached to the charitable trust via something called an "orphaning structure" to do so. By the high point of the mortgage arrears crisis in Ireland in 2013, the existence of the SPV was part of the conditions that incentivized North American "vulture funds", actively courted by the Department of Finance, to buy large tranches of "toxic" Irish assets at a large discount. Those toxic assets usually included deeply indebted mortgages, particularly those in over 720 days of arrears (or default). As a consequence, these funds used charitable trusts to move the profits made from either repossessing and selling Irish homes to a third party, or collecting revenues from remodified loans.

As I described earlier, vulture funds did not purchase portfolios of mortgages from state-financed or nationalized Irish banks as securities—they bought them (likewise at a fraction of the original loan amount price) to own fully them, at least for a time (usually three years or until the point they meet a margin of 30% of the amount they paid. But the way vulture funds moved their money around did use trusts in a way that was structured similarly to the way MBS were used. One of the common ways that vulture funds use trusts to return profits from Ireland is something called an "orphaning structure" to assign an unconnected third party, usually a charitable trust, as an owner of a SPV established with reference to Section 110 of the Irish Taxes Consolidation Act 2017. In the "orphaning" form the trustee was itself a trust, and the paternalist power of the sovereign state to take its feudal dues was not only weakened, but repositioned away from the action as the very pretense on which the wealth is going to be transferred at all.

One such case made international headlines was Seraphina Mortgages Designated Activity Company (DAC), a limited liability company was created as a "bankruptcy remote" entity created expressly to acquire *the beneficial interest* in residential mortgage loans and their securities. This means that Seraphina was assigned the function of beneficiary, to whom there is a trustee who keeps the legal interest in the assets, which in this case would seem to be the ownership of the mortgages. The money that Seraphina purchased this big portfolio of mortgages with came from selling "notes" to investors, who might have been anyone: pension funds, the ultra-wealthy, etc. Notes are essentially shares in the future profits of the beneficial interests in those things: the profits of the profits. Notes are tiered into Class A and Class B Notes. You can buy the Class A Notes on the International Stock Exchange in the offshore financial center of Jersey in the Channel Islands. When you buy a note, your money goes to pay for the purchase of the beneficial interest in these mortgages, and what you get back are "secured obligations" from the company to pay you back. While Seraphina could sell "notes" it could not actively sell the mortgages because they were legally held elsewhere. The legal owner of the mortgage paper that Seraphina reaped and distributed the profits from was a trio of "charitable" trusts, which, in turn, acted as trustees for Seraphina: Badb Charitable Trust, Medb Charitable Trust, and Eurydice Charitable Trust.

Before it was renamed as Seraphina DAC in accordance with changes to Irish law on company names for financial institutions, the company was incorporated as Seraphina Mortgages Limited in September of 2013, which happened to also be the high point for mortgage arrears in Ireland after the precipitous crash of the real estate and banking sectors of the Irish economy starting in 2008. That is, September 2013 was when the largest percentage of all active Irish mortgages were going into default because borrowers could not meet their monthly payments (12% of all mortgages were in arrears at this point).

As though the trust was a mercurial person, we might say the trust can sometimes be a very anti-social social being, with its accountable effects of its intimate social connections being reclusive, secretive, and exclusionary disconnections to a broader "social". "Mercurial" is a particularly apt word for the trust's sociality as it suggests an unpredictable disposition that can alternate between charitable, generous, gregarious impulses and avaricious, acquisitive, and taciturn impulses (and everything in between). The form can be as public and sociable as a charitable trust which runs shelters for dogs, or as disconcertingly unethical as a blind or irrevocable trust set up to ostensibly separate a politician from their personal wealth during their tenure in public office. "Mercurial" also suggests the Roman mythological figure of Mercury, a figure whose powers and danger revolve around his ability to traverse the disjointed worlds and temporalities of the gods and humans.

Of the three female figures in that pivotal test case of Seraphina DAC for the Charities Regulator in Ireland in 2017, the first two charitable trusts in question were from the Irish mythological canon, the latter was from the Greek. Queen Medb, a key figure in the Irish prose epic *Táin Bó Cúailigne* (The Cattle Raid of Cooley), has been controversially called an instantiation of a sovereignty goddess, and is tenuously associated with the Morrigan, a Goddess of the land sometimes rendered in three different guises, one of which is Badhbh, a hooded crow who appears in battle to foretell death. Like Hermes, Odin, or Mercury, the Morrigan are at once associated with sovereignty attached to boundaries, and the unique and harrowing powers to those thresholds. They are all deceptive in their appearances, and all should strike terror into any mortal who recognizes them in their various disguises. The story of Eurydice, in particular, tells of the mortal danger for humans to cross the thresholds of gods. When Eurydice dies, her husband Orpheus plays his lyre so beautifully he is allowed the opportunity to go to Hades and try to retrieve her from the dead. Hades allows him to take her with him but he must demonstrate faith in his agreement with Hades, and not look back to see if she is still there. Thinking he has been deceived, he balks and looks back only to see her disappear back into the underworld.

Trusts are social but not merely mortal, and by their very ambition to keep things from perishing, to transcend the threshold of death (see also Friedman 2009). Like the encounters with the trickster gods that someone in a law firm thought it appropriate to call its trust vehicles, the trust calls forth a kind of delirium in the eerily unsettling sovereignties and confidences it instantiates. This shifting of form, traversing of threshold, and danger in the keeping of things from hands of gods of death, is an ambivalent aspect of alternative economy as Maurer (2005, 2008) conceptualizes it. Rather than a cosmological landscape of distinctly autonomous domains of alternatives to capitalism or state law, the trust and equity model a kind of capacity for flickering alternation into and out of view, creatures with entirely different temporalities and forms than humans, shot through our world. They are definitively "collateral to", to recall Coke's early modern definition of the trust as a confidence reposed in another collateral to the land, alongside but not yoked under,[70] law and economy, imbued with the capacity to phase shift, to go in and out of those domains, to partake but not be part and parcel to the market or to law. As such they may be the refuge of rogues and tricksters; they may inspire both hope and terror, cynicism and confidence.

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[70] Even when equity is talked about, a different preposition was used, suggesting a dislocation relative to law: a ruling would be held "in law" but "at equity", as if law was an inclusive space, equity an outpost that nevertheless can overrule law in certain matters.

In this model the role of the trustee, who holds legible and transparently recognizable power (think of the sovereign's face on the coin, or the legal titleholder on the registered folio in a Torrens title registry) in the form of legal possession, is taken by another trust. It seems set up to interrupt signification, like an infinite regression of actual transparent ownership: we know very little about the owners, and maybe even less about what it is they own. What we can note are the traces of this structurally encouraged absence: the state loses revenue, leaves wealth on the table in the service of other, more influential fiefdoms. Henry VIII might recognize the landscape but for the fact that in this case the sovereign state has no interest in asserting itself as a revenue collector.[71] Rather, it has invited the petty fiefdoms in. In the service of a particular kind of confidence, international confidence in Ireland, a different kind of trust, a different kind of sovereignty. While Irish governments at least implicitly encouraged this kind of behavior that looks like a total amoral shirking of responsibility and a hollowing out of the paternalist welfare state, the orphaning model should in fact suggest a repositioning of morality into a global commercial sphere. The relational form of the state-as-family has been re-engineered for the performance ethic over the possession ethic of political economy (Lee 1989), made to win the confidence of international interests as an indirect way of ensuring its vision of the republic.

Conclusion

In the American financial crisis we saw a profound disillusionment in the kind of confidence that calculative agencies like the credit ratings engineered, as they became detached

[71] The case of Apple's lower-than-legal negotiated tax rate in Ireland particularly speaks to this point. The European Commission found that Ireland had given undue tax benefits to Apple and ordered Apple to pay Ireland €13 billion plus interest for what it should have collected in the first place. The Irish government has actively refused to accept the money from Apple and has appealed the decision, while the €13 billion sits in an escrow account.

from the objects they were meant to measure and the ethics with which they were attached (see Poon 2009). The rise of "evil counselors" in the US and Ireland has to not only take into account the faulty foundations on which market confidence was based in the lead up to the crash, but the reduplicated efforts to engineer confidence on faulty foundations in the unwinding that took place in the aftermath of the crash. In the United States, that meant a robo-signing scandal where banks asked courts to trust them that they had the legal right to enforce a loan even if they could not show the proper documentation that was once normal for applying for a foreclosure. In Ireland, that meant ensuring that international markets kept confidence in Irish government's commitment to repaying its substantial loans by turning to trusts to help generate a new speculative market on mortgage debt.

Trusts "vex" the juridical and normative ideas of property, ownership, and social relations encouraged by law in one way or another. They are long-lingering annoyances that initiate cases that come in and out of court for years if not decades. They do not reveal themselves to representational apparatuses like a Land Registry very cogently, and they do not necessarily even reveal themselves to the constituent members of the trust. The common law finds as natural givens, as transparent social relations translated into legal reasoning ownership (as a description of a person's relationship with objects), on the one hand, and contract, on the other (as a description of how people do things with those objects). The legal sensibility of ownership is transparent in the sense that it bears the visible markings of the owner's expropriative or additive labor, *á la* early modern theories of property found in Hugo Grotius and John Locke, respectively. Ownership is also transparent in the sense that it presumes that possession of an object—the physical occupation or enjoyment of an object known in land law as *seisin*—is coextensive with the social fact of ownership. The phrase, "Sally owns Blackacre," discourages one to think, “Sally owns Blackacre in a strictly technical sense, but she holds it in trust for Mary and her heirs, who actually live at Blackacre, and also the bank owns it in the sense that there is a mortgage on the property and so they technically have the title deed, but, in fact, the bank has bundled the ‘paper’ of the loan offer sheet up with thousands of other mortgages, and sold it as a security, transferred in the form of another trust entirely.” That is to say, ownership implies something more exclusive, solid, and directly 1-to-1 in how it describes how things are *possessed*. Ownership assumes the possibility that possession of land—something that cannot be continuously, entirely held, and will long outlive any individual possessor—is stable.

While ownership is the key socio-legal metaphor in common law for transparently *holding* possessions, contract is the key socio-legal metaphor (and very real mechanism, to be sure) for transparently transferring or modifying possession. It is transparent in the sense that the contract evidently identifies at least two parties who are agreeing to do something with regards to clearly marked, stably possessed object. Most importantly, contracts are on paper, they are agreements that are definitively stabilized in the material in which they’re inscribed. Contract is how we assume things are moved efficaciously in a legal sphere not only because they make external, legible inscriptions, but because those inscriptions can be returned to time and time again, turning from performative articles that transfer or modify possession into evidentiary artifacts of a transfer or modification of possession. Contract assumes the possibility that the social relations that go between people and their possessions, we might say possession in action, can also be made stable and transparent.

In comparison trusts are not transparent. By splitting equitable possession from legal possession they make a mockery out of *seisin* and the presumption that the ownership of a thing really is the 1-to-1, solid connection that ownership implies as metaphor. Trusts also run afoul of, exceeding and unbalancing, the stable imagination of contract: a trust is not so much an exchange executed with the written document as evidence, as an ongoing transaction in which the trust settlement or declaration of trust (which might only be verbal or read backwards into a transactory relationship) is a faint index.[72]

The question of its transparency also implies another question: "for whom is it transparent or opaque?" But for whom is the trust an enemy to transparency? To law, particularly, and to publicity as a virtue in law. But on its own terms, the trust is not any more or less transparent than it needs to be, it is only vis-à-vis an external observer that carries a certain type of expectation of what social relations look like that the trust looks inherently cynical. Recall the daughter that Maitland holds in trust for his oldest daughter. He offers this up as a kind of relational form that is unique to *a* trust, not trust, in general. But we might also wonder if this is not *more in line* with social relations than the kind of mutual bond of solidarity that is a transparent given. That is, from the perspective of the trust, it is hardly a stretch to find that the key relational form, the thing that binds, is not only emergent, but as liable to turn connections of solidarity into bitter disconnections. Attempts to engineer trust and solicit confidence facilitate the imagination of a perduring, moral relation that works at a higher calculus than experience dictates—it solicits an idea of more permanence than just fee simple.

[72] An old man who gave hundreds of dollars to the devil earlier when he posed as Mr. Truman, a dubious stockbroker, speaking to the devil posed as a seller of homeopathic remedies: "'But I have no receipt—ugh, ugh! Nothing to show where I stand…'
"'Why, you know that you gave him your confidence, don't you…?'
"'But I have no bond.'
"'Don't need any bond with Mr. Truman. Mr. Truman's word is his bond.'" (Melville 1971:78-79)

But that solicitation of confidence is what Gary Watt characterizes as a definitively intermediate status, "Not so much a state of ownership as a dramatic tension maintained between states of ownership" (2009:118). Just looking at the long-durée unwinding of the Irish crash from 2008 to the current day, we can see how that intermediate, dramatic tension can endure for quite some time (see "Purgatory" in Chapter 2, for instance).

The Irish crash swiftly produced a cottage industry of literature explaining "what went wrong." Popular Irish newspaper columnist and author Fintan O'Toole had perhaps the most successful and damning example of this sub-genre that now fills the racks at charity shops throughout the republic: it was called *Ship of Fools*, published in 2009. In it, O'Toole hits out at Irish regulatory, fiscal, and political culture, and Irish democracy in general, for its disorganization, stupidity, corruption, and developmental immaturity. This element of the ship of fools allegory—democracy is sure to sink under the guidance of the willfully irresponsible and those deliberately uninterested in the discipline of navigation—provided a sharp critique, in particular to the *gombeen man* parochial politics of local government.

But the element of Plato's recording of the allegory that I think speaks more to Melville's story and to what has happened to Ireland *after* the crash (but is there in O'Toole's criticisms, too), has more to do with the very meanings of leadership and authority crumbling. In my copy's translation,[73] the key to the allegory is not the result (that a fool takes over the ship) but the transformational change to the office of the helmsman: "Having stupefied their noble shipowner with drugs, wine, or in some other way, they rule the ship…Moreover, they call the person who is clever at persuading or forcing the shipowner to let them rule a 'navigator,' a 'captain,' and

[73] Translated by G.M.A Grube (1992). The translation is key to interpreting the allegory because of the distinction between the person whose physical infirmities are weakening their leadership and the "helmsman" who pilots the ship. It has been pointed out that it does not make sense for the former figure to be the "navigator," as is sometimes translated, because then he seems quite rightly overthrown as navigator. See Seymour 1902.

‘one who knows ships,’ and dismiss anyone else as useless” (488c-d; 1992:162). The tale implies a hollowing out of the what it even means to be navigator, the criteria with which people trust someone to fulfill an office that in its very title is defined by skills based on knowledge of currents, stars, winds, and ships, but which comes to be self-fulfillingly defined by the ability to parlay knowledge about other *people*, fellow passengers, into that office.

What this problem of Irish modernity in two models of the trust illustrates is not how so much how Irish politics is defined by deficits, as O’Toole would suggest and other critiques of Irish political culture and parochialism do. That is to say, that rather than regard the widespread reliance on provisional, not-quite-legal, late feudal forms that are organized around private, interpersonal confidence as an affront to modernity, both Melville and Simmel would agree that the radical uncertainty of relations abounds in modernity, becomes its defining feature. Both are concerned with the uncertainty of the encounter, which in the 19^{th} century became more ephemeral and anonymous than ever: Melville’s riverboat invited chance variance in the encounter that offered the perfect opportunity to test confidence in strangers. For both, finance, just as much steam engine and urban industrialization, created a new society that was at once more shot through with uncertainty and unfamiliarity in personal relations, and which depended more and more upon confidence, indexes of credibility, and faith in new relational forms that could stand in for that confidence work like statistics.

CHAPTER 4

Friendship

This chapter examines "brokerage" as a model of social action. As a case, I examine a trust where the trustee was empowered to act as a kind of middle-man on behalf of the beneficiary. In Chapter 3, I examined how the mortgage arrears crisis opened up avenues for some people to engineer authority and confidence vis-à-vis different trust forms. This chapter looks at different kinds of "friendship," a term that carries with it connotations in the anthropological literature of patron-client relations and uneven reciprocity. A "friend" is also someone allowed to accompany a self-representing litigant—like a distressed borrower—in court, known as "McKenzie friends" in common law courts.

In the brokerage model that I introduce in this chapter, the clients of the emergent patron-client relations participate in a trust in order to have the trustee accompany them in court. Because they may be too unskilled in, or intimidated by, the courtroom environment to represent themselves in a way they feel will get them what they may ultimately desire, they adjust and work with a patron who brokers their defense. Their broker offers a possibility: an exit from their mortgage agreement where they retain their indebted home or other properties without making any additional payments. As a link of access, brokers are (usually) rent-seeking figures through whom wealth passes (like a stockbroker), and personhood is conferred, as in the example that follows.

"Friend" should not connote a relationship of easy amiability, but a more agonistic kind of asymmetry that two parties come to for different reasons. For that reason I will read the "friendship" that inheres in the brokerage model and literature on "friends" as paradoxical, unstable, and uneven relationships of reciprocity. If "confidence" in the last chapter was a disembodied concept upon which trusts solicit their craft, "friendship" is a more material association, an indeterminate confidence bearing dubious fruit.

A nod is as good as a wink

In early December 2015, I was at the home of a friend in the Irish border county of Cavan as we watched the national broadcaster Radió Telefís Éireann (RTÉ) run a special episode of its in-depth investigative reporting program, RTÉ Investigates, on influence and corruption in local Irish politics. The crux of the television program was a ploy to catch local county councilors in the act of taking money from "Nina"—an undercover reporter who, according to interlocutors who professed to be in the know, an attractive young woman (her identity and face are obscured in the footage) posing as a representative of a wind farm firm from the continental Europe looking for help in securing planning permission for the farms on cheap and easily purchased land, to build a wind farm in their county. The meetings are ostensibly supposed to test the willingness of these local politicians to cross the threshold from hearing out the concerns of the wind farm lobby to taking bribes to exert their influence on the local political machinery.

RTÉ televised three cases in Irish border counties: Nina found willing participants for all of them, but to varying degrees of indiscretion. In fact, the result was something like a goldilocks situation: one negotiated on the edge of bribery, one proactively solicited bribes from Nina, and one sat in the middle.

The first was Joe Queenan, a county councilor from the coastal county of Sligo, who listened attentively to Nina's proposal, offering ways that he could potentially help. But when Nina asks what he would like in return for his help, he expresses interest only in providing jobs for the region, and that he could not take anything in return because if he was seen doing anything like that he would be "out on [his] ear straightaway." Then, as an aside, he mentions his own agri-business idea for which he is looking into the future to come up with the necessary money he needs to purchase land. "He's not looking for anything at the moment," he says, but he might be courting investors for half the money he needs in the future. "That way you could help, *if* it ever comes to that," Queenan redirects it as a matter for the future.

The wildly indiscreet case was that of Hugh McElvaney, a county councilor from the border county of Monaghan. McElvaney shows up to his meeting with Nina wearing a gold bracelet and rings. In what he would later claim was a grandstanding attempt to satirize the national broadcaster's unethical exposé journalism, McElvaney repeatedly interrupts Nina to tell her how bribery, or "pre-planning" works, what it will buy, and how much he will likely require for his services. A video clip from the meeting became a popular meme in Irish internet circles, set to remixes of the Macarena; when Nina asks him what he requires, McElvaney responds, "In money terms? Well, it'll be money, sterling…If [the planning permission's] not successful for you, I'm out of the equation. But if it is successful for you," he says before pausing to make pantomime gestures of scooping up money on the table and stuffing his jacket and trouser pockets, "I want loads of money. Ah." "If you let me down," McElvaney insists during the face-to-face meeting, "there'll be war."

The goldilocks case had nowhere near the decadence of McElvaney's performance, but also lacked the subtlety of Queenan's approach. John O'Donnell, a county councilor from the border county of Donegal, positioned himself to Nina as a business man who was not a "negative person," neither left nor "too far" right, but who liked to see things going forward and progressing in Donegal. If he believed something is good, he said, he's for it, but if not, he goes against it. Wind farms are the way of the future, he preened, before talking about how he could lobby behind closed doors for her firm, and also help get cheap land not zoned for development re-zoned after the firm purchased it. When he mentioned a man who would liaise with them in the future Nina asked him if her firm would pay that liaison. O'Donnell responded, "Yeah, yeah, you'd be paying him," then whispered, "you see, I don't want to be seen to be…" Nina clarified: "But you'd get paid through him?" In the video, O'Donnell nods and twists a mischievous smile, before winking on the first syllable, "I'll get paid through him."[74]

I was audience to that wink several times during the course of my fieldwork. Sometimes it is transmitted in a very innocent way, a simple salutation from men from the countryside. In that greeting, it comes with a jerk of the head to the side. A staff member always greeted me with that wink during my summer fieldwork in 2013 at the Land Registry in the summer of 2013 there was a staff member who always welcomed me with that greeting; back then I thought it involuntary, rather than a gesture of comity. The wink can also be flirtatious. The wink, as Geertz famously observed, is a subtle and situated symbol for cultural interpretation (1973). The quick flutter of the eyelid that I saw on the television and that I saw again later in a courtroom in the midlands, is of a kind that implies a secret sympathy between two individuals that might not reflect a preexisting one, so much as create a (perhaps unwanted) one.

As I took my seat in an Irish courtroom in Westmeath, where a County Registrar heard mortgage arrears cases where homeowners had stopped making scheduled mortgage payments, I recognized a familiar face in the crowd and I sat in the row in front of him. I had met David once before. He was loosely associated with a group of Irish Sovereign Citizens. Sovereign Citizen movements started in the United States, and offered a vision of the radical sovereign autonomy

[74] Despite the considerable negative attention the television special garnered for all three men nationally, each was returned to office in their next electoral test. Even Hugh McElvaney.

of individuals, whose rights were inviolable. Sovereign Citizens in Ireland had adopted the rhetoric and ideology associated with the American movement and then shifted some of the attendant conspiracy theories to fit Irish history. Sovereign Citizens were sometimes, but not always, involved in lay litigant advocacy, offering their theories as defenses that indebted borrowers could use to defend their home from repossession.

David also had been a candidate in various local elections, and leveraged both the Sovereign Citizen ideology and political connections to offer his not-strictly-legal services to indebted Irish property owners. On the flipside, he also leveraged the familiarity he had established with people who were deeply in debt on their homes, who he met through the world of Sovereign Citizen lay litigant advocacy, to further his political aspirations.

His reason for being there in court that day was there to speak on behalf of a man whose name would be called later that session. As one of the many untrained, or self-trained, self-styled experts of the more Sovereign Citizen-influenced lay litigant movement, David would often talk about law in a string of familiar sounding nouns and proper nouns, but which seemed to lack any grammatical unity. Often those nouns included that archaic and arcane legal texts were resources with which to throw into question the entire foundation of everyday legal practice. Judges were rarely swayed by these arguments, often because as arguments they could never demonstrate the rhetorical consistency of the aesthetic and logical standards of courtroom exchange. But the audience they were most aimed at impressing were not judges, registrars, and barristers—it was their own clients.

Because it had been some time since the last time that I had spoken with David, I wanted to get his take on a big legal development that had taken place that summer: the closing of a legal loophole that lay litigants had found and gotten recognition from a High Court Judge to enforce, more or less.

The initial High Court judgment that opened the legal loophole revolved around language relating to which jurisdiction would hear which mortgage arrears cases for repossession. In particular, if a residential property had a value over a certain threshold it would automatically go to the High Court, but under that it would default to the Circuit Court.[75] The problem was that the threshold was assessed as a factor of valuation for taxation, called "rateable valuation". The problem was that no rates, or local taxes, had been assessed on residential property for decades, so, the first defendants of a repossession case successfully argued before the High Court, even if they are functionally being assessed €0 on their home, it is not rate*able* because there is no longer a rating apparatus. Justice Murphy agreed that the statute in question had erred in not updating its criteria for the jurisdictional foundations for repossession. The decision had produced a ton of confusion in the lower Circuit Courts' Civil Motions Lists, where the vast majority of repossession cases for mortgages were heard. Should they suspend normal activities for all the properties that were built since rates had stopped being assessed on residential property? Even more confusingly, a second High Court decision found the opposite soon afterwards, meaning there were two contradicting rulings at the same level. After a considerable period of stasis, the Supreme Court ruled in the *Langan* decision that not having any "rateable valuation" was in substance the same as €0. Totally separately from that, a statutory fix to the loophole had been passed into law (Civil Liability and Courts Act 2004 [Commencement] Order 2017) which stated that the Circuit Courts would have jurisdiction if the *market value* of a home was under €3,000,000.

[75] The High Court has "original" jurisdiction, so a plaintiff could choose to take the more expensive and involved route of the High Court.

When I asked David about *Langan* and the new legislation, during a short break in the proceedings, he laughingly reminded me that, "Of course, it's not like it can be in force." He punctuated that reminder with a wink that I did not understand and made him explain the privileged knowledge behind the wink. "Michael D. [Higgins] is the President who had to sign the bill," he explained, referring to the former sociologist and Labour politician was Ireland's President, which is an elected figurehead role that legislation nonetheless passes through. I still had no idea what he was talking about, because the Higgins *had* signed off on the bill. Spelling it out for me, he said, "Michael D. Higgins isn't *in office* because he hasn't taken the oath because when you swear the oath you have to swear on the bible, like the Constitution says. It's written in the Constitution. He says he's agnostic, doesn't believe in eternal life!" He clarified that he had nothing against anyone's religious beliefs, but it was a matter of what the Constitution said.

The wink—the County Councilor from Donegal's wink, the unassuming and friendly culchie in the Land Registry, and David's—is a shibboleth of confidence. More in need of correction and more foreign, probably, than even Nina, I often failed to recognize and reciprocate the wink appropriately. There is nothing inherently seedy about the wink, nor is there about confidence.

Simmel would recognize these winks sociologically as "symbols of reciprocal apprehension, which is the presumption of every social relationship" (1906:442). For him, all social relationships were premised on uncertainty about another, around which mutually constituting practices of revelation of secrecy guide how people form and further elaborate their relationships. Simmel identified what he saw as tension in modernity between the increasing complexity and anonymity in modernity; exemplified in the credit economy, it required people to rely more on belief than ever before. Rather than outright disenchantment in others, the presuppositions upon which faith and belief in others' intentions were based only multiplied and mattered more and more. The wink establishes a context in which some social solidarity can be based on a shared secret, even if that shared secret is never spelled out or is, in fact, dramatically different.

I want to return to David, now, whose whispers and winks about the apostasy of Michael D. Higgins' and the illegitimacy of any statute that passed through his office were communicated to me in the back of a Circuit Court courtroom. When I asked David about what he has been up to since the last time I spoke with him, he lit up and boasted, "We're commercial now!" in reference to the work he had done with other like-minded Freemen that was formerly "donation"-based. The way this new commercial venture would work, and what it was for will become more clear after getting an understanding of David's place in the court, but the basic goal is this: David would become the trustee for the home, and therefore the owner of legal rights to the home, including the mortgage charge. The homeowner, meanwhile, would retain equitable rights to the home, and will continue to live in it as the substantive homeowner. For his services, David would be paid in fees by the homeowner, which is why it is now a "commercial" enterprise. Whereas the fact that money was being made off of advice to lay litigants was a critique of self-styled experts like David from legal practitioners—echoing a skepticism about the "McKenzie friends" across the common law world—what made them bad "McKenzie friends" (taking money) is what made them trustworthy advisors (they were professionals).

After a short recess, a name was called in a case ("Mercury Capital Designated Activities Company v. Fergal O'Brien") that had both David and the man sitting beside him stand up. The man was dressed like so many men from rural Ireland: boot-cut dark denim jeans with squaretoed leather shoes, an untucked polo shirt, and a dark windbreaker. He had a short goatee and short, gelled hair stuck up into the air in the middle. When he stood up he kept his hands in his pockets. The clean-shaven David, on the other hand, who might otherwise have dressed in something similar, wore a burnt umber suit with a white shirt and no tie. He was dressing the part for court, and other than being for too earth-toned for a solicitor, the suit did not seem to loud or too cheap for the occasion. His lack of a tie was a marker of distinction between him and the legal profession.

David had paperwork in his hand, and after the facts of the case were read and the County Registrar asked if the defendant was there in court, David spoke up for the man standing beside him, presumably Mr. O'Brien. David told the County Registrar that was with Mr. O'Brien, who had been counseling with him.

The plaintiff, Mercury Capital, had hired a barrister, which was not the norm but became more common the longer cases lingered in the County Registrar's Court, and especially in cases where the defendant took up lay litigant tactics on the advice of people like David. The barrister immediately went on the offensive before David could start his anticipated diatribe about the Irish Constitution, and told the County Registrar, "Who is this man? This man has no standing in court!" before reminding the County Registrar of the High Court's ruling on the rights of so-called "McKenzie friends".

The term "McKenzie friend" comes from a divorce case, which was heard in England in 1970, called McKenzie v McKenzie.[76] The original case involved a marriage involving complicated cross-charges of cruelty and adultery. The husband petitioner could no longer afford his solicitor's legal services but was then sent a Australian barrister. Being from and licensed in

[76] McKenzie v McKenzie [1970] 3 W.L.R. 472.

Australia, that barrister could not represent Mr. McKenzie but stayed at his side and quietly prompted Mr. McKenzie (see Thomas and Mungham 1978). The first judge said something to the effect that the barrister, still connected with the solicitor's firm could not offer legal advice during the court hearing. The issue comes down to a question of *standing*: who can stand in for the person named in the case, act as them, speak to the Judge, cross-examine witnesses, and so on. Standing has not only to do with courtroom procedure but the very nature of legal personhood—when you have an "undertaking" to a client, you act as them while having a capacity for communication in a courtroom environment that they do not. In theory, the bar exists to provide the requisite educational and ethical training in how to do that, so informalities in that relationship pose problems. On appeal, however, the Judge found that Mr. McKenzie had been deprived in an irregular way in the first trial, and recognized that, "All the assistance a litigant in person receives from a Judge and from opposing counsel is not really the same thing as having skilled assistance at his elbow during the whole of the lengthy trial," and that a lay litigant like Mr. McKenzie, "Should be seen to have all available aid in conducting cases in court surroundings, which must of their nature ... seem both difficult and strange [to him]."[77]

What degree of assistance should be allowed to lay advocates, and where to draw a line from assistance to standing has been debated ever since. Should lay advocates be allowed to write notes to the litigant? Can they whisper to them? Can they speak up for them in court and explain what their client means to say? That might sound like it certainly has crossed the line into an undertaking, a presumption of standing, but what if the client is overwhelmed by all the difficult and strange challenges of contending in an unfamiliar language with a highly trained barrister? Discussions of the McKenzie question—like the question of mortgage arrears vis-à-vis

[77] Ibid. at 478,

the figure of the “strategic defaulter”—is often framed around the concern that the McKenzie friend is a “rogue” and is not acting with virtuous, altruistic charity in his heart, but is quietly pressing the litigant for fees outside the courtroom for the services he advertises, or is willing to give detrimental and unsound legal advice for some other purpose (like advertising to other potential litigants-customers). The McKenzie friend issue is a thorny one: legal scholars have pointed to how it has inadvertently helped expand a neoliberal deregulation in legal services markets (Webley 2015), which in expanding the notion of acceptable legal services (recall the “duty solicitors” who worked with borrower-defendants in Chapter 2) also threatens to dilute the standard of legal aid that indigent clients deserve, or further stratify legal services (like premium pricing tiers). Even research that recommends closing the regulatory gap with more standardized definitions of what litigation (or advocacy, on the other hand) entails, also reminds it audience not to throw the baby out with the bathwater, as any limiting McKenzie friend exception could have deleterious effects for legal representation without appropriate measures to provide better help (see Smith, Hitchings, and Sefton 2017).

McKenzie friends became so common for figures from the world of lay litigants to act as advisers to borrower-defendants that in the summer recess of 2017, the President of the Court of Appeals in Ireland created new practice directions for the courts, explaining the limitations of McKenzie friends, who could provide moral support for the lay litigant, take notes, organize briefings, and whisper advice to them. They would not be allowed audience to the court, that is, they could not speak in court *for* the defendant, or cross-examine witnesses. That essentially just highlighted what were already the rules regarding McKenzie friends (why the barrister cited a ruling on the matter at a time before the practice directions were made). The problem was so well known and so strongly associated with self-styled experts of lay litigant legal advice in mortgage arrears cases that even one of the most well known lay litigant self-help centers for advice on lay litigant mortgage defenses, which also operated on donations, welcomed the practice directions, "It will also stop all the bar-room pseudo lawyers that are ripping people off."[78]

Before the barrister could continue to tell the County Registrar about this man's unfitness to speak in court, David interrupted his interruption, quickly snapping back that the barrister himself was representing Mercury Capital, which had broken the law on numerous occasions so, "[He, the barrister is] not here with clean hands, so *he* has no standing." The "clean hands" David referred to is an axiom in equity (the County Registrar's Court does have a limited, equitable jurisdiction). Equity, which was formerly a jurisdiction and is now fused with the common law, is both a jurisdiction and a philosophical stance towards goodness that takes into account contingencies. The jurisdiction is guided by a series of axioms, the most famous of which is, "He who comes to equity must come with clean hands," which means that it is unconscionably hypocritical for a litigant to ask for equitable relief when they themselves have not been acting equitably (Hudson 2010:28). It was the first time I had heard anyone associated with lay litigants mention this axiom specifically, but it fit a pattern of trying to find legal justifications for not paying mortgages by pointing to the lack of standards and ethical comportment that lenders had been responsible for in making the loans in the first place, crashing the economy, and trying to fast-track repossessions without the rigorous detail evicting someone ought to require (think of the robo-signing crisis in the United States, discussed in Chapter 3). Given the lack of prosecutions of Irish financial figures, many developers, and institutions, making these kinds of points in a legal setting—even when they were legal mumbo-jumbo—scored points with lay litigants who they advised who did feel aggrieved, and who had every

[78] "Judge tightens rules on non-legal advisers in court," Fiona Gartland, *The Irish Times* (online edition), August 21, 2019.

right to feel that the price they had to pay was disproportionate and inequitable compared to what others with more capital to begin with were able to leverage for themselves.

Before the barrister could re-interrupt him, David then quickly added on that, in any case, he was not a McKenzie friend, because he was a trustee. The County Registrar allowed Ben to speak to the dismay of the barrister but made clear that, "I reserve the right to hear him today; I might not tomorrow, but I will today," which was a warning both to Ben not think he had won some victory and to the barrister to remind him that it is a court that, like equity, was flexible and contingent in its decisions about how to do best by conscience.

After David was given latitude to speak, he complained that they were looking to get a meeting with the new owner of the loan, Mercury Capital, who bought the loan from a subprime mortgage broker, Horizon Mortgages. The County Registrar turned and asked the bank, "Could they not get a meeting? I think the bank should meet with them if they have proposals." The barrister was exasperated by the direction this was taking and sarcastically asked if he was being given directions, "Sorry, that there *has* to be a meeting to come to an agreement?" This was not something he could really put to his client, because it was not something that could actually be ordered. The Country Registrar rephrased the first clause in the popular vernacular of the Irish conditional, "Well, that there *would be* a meeting." The ambiguous Irish "*would be*", untethered from any set-in-stone obligations, assured against any possible material repercussions for its utterance. The Barrister insisted, "But we can't come to an arrangement without a Standard Financial Statement," referring to the documentation that sets out and avers the financial standing of the borrower in order to come to a remodified loan. Many borrower-defendants and distressed mortgagors are reluctant to sign, even with the help of the credit counseling independent state agency that provided help for free, because making a

Standard Financial Statement (SFS) gave the creditor a firm reason to deny extending any renegotiated terms to the borrower. They could not only point to the sums on the sheet as unsustainable for any mortgage arrangement they would offer, but could now claim that they had observed all the formal procedures they had to in order to get to the point of having a repossession granted. The County Registrar asked David if he and his "friend" could do that. They agreed that they would within 30 days, and David, quickly slipped in, again, in a mumble, that he was not his McKenzie friend.

The American jurist Oliver Wendell Holmes once encouraged jurists to think of law from the point of view from the perspective an unscrupulous, calculating "bad man" would have on the law. That, he suggested in *The Path of Law* (1897) was a better way to think about the distinction between what courts ought to do than first principles. But what if the "bad man" is not out there in the world anticipating legal loopholes? What if he is, instead, found his way into the courthouse, and actively testing them out in your court? If David was the bad man of law, he didn't want to evade the law so much as beat it with his tactics in its own element.

David had explained to me that he and his acolytes' new strategy would earn them legitimacy, making them something more than just advisory figures lurking in the shadows. The homeowner would sign a document stating they had transferred the legal right to David, who would then operate in court as the legal titleholder. He almost certainly would not, in fact, be the legal titleholder by any standard measure in Ireland, since the homeowner would have to register the transfer of legal title in the Land Registry, which could only be effected with permission from the owner of the mortgage charge—Mercury Capital, in this case. The homeowner would remain the equitable owner of the home but the legal owner would now be David, who could therefore legally speak in court as an interested party and defend the home from repossession in as public and grandstanding a way as he liked.

I call this a brokerage model for the trust. The goal is to activate the trustee as a surrogate owner for the distressed mortgagor. In other forms, the trustee is not expected or obligated to take as active a role in fulfilling the duties of legal ownership, as we shall see in other cases. Here, the whole point of settling, or making the trust, is to have a trustee *act as* the borrower-defendant. By making the trustee the *pro forma* legal owner, the advertised premise of the trust was to confer legal standing for the trustee in a courtroom so that they could speak for the borrower-defendant with a significant degree of discretionary license.

Why not just hire a solicitor if you had the money to pay the trustee? Why, in addition to those payments, also risk entrusting the legal title to your home to a total stranger or rental property? If it turned out to be an actual, efficacious transfer of legal title, did you just give someone the right to sell the home on your behalf? Consider the rents from it. Even if the trust never was proved legally efficacious in a court of law, trustees in these scenarios did often take the rents from properties, meaning that if it was a buy-to-let property, they demanded profits from the property as part of their legal entitlements, and could point to language in the trust settlement document to do so (again, it probably would not hold up in a court). So, why?

One important factor was that David's trust emerged out of a lay litigant movement that was inherently distrustful of the legal profession, and so being charged by this brokerage model usually already presumed confidence in local self-styled experts of "freeman on the land" interpretations of law. That confidence was fed by the publicity David had worked hard to achieve, associating himself with ongoing, high-profile anti-eviction campaigns that bolstered his credentials as someone who kept people in their homes. The first rateable valuations case, the one that successfully argued there was a legal loophole based on anachronistic language on the establishment of jurisdiction, was claimed by dozens of lay litigant experts, if not more, as their handiwork.

Distrust in the legal profession could often just be based on familiar tropes about lawyers waiting to make money off of the misfortune of others, but it could be more pointed than that: solicitors had advised people on the mortgages they signed up for, solicitors had on their client lists many of the litigant borrower-defendants facing orders for possession and eviction from their home. This is not to say those solicitors were morally responsible for the unsustainable mortgages that borrower defendants signed onto. For many of those rural solicitors, their bread-and-butter had been conveyancing work, which was decimated after the crash. They now had to hustle and take on the undesirable dirty work of seeking possessions as local agents for financial institutions against the very same people they might have represented and advised in the past. One County Registrar in a rural jurisdiction would make this point when borrower defendants would not appear in court, by asking if anyone new of the whereabouts or current status of a borrower-defendant. When no one answered, he would look at the copies of the original mortgage document in the book of pleadings given by the agent for the bank, and see the attorney named there, and note out loud that it was curious no one was familiar with this person "some of you" might have represented them on this very matter in the past.

The other selling point for having David advise you instead of a legal practitioner or the independent state agency that provided free credit counseling, and had expanded its role in court proceedings related to mortgages, was that David would not be contrite on your behalf. He would not demand moral performances of penance effected through Standard Financial Statements. He might ask for sympathy on your behalf—tell the court that you had contemplated suicide, were ill, and so on—but he would not suggest you had erred morally when it was banks who had acted so egregiously and gotten off so easily. This point was evident in David's own position post-crash: you could accuse him of opportunistically, even cynically, profiting off of the misfortune of others, but unlike the big developers, high-profile bankers, and the political class that included well-known judges and barristers, he had gotten no help from the state when his ill-timed attempts to get in on a big development left him holding huge debts, while his wealthier and politically influential co-investors had made it so they were not as exposed on those deals that were, to them, small plays. David had suffered just like the borrower-defendants, which was a basis for confidence. His rejection of contrition and long and arduous path of moral redemption through the "equity of redemption" suited an aggrieved people, who were certain their possession of real property had greater moral priority than the bank's claim to a legal right to seek relief for unpaid mortgage payments.

The language that he used to describe to advisee lay litigants was nationalist, not only in its continuous reference to the 19th century anti-eviction Land League movement, but also its valorization of real property rights as inviolable and autonomously sovereign. Even more remarkably, he would often echo the strategic language of the Republican movement in Ireland, familiar to many through Sinn Fein and the Irish Republican Army, by insisting that all of his tactics, no matter how ridiculous or inconsistent, were ultimately about frustrating the market-oriented impetuses of the lenders and creditors and "forcing them to the table to negotiate."

When I spoke with an MCAA credit counselor about their frustration with the obstructionist, hyperlegalist tactics of people like David, she said, "Well if it worked, that would be one thing, but where are their [lay litigant advocates] results? I haven't seen them." But David's rhetorical strategy was to suggest that these seemingly obstructionist tactics were part of a long game of bringing “them” to their knees. The “them” in that phrase used to refer to those who administered British rule in Northern Ireland. Here David could still rhetorically refer to a coherent body of financial interests that could be called “them” who would agree to collectively negotiate. In the background, the phrase suggested, there was an underlying order behind these financial institutions. If called out and frustrated enough, they could be made to reveal themselves. As I learned when chatting at bars with people who were not even particularly involved with people like David, the presumption of a “them” behind their financial institution was common and often assigned to a group of Jewish figures. Even though the Irish state was the body that had implicated itself so heavily in most homeowners’ financial affairs, the Troika, who the state owed money to, lay behind them. And behind them? Jews did prove (but weren’t always) a popular figure of choice. A rhetorical strategy of justifying military action, questionable to some, as part of a long-term negotiation technique to win anti-colonial liberation for a united Irish republic was justifying the little tactics of delay and obstruction that, David boasted, would give them the upper-hand when negotiations took place. If you were someone who bought into a conspiratorial ideology, it wasn’t unreasonable to see even symbolic victories as results because eventually they would matter in the long-term negotiations.

Friends in high places

The trust entails a social imaginary, as we will see in every case, that by virtue of its tenuous half-inside, half-outside, disjointed relationship to law and other legal devices and logics, encourages non-professionals to think of it as something that can do incredible things. Because social relations and activity define the trust, it does not seem so improbable that it could help hide a mortgage from a bank. After all, every Irish newsreader would know that it is through trusts and other similar instruments that private equity firms like the North American-based Mercury Capital, a so-called "vulture fund", are able to repatriate the profits it makes from buying and pursuing repossessions on large portfolios of "non-performing assets", or, distressed mortgages of Irish homeowners, all virtually tax-free. The point here is in the moral symmetry that would have distressed mortgagors asking, "If *they* can use trusts to not pay revenue to the state, why can't we use trusts to not make payments to someone who paid a fraction of the value of pittance for our mortgages?"

The defining feature of the brokerage model is that in placing a trustor places confidence in the trustee to act on behalf of the freeholder in an unfamiliar situation to the homeowner (that is, the courtroom). The role is more circumscribed than the trustee in the sovereign model, that is, empowered to do less. It is less protective and more substititutive than the sovereign model I have described in Chapter 3. The client empowers a broker to act *as them*, in their interests, and to take on their personhood. While the sovereign model was intensely private in such a way that the agreements themselves were opaque and receded out of view from the courts, in the brokerage model they had one foot in that intensely private world and one foot in the world of court appearances. They were cognizant of law, and spoke to it, although rarely with all their cards laid out on the table (but what good lawyer would?) and sometimes out of the side of one mouth.

In this regard the relationship closely resembles a patron-client relationship between the advocate, David, and the client. This is not quite the same as a feudal vassalage, although the similarities will prove instructive. Ernest Gellner defined the patronage of patron-client relations against feudal relations by saying that while the bonds of feudalism were open and avowed, codified, unique and unambiguous, patronage offered itself as *pays réel* with cognizance of, and mocking regard for, a *pays légal.* "Though [patronage] may despise the official morality as hypocritical, fraudulent, or effeminate, it nevertheless knows that it is not itself *the* official morality" (1977:3). I think there is hardly a better description of the abundance of "natural law" theories and the trust-like associations that continued to attract followers in post-crash in Ireland after the first trust floundered. David's snickering at Michael D. Higgins' atheism is illustrative. Aside from his reputation for left politics and imputed atheism, Michael D. Higgins' masculinity is easy fodder for sneering jokes for men like David: Higgins is a very short man, a bespectacled professor of sociology, who has long been the subject of rumors about his sexuality. And as President, which is a figurehead position, the formerly vocal politician Higgins cannot offer his own political positions but rather must give nice, non-partisan speeches and present a friendly face to the world. As a face to present Ireland to the world, Michael D. Higgins is a dignified, intelligent, and well-spoken individual, but here, David is using him as the talisman for the state's hypocrisy and the apostasy of the state.

Whereas in North America the natural law theories of Sovereign Citizens tends to overstate their abilities to re-unite the *pays réel* with the *pays légal*, in Ireland, the folks like David worked with regards to official morality, characterized by the purgatory I describe Chapter 2. By having bureaucracy to laugh at and critique, these trustees could profitably position long-term asymmetrical relationships engendered by trust, by winks, as a "style [and] moral climate" (Gellner 1977:3). Recall Coke's definition of the trust as an agreement that was inherently "co-lateral" to the land: that is here perfectly in tune with that moral climate, with asymmetrical reciprocity: claims of "natural law" and an economy arising out of patron-client relations need law to exist to offer a different climate than the official one.

If there is a line to draw from feudalism to this neo-feudal patronage, it runs through imaginary of friendship and the legal forms, like the trust, that attempted to give form and endurance to the fidelity avowed in these rituals. Friendship is what Marc Bloch (1961[1939]) identified as a central paradox of the ties of dependence that organized feudal society (as much as there could be said to be an organization of feudal society). "Friend" was a common synonym for the vassal, the subordinate in a voluntary relationship in a economic-political land tenure-based association of reciprocity The bond of friendship implied fidelity between two men, that was formalized through "commendation", usually sealed with the ceremony of "homage," the receiving of the vassals hands by the lord and, in cases of a strong bond of mutuality, a shared kiss on the lips. "This bond was felt to be so strong that the idea of it dominated all other human ties—even those which were older and which might have appeared more worthy of respect," Bloch writes (232). Thus family kinship, romantic relationships, and even the relationship between humans and God were metaphorized to the "friendship" of vassalage.[79] The brilliance of feudal imagination was to create new forms of solidarity, borrowing liberally from religious orders and Islamic thought, that engineered these quasi-voluntary ties of personal dependence as "a sort of substitute for, or complement to, the solidarity of the family, which had ceased to be fully effective" (224). The paradox of this friendship, as far as I understand from Bloch, was that it had to be voluntary for the fidelity to be meaningful, but it also had to be so unbreakable and of such solidarity that it exceeded kinship, to the point that it ceased to be voluntary only in ceremony.

[79] For example, Bloch describes court romances in which the avowals of fidelity are based off of lord/vassal relations. The very act of praying with two palms touching each other, pointed skyward was copied from the gesture made by the vassal to offer his homage to the lord who placed his hands over the vassals (233).

"Friendship" was a key part of the patron-client relations that became associated with mid-century European, particularly Mediterranean, anthropology. In the pioneering (for Anglophonic anthropology) ethnography of an Andalusian town, *People of the Sierra*, Pitt-Rivers (1961) noted almost precisely the same paradox of friendship as Bloch. Pitt-Rivers defined friendship as a, "free association with a person…whom one likes and admires and wishes to be associated with for that reason" that necessitates a "mutual confidence" that binds the two together in reciprocal services and obligation (138-9). To his credit, while Pitt-Rivers does suggest that friendship is the building block of a system of patronage, he notes that relational form has an inherent instability. Pitt-Rivers identified the unstable paradox at the heart of friendship and a political economy of patronage thusly: "while a friend is entitled to expect a return of his feelings and favour he is not entitled to bestow them in that expectation," otherwise the bond of *simpatía* (sympathy) and *confianza* (confidence) is broken and distorted into mere "vile calculation" (139). So patrons, *padrinos*, are made by their ability to forge "lopsided friendships", as Pitt-Rivers defines patron relations, with clients, *hombres de confianza* (literally, "confidence men"). The *padrino*, even while profiting off of his position of structural economic inequality, must keep and maintain those relationships through the register of confidence, protection and a mutuality with uneven proceeds.

Meanwhile classic Irish ethnography, and contemporary political vernacular, provides a distinction between the good (social solidarity) and bad (anti-social) "friends". In *Family and Community Life in Ireland* (1968[1940]) Arensberg and Kimball identify the importance of relations of "friends" in the cooperative farming technique of *cooring*. "Friendship" in Ireland is, as in the feudal and Mediterranean cases, a relation that is simultaneously and tenuously "obligatory and pleasurable". As in the Andalusian example, any hint of monetary calculation is an affront to mutuality of the relation: as an “alliance in a familistic setting no formal remuneration of monetary payment is ever present…Money payment is the mark of the outsider; gift and barter that of the fellow in the local community” (252).[80] Unlike the examples from the continent, however, Irish “friends” are not necessarily homosocial, but are often between boys and girls, or at least through their families which grow up alongside each other (neighbors, however are not necessarily friends). Arensberg and Kimball point to the limitation of agnatic patriliny as the end-all and be-all of how people reckon up kinship in practice: “Patriliny is merely one device, an extension of the father-son relationship, by which individuals are included in one’s group of ‘friends’” (77). The cooperation entailed by friendship in rural Ireland involves the lending children, proving oneself to be “handy”, and a mutual sense that one “has right to help friends,” which is a Hiberno-English expression that connotes that they are obliged to help. Because of land tenure in Ireland was between lords who acted and were seen as foreign to friendship, much more so than in the Mediterranean, the unevenness in friendship in rural Ireland was much less pronounced and demanded even more commitments to flat mutuality. In its anti-economizing demands, friendship could also become agonistic and counterproductive for those who went to the fair to sell livestock or goods: to take home the profits without using them to celebrate with your “friends” was an affront to that friendship (75).[81]

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[80] The importance in donations in the early part of these trusts fits with this sensibility. The later boast of, “We’re commercial now!” speaks more to that half-in/half-out cognizance of the brokerage model.

[81] Irish author and border-county son (born in Brooklyn) John Montague’s short story “The New Enamel Bucket” (1978[1964]) perfectly captures the problem of going to market with friends. Rural people in Ireland balk comparisons to peasants because, strictly speaking, there was hardly ever a formal peasantry in the country (in fact, peasants in other settings were likely afforded better tenurial status than the Irish tenant farmer was by the absentee landlord). Nonetheless, one can detect a resonance to Foster’s analysis of the “image of limited good” in Mexican “peasant society” in the anti-economizing reciprocity of rural Ireland (1965).

The false friend that overextended dominance through money was known as a *gombeenman*. *Gombeen* is a corruption of the Irish word *gaimbín* for "interest". The suffix -*een* or -*ín* is a diminutive in Irish and Hiberno-English and the term likely connotes a margin of a coin, like a miserly shaving of the metal. It is always used in a pejorative way. Because of the influential literature on patron-client relations in Anglophone anthropology of the Mediterranean in the early 1960s, especially, Irish sociology and anthropology asked whether the brokerage activities of the rural Irish *gombeenman* was analogous to the *padrino* of the Mediterranean, and whether they were on the wane or the rise with the "penetration of petty capitalism" into rural Ireland (Gibbon and Higgins 1974). Michael D. Higgins, the same man that David snickered about in the back of the courtroom, was a central figure in these debates along with Peter Gibbon, influenced by his time situated in the Manchester school of anthropology. Criticized for Marxist "demonology" (Kennedy 1974) in trying to dig up new *gombeenmen* in the form of petty bourgeois Irish people who had access to credit, they loosely defined the term as a person who brokers credit with an expectation of "exorbitant" and usurious expectations of return payments. As is the case with patron-client relations on the continent (see Wolf 1966: 17), Gibbon and Higgins suggested that while this patronage of the *gombeenman* was becoming more horizontally instituted via brokerage, it was the basis of the political machinery in electoral politics.

In chapters they added to the second edition of their seminal ethnography of rural Ireland, Arensberg and Kimball (1968) analyze credit/debt relations between shopkeepers and farmers in 1930s County Clare. Farmers, even "middle-class" farmers, were almost always money-poor and had to buy goods on credit from shopkeepers. Shopkeepers had in interest in extending them credit to buy their goods, especially when there was the outside chance that, if they denied credit to the farmer, that farmer could go elsewhere to purchase their goods. Besides having to buy goods on credit, farmers also got added benefits from their debt to shopkeepers: shopkeepers would acts as brokers to the farmer for resources they otherwise had no access for. The shopkeeper had an interest in acting as a broker for the farmer because what they were often brokering would result in more liquidity: for example, the shopkeeper would loan the farmer money to help his daughter emigrate to America, work and send back money, with which he could reduce his debt to the shopkeeper. Likewise, the shopkeeper would go so far as to co-sign on a personal loan from the nearest branch of a retail bank to the farmer. With the bank's money, which the farmer could never have access to without the co-signing of the shopkeeper, the farmer could repay a portion of the debt to the shopkeeper. Neither had much expectation the bank's debt would ever be repaid.

Even when that brokerage resulted in new liquidity, however, the farmer would be extremely reticent about repaying the outstanding debt. The farmer might go into the shop, pay down the outstanding debt, and then immediately purchase soap on credit. Why? If the debt is cancelled, the shopkeeper would fear he has lost any leverage over the farmer and all the farmer's family, who can now patronize the shopkeeper that is at the crossroads on the other side of their farm. For the farmer, a cancellation of the debt means the shopkeeper is not motivated to broker anything for them if they need it. Suppose they want to send the oldest son to school to become a priest or doctor but they family has no uncle priest in the country? Having a debt with a shopkeeper paradoxically gives them a little bit of leverage to ask for favors. Ultimately, each party is extremely anxious about the cancellation of a debt, and would rather generate new debts, and seek out new creditors to extend and expand the lives of the debt.

Arensberg and Kimball are hesitant to call the shopkeeper a *gombeenman*. the shopkeeper who "puts the screw" to the farmer is one, but that is just as much of an intuititve measure as Gibbon and Higgins's (1974) standard of "exorbitant interest" as the marker of the *gombeenman*. They see the term as a "bogeyman" which forecloses more questions than it opens. The brokerage engendered in the relationship is key to their argument of how rural Irish people "Gaelicize" modern institutions, making retail banks, post offices, and so on "more Irish than the Irish themselves."

Conclusion

I said before that the *gombeenman* was a kind of "false friend" in rural and contemporary Ireland, and while that is not wrong. Arensberg and Kimball, however were, I think, quite right in hesitating to classify rural credit/debt relations between shopkeepers and farmers in those terms, afraid of substituting a *gombeen* "bogeyman" in place of a credit/debt relation whose mutual agonism was characterized as much by mutual confidence in a shared, if uneven future, as it was monopolistic domination and "putting the screw" to the debtor (1968). Kennedy (1974) might be right that Higgins and Gibbon (1974) are shaping their definition of the term in such a way to advance a theory of an indigenous form of the petty bourgeoisie. This was doubtlessly a worthwhile project to pursue, but the post-crash social environment emphasizes the shortcomings of thinking through the material with regards to a class.

Whatever class pretensions small operators like David had in 2008, they were now positioning themselves atavistically in the new self-conscious image of a "common man" with slightly more access and experience to offer as a broker. His relatively more dressed courtroom appearance and his charged fees made instilled faith: fro those who were on the verge of losing everything, he seemed to succeed in a world of the lawyers and judges without being one of them. But through jokes, winks, and sneering disregard for the professional of lawyers, David could also inspire confidence in his client that he was on their side, and he was a perfect candidate to act as them in the strange and unfamiliar world of the courtroom.

When people like David make the news, people regularly call him a *gombeenman*. The term is also used for corrupt politicians, but usually someone else's. Hugh McElvaney was reelected, so was Joe Queenan, so was John O'Donnell. They may all be *gombeenmen*, but I think it matters that people do not want to cancel the debt with these men. Those might be parochial politics, but that makes them no less powerful. David's wending of "natural law" and "sovereign citizen" ideology with brokerage also opens another possibility—one that was fomenting by the notable absence of the state as a patron figure to people in critical danger of losing their homes. That parochialism, which many in the capital like to think is a backwards and small society lagging behind, might have the germ in it of a very real populist ideology that aspires to something that renders the state a tool in achieving something that could very conceivably look like charismatic right-wing populism. In that regard, I think it is a step ahead (not in terms of progressive ideals, to be clear) of current and recent Irish governments, which I am not sure takes a position on the role of the state in the future of the republic.

To clarify, I am not identifying David as a *gombeenman*, but I think it is important to separate the modality with which he engenders and distributes confidence—the friendship brought together through trust—with the end result. Just as "vultures" descended upon the wreckage of the Irish economy after 2008, making profits out of the misfortunes of others, so too did *gombeenmen*, so too did friends, so too did patrons, so too did associations of mutual reciprocity and confidence. (So too did anthropologists). The point in an unstable and uneven relationship is its indeterminacy. The good "friend" and the *gombeenman* are two sides of the same coin. They are a Janus-faced modality of tenuous brokerage that can as easily be put into motion to achieve political goals of protection the state has shifted from, an exercise in petty con-artistry, or an opportunistic tool for local political patronage that careers are built on.

CHAPTER 5

Trust

This chapter presents the "mere custodial model" of social action, and is the final and concluding chapter to this dissertation. In it, I introduce a model in which trust and confidence is engineered to produce a placeholder position of authority outside of exchange where the asset, once again a home, can temporarily sit undisturbed. The position of authority is opened with the intention of being closed as soon as possible. The trustee is configured as a purposefully inactive role—their personhood is necessary to reliably open the space and promptly close it, but that is all.

Recall that in Chapter 3, the "sovereign model" of the action figured the role of the trustee as a protector figure who was empowered to act as a kind of arch-feudal lord in order to fulfill a duty to shield the beneficiary of the trust from the outside. In the case that I presented there, the trustee, "the man in black," took a view on the trust as a development out of the Crusades and was working off a previously extant trust in which distressed homeowners volunteered legal ownership over homes into a trust, and promises of paying annual ground rents to continue to enjoy the property in the trust, in exchange for being (rather unbelievably) shielded from their creditors. I also introduced the "orphaning model" of action, in which the role of authority was deferred. In Chapter 4, the "brokerage model" made that position of trustee one which extended the personhood of the client through the trustee/broker.

The case that I present here elucidates the moral order of the home in rural Ireland. In Ireland, as in America, diagnoses of the financial crisis tended to vacillate between accounts of either (a) rapacious capitalism that crushed debtors, who were helpless innocents who could not understand the financial precarity of those unsustainable loans, or (b) "strategic defaulters" who greedily took on too much debt when they could, with little intention of paying it back. I do not want to suggest an equivalent wrongheadedness between the two narratives: the first storyline is closer to the mark of what actually happened, but leaves a critical analysis wanting. My point is that the construction of the debtor as a moral innocent totally misunderstands morality in the context of homeownership, market economy, and republicanism in rural Ireland (especially in the border region where most of my data comes from), which this chapter unpacks.

By departing from the innocence narrative of the homeowner, I do not want to suggest that playing field between borrower and creditor is anything but an imbalance that must be redressed (see FLAC 2014). The strategic defaulter is largely bogeyman against which the morality of commerce is counterweighed—but does he or she exist? Plainly, yes. There are occasionally people who have no intention of paying their debts: but they are no more absolute moral reprobates than the homeowner scratching together whatever they can to make partial monthly payments but still facing repossession every three months is a moral innocent who will, in the end, be rewarded. Rather, in building a picture of someone who is trying as hard as possible to provide a sustainable solution for his family's debt (in fact, it is an amazingly fair proposal that is, technically speaking, fraud), I hope to call into question the morality of leaving small-fries borrowers to either perishment or purgatory. In this chapter I describe and analyze the passionate creative energies of extremely distressed debtors like the Yankee, who I introduce as the subject of this chapter. I suggest that what his creativity, which envisioned as a sacrifice to protect his family's stability, exposes how imaginative successive Irish governments of both major parties were in imagining futures for rural Ireland.

A bigger picture

The Yankee's[82] repetition is moral. He did not grow up poor in his rural Irish border county, he grew up "very, very, very poor". He did not work hard for his home and his family, he worked "very, very, very hard". In conversation he concerns himself less with the fineness of description as much as landing heavy moral rebukes. Because of debts he accrued before losing his job at the point of Ireland's real estate and financial crash of 2009, he has worked to stave off the repossession of his home and his brother's business. He is ill and his repetition carries with it urgency as he confronts his own mortality and the inability to control the tone and circulation of his stories. At the heart of his play to keep the home is a gambit with a moral arc that focuses around the family home. When he tells you the story about his gambit that carries danger and sacrifice in its attempt to prise loose legal possession of his home from his creditors, he wants his generosity and bravery to outlast him like a patrimony.

The gambit is this in simplest terms: the Yankee has sold himself his own family home. He has done so through a third party who appears on paper as a good faith purchaser in compliance with the law of "arms length" transactions, but he is not what he claims. The Yankee is by no means alienating his family's home, but enlisting family (whose home he has already helped them to keep, in his terms) to help him give the impression he has sold it, so that he no longer owns the home on paper. Belgique Bank, his lender, agreed to the sale with the stipulation that he will still make monthly payments to "the shortfall" between the sale price of the home and the remaining unpaid amount on the original loan. His plan is to declare bankruptcy when the house is technically in that third party's name and no longer an asset that he would have to

[82]"The Yankee" is a pseudonym for a frequent interlocutor. The pseudonym was chosen collaboratively. I have represented in a composite way in order to depersonalize information about his story.

sell to pay off Belgique. He has no plans to pay Belgique and, knowing he will declare bankruptcy within the year, has applied for a credit card:

> I intend to go bankrupt in July or August. I didn't want to go bankrupt straight after I got the deal done. I wanted to let things sit for eight or nine months. In the meantime I was talking to people and I said, jeez [Eire Bank] now is loanin' out wee small amounts of money, so I knew I needed a sewer system, so I phoned up one day and I look for a credit card, and me credit rating's very bad, so I got a facility of 4,200 with a credit card, so I used it, put a brand new system in, took three days to put in the whole new system…So, I didn't pay the credit card, so it's gonna go into the bankruptcy pile, pot, as well.

He used the whole of that money on the very same house he told his bank that he was selling to help pay off his debt to Belgique—"And the reason I done that was because they fucked my head around so much, I said, 'I'm gonna *fuck* youse over.'"

The credit card is a superfluous exclamation point to the gambit. At the core is the "double act" that involves the "sacrifice" of selling of his wife Nuala's (rented out) home to buy the other one (their family home) again. In order to complete this deal he needs to know people who will value property under its current market value and look the other way when they need to. As I will outline below, he needs to know the finer points of the distinction between discretion and disclosure as law and a broader social trust are concerned, and needs to find co-conspirators who understand those finer points as well. The final turn, when the family home will be reconveyed to him by the dummy "arms length" buyer, in fact his Scottish cousin, relies upon a document called a "Declaration of Trust" that he and a willing solicitor drew up that establishes that a Scottish cousin only holds a formal legal interest in the family home "in trust" for the Yankee, and has no beneficial or equitable interest in the home himself. That is, at the last leg of this gambit to "work outside of the courts" to keep his home and flout conveyancing law is a document that purports to be legal, which outlines the difference between equitable and legal ownership.

This trust is just one of the many that I have seen in Irish property after the crash. Some are Real Estate Investment Trusts (REITs) that have moved to buy post-crash Irish real property in bulk as long-term investments. Some are special purpose vehicles (SPVs) listed as charitable trusts that repatriate money out of the country that was made by foreign equity funds ("vulture funds") who buy Irish mortgages (as opposed to property itself as REITs do) at a discounted bulk rate and either repossess or renegotiate and re-sell those mortgages. Each of these are technically legal trusts that, although the loophole that enables the SPV use of charitable trusts came under scrutiny and was partly curtailed. Then there were the scams advertised as trusts to distressed mortgagors, offering them the opportunity to transfer the legal title of their property the trust in a paperwork ceremony that would transfer the mortgage to a mysterious trustee. In these cases, the logic of the trust hinged as much on a belief that concentrating debts together would give bargaining power to trustees as it did on desperate magical thinking.

When the Yankee relays his thoughts on the man in black I introduced in Chapter 3,who operates an apparent "sham" trust that convinces distressed mortgagors that they can escape repossession by giving their property over to him and his trust, he is not conveying a story as much as theodicy. "That's a scam what [the man in black] is doing now. He's raping people, takin' money off of them, and leaving them high and dry. That man should be jailed," he condemns, "That's sad, that's very, very, very, very, very, very, very sad." The Yankee wants you to know he is not the man in black, who does "nothing for people, only takin' twelve hundred, fifteen hundred, liftin' rents" meanwhile taking his ill-gotten gains out of the local economy and the country altogether, "launderin' money out, he'll leave the country that man. He's a disgrace that man." Greed, he will tell you, pure greed, has led to the disintegration of local community, whether he is referring to the man in black, banks, or participation in the Gaelic Athletic Association (GAA) youth teams.

But how do you know the Yankee is not the man in black? Although the sometimes conspiratorial and tenuously held together screeds of conspiracy-minded lay litigant advocates (lay litigants being homeowners representing themselves in courts where lenders pursue repossessions) swayed him in the past, the Yankee is a pragmatist who knows what and when to sacrifice in order to win. His redemption is one achieved by a gambit of sacrifice and cunning rooted in family as a moral and pragmatic end. The family home is totemic of that moral primacy of family, and the scheme, which hinges on the mutual confidence and reciprocal help among "friends" and kin, is justified in its unethical missteps by its preservation of the normative locus of rural Irish family morality (see Arensberg and Kimball 1968), the family home:

> I had a bigger picture. I had a bigger picture. And the bigger picture was my set of goals. The bigger picture was my set of goals. *My* family, *my* kids, *my* family home. That was my goals. So what's wrong with a lot of people out in Ireland is that they want to hold on to everything. They don't want to give up anything. You have to sacrifice certain things, you have to, you have to sacrifice other things to gain. That's my belief, and that's our family belief.

From afar, the Yankee's gambit might look like a small bit of chicanery, or just plain fraud, but for him it took on a life of its own, and resembled the kind of heroic acts which, Annette Weiner writes, strive against mortality "to secure permanence in a serial world that is always subject to loss and decay…[and] to foster the conditions of growth or regeneration" (7).

Those heroic acts are central to Annette Weiner's theorization of "keeping-while-giving" which is at the core of this final chapter. Weiner's body of work was essential in rethinking the masculinist anthropological assumptions about certain kinds of exchange and reciprocity as "where all the action is" in society, particularly in the canonical work of Malinowski who, she argues, missed all the daily economic reciprocity and maintenance work done by Trobriand women that laid the foundations for the grandiose acts of *kula* that he was so interested in. In taking on the "norm of reciprocity" associated with Marshall Sahlins, Weiner (1980) contended that the attention given to acts of exchange in gift economy treated reproduction, death, decay as natural givens, rather than as culturally elaborated problems against which considerable time and energy were devoted in forestalling, regenerating, and maintaining. Reciprocity was only another part in a broader landscape of Maussian gift economy, and deciding what would not be put into reciprocity, or figuring how things could return and replenish families, represented a huge unexamined portion of the concerns in gift giving.

Weiner's concept of keeping-while-giving accounts for the process by which inalienable possessions are distinguished from exchangeable gifts. By keeping possessions from exchange, not only is value produced for what *can* be exchanged, but hierarchy, division of labor, and authority are authorized by making clear who can make what inalienable (10). In Weiner's account, by determining what is inalienable and alienating, exchanging, and so on in order to affirm its inalienability, the familial, social, and political roles of the household, which Engels theorized as foundationally established through private property (2010[1884]), are continually re-established, re-affirmed, and maintained.

Weiner notes an ethnographic challenge in describing inalienability, in part because of its less punctuated temporality and the tendency to see reciprocity as "autonomous". The giving in exchange is action and lends itself to description, while keeping is action of a more indirect, longue dureé kind that is harder to appreciate in each particular transactional event. Reciprocity, even when appreciated for its substantivist social entanglement, is often taken as its own course of action, an autonomous logic of exchange that might signify deeply for those engaged in it, but which is definitively opposed to processes of stasis and inert possession. "[A]t issue is not how one gift elicits a return," Weiner writes, suggesting that the presumption of autonomous reciprocity backgrounded the anxious fretting over, "which possessions the members of a group are able to keep through generations, *even if they must loan them for a time to others*" (26; emphasis mine).

Thinking with the paradox of keeping-while-giving is *not* to imply that this larger scope of Maussian transaction is a "real economy" of householding *oikos* and panacea from the exchange-based "financial economy" that deracinates the social relations of kin, friends, and so on, that constitute the household. Rather, I want to take into account the suggestions of the "Gens Manifesto" (Bear et al. 2015), which emphasizes the interstitial points of flow, transfer, and delay that run between what gets over-determined as a separate domain of economic activity from practices and relations of kinship and householding. In reflecting on the "Gens manifesto," Maurer (2018) considers how "kinship" and "household" become something like the "real" of ethnographic inquiry, and focuses on the role of conversion they put forward: that is, for example, how can Aristotle's shoe be simultaneously an object of productive value that supports the *oikos*, on the one hand, and alternately, elsewhere and in another moment in time, be an object of pernicious exchange. In other words, I am not intending to have found the "household" within a "realer" moral economy that tells us something about the financial capitalism. Rather, the "friends", kin relations, professional practices of valuing homes for the market, cash, lay litigant advocacy groups, all help put the Yankee's gambit into motion, and are the locus of tenuous conversion, waiting, delay, and continuity in a process of mutually (re)constituting family and finance (see also Yanagisako 2002).

For the Yankee, in order to successfully keep what became clear was the most moral possession, the home, he had to give away other possessions, and give up the position of winning. He had earlier worked with David, who I introduced in Chapter 4, and thought he would go against his bank directly in court with an argument that followed the securitization one:

> I was gonna bring a case against [Belgique]. I had two and a half years work done on it, I was gonna bring them in on me case off securitization I was gonna folly [follow] them on securitization and I had a lot of information got on them and a lot of stuff got on them and everything, but I just realized there's no winning in the courts. There has to be another way.

In comparison with David's methods or even the man in black's methods of developing a trust to help get rid of one's debt, this one was least likely to involve going to court. But oddly, it was also not resolutely private in nature: it relied upon something that looked very much like legal documentation to effect a trust, and also relied upon public, perfectly institutional avenues of insolvency.

At the heart of the matter is a paradox, a kind of form that gets most clearly articulated in the form of the declaration of trust. But how that paradox unfolds, how it becomes heroic, how it entails the trust of all those who it comes into contact, depends upon the competent and serious play in the gaps between local knowledge and institutional knowledge, between discretion and boastful agonistic competition.

Self-serving and petty as some of his plays, like signing up for a credit without the least intention of repaying it, might seem to outsiders, the Yankee's mode of operating vis-à-vis national and international institutions demonstrates the same toolset and morality of the rural Irish *cute hoor*. In particular, his fusion of gambit and rebuke resembles the sensibility of the *cute hoor* in rural Ireland, but one significantly rearticulated for a post-crash rural political economy and inflected by the economic practices and political ideologies particular to Irish economic and political history in the border counties. According to sociologist J.P. O'Carroll, who provided a lasting and influential interpretive sociological theorization of the ideal-typical figure, the *cute hoor* is a sort of maximizing but moral trickster figure in Irish political and community life. The *stroke* is the *cute hoor's* shrewd doing, the play being made that typically wins some local fame or recognition. *Sharp practice*, on the other hand, is the category that *cute hoorism* falls into when done by someone outside of the framed political community. One earns and maintains the loyalty of those who are local to the political community by outmaneuvering people, and particularly institutions, outside of the community (1987). O'Carroll suggests that the admiration of their *strokes* stems from a notion of local natural law dominion in which those plays serve a redistributive benefit for a more "moral community".

In O'Carroll's formulation, possession is the fundamental discursive and material basis of an Irish community-based political imaginary: "unique sovereign possession…forms the basis of [communal] identity" (1987:78). Possession of real property is therefore the key coordinate of personal and communal belonging in a localized political community, the key sociolegal practice in particularizing and historicizing abstract moral notions of natural law. It would be difficult to reduce the Yankee's sense of sacrifice only to the sale of his wife's property because keeping possession throughout the long, ongoing purgatorial aftermath of the Irish crash for rural mortgagors, especially, is itself felt and expressed as a sacrificial trial. To come out of the years of confusion, stress and fear about repossession, having maintained possession of the family home is rarely framed outside of the terms of sacrifice.

The Yankee's gambit manages to be at once ideal-typically characteristic and historically particular to the post-crash moment in Ireland, because *strokes* are always such dense composites of intuited and situated local knowledge that they resist the legalistic and anthropological impulse to clarify norms from instances. The Yankee's mode of picking up pieces of the world—personal favors owed him, mimeses of legal paperwork, decisively partial facts, familiar moral claims, and whatever gossip and anecdote he has at hand—and recombining them in another, recalls a sort of "legal bricolage" (Goldstein 2012). Like much of the lay litigant sensibilities that emerged in the mortgage arrears crisis, which served as a sort of legal training grounds for the Yankee, The Yankee's legal sensibility pieces together and overlays the moral and factitious detritus of post-crash rural Ireland. Facts are already moral rebukes, not instruments on the way to crafting or supporting a normative argument.

At first glance The Yankee bears a resemblance to "our friend, the bad man," as the American jurist Oliver Wendell Holmes phrased the walking trouble case. The "bad man" of law was the hypothetical figure who understands law as a machine of social facts. The "bad man" sees law as no higher calling other than an institution that produces patterned and predictable social doings. The bad man shrewdly studies legal practices to infer how he can elide the post hoc consequences of his plays. Holmes intended to suggest that viewing law for its principles occluded a reckoning with its actual practice and its (worryingly economistic) transformative potential. But that "bad man" is a proto-Law and Economics pragmatist with an almost sociopathic tendency to manipulate the good faith of others for his own gain, as it would be framed in the narrowest of terms. But the Yankee's agonistic drive to win against the banks does just not myopically seek through a keenly whetted rationality, nor is it antisocial to an institution framed as upholding social values. Rather, his crusade is a gambit, a "double act" in which sacrifice and ethically questionable behavior is fundamental to earning a moral redemption against the banks and for his family.

The Yankee poses the moral basis of his "double act" to keep possession of his home against the amoral commercialism in the time of rural Irish home repossessions, and the cleverness of his stroke against the unthinking rote bureaucratic knowledge of banks and the state. His enemies are large and full of resources, but they lack the local knowledge and resources he has. They want money paid back but, he suggests, they lack an appreciation for the contingencies of reciprocity:

> But the annoying part of this is, in 2013, when I was very ill with my second condition after fighting cancer, em, I offered the bank eighty thousand [euros]. Eighty thousand I offered the bank and it was only €220,000, €230,000 I owed the bank, that was owed in total. With all the backup letters from the hospital, and consultants, and they refused [my offer of] eighty [thousand euros]. But when I went the other route, I put my house up for sale for nine months, put the offer in, they fucking accepted forty thousand euros. There's no common sense being used in Ireland, Nathan. No common sense being used. They're brain dead, it's tickin' boxes. But the whole secret is, is the guy who comes out to value the house, whoever's on the board of Permanent TSB, AIB, Bank of Ireland, KBC, Permanent TSB, whatever it is, it's him that's the trump card. And you have to have the solicitors on your side, you have to have two solicitors. One to sell it, one to buy it. So it's a really double act, it's a, it's a—and I have several more of these across the line for people now.

The Yankee immediately pivots from lambasting the lending institution for being so callously rote, unimaginative, and miserly that it ended up losing money by not accepting his initial bid—to his intrepid and intimate knowledge ("the whole secret") of how to use the bits and scraps of the well-positioned social capital he has in the legal profession and his patience (the two-part act). When he tells you about his stroke, he wants you to know that he has drawn on every ounce of uniquely situated experience, sacrifice, local and kin-based networks of reciprocity, local knowledge, cunning bravery, and generous care to pull off his great "double act," to *win* (not just keep) his family home from repossession and rebuke the amoral rent-seeking commercial behavior of banks, the legal profession, and the courts.

Even as he situates himself and the "serious play" of his agonistic gambit on a path "outside the courts", all his valuable connections and knowledge relies on a view of law and finance as porous institutions that he can raid for resources. So even while he talks about the callous stupidity of courts, banks, and the state, he will nonetheless talk about individuals within those institutions who “have it right” enough to aid him. When he rattles on about the unfriendly “courts”, he is not including exceptional figures who work in the courts who have offered him their generosity in the form of forbearance, guidance, and tidbits of legal knowledge. He refers to these figures as “good men” (men almost exclusively earn the label from him). Likewise, his rebukes to “greedy banks” are not aimed at the exceptional figures at the local branch offices who know him, know his family and know not to try to handle him too aggressively because of his family’s part in local history. These are people he “knows” (as often women as men). When he targets the legal profession for invective, “solicitors and barristers”, he not including solicitors who will work with him to accomplish the goal of keeping possession (and eventually legal title) of his family home as he sees fit, no matter how unlawful his movements probably are.

It is important to the Yankee that people “work with” him, share his risks, become his co-conspirators, and trust in the moral basis of his “double act”. He wants you to feel the gravity of his rebukes and share in the agonistic pleasure of his gambit. He wants you to be complicit and companion to his trust.

The first act of the Yankee’s gambit

To banks and industry advocates who have produced and demonized the image of the “strategic defaulter” for years, the Yankee’s strident refusals to redeem his mortgage might seem like proof of the “moral hazard” of a system of repossession that does not make swift and irreversible orders for possession. The Yankee’s tone is unapologetic yet shifts the frame of what was a political and fiscal problem to economics professors, industry advocates, and newspaper columnists who primarily regard the morality of homeowner debt as situated in the commercial register of asset and collateral, the Yankee frames the second home, a converted buy-to-let (even easier to dismiss as a speculative commodity), as linchpin of householding economy and as the locus of productive labor that shapes and maintains kinship:

> Four or five years, and I paid nothin' to them, I paid nothin' to the bank. Because that money was kept, because that rent was comin' in was keeping me own house goin', because I was so sick and me wife was out of work, so we had two very small kids, we'd only one child, a baby, only born, we only had a child six months old when I got the cancer. So the rent I was getting in Cavan was keeping me family home goin'. And us goin'. And I was afraid of the banks movin' in there, so I said, "I'm gonna put this up for sale."

In order to get cash to buy your own home from yourself, you must have another property to sell. For the Yankee, that property belonged to his wife and was in the neighboring county of Cavan. She came into the marriage with the home and the mortgage on it, but they had rented out the home after marrying. She had been gainfully employed at one of the businesses of Sean Quinn, but was made redundant when the local billionaire's empire was put into receivership by state-run liquidators. This was the story with so many people in the border counties who had been employed by Quinn, whose "loyalty" was often painted as expedient. No matter how careless and risk-seeking his gambles had been, Quinn drew considerable loyal in Cavan, Monaghan, and Leitrim based on that demonstrated loyalty. When the receivers sold parts of his empire to an American multinational, hardly anyone had faith the new owners would keep the local jobs they promised to maintain in the area (they did not).

The Yankee's decision to realize the exchange value of his wife's home and initiate the first part of his "double act" due to three intermingling kinds of unpredictability. The first is the financial precarity of his and his wife's unemployment (irrespective of mortgage payments) when the nationalized creditors of border billionaire Sean Quinn put his local empire into receivership, curtailing a new paradigm of local employment founded on patronistic loyalty and local job creation. The new US and Dublin-based interests running some of his businesses promised to maintain the local offices but over the course of a few years had eliminated or relocated most if not all of those jobs. His wife's job was one of those that ebbed back to the capital when Quinn's border region empire was taken out of his hands. The Yankee will announce his loyalty to Quinn, whose supporters account for his ill-fated risk-inviting move to buy out the unstable but high-performing Anglo-Irish bank by seeing in him qualities they might see in their own indebted stories after the crash. They chalk up the fall of Quinn to too much hubris, to trusting *too much* in untrustworthy Dublin-based banks, or to conspiracy from a post-crash state eager to collect on the hard-earned incomes of rural scions like him. An affinity between the Yankee and Quinn runs deep through to their love of Gaelic football and the nationalist sporting organization the Gaelic Athletic Association, and in their fiercely passionate love of agonistic competition. Both made many of their personal connections through Gaelic football and draw on its axiomatic wisdom to make sense of successes and trials.

The second form of unpredictability motivating his sale is his health and his mortality. When the Yankee took me to his home he proudly showed me the house and outlying lands that we had often discussed like the McGuffin in a noir film that inspires a series of unraveling plotlines but is itself an interchangeable object (much like an "asset" on the balance sheet of a bank). He showed me photos of his wedding and family photos from the intervening years, in which his weight fluctuated according to the phase of his cancer and treatment. He also made sure to show me, without solicitation, his pharmaceutical prescriptions and voice messages from his doctor's office. Did people doubt his account of his medical history? It seems they might have. In any case, his medical condition and history is part of the house tour, as are the stories of older brothers who have died young and records of his considerable sporting career truncated by his illnesses.

He shows me his sons' room, where they tack ripped-out pictures of tractors to the wall and play as "strong farmers" with toy cattle, barns, feed lots, and combine harvesters and tractors complete with tarps and tires for cutting the silage. The Yankee has no farmland and his sons have little chance to ever become strong farmers without a start in family land but this sort of fantasy is common in rural Ireland even among my friends whose parents are shopkeepers. His health has insisted to him a common concern that property entails: an anxious concern over the end of freehold, of human frailty, chance contingency, and opportunities to convey himself and his work to another generation cut short. As far as he is concerned, the children have little to no idea that the home their home is in arrears let alone risk of repossession, but he anticipates that the moment of formally buying back his home from his distant cousin as the moment when he can then will the house to them as a patrimony of belonging in the same townland he was born into and without the legacy of debt.

The third unpredictability that compels him to make a choice about how and when to sell his wife's home is an uncertainty over when the bank will launch a civil bill for possession on his wife's home. By not paying their mortgage the family has fallen into arrears and has entitled the bank to launch a civil bill for possession. The vast majority of mortgages from the time of the crash in rural Ireland are "under water", meaning that more is currently owed on the mortgage than the value of the home itself. At the very least that means that property values are still a shadow of what they were at the height of the boom, and lending institutions would prefer to collect partial mortgage payments as if it was rent until the value rebounds and makes it more worthwhile. At the moment they could take a substantial loss on the asset by selling it in a large auction in Dublin if they felt they would get no future revenue from it via monthly payments. A civil bill for possession does not even signal a willingness to take over possession of the property but is an instrument through which they can remind the borrower of their obligations to pay them. As the market has steadily rebounded the Yankee has become more concerned that he has a very limited window in which to complete deals like his gambit, especially since it relies on an artificially low valuation for a cash buyer.

Despite his vitriol against banks, the Yankee sometimes demonstrates his own fealty to a market-based, financialized economy. Rather than oppose himself to financialization and logic, he is more likely to suggest that those with “common sense” and without too much formal education run financial institutions. If this betrays an anti-intellectual cynicism towards education, this seems to contradict that the first house, his wife’s was originally intended as an investment for the education of his children so that they could get “good jobs”. In finance, in particular, the Yankee thinks, in much the same hubristic way that Sean Quinn thought, that any clever Irish countryman could do one better than the Blackrock-set from Dublin. The form of finance he envisions is one where local knowledge is central, and the moral political community that the *cute hoor* upholds receives loyal redistribution.

Rural Irish economy has long fostered a co-operativist ethic to counter-balance the outright competition and jealousy between individual farms. The vocationalist leanings of the Catholic Church I described in Chapter 1, in which priests envisioned a radical social reorganization of the republic in such a way to forestall socialism but dampen profit-seeking that exceeded moral (Aristotelian) production, led to the growth of credit unions all over rural Ireland. Likewise, one of the most successful Irish industries of the 20th centuries was the Irish dairy cooperative. When you go to an American supermarket and buy Kerrygold Butter, which is from the Kerry Group, one of Ireland’s largest corporations, that is a business that is still actually a dairy co-op. It is tempting to draw a line to the success of these cooperative forms from the norm of *cooring*, mutual aid and collective pasturing practices in agrarian Ireland before heavy mechanization of industrial farming and entry into the European Community disincentivized it. That connection would be hard to establish here, but what we can say is that before the rise of dairy co-ops and credit unions is the Gaelic Athletic Association, which has a cooperative community-based structure, redistributive model of finance, and nationalist ideology that precedes the birth of independent Ireland by several decades.

Sport

Established in 1884, the GAA was not only devoted to amateur sport (all athletes are still, by rule, amateurs), but to the promotion of Irish national "culture", the Irish language, and the discouragement of English sports and military institutions. The GAA wedded the language provided by the romantic nationalism of the late 19th century Celtic revivalism and, probably more immediately, the anti-colonial nationalism catalyzed by the Land League. In doing so it developed a new and lasting mode of nationalist, "muscular Catholicism", that would be a critical force in the constructing a new normative framework for (especially) rural Irish masculinity that could be seen as appropriately indigenous and politically aligned with a future republic (see McDevitt 1997). The Catholic Church has long been a supporter of the organization, and seen it as a vehicle for family values. Indeed, it is as much a fixture on Sundays as mass: One of the watershed moments for the GAA pre-independence was in its fight for Gaelic Sunday, to not be denied their Sunday matches by a British Day of Rest bill to not have entertainment on Sundays (McGuire and Hassan 2012). It is an organization that spans the entirety of a divided Ireland and has broadcast itself so successfully throughout that its centrality in Irish live radio and television has fostered an imaginary for a united “post-partition nationalism” (Boyle 1992).

The GAA promotes several games, including handball and a version of rounders (a historical antecedent to baseball). But the two most popular are Gaelic football and hurling and ladies’ Gaelic football and camogie (a women’s game that is close to hurling). Hurling is traditionally strongest in the southeast and south of the island, while Gaelic football is stronger where hurling is not, with the exception of a few counties like Cork that compete notably in both. In the area where I conducted my fieldwork, where Sean Quinn and the Yankee are from, Gaelic football is the only significant team sport played (it is just called “football”).

When you are a successful local businessman in rural Ireland, the expectation is there to support your local club, which is usually based around a parish, and probably your county team, as well. That means funding the building and maintenance of fields, stadia, training facilities. While the GAA is redistributive, it encourages local investment—in money from those who have it, and as time commitment from those who do not. Sean Quinn is a famous patron, and former player, for his local club. His brother Peter Quinn was President of the GAA. While redistribution is key to what keeps the GAA relevant in places where it would otherwise falter, if you build facilities for your local club, that is ultimately something that gives competitive edge back to your parish that does not have to indirectly replenish competing parishes (because real property is not, ultimately, fungible in the same way as money).

Although there are often rumors and jokes about the actual workings of the GAA’s finances, especially when high-profile inter-county matches end in ties and have to be replayed two weeks later (feeding suspicions the GAA has fixed a draw to earn more revenue), it is generally viewed as a more reliable, less corrupt, and more assuredly nationalist institution than the state. The Yankee says that, “It’s public knowledge all our incomings and outcomings. Everything’s accounted for. So our club would just be head over water, our club, [at the AGM] our club will be 5,6 thousand in profit. That gets rotated, rotated, rotated…There was guys with no money, we bought boots for different kids.” What also gets rotated is labor: once your playing days are over the GAA never has a shortage of avenues for finding ways for people to contribute to their local community, including re-training people for new skills, including in sports training and management of the teams:

> I suppose I done a lot of courses in the GAA. Ten years ago when I took over a team, I didn’t care, all I wanted to do was fuckin’ win matches. All I wanted to do was win cups. And I think our, our, our system in the GAA, and our club is, to take a group of players if they’re under twelves, try to put respect into them, try to put discipline into them, and put the GAA skills into them as much as you can and hand them over to the next manager, under fourteens. And the best skillset you can do. And it’s about developing players, it’s about making them happy.

It became, in the last ten years, more popular in Ireland to try to maximize a team’s talent, particularly when they were at a competitive disadvantage in talent, by playing a “swarm defence.” The style became especially popular after Donegal won an Ulster championship in 2011 and a surprising All-Ireland championship in 2012 by playing this way (another Ulster county, the dominant Tyrone, had used it successfully before, but Donegal was attributed with its recent rise). For those familiar with soccer, the analogy would be to the “negative” style of Italian football—keeping players back to suffocate your opponent’s offensive attack and then opening up one or two lines for quick strike counter-attacks. But it differs from negative soccer tactics in that there is technically no tackling in Gaelic football, as tackling was identified with the barbarism of English football. So amassing a horde of defensive players to “shoulder” strikers and cut off openings to get away a kick is essential (in other words, the individual defender is at a disadvantage in comparison with a soccer defender). Likewise, because the majority of the 28 non-goalie players from each team on the field will be bunched together, the "swarm defense" style encourages "hand passing," which is perfectly legal in Gaelic football (players carry the ball in their hands but must dribble it off their feet and ground alternately), but which breaks with a history of long kick passing and moving up-and-down the field more vertically. Although it has grown in popularity, the tactic has proven controversial in the years since, as it is seen to make the game uglier, less skillful, and less manly in its reliance on gimmicky tactics. For Gaelic football, in particular, which uses the hands in a way similar to Aussie rules football, the tightly bunch

When I ask him how his team play and what he thinks about swarming defense (a leading question), the Yankee responds with characteristic energy and begins to sketch out drills he uses with his teams on a napkin:

> I don't believe in it. I believe…get the ball in, get the ball in, get the ball in, nothin' moves quicker than the ball. But the reality is, you have to have forwards that's fit to take the man on. You have to have—I believe drills you need to do in GAA, six drills. That's all you need to do. No secret, it's very simple. We're overcomplicating the football. We have a big football field, and you go watch all the coaches, and they're training to be fuckin' square forty to forty, all fist passin', so when you go out to play, you train in a wee square here.

The reason why the discussion of the GAA is worth detouring into is, on the one hand, to provide a sense of the ethical framework through which economy—figured as redistributive, community-based, supportive of Catholic social principles, and scaling up to a United Ireland—is judged. On the other hand, it helps illuminate the masculinist quality of serious play involved in the uneven agonism of the exchanges that take place within that larger egalitarian framework. The one-on-one competition between the defender and the striker is the ideal of competition in which risk is essential to the gambit of play, while the swarm defense is a tactic that presents an uneven playing surface for the individual striker, forces them into an overly cautious and unbeautiful style of play.

The way the Yankee boasts of his personal cunning turns on his own keen speculative instinct: his risk-taking and timing in the marketplace to convert his wife's house into cash that will support more moral and prudential goals of keeping the family home (with his mortgage) free from creditors. Like the fallen figure of local border billionaire Sean Quinn before him, the Yankee wants to demonstrate a mastery of market-based political economy according to values he frames within local norms of kinship and community morality, and which is enabled by broader networks of kinship that include the family in the family home, and extend outwards to "friends" whose reciprocal loyalty buttresses the conditions of maintaining the kinship of the family home.[83] He suggests that the production and maintenance of the family is produced in part through householding economic practices around the home that his wife brought into the marriage, and also by the cultivation and harvesting of exchange value enfolded within the framework of a rural Irish *oikos*. The goal is to put commercialist practice and logic under the authority and advisory of kinship, and in producing that relation between the two, to qualify and clarify each of the terms in locally moral ways.[84]

The Yankee's intensity bubbles over into weeping only when he works himself into talking about having his own sporting career taken from him by illness and when he recounts the

[83] Arensberg (1937) tells us that the Irish countryman's "friends" can include his kinsmen, but Strathern's (2015) point about European "kinsmen" once being inclusive of friends is just as essential to understand the particularity of the kin relationship being entailed by the form of the vernacular trust. That it relies upon, crystallizes, or even enacts a tie of dependence with a distant cousin is not satisfactory: we have found kinship and social relations, but what kind?
[84] It is unclear to what degree *he* was doing the work of collecting the rents from her home, but it is clear that the work of selling her home to support his home is being conducted primarily by him. On the one hand, he is subsuming the productive labor of his wife's home and the productive value she brings from her family into his patriarchal household, which recalls an Engels-like origin of the institution of property itself.

injustices that have been done to his children's Gaelic football team by referees. And in the Yankee's own boastful account of his anticipated reclamation of the small kingdom of his home, in which he turns a cultural discourse of furtive shame over unpaid debts into pride over his refusal, he eerily echoes Quinn's now infamous but contested hubristic assessment of his creditors as "unsecured scum". After all, the gambit offers just that for the Yankee: he would make his loans unsecured through the process of voluntary sale to a seemingly distant third party and declaring bankruptcy on the remaining balance of the loan that the sale of the home does not cover.

Before he dedicated himself to work on mortgage arrears for lay litigants, the Yankee welded a bit and worked at his brother's business, both of which were incomes that dried up in the crash. He makes only a little bit of money from working with other lay litigants, either in helping them set up their own double act, or liaising between them and solicitors or other lay litigant figures who made promises about providing solutions to debt. He says he has trouble refusing other lay litigants because of loyalty. But it is not the case that he gets nothing from acting as middleman and consultant to others in trouble; he would more likely receive payment in kind than in wads of cash.

The analysis of complementary transactional moralities that Parry and Bloch (1989) provided with regards to high-turnover, short-term and restorative, long-term cycles of exchange suggests itself in this scavenging economy. Rather than suppose that land was symbolically corrupted from natural *oikos* into unnatural "fictitious commodity", the financialization of the home in the speculative bubble of the Celtic Tiger of the mid-aughts was morally unproblematic to most: so long as the acquisitive drive to obtain land through the mortgage stemmed from a desire to provide long-term financial wealth (equity) to the agnatic line, a market in land was not only justifiable, but a social good. While the view from the parish *oikos* might actually resonate quite strongly with a Polanyian commitment to solidary economy, the idea that the land was made fictive commodity through financialization of the home in a neoliberal mode of governance does not hold up: the farm and the family home have not in recent memory been isolated from financialization, but they have been shielded from being a security that could be repossessed. In fact, the 19th century governmental solution to the well-organized rent strikes, boycotts, and agitation of the Land League was to make loans to tenant farmers to buy their freehold title and, as discussed in Chapter 1, to create a Land Registry which would guarantee that title and register that loan as an attachment to the land.

What the crash—and specifically the evident reality that land could also be repossessed—did was change how people thought about the mortgage as a cycle of transaction. The mortgage, as an instrument to enter into a market on land, is more squarely controversial for its ambivalence to the question over whether it supports short-term high-turnover cycles of transactions (it sets up the much-criticized and suspected "securitization" in which a bank quickly trades on the paper of the loan) or whether it supports the long-term restorative cycles of exchange. In this regard the Yankee is clear to constantly frame every one of his moves, all of which are usually precipitated by or productive of part-monetary, part-nonmonetary exchanges, as intergenerational in nature. But the valorization of the long-term transaction does not preclude moralizing, speculating on, and deeply enjoying short-term commercial transactions if they are organized appropriately. What the Yankee's morality demonstrates is not an all-out attack on the unnatural financialization of a kin-based notion of real property, but an extension of new and shifting boundary lines in a crashed rural economy. Consider how in the same breath the Yankee frames his potentially unlawful moves to preserve his title to the family home as intergenerational wealth, and then pivots to criticizing the banks' inability to be commercially sensible:

> So you realize after three, four, five years of negotiating and negotiating with them you're just going nowhere. You were drived into a corner with young kids. What had I to do? Lie down and die in the corner? Not fight for my kids? Not fight for my wife? And me with a condition where there's no cure. I had to come out and fight. And I don't see this as—I actually see it as fraud on the bank's point of view that they wouldn't take eighty thousand gathered up by my family, of me, because it *was* me, they wouldn't sell for me to give it to, back to me, but yet they'd take half of that money, forty, from A, another person. It's madness, it doesn't add up. There's no common sense.

This is a recurring theme for the Yankee: acting commercially, even when a family home is being considered, is not per se immoral. He is not at all against seeking profit, especially where it is earned through *special knowledge*. What he is pointing out is that the bank's unwillingness to make profit on a non-performing loan (non-performing because he is not making payments) because it would essentially reward his non-payment is in fact anti-commercial. The bank refuses to recognize the pragmatic and commercial logic of selling to their non-paying mortgagor. That is more immoral to the Yankee than signing up for a credit card he has no intention of paying back. It is not just because *he* wins that it is more justifiable (although it is admittedly hard to parse that question from the larger dynamic) but because he earned it by using his special knowledge that the bank was not looking at credit histories, and that the money would go to the home. While he would say refusing to sell it to him for €80,000 and getting half of that at an auction is immoral, it is precisely their own "moral hazard" line that keeps them from doing so.

What was during the economic bubble a largely unexamined and happy alignment between homeowners, bankers, and state finance about the virtuousness of not only owning freehold property, but speculating on it, became a fractured and piecemeal topography of disagreements when, and to what degree of closeness to a threat of repossession, it was appropriate to make money.

What happens to the money that is earned is also more or less moral depending upon how it recirculates. The Yankee criticized others in the lay litigant world who claimed to help indebted mortgagors but vacationed in exotic places and drove fancy cars on the money they earned through “donations” or fees for their help (“Them two men are after money, as well. It’s money. They’re drivin’ two brand new cars.”). I have every reason to believe he did actually collect very little from assisting others in “getting them over the line” through schemes similar to his own gambit, as he tended to expect non-monetary forms reciprocity and obligation when giving his time and energy to others. By taking money from the lay litigant world and into commodities that could be characterized as personalistic and vain, the Yankee positioned his own spending of money he received from others as redistributive: he could spend money on lunch, tea, or drinks (he cannot drink because of his health) with others in the lay litigant world (both legal professionals, self-styled legal professionals, and nonprofessionals) that might be of some help to him later. It is through a lifetime of cultivating these sorts of reciprocal ties that he could harvest and marshal favors when he needed them to complete his own gambit. If money is needed to lubricate those social relations, then all the more reason to be a shrewd commercialist in other spheres of exchange: so long as the cute hoor can justify the long-term maintenance of the home and the family can be traced to, then the exchange can be said to be redistributive to the restoration of a more moral community.

That atmosphere of indebted uncertainty sets the parameters of his window of opportunity and sets into motion the first part of the double act. “The mechanism of it is,” he says of the entirety of the scheme, “you have to have an auctioneer to sell it, you have the two solicitors, you have to have the valuer. You have to have the buyer, you have to have the money. You have to have the engineer's report, as a key, as well." In fact, that description of the mechanism sells short how involved the duplicitous double act is. There must be two engineer's reports, two and a half buyers (a good faith purchaser of the first home, an "arms' length" purchaser in his distant cousin, and himself), two valuers, and possibly two auctioneers.

For both houses an engineer's report will detail problems with the property that will justify an artificially low valuation that he will pay the bank-appointed valuer to make. The auctioneer is necessary to "put the house on the market" although the Yankee did not "enter the market" so much as create the image of one. In the first he does indeed hope to find a discrete local buyer who would pay with enough cash to help him buy the family home, but he needs to find a buyer he can trust to play along with the irregularities of the deal. That is, the buyer of the first home will have to accept that they will pay more to the Yankee than what they both tell the bank the purchase price is. That is key to the Yankee who needs that unreported cash to help buy back the family home and the services of the people he will need to do so. It also benefits the purchaser who will pay less stamp duty to Revenue because that tax on the property transfer tax is pegged to purchase price.

Engineers' reports are key because they give reliable documentation to the house's depressed price that will help sway a valuer that they are not going out on too far of a limb in valuing the property at a low estimate, and helps auctioneers not "look like a clown". He uses one engineer for all his engineer's reports for his double act and the ones he helps other people with because of the engineer's professional integrity:

> He won't put a crack in the wall if there's no crack. He won't because his report can be stood over in any court of law. So this is the agreement I will work with anyone else, as well. It's only cutting yourself if you go down the other road.

> Because if the bank gets out an engineer's report, and they find that your report's wrong they'll close the doors. So you're cuttin' your fuckin' self, ok?

In order to get an engineer's report that can be stood over in court, that might mean as much as getting supporting documentation from the County Council that the house has no planning permission for a sewer system, which must be updated but also can will be granted an exemption by the council because of the Yankee's medical condition. For this, having friends on the County Council is necessary and these connections are facilitated through involvement in local party politics, as well as Gaelic Athletic Association organizing. The prima facie accurate but felicitous engineer's report might also entail literally putting your own cracks in the wall so that the engineer does not have to imagine them ("There was no sewer, no planning with the walls as well. So I pullt the old walls down, purposely"). It also might mean as little as just asking the engineer to be minutely thorough with their examinations of old homes facing the tough elements of rural border counties.

The next step is getting a valuer on board who has slightly less professional integrity. The engineer's report provides cover for their artificially depressed valuation. The valuer is not someone that the Yankee can seek out as banks select them from a panel of local valuers they trust to provide independent valuations. When the bank sends someone who will not work with the Yankee, he will tell the bank he has a "conflict of interest" with the valuer until he finds someone willing to co-conspire and value the home low for some extra cash. The reality of rural Ireland after the crash is that "conflicts of interest" are abundant enough that it is not only reasonable but often verifiable that a family member of his might have worked with that person before during the boom, and that the shoddy inflated valuations during the boom would leave conflicts of interest all over the countryside. Armed with the engineer's report, he got lucky with the first valuer the bank sent out for his wife's house. "He worked with me. It cost me [money gesture]. See it? He done the valuation so he got six, seven hundred euros cash, plus the bank paid him one hundred and forty euros plus VAT [value added tax] to do the normal, so he valued the house for me so have done me a serious favor." Because the whole idea is to give the appearance of legal compliance and ethical responsibility while acting outside of each, money and "favors" are necessarily concomitant for the co-conspiratorial transaction that implies a trust. Money does not buy that trust but strengthens and seals it.

The Yankee also got lucky before he had gotten the valuer by doing a "dummy run" of a sale on the house and finding a cash buyer who could pay a large lump sum for the home. The Yankee had no expectations he would randomly find someone looking who had the cash and was willing to play along with the more under-the-table elements of the transaction. But it turned out that the first prospective buyer showed up, the Yankee recognized him from the next town over, and was confident that he could work with him:

> When I met him I was fuckin' shocked. I couldn't believe the guy that had the money. I couldn't believe this guy, holy Jesus. I knew him, he was in the next town to us. You know, I know him to see, I wouldn't've *known* him. But I didn't care, the house, he got a house for 50,000 through the books, and he gave me 45 cash. And the house is worth 150. *So the whole secret here is the buyer has to get value as well.* Now I was very lucky to get such a lump sum, usually you only get 15, 20,000. Ten, fifteen, 25 is the max you're gonna get out of anybody. But for the cash buyer, there has to be value in it for him. And I'm *happy*, I'm happy for him, I had to be happy for him because…I believe in to have any luck, you have to be happy for him, and I'm really happy for him.

So the buyer pays a total sum of €95,000, splitting the sum into two payments: €50,000, with documentation, goes to the bank, while €45,000, cash in a bag, goes to the Yankee. This is the border region in Ireland, where it is common for these kinds of transactions to be paid in cash, and to not ask to many questions about how. Clearly, the Yankee was surprised the man had either the wealth or the connections to provide cash. He had no interest in looking further into it—not necessarily because there was anything untoward in doing so (although there could be, and not asking is a good health and safety practice), but it is also part of the *habitus* of payments in the border region: saving and paying in cash is a preferred way of maintaining an appropriate discretion in one's economic life. A friend who worked in a branch bank in Monaghan once told me a border county aphorism that essentially went like this: you ask me to write you a check for five hundred dollar and I cannot help you, you ask me for a hundred thousand in cash and I can get it for you tomorrow. The implication is not that he has one hundred thousand Euros stashed away in his mattress, but there are ways of getting cash that are outside of banks.

Nonetheless, the payment in cash can provide difficulties, as you actually have to handle physical specie:

> So I'll never forget it, it was very funny, there was a row between the solicitors, no solicitors would let the cash be counted in their offices. So I had to meet him outside in the car and he counted the money outside in the car. [Laughs] And me brother was with me so I went off with a bag of cash, 45,000, and I let him out of the car, and he driv off, no keys to house, no nothin'. And I'm after signing the contracts for the house…so he went to the solicitor and he says to the solicitor "where's the fuckin' keys??" you know he was shellshocked that there he was one minute he had a bag of cash and the next he was, there was a fella after driving off in the car, and he hadn't even keys to the house. You know, because we got away so quick like, you know? [Laughs]

That brings us to the second act of the two-part gambit to keep his home while lending it for a time. Now with the surplus of cash in hand, the Yankee had to find a way to buy back his home, which meant once again valuing it at below market rate and finding a buyer who could stand in for himself.

The second act of the Yankee's gambit

The Yankee now had the cash in hand, which was a source of some nervousness. He put the money in a safe, which locked away the future of securing the title to his home free and clear.

The next step was to put his home on the market, although in this case, he had no intention of actually parting with it as he had his wife's home:

> So, I put the money at home in the safe and it was long time, it was long year and a half 'til I got that money out of the house, so, lookit, I put me own house up for sale and it was up for sale for nine months, and there was one or two people looked at it, a lot of people didn't trust in it.

People did not "trust" in the property because, having visited the home and met with the Yankee, they could sense that he was not really exchanging it. I cannot say for sure, but I would not be surprised if he intimated to some of them, if they were local enough he could trace them to known "friends", what he doing in a boastful and cautionary way.

But if the Yankee was happy that people did not trust in the home's being on the market, he had to get the bank to trust in it. Once again, he had to convince them that not only was he selling it all those months, but that it was worth well below what the square footage and location of the property indicated.

The first thing he had to do was ruin his home a little bit, and provide documentation from an engineer's report, again, that it was in a bad state:

> I had to have a lot of things to go for me because there was the sewer system was there in the 40s, 50s, so technically there, there *was* no planning with the sewer system. So what I always do is I always get an engineer's report done on the house, so there was no planning permission with the sewer system in result if someone wanted to buy the house and raise a mortgage, banks won't loan to a house where there's no septic tank. So it would only suit a cash buyer, so there was no planning permission, no sewer system in the house. There was no sewer, no planning with the walls as well. So I pullt the old walls down, purposely. So I done up an engineer's report.

Having the engineer's report that attested to the state of the walls and the fact that there was no planning permission for a sewer system helped make the auctioneer, who was friendly and advertising the home as up for sale for a surprisingly low price, look less "like a fool."

When the Yankee has helped people do similar things with their homes and faced with a valuer who was not local and friendly to what they were up to, he made the valuer's visit as unpleasant as possible to convey the fact the house was worth far less than they might otherwise put it at: "We boilt eggs, you know, eggs...We boilt them, three days beforehand and let them sit. And we cut them all up, and we put them down the toilets. And in the bins. And we had the smell of the whole place, so the sewer system wasn't workin'."

In the case of his own home, the first valuer from the bank that visited the Yankee was not a friendly one. This valuer was out not to set the price but to make a valuation so the bank could determine whether they were happy to allow the Yankee to sell (as a "short sale," essentially) the home, and agree to repay the rest of the then-unsecured debt afterwards. Because this was a different bank for a different loan, the first valuer, who was game, was not on the board of preferred valuers. The valuer they sent was a woman from the town over, but in this case the familiarity with her was how he knew she would not go along with the scheme (even though he still tried):

> I knew she wasn't going to work with me, I knew she wasn't going to work with me…She works with the banks, she just doesn't wanna do anything for anybody. She's just down the line, she doesn't wanna do anything for anybody. Local, [next town over], so I know her very well, so then I sat with her, I offered her €1,200 She wouldn't do it, so I wrote to the bank and said there was a conflict of interest between me and her, sent out another valuer. So I went through three valuers, and no one would value the house, at that price, I wanted it valued at: 35,000.

When I asked him how he arrived at that price, he told me it explained that since he had €45,000 in cash from the sale of his wife's home, he wanted to have that extra €10,000 in cash to make payments to two solicitors (the one representing him as seller and as purchaser of his family home), to the auctioneer, to the engineer and to whichever valuer would play ball.

It turns out that he eventually found a valuer on the board of the bank who was willing to play ball. The Yankee had not met him before a short conversation on the phone, but even that exchange made him realize this was someone he could work with. He was initially very skeptical because he was based in another county, Kildare, a county that was part of the Pale, which was under English colonial rule in medieval conquest, which is still associated in Ulster counties with wealth, privilege, and a closer connection to (foreign) law and order.

In fact, some advocate groups already regarded this valuer as one who would not work with lay litigants and was in the pocket of the bank. Feeling that the lay litigant crowd had probably approached the man in too confrontational and demanding a way, the Yankee set about endearing himself to the stranger. In this regard, the Yankee, whose passionate energy can often verge into the explosive confrontation, showed a broad repertoire of relation-making that makes a *cute hoor* effective at building networks and getting things done, whether as a politician, a hustling businessperson, or as a homeowner simply trying to buy his own home. Like, "C'mere," The term "lookit" is common phrase in Irish vernacular speech to forge a kind of parity of perspective that precedes an intimation (like, "Come look at this from my eyes"), and the Yankee uses it several times as he tries to get the valuer to trust him, and then uses it with me, the interviewer:

> I think what happened was, people approached him in the wrong way. People went to him what he had to do for them. So I went the opposite way. I said, "Listen, you know I'm in a bad way, and, what do you think you could do for me? And, lookit, sure, lookit, if you could come down and help me, and, sure look, we'll have a cup of tea and we'll see what happens." So I went a different approach, Nathan. I didn't go the gun to his head. So, I didn't go the gun to his head. So, lookit, he came down, and he was an absolute gentleman, he went through the whole lot.

In order to really show a friendly intent, the Yankee took, or at least relayed to me, a slightly cloying stance, playing the part of a hospitable countryman, offering tea and telling his troubles.

The most endearing thing to him, though, was probably the engineer's report, because it was well done and it gave the valuer an alibi that also showed respect for his professional pride. He explained to the valuer that the engineer he works with would not "put a crack in the wall if there's no crack," meaning he will not leave a chain of mismatches between the reality of what the home shows and how the valuer determines the value of the home. What happened to the house before the engineer sees the crack (the homeowner taking a hammer to the wall, say) is not his concern. The report, he assured the valuer, who was happy with what he read in the report and could see himself as he toured the home for the first time, could "be stood over in any court of law."

Ultimately, he paid the valuer €1,200 for his trouble, What I think is really critical to understanding how economy and society works is to understand how these trades still very much depend on interpersonal confidence, in transactory assurances beyond the strictly *qui pro quo* payment in exchange for service. In precisely the same way that medieval pecuniary arrangements, or ancient Greek gift reciprocity, transmitted along with the principals of the exchange additional gifts traveled alongside to further bind the two parties, reminders that transactions endure. As they were finishing going through the home, the Yankee, told the valuer about his various health problems, showed him his prescriptions and decided to make a final gesture of good will:

> So, what happened was, he came down and we went through all me medicines and talkin' and everything and I'm back handing his money and whatever, "Jesus," I says to him, "fuck," say I to him, "I've Viagra, you know," I say, "Jesus, do you want some of that stuff…? Jesus, sure, ah, sure, go on." Every man says no. So I gave him the rake of [all of the] Viagra. [Laughs]. You know what? That's Ireland, it's very funny. It's very fuckin' funny you know that?

It is funny, but it is also serious. When the Yankee says, "Every man says no," it may imply he has given them as gifts before—in either case, what it does imply is that it in order to make the transaction and for each party to retain an appropriate level of masculinity, the receiver has to deny the gift, and the giver has to insist. The man has to say, “You know, my age,” before accepting the pills, and the Yankee has to make clear to me that he has them but does not require them at his young age. The palpable masculinity in the kinds of disavowals of need and want is what makes this extra surplus to the transaction meaningful. Whereas the Yankee has dealt with auctioneers, valuers, engineers, and solicitors he can count as, or trace to, “friends”, this man was a stranger. The other relationships might not have needed an additional object of good faith to go alongside the transaction because they were premised already on a series of help, mutual aid, and so on. But this valuer was a stranger and so it was important to make the transaction more than just crass exchange, to establish its enduring quality.

Now, the Yankee had some measure of confidence that when the valuer left the house, he would go to the bank and say, “Yes, I see this as a €35,000 home.” The extra gift at the end is an admission that the Yankee cannot be sure that the man will do as he says, and so he wants to make the relationship that much more personal.

The trust that binds

As it happened, the valuer did tell the bank that, in his professional opinion, given the documented problems with the home’s sewage system and so on, that the home should be valued at €35,000. His bank, “one of the banks that was hardly hit…was mad to take the money.” The final step was to make himself both a seller and a purchaser.

In order to complete the gambit back to his own possession and legal title, to reunite the cleaved equitable and legal rights in the home, the Yankee had to make a sale a cousin from Scotland who was “within arm’s length”, but who he presented to the bank as an unfamiliar purchaser. I will call the cousin Gerry. Once Gerry formally bought it for the Yankee with the Yankee's money, he would wait six months to a year before formally reconveying legal ownership of the home to the Yankee. Not satisfied to just place confidence in Gerry, the Yankee wanted to draft a document that would cement that confidence into a more binding form. So he hired a local solicitor to help him draw up a declaration of trust (reproduced below in Figure 1) that outlined that Gerry's interest was never "beneficial" and was only held in his function as "trustee". That is, he held the property in name only for the benefit of the "sole equitable and beneficial owners", the Yankee and Nuala.

This is what I refer to as "mere custodial" model action, where the authority of this other figure is entailed into the trust just to hold that legal interest aside, collateral to the land. Recall the "sovereign model" I introduced in Chapter 3 was based on the trustee enacting mutual confidence as protective autonomy. The "brokerage model" of the trust that I introduced in Chapter 4, enacted the mutual confidence of the patron-like trustee and the client-like borrower as a substitutive agency: the trustee acts *as* the borrower in spaces they do not have access to, or familiarity with. Here, however, the "mere custodial" trustee simply holds an empty space to the side, which the transaction must pass through, but which they are expected to dutifully do nothing proactive about in the interval between opening and promptly closing. Their personhood is needed only as an alibi to open that space for the trustee's legal possession of the asset in question, and to evaluate the level of trust that can be put into them, but beyond that their personhood should not continue to figure into the transaction.

I, Gerry, of ___ in the county of ____, hereby confirm and declare as follows:

1. In or about the ___ day of ____ 2016, the premises known as dwelling house at ___ in the county of ___ is comprised within folio ___ of the register of County ___, was purchased by me, in trust for (the Yankee) and _____. For various reasons then considered appropriate, it was decided to register the property in my sole name but for the benefit of the Yankee and Nuala.
2. The said premises have at all times, since same was acquired by me, been the property of the aforementioned Yankee and Nuala. At all times my interest was in trust for the benefit of the said Yankee and Nuala, and I have never had at any time any beneficial interest in the said premises.
3. Yankee and Nuala are the sole equitable and beneficial owners of the entire premises as composed in folio ___ of the register county ____, and my legal interest in the said premises has always been and will continue to be held on that basis.
   Declared before me _______, a practicing solicitor at ___, in the county of ____, by the said Gerry who is personally known to me this ____ day of ___, 2016.
   [Room for signatures]

Figure 1: The Yankee's Declaration of Trust

When the Yankee first told me about the trust and told me it was sitting in a safe in his solicitor's office in case he ever needed to call on it, my first naïve question was, "But, wait, is this an *actual, legal* trust?" As far as stupid questions go, this would qualify as one. I was asking if this declaration, which documented a seemingly obviously *unlawful* transaction, was "legal". Even when trusts are done in ways courts approve, they are technically still not "legal" devices. But, then again, why even do it? Why draw up a document that looks properly legal, is witnessed by a proper legal practitioner, and sits in the solicitor's safe alongside proper legal documents like titles to land and mortgage deeds, if it could never ever be enforced? In fact, why go through the trouble if it could probably only be used as evidence against you?

As it was, the Yankee and his cousin Gerry were not particularly close, arm's length or not. The Yankee put it this way:

> The bank wants an arm's length transaction. But it wasn't an arms length transaction. He's a different name than my surname. He is, he's related, but it's meant to be an arms-length transaction. But the connection will never be there, never made. Because he's in the UK. So you're better with someone close beside ya. They're not really related, they're not a brother or a sister…It's good that

> way…And I would have done work for them, now, as well. His brother's deal is only going through the same now. His brother's deal is ready to go through. So I've done work for him, his brother's house.

The so-called arm's length principle in the common law tries provides a standard of legal transactions that the parties be free, equal, and sufficiently independent of each other. The principle is often at stake in questions of avoiding creditors or tax authorities. Even the name, "arm's length", suggests the common law's general discomfort towards kinship mixing with markets; trusts and equity are less squeamish about these boundaries. (Readers might be famliar with the principle from peer-review publication, where authors are asked if they have an arms-length relationship to a reviewer they are recommending).

The Yankee had done the legwork for Gerry's brother for free and provided a trustee for them. During the intermediate phase of his play, the Yankee was relying on *mere trust, mere confidence in another*, that the favor he had tendered to his cousin Gerry's brother would come back to him as his home restored *sans* the mortgage burden on the home. Now, this whole time he, Nuala, and their children would continue living in the house, but the window of intermediacy was still tenuous enough for him to try to make that confidence more concrete by turning to the form and aesthetics of a proper-seeming legal instrument which also tracks at a frequency below what the antennas of the banks and courts could pick up.

This whole transaction is a quite literal example of Weiner's "keeping-while-giving" in the making of inalienable possessions. This works not only for the anthropologically trained observer, it is understood and experienced by the Yankee as a heroic fight to maintain inter-generational items of wealth by paradoxically "loan[ing] them for a time to others" (1992:26). I have little doubt that when the Yankee reads this, the excerpts from Weiner will resonate. The Yankee would earnestly talk about doing his scheme both as a kind of sacrifice (having to make something alienable to keep other inalienable wealth) and for the sake of his children's future. But by retaining wealth, that does not mean that wealth and the people who hold it are static. Weiner's attends to how the process of making things inalienable constitutes notions of hierarchy, difference, and gender is critical here: when complete, the scheme will finalize the family's virilocality. The home she brought in was alienable but his (which they had already lived in) was not; her home townland, parish, and county where the house she owned was based, would not be the county their children called home, or played Gaelic football for. Of course, that process had already begun and by that point the choice already suggested itself, but it was the choice of what form of wealth was inalienable and what was alienable that secured a particular kind of kinship for the Yankee and Nuala's young family. The trust document I reproduced above is an artifact of that process; it was an externalized memento of the transaction attached alongside the home throughout the duration of that intermediate window, between the point of giving and the restoration of full possession.

Trust: artifact and index

By "artifact" I do mean to imply the trust document is passive or primarily reflexive, as the linchpin in process of keeping-while-giving it is something much more along the lines of what Mauss called "survivals" of the gift form in medieval European texts. As a kind of pledge incarnate, the document both resembles something like the *symbolon* that accompanied ancient Greek transactions of high prestige, and also like Germanic *wadium*. An examination of those older artifacts of reciprocity provides instructive clues for why the Yankee—or any of the trustees who are doing dubious things with their paperwork—would risk formalizing what almost by definition has to be an informal transaction. Why are these people in shadowy legal and economic territory, who are seemingly getting further from legal formalism, very anxious to surround themselves with legal forms which could only make themselves legible to the very courts they propose to work around?

The seriousness of the object of wealth involved matters. The declaration of trust document probably does not get made for a car or even a horse, but it does for a home. Again, the literature on gift economies and meaning-making reveals an important link between the social status conferred in transactions and the materiality of the things transacted. In ancient Greece, for instance, those extra things that go alongside the transaction (like the Viagra, above, and the trust document, here), called *symbola*, were not only involved in transaction between high status parties, but in regards to wealth of high status. The Ancient Greek *symbolon* is often rendered as a coin-like object of precious metal that is broken in half and distributed to two parties in a transaction. For Marc Shell, transformations to the quality and visibility of that *symbola*, as it turned from private prestige object to publicly circulated minted coin with the sovereign's head, provided opportunities in stories like the Ring of Gyges for reflection on the changing moral valence of exchange in ancient Greece. Central to the morality of those transactions was the question of what is known in conveyancing as publicity, but in Shell's Greek examples is more clearly visibility. Land was *ousia phanera*, which denotes "visible substance", suggesting both that the land itself cannot be concealed but also that the transfer is witnessed by third parties of high status, and is made lastingly material and visible in the *symbola* that accompany the transaction as "a necessary symbol of credit or trust" (1989:40). Note the tension between publicity and visibility: *ousia phanera* were not public, as such, the event of the transaction was legible to certain eyes only, and its continued visibility would be exclusive to those who had access to the *symbolon* and the knowledge of what it indexed.[85]

In the case of the *symbolon*, or the Yankee's trust document, the index has become a material instantiation of reference; it is not a direct party to the dyadic interaction, but a third party that only has forcefulness with reference to a convention. With "convention", think of Llewellyn and Hoebel's (1941) elision of formalist definitions of law by their term "law-stuff" for all the kinds of patterns of expectations and "oughts" attached to social interaction. There is a strain of an assumed teleology in my question to the Yankee ("But, wait, is this an *actual, legal* trust?"): ultimately if a jurist could, would, or should enforce the terms of the document, that would make it "legal". But, like the *symbola*, the Yankee's trust is not meant to be intelligible to a superordinate institutional grammar of law, even as it leans on the aesthetics and form of law to render the transaction intelligible to the *convention* of law, untethered from (but uninformed by) legal institutions.

The semiotic works of Charles Peirce are particularly pertinent for analyzing how you get from a paper document in a safe (the Declaration of Trust, this embargoed chapter), to the fiduciary duty of a trustee, to the dense "bundling" of relations and indexes that contribute to the biography of the home (Keane 2003:414). Peirce employed *symbol* to identify a quality of "thirdness" that convention and spatio-temporal context inheres in a sign. In his example of relaying the fact that the owner of a certain house is the richest man in the area, he suggests words do nothing to convey meaning without their ability to take root in spatio-temporally specific situations, not just their syntactical ordering. The speaker would have to take their

[85] This is not in contradiction with conveyancing, though: the "mirror" and the "curtain" metaphors of land registration make clear that a public register is only as public as the potential purchaser would reasonably need. What is too messy or trivial to the register is "curtained".

listener to the house—through gesture, through maps, through other words that link the particular house to the new idea. Peirce insists that the term “symbol” has always suggested the materialization of social arrangements: “Etymologically, it should mean a thing thrown together, just as…*parabolon* is a thing thrown besides, collateral security…the Greeks used ‘throw together’ (*sumbolon*) very frequently signify the making of a contract or convention” (1894). As something like the transactory *symbolon*, this trust document is a little bit “thrown together” and “thrown besides” in that it at once actively binds parties, and yet it is held aside, kept in the safe of the solicitor. The ambivalence belongs in part to the ambivalence of the convention of the trust itself: the path that leads back to the house only has to be available to the Yankee and his cousin Gerry.

Like all transactions in medieval Germanic law, the debt instrument of *wadium* entailed a pledge which Mauss describes as an ostensibly insubstantial artifact: “One partner is given an object, generally something of little value like a glove or a piece of money...The fact that it is in the hands of the recipient moves its donor to fulfill his part of the contract and buy himself back by buying the thing” (1967:60-1) The pledge traveled with more materially substantial forms of transacted wealth and stayed with the receiver as a reminder of ever-present danger in reciprocity. How it moves the participants to complete their transaction is of critical importance to Mauss as it just traces some concept that, like *hau*, motivates the return for the thing to return to its original owner:

> The thing pledged is normally of little value—a stick, the Roman *stips*, or the Germanic *festuca notata*…These are live things. Probably they are considered as survivals of older obligatory gifts or reciprocal dues. The contracting parties are bound by them. In this respect these supplementary exchanges are fictitious expressions of the movement of personalities and the objects confounded with them. (1967:47)

Mauss goes on to contend, contra the division of an epistemological separation between personal law and real law (or rights directed towards things, *iura in rem*, and rights directed towards people, *iura in personam*)[86] that "originally…things had a personality virtue of their own. Things are not the inert objects which the laws of Justinian and ourselves imply. They are a part of the family: the Roman *familia* comprises the *res* as well as the *personae*" (48). Mauss is here concerned with the rendering of the commodity form via formal law, and he reframes that process as a magico-religious one in which ritual acts bind instead of simply reflecting pre-existing bonds. There is something like the Catholic idea of transubstantiation going on, in which the Eucharistic ritual brings about the "real presence" of Christ.

Those sticks of little value, the *festuca*, played an important role for an origin story that Pollock and Maitland provide for the trust—an origin story of the trust that elucidates the kind of spirit of confidence and retention the Yankee and his trust, in particular, enact.

In contract to an institutional origin story of the trust, Pollock and Maitland offer that the concept of a "temporary trust" would have emerged intuitively in primordial early English law all over. Before constraints to alienation of land progressively disappeared (still in the medieval period), a workaround of "substitution" could effect something similar: the purchasing leaseholder (not a renter) had to get permission from the lord to take the place of selling tenant. Once consented, the lord had to mediate the ritual of the substitution with the *festuca* that had been given to the selling tenant. "The vendor surrenders the land to the lord 'to the use' of the purchaser by a rod and the lord by the same rod delivers the land to the purchaser" (1898:240). So the lord is the fiduciary, or trustee, only holding onto the possession until it can be restored to

[86] It is worth noting here that trusts famously flummox this distinction in the common law, although Hudson (2010) makes the pragmatically compelling case that they are best understood as rights in people (*iura in personam*) not rights in things (*iura in rem*).

the purchaser who has seemingly bought the right to take possession. Pollock and Maitland then pose the question: What if the lord refuses to part with the rod?

Even as that scenario presumes a concept of possession that can be transacted, there is a hint that maybe this uncertainty of the lord's fiduciary power is motivating problem for an institution of property. Possession is evidently fickle in moments of transfer because humans are fickle and land is not. Even though the rod is "symbolic" something has to be because how else could land be owned? As long as people continue to suppose they can own land, there is no elimination of the uncertain fiduciary relationship, only it displacement.

Uncertainty here is something like a metaphysical prior to rights, and keeps us from seeing contract, title, or the Yankee's trust document as performative *faits accompli* with regard to their binding capacity. The uncertainty of the relation, the necessary failure of permanence that motivates and makes the trust document endure also makes it ambivalent and fickle. For the Yankee's trust, which ostensibly provided *clarity and assurance* for both parties, danger lay in the fact that by making almost explicit the uncertainty and distrust of kinship at a distance, that paper might do reciprocity better than blood, it might also make clear the diminishing returns on increasingly distant kinship. It also has the potential to be a liability for the Yankee, to be used against him in a court if it were ever to fall into the wrong hands. By guarding *against* his undoing at the vulnerable moment of the transfer with a trust document, he was also producing new possibilities for his undoing.

Naïve as it was, my question about its legality hit on the boundary the trust sits on between social and legal arrangements. Recall Coke's definition of the use/trust, "as confidence reposed in some other, which is not issuing out of the land, but as a thing collateral annexed in privity to the estate of the land, and to the person touching the land". On the one hand the trust looks like an eminently social technology in that it can almost be defined as an interpersonal confidence attached to the transfer of wealth, but on the other hand, it makes those social relations opaque, not only to the outside world that would monitor the taxation and registration of that wealth, but even to the individuals inside the trust, like a beneficiary who might not know they are the subject of a trust.

Why would the Yankee tell me all of this when for all he knows my recording of his story could also be his undoing? The first thing to note is that the agonistic element of the "prize of competition" in the Maussian gift is at play. The Yankee approached every element of his play like a peril likened to sporting achievements in Gaelic football. As I will touch on in next chapter, he understood how this play fit into the larger scope of his biography through sports, and how each challenge within the scheme presented a test that could be likened to competition. For something he treated with the utmost seriousness and regarded as sacrifice, he also demonstrated a sense of play that was premised on the uncertain outcome of his actions. So he was willing to countenance the chance of telling me with the upshot that it would make his victory visible.

After he had first drawn up the "Declaration of Trust" with his solicitor, a document in which the cousin averred he was only a trustee for the eventual reconveyance of the home to the Yankee, I asked him about the wording of the document and whether he edited phrases in its after it was drafted with the help of a solicitor. He responded pointedly and with repetition: "No. Being honest with you, no. Being very honest you, no. You have to have trust somewhere. What do *you* think of it?"

The implication he picked up in my questions was that he was not as diligent as should have been, or well-versed enough in legal writing to ensure the document was effective. So he justifies the value of the Declaration of Trust to me on the basis of a more moral community tenuously held together by trust. And in doing so he is now enrolling me in the legal advice process of his trust, which charges me with an undertaking itself, a duty, and a complicity, as if to remind me that in reading this out to me that I would also be bound by the same trust that the mobilized to finish his master *stroke*. When I recalled his own wording to suggest that it would seem hard to believe that it would stand up in court when the whole deal is not exactly done in good faith from the bank's perspective, but that nothing is, after all, "bulletproof" as he had put it, there is a pause and he slowly pronounced in a his Southern Ulster accent: "Life's not bulletproof." Every trust re-organizes the danger of social enmity along with the hope of abrogating it, and entails into that crucible more material, more time, more life.

The Yankee says you need trust, but he feels it slipping away all around him or else why would he need the vernacular trust document itself as a small recourse as he broaches uncertainty in a world gone sour? His trust entails the scrutiny of his co-conspirators, even his interlocutors, and as he moves from the first act to the second his trust needs to pivot on more figures incurring more danger and further churning outward lines of dependence outwards; the trust entails, the gambit spreads, the crucible widens.

Conclusion

I can reproduce to you the words of the trust document, as I did above, but like the listener in Peirce's story who hears about the richest man in the area in "that house", the document only leads you to the house in the vaguest sense: because of some surrounding conventions that place the fact you know there is a house that has been entrusted to another in the context of evading a creditor.

In fact, I need to make sure you do not have the tools to get back to the house, because I am not exactly sure who you, the reader, will be. On the last night before I left Ireland for my fieldwork, the Yankee wanted to meet me because he wanted assurance that I was not working for the banks, and was not just going to tell them what he did. We went back over the informed consent information, and I said I would be publishing, I would be using the pseudonym he and I made up for him, and I would tell the story but without allowing him to be identified. I told him I only had so much control over who might read a published manuscript, I would make it virtually impossible for them to single him out as the Yankee.

Fame was a problem for him and a problem for me. He insisted on the ability to recognize himself in this story but we both needed to make the trail that led from him to his story totally opaque. So we arrived at the nickname "the Yankee" based on a generic family nickname that kept his identity confidential while allowing him to recognize himself in the writing. This is confidence and confidentiality, the uncertainty of the trust extending to inculcate the story of the trust. And in conversation we would also extend the perilous gambit of his scheme to me, making explicit the nature of trust in our interviews, asking me what I thought of the wording of the document. I declined to offer any suggestions that might constitute advice or make me a party to the deal, but in so doing I introduced the peril of refusing his confidence, which he also obliquely noted.

For me, the story of the trust did lead me to his house eventually, when he brought me there to further make me an initiate into his entrustment. Although I was not named in the declaration of trust (thankfully), simply by reading it over and giving an evasive answer as to what I thought about its language, I had become responsible in it. But as much as I can give a sense of the home I was taken to, my rendering of the particular relationships should never take you beyond the hazy sense that there is a house in a trust somewhere. For every new fusion a trust enables, it can also necessitate opacity for those who are to remain outside of entrustment.

The Yankee's two-act gambit that was conveyed by trust led him back to the home. He never left the home that he "sold" to his Scottish cousin, simply remaining there throughout the duration of the sale and the personal insolvency that he had to go through in order to not have to pay the credit card debt and the overhang of now-unsecured debt from the mortgage he declared he would pay back. I think for as much intrigue as this story has—the payments, the gifts, the plotting, and so on—it really should be emphasized that all the Yankee did was sell one home to pay off the debt of another, and go into bankruptcy. It is a perfectly reasonable result, especially since the creditor in this case was more than happy with the sum that they received, so long as they were not aware that they could have gotten more.

The result of his gambit was also the reproduction of an Engel's like domination of the household through the narrowing of private property, and a re-affirming of the family's virilocality. I want to be careful not to over-glorify this transaction: so much of this transaction not only reproduces Irish forms of masculinity that are very familiar, but strengthens them. That is, however, something that the absence of state intervention into financial and legal support for indebted families encouraged: as discussed in Chapter 2, many of the people expected to go through the long and mercy-seeking path of renegotiated debt were women who were joint tenant with separated partners who had absconded from the property. Their payments halved, these women could not even sign an agreement to surrender the home and get onto a social housing list without the spouse's agreement. In the case of the Yankee, the income his wife Nuala brought in from her job in the Quinn business empire and from the home she brought into the marriage are no more.

By analyzing his gambit through the moral transactionalism of the *cute hoor* I want it to be clear that while the masculinist agonism of competitive transactions is there, what he is securing for the family is not unreasonable. It is a solution to a problem, a solution that delivers something closer to the actual "particular justice" that Aquinas develops from Aristotle, and which Aristotle called "decency" than other paths offered. To get to that equity, he had to wade through questionable ethical territory, but he produced an equitable result that so many people are still waiting for, caught between an impossible redemption and the threat of repossession. As they slowly go down that road, trying to get back to the house, they encounter figures asking for their confidence, for their penitence, for their surrender. Few will "get across the line." When future historians turn to write about what happened in Ireland of this decade and the last, much of that world will be kept out of their archive, kept in some country solicitor's safe, co-lateral to the mainstream stories about bank balance sheets, repossessions, REITs, and vultures. The hope for this chapter is not that the trust stays in shadows, or that it be brought to too harsh a light, but, in my own cloying way, that the particularist equity it indexes might stir somewhere in the recesses of the rolling drumlins in the borderlands of a republic repossessed.

CONCLUSION

The Yankee had arrived at a self-proclaimed "sacrifice" after a long time of entertaining the hope that he could defeat the banks. For him that meant giving up pride and losing some of his wealth to help secure the most urgent and unique form of wealth: the family home.

But sacrifice was a common way of talking about the post-crash atmosphere of Ireland. Some used the language of "sacrifice" to morally rebuke those who would spoke out and protested against austerity cuts led by successive Irish governments. On the other hand, it could be used to couch moral rebuke against the state for prioritizing financial institutions, creditors, and indebted big-time developers over the everyday freeholder whose security of tenure was fought for alongside national self-determination: we have to sacrifice. What appeals about this language is the way it lets go of the rationality of explaining economic policy: it admits that things are being destroyed in a morally charged fashion.

Another way to interpret "creative destruction," then, could be "sacrificial destruction," which Mauss (1967) described as the apotheosis of *potlatch*, tournaments of agonistic ceremonies of reciprocity that were, to Mauss, the gift economy *par excellence*. Indeed, the language of "sacrifice," was ubiquitous in the world of Irish economic recovery: homeowners were expected to sacrifice indulgences in spending and prioritize their mortgage payments, austerity budgets called for the country to make sacrifices in the form of social services and emigration.[87] Sacrifice literally means, "to make holy."

This is precisely what Mauss was interested, and had developed with Henri Hubert decades before his famous essay on the gift. In the 1898 essay, *Sacrifice: Its Nature and*

[87] The relation to the budget and emigration might seem obscure, but the annual budgets lawmakers put forward worked under the assumption that a certain amount of Irish residents would be leaving as industries collapsed and social safety nets contracted.

Functions (1964), Hubert and Mauss attempt to classify different kinds of sacrifice: for different ends, the humans organize different ritual performances. If the form goal is to bind the divine in a relationship of mutual obligation with the lowly mortals, the ritual takes on the form of "attribution," a French term which is unfortunately left intact in the English translations. Whereas "attribution" in English denotes a statement assigning responsibility for something, in French it goes a step further and establishes responsibility—"attribution" is used in the same way we say someone is "awarded a contract" or "conferred an honor." A ritual of sacrificial destruction is one in which an object is burned or otherwise destroyed with a portion remaining. That remainder is an impingement between unequal parties, made by humans that seeks to compel reciprocity or channel action by the gods. The specificity of the sacrificed item matters, as does the mode of performance. The sacrifice becomes a mediating form that can traverse the incommensurable distance between mortals and immortals: "The victim is moulded on the votive formula, is incorporated in it, fills and animates it, bears it up to the gods, becomes its spirit, its 'vehicle'" (1964:66).

Hubert and Mauss's analysis of sacrificial destruction is of interest here because they provide an account of contract that runs counter to Enlightenment ideals and rights-bearing individuals. Juxtaposed with "creative destruction," the concept of "sacrificial destruction" resituates surplus, exchange, and the acquisitive spirit of capital as historically and culturally achieved. As an analytic approach to contemporary markets and economy, "creative destruction," puts the machinations of wealth, exchange, and property beyond historical and cultural reach, remystifying power. To suggest that offerings of sacrifice provide a less mystifying approach to contemporary economic phenomena than "creative destruction" might seem rather counterintuitive. But after considering the tremendous energies undertaken by people hit hard by economic forces far beyond their control, "sacrificial destruction" might be a better way of thinking about their struggle to make the destruction at their doorstep commensurable meaningfully part of history, and therefore negotiable with a flexible repertoire of strategic action.

This question of the specificities of sacrifice matter to me and to the people who I spent time with in researching this project. They want their work, the sacrifice, their action to be meaningful and valuable. The idea that they are being pushed and pulled pell-mell in a world of *a priori* givens does not suit at all.

I am left wondering, though, what are the ethics in recognizing these specificities while the destructive power of speculative capital, seems so big, so universal, so relentless?

For Bakhtin, this obligatory fact of responsibility for one's singular participation in space-time is the basis of action because it gives a weight, a place, and a time to action: "I, too, *exist* actually…Where I am now located, no one else has ever been located in the once-occurrent time and once-occurrent space of once-occurrent Being…That which can be done by me can never be done by anyone else. (40)." What marks ethical action is the attempt to remain "unindifferent" to what Bakhtin calls the non-alibi in being, or what the Franciscan theologian Duns Scotus called *haeccity* or "thisness" of one's action and the ability to account for that action:

> It is only my non-alibi in Being that transforms an empty possibility into an actual answerable act or deed. This is the living fact of a primordial act or deed which produces for the first time the answerably performed act—produces its actual heaviness, compellentness; it is the foundation of my life as a deed-performing [*postuplenie*], for to *be* in life, to be *actually*, is to *act*, is to unindifferent toward the once-occurrent whole. (42)

It is in that vein of unique historical presence that I have aimed to convey stories about what people got up to during a watershed moment in Irish history. Those activities were often not ethical or felicitous, nor did they provide a normative model to follow for others. But what they did do was transform empty possibilities into connections, relations, and futures. As my own path took me from ghost estates to the Yankee's homeplace he worked tirelessly to retain possession of, my hope is to have produced an account that itself can turn empty possibility into connection.

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