doi:10.1017/hgl.2024.34 *Hegel Bulletin*, 45/2, 340–367

Dividends of the Colour Line: Slaveholder Indemnities and the *Philosophy of Right*

Ciaran Cross

Abstract

In notes to Hegel's *Rechtsphilosophie* lectures, written around the time of Haiti's 1825 'ransom'—the 150 million francs demanded by France to indemnify former slave and plantation owners—we find an uncanny remark. Hegel appears to report on a different ransom, a compensated abolition of slavery in North America that never happened, anticipating an application of the Fifth Amendment's takings clause that US legal scholarship routinely fails to mention. In view of Alan Brudner's enlistment of Hegel as the philosopher 'uniquely' able to understand the Fifth Amendment's requirement for compensation for expropriations—a 'constitutional essential for liberalism'—this paper explores the meaning of these passages in the historical context of the legal abolitions of Hegel's time: feudalism and slavery. The slaveholder indemnities were clearly the unjust 'dividends' of the colour line, but their legal foundations and developments in US thought of the nineteenth century also usefully illustrate takings law's foreclosure of political and social transformation through the securitization of value. Reading these histories and Hegel's comments alongside the critical interventions of the black radical tradition, I suggest that Hegel's curious remarks on compensated takings suggest not only a critical divergence from Brudner's understanding of 'dialogic community', but a crucial limitation in his field of analysis which pivoted on the denigration of black sovereignty. This paper thus suggests an understanding of US takings law through the shifting understandings of the term 'ransom'—which for abolitionists such as Frederick Douglass signified not a resolution of slavery, but rather the threat of its perpetuation—and Douglass's elaboration of the pathology of the colour line.

Introduction

> [T]he case for reparations has been made against us …
> (Moten and Harney 2016: 200)

In 1825, fourteen French warships bearing 494 guns delivered a Royal Ordinance to Haiti prescribing preferential terms of trade and an indemnification worth 150 million francs for former slave and plantation owners whose property rights were extinguished by the Haitian Revolution, as conditions for Haiti's recognition (Logan 1941: 218–20). According to the *New York Times*, the indemnity to slaveholders represented the equivalent of $560 million today, and servicing the debt cost Haitians up to $115 billion, eight times the size of Haiti's 2020 economy (Gamio et al. 2022). While France regarded the compensation a correlate to settlements arising from the French Revolution, the United States recognized in Haiti's indemnity—'perhaps the single most odious sovereign debt in history' (Gamio et al. 2022)—a timely precedent: Henry Clay, then Secretary of State, defended the compensation to former slaveholders as legitimate, even while lambasting Haiti's pseudo-sovereignty as 'colonial vassalage' due to France's preferential trade conditions (Logan 1941: 219–28, 303). Throughout the antebellum period, the expectation that the US government was similarly obliged to compensate slaveholders upon abolition served to antagonize abolitionists and slaveholders alike. The US Constitution's Fifth Amendment prohibits any government 'taking' of private property 'for public use, without just compensation'. The 'only plausible interpretation' since its adoption in 1791 was that the 'takings clause' applied to property in slaves (Finkelman 2012: 120). Until that application of the takings clause was definitively ruled out in 1868, US slaveholders could argue that such was required by the US Constitution, and that abolition in the US was thus bound to follow the precedents set for slaveholder indemnities—imposed on Haiti in 1825, legislated for in Britain in 1834.

Bearing in mind Alan Brudner's enlistment of Hegel as the philosopher '*uniquely*' able to understand the US takings clause's compensation requirement (Brudner 2013: 73), notes to Hegel's lectures on the *Philosophy of Right* appear to be curiously prescient on the matter of the slaveholder indemnities—the one application of the takings clause that contemporary US legal scholarship (Brudner included) routinely fails to mention.[1] Hegel did not live to witness either Britain's compensated abolition of slavery or abolition in the US. But remarks recorded in notes to his 1818–19 and 1824–25 lectures uncannily anticipate compensated emancipation in North America and provide a snapshot of that nascent debate at a critical juncture. Forty years after Hegel's death, in 1862, Abraham Lincoln arranged for legislation compensating slaveholders in the District of Columbia.[2] Paying full compensation to all southern slaveholders upon abolition was hardly a viable option (Fladeland 1976: 186; Piketty 2020: 237–38). When James Madison—credited as solely crafting the clause—first speculated on the constitutionality of 'taking' slaves in the US in 1819, he estimated that compensating slaveholders would cost the government 600 million dollars (Treanor 1995: 787–91). By the 1860s, the estimated market value of some 3.9 million slaves in

https://doi.org/10.1017/hgl.2024.34 Published online by Cambridge University Press

the US would have eclipsed Haiti's 1825 indemnity by several orders of magnitude: contemporary estimates suggest that 'full' compensation to US slaveholders would have required the equivalent of thirteen trillion dollars today (Kleintop 2018: 8).

This paper seeks to historicize Hegel's remarks and consider the significance of the debate on compensated abolition, for both Hegel and property thought in general, in the context of critical interventions of the black radical tradition. If that tradition is distinguished—as Fred Moten writes—by 'a refusal of the inaugural force of sovereign power' (Moten 2018b: 42), this is a refusal which exacts, among other things, a reappraisal of Hegel's claim that 'freedom is truly present only as *the state*' (*EPR*: §57R, 88/142).[3] Out of the antinomy that the historical *justification* of slavery as well as its *critique* has ever leaned on the concept of 'nature', lay the insight for Hegel that the State is *abolitionist*: only within it could true freedom be attained (*EPR*: §57R, 88/142). But the vision of sovereign power Hegel expressed in his lectures on the *Philosophy of Right* was distinctly European and its monopolies on freedom meant that the stateless were more or less fit for slavery: black sovereignty as demanded by Haiti would only ever prove to Hegel that 'Negroes' were 'not ineducable' (*PSS*: §393, 53). The black radical tradition marks among other things the necessity of scrutinizing the legacies of European political and philosophical thought of the Enlightenment, and of a 'retheorization of modernity as a whole', one in which black slavery is understood as 'the root of capital accumulation in its modern form' (Chandler 2013: 172). Reading Hegel's enigmatic plea for a historical study of how 'property became free [*des Freiwerdens des Eigentums*]' (*LNR*: §26, 75/30; my translation) in that vein, we might consider that the *concept* of property 'became free' from its least stable referent and most obvious fiction, the *human thing*, simultaneously with 'our very capacity to imagine that thinking and thingness are distinct' (Brown 2001: 16). The very emergence of the idea of property as 'the law of [*non-human*] things' (Smith: 2012) required European legal thought to first shed the single manifestation of *dominium* which fatally exposed the intrinsically contestable nature of the commodity thing itself: the prohibition of this particular fictitious commodity served to sediment the indemnification of liberal legal fictions in general.

This paper first outlines a problematic in US property discourse that has emerged around the Fifth Amendment, the uncanny persistence of the original 'physicalist' thesis, and the issue of compensated abolition. Section II explores the historical context of Hegel's own remarks on the compensated abolition of feudalism, which provide a useful counterpoint to the contours of US law, including a critical divergence from Brudner's 'Hegelian' account in respect of valuation. In section III, I suggest that in Hegel's conceptualization of property, 'das Zueignen' posits absolute property rights as *essentially* incorporeal and as a metonym for *thought*, but that 'thinking' was for Hegel, like sovereignty, an endeavour marked by racialized, civilizational hierarchy. Section IV considers the likely

https://doi.org/10.1017/hgl.2024.34 Published online by Cambridge University Press

impetus for two fragments in the notes to Hegel's lectures concerning slavery abolition and slaveholder indemnities. These observations appear curiously prescient of the debate in the US, which peaked the year after his death and cemented the problematic of an indefeasible and unpayable indemnity at the crux of the nation's descent into civil war. A novel Anglo-American arbitration concurrent to Hegel's lectures heightened expectations of slaveholders on both sides of the Atlantic and likely expedited the compensation settlements made by Haiti, Britain and in the US. In section V, I suggest that divergent usages of the terminology of 'ransom' by Hegel and Frederick Douglass—born into slavery in Maryland around the time of Hegel's first lectures on the philosophy of right—suggest a deep polarity of experiences in respect of constitutional property protection and legal liberalism.[4] If Douglass and Hegel's thoughts appear at times to orbit each other, Haiti is their apogee: whether Hegel spoke of Haiti in silences (Buck-Morss 2000), or simply 'silenced' Haiti (Pradella 2014: 448), when Douglass spoke, he spoke of Haiti *speaking* (Blight 2020: 730). After US abolition, Douglass's former equivocations on compensating slaveholders gave way to a more radical understanding of racialization, debt and legal discourse.

I. The value of limit: physicalism and the human *res*

The 'just compensation' requirement in the US Constitution's Fifth Amendment takings clause has long been debated as creating a potential barrier to redistributive legislation. An indefeasible requirement to pay compensation for expropriations protects against confiscation and the nullification of vested rights, but can be double-edged: it will 'make a just distribution more secure, but it also will make an unjust distribution more secure' (Nickel 1976: 383, 388). The 'original intent' of the US Constitution's framers to this end has proven divisive in legal histories, although the clause's sole drafter, James Madison, was clear about his anti-majoritarian anxieties and the threat of populism to the rule of law (Nedelsky 1994: 205–207).

With *Pennsylvania Coal Co. v. Mahon* in 1922, the US Supreme Court debunked any so-called 'physicalist' limitation to the clause's application—its putatively limited application to property *physically* seized or occupied. The meaning of 'taking' was thus confirmed to cover abstractions of value, expectation and interest, such 'things' as might be taken when 'regulation goes too far'.[5] This shift alarmed organized labour and legal realists who cautioned that 'thingification' simply veiled 'the circularity of legal reasoning': property's protection ensures *value* and value warrants protection as *property* (Cohen 1935: 815). This recursive relation between securitization and value is what is meant to drive growth and investment, but once any government measure may incur an obligation to compensate, it also puts an uncontrollable price on social and economic transformation.

https://doi.org/10.1017/hgl.2024.34 Published online by Cambridge University Press

In the wake of *Mahon*'s 'disintegration' of the physical concept of property, an affliction of what Davies calls 'post-Hohfeldian anguish' has been unleashed, with practical consequences for takings law (Davies 2007: 42; Grey 1980). Broadly stated, *Mahon*'s non-physicalist expansion is understood to risk engendering claims for indemnification for *any* diminution of value incurred due to 'regulatory' expropriations (Smith 2012: 116–17). John Commons's 1924 account regarded this slippage from the *tangible* to the *intangible* in US constitutional property thought as 'more than a transition—it is a reversal' (of the original, physicalist thesis), one which 'becomes important when Capitalism rules the world' (Commons 1924: 21). Indeed, the legacies of US takings discourse extend well beyond US jurisdiction: after a century of fierce international contestation by postcolonial States, the Fifth Amendment's 'enlightened' norm of 'just compensation' has been successfully transplanted into a spaghetti-bowl of investment treaties, and effectively elevated to the status of an immutable principle of political and economic expediency, albeit one not yet considered customary international law (Vandevelde 2017: 5–28).

Brudner's enlistment of Hegel as the philosopher 'uniquely' able to understand the takings clause is a shrewd choice for thinking about shifting understandings of eminent domain, but—as I argue below—his justification of an indefeasible constitutional guarantee of compensation cannot be said to exhaust Hegel's philosophy, nor to exhaustively apply it to contemporaneous circumstances. Brudner reads into Hegel's 'absolute right of appropriation […] over all things' (*EPR*: §44, 75/126–27) a concept of property characterized as a *right to 'acquisition'* that ultimately becomes a duty to acquire,[6] thus imprinting Hegel's philosophy with paradigms of possessive individualism: property is acquired 'prior to the rule of law', 'independent of distributive fairness or the public interest' (Brudner 2013: 86). Brudner's account of the takings clause does reject the thesis that the *physical* thing was somehow eroded in property thought, and rather acknowledges that it was never *first* to begin with (Brudner 1995: 300).[7] But it stops short of exploring the significance of that understanding for what was, during Hegel's lifetime, the most contentious application of the clause: namely, slavery abolition.

Curiously, takings discourse's abyssal margins after *Mahon* have sustained an uncanny slippage between physicalism, absolutism and debt. If the notion of property as the law of things (the *in rem* right) has often been associated with a Marxian account of the legal reification of the commodity form, its corollary resides in the implicit anticipation that the revelation of property as *relationality*—'through and through' (Dagan 2021: 27)—entails a disenchantment of the law's operations and a more emancipatory concept of 'property' as a social construct. Without the 'logical stopping point' tendered by the physical thing, however, property might 'include *all legal relations*' and 'lose meaning as a category of law' (Vandevelde 1980: 362, 364). Margaret Davies notes that this post-Hohfeldian

https://doi.org/10.1017/hgl.2024.34 Published online by Cambridge University Press

disaggregation of property coincides with linguistic theory's 'crisis in meaning' (Davies 1998: 159). Takings law (perhaps uniquely) demonstrates that property shares with *meaning* a particular instability of over-extension: *limit* is the *price* of meaning—is reason's very condition of possibility—for the 'the right of entry into language' (*logos*) requires that 'polysemia is finite' (Derrida 1982: 247–48). Twentieth-century US property thought post-*Mahon* has often pivoted around determining how to delimit the clause's scope, guided by little more than the notion that property is a normative idea of distribution guaranteed by 'some degree of permanence' (Michelman 1967: 1203).

If the historic erosion of an original physicalist paradigm of property is a retroactive invention, Commons's physicalist 'reversal' thesis is more than 'something of an oversimplification' (Stoebuck 1972: 601–602). After the Fifth Amendment's ratification in 1791, the first express assertion of the federal power of eminent domain came in 1875, by which time the equation of property with 'everything which has exchangeable value' was already well established (Commons 1924: 14).[8] Some antebellum state constitutions included compensation clauses, and some state courts held to the principle that 'property must be actually taken in the *physical* sense of the word' for the requirement to apply, but the application of the compensation principle to a '*non-physical* concept of property' arose at least as early as 1816 (Stoebuck 1972: 601). Physical loss also *remains* paradigmatic of takings law: physical seizure or invasion are still the bright-line exemplars which structure practically all takings discourse. The debate over the conceptually promiscuous 'intangible' version of property post-*Mahon* culminated nonetheless in 1995 in Michael Treanor's presentation of the figure of the *slave* as evidence of the Constitution's framers' adherence to the *physicalist* thesis, suggesting that human chattel was likely the first type of property to be considered under the federal takings clause's purview.

Treanor's premise—that the physicality of slaves *proves* the clause's original limitation to *tangible* property—is remarkable: Morris Cohen, Hans Kelsen, and Orlando Patterson each suggest in different ways that the very distinction between a *corporeal* and *non-corporeal* concept of property is as old as slavery itself (Cohen 1927: 11–12; Kelsen 2005: 131; Patterson 1982). 'Physicalism' is an awkward trope of takings thought to apply to the context of slavery abolition: according to Patterson, *absolute dominium* was a legacy of the Roman slave economy that came to 'haunt' Western legal concepts for millennia (Patterson 1982: 31). It is, and always was, obvious that 'strictly speaking, property refers to a set of relationships between persons': slavery *above all* needed the concept of 'things', for the slave had to be 'above all a res, *the only human res*'—an emphatically *human* thing (Patterson 1982: 32). The persistence of the *thing* in understandings of the property concept hinges on what Jeremy Bentham described as the 'violent' (if quotidian) 'ellipsis' of the property *relation* (Davies 1998: 158): in this regard, the *human res* is the property concept's most violent denial of relationality.

https://doi.org/10.1017/hgl.2024.34 Published online by Cambridge University Press

II. Full right and full value: Brudner's 'Hegelian' indemnity

One of Hegel's primary interlocutors for modern US property thought, Alan Brudner presents takings law as illustrative of his concept of 'dialogic community', or how the 'contradiction inherent in civil society is logically surmounted in the political community (what Hegel calls the 'State')' (Brudner 2013: 91–92). Compensation for takings is 'just' because 'property exists in the state as the private property approved in a free market and not as a product of the public welfare' (Brudner 2013: 96). Cognizant that this condition may thwart redistributive legislation with prohibitive cost, he nonetheless maintains that 'an authority to expropriate *for the public welfare* limited by a right of compensation *indefeasible by the public welfare'* offers a theoretical axis of coherence for property law—the 'reciprocal limitation within a whole' (Brudner 2013: 69–73, 97–98).

It is not altogether obvious that this 'constitutional essential for liberalism' (Brudner 2013: 73) is essential *for Hegel*. While the clause's compensation requirement has emerged as a totem of liberal US property thought, the relationship of Hegel's *Rechtsphilosophie* lectures to liberal political philosophy is contested, in no small part due to its author's ambiguous commitments to statism and legal science, discussed below. Many sections of the *Philosophy of Right* lectures indicate that generally Hegel believed the State may subordinate private property to the public interest, seemingly sanctioning exceptional acts of confiscation (*EPR:* §46A, 78/130; Wilson 2019: 89–90). Hegel defends infringements of the right to property as patently necessary exceptions that rather prove the validity of the general principle that property should be protected (*VPR H*: §137, 134; *VPR 4*: §30, 157–58).

At the time of Hegel's commentary, litigation was still disentangling the question of compensation for the abolition of feudalism in France, and struggling to distinguish between feudal and non-feudal property relations. The 'legal structure' of property at the time of the French Revolution consisted primarily in 'divided domaniality', and the unification of *dominium directum* (ownership) with *dominium utile* (use) was effectively 'shorthand' for abolishing feudalism (Blaufarb 2016: 62). Overcoming the regime of divided dominium was sometimes framed as the restoration of an (ostensibly) original character of property as *allodial* ('full' or 'absolute'), but Susan Reynolds suggests that the *allodial* paradigm was largely derived from 'postmedieval historians who originated the idea of feudal law and feudal society' (Reynolds 2010: 105). In France, the invocation of an indivisible *allodial* right was rhetorical: Rafe Blaufarb writes, 'Although [*allods*] recognized no overlordship, they could be dismembered into subordinate tenures in exactly the same way as a fief' (Blaufarb 2016: 64). The term *dominium eminens* was first used by Francisco de Vitoria to refer to a superior sovereign, or princely, prerogative, over and above all other claims, and Hugo Grotius's influential 1625 account

https://doi.org/10.1017/hgl.2024.34 Published online by Cambridge University Press

espoused the principle with compensation as its essential caveat, as a law of '*jus gentium*' (Grotius 1901: 387–88). Thus the US takings clause's strict compensation requirement certainly reflected a vital qualification of the *original* understanding of the concept of eminent domain—uniquely adopted by US constitutional discourse in legal treatises of the late nineteenth century (Reynolds 2010: 109–10, 138).

However, the distinction between *dominium utile* and *dominium directum,* revived from Roman law in the twelfth century, had always been academic (Reynolds 2010: 91) and politically potent (Fitzmaurice 2014: 37–39)—but never coherent. Early Franciscan texts had established an equivalence of *dominium* and *ius* that persisted in medieval and scholastic thought, meaning that *dominium* could enjoy a certain similitude with *any loss entailing a right to restitution,* and injury a broad equivalence with 'furtum, theft' (Brett 2003: 25, 29, 127; Brett 2014: 92). By the fifteenth century, Konrad Summenhart catalogued no less than 'twenty-three categories of dominium', and Vitoria would later deploy the divisibility of dominium to argue 'that Indians [in the New World] could have dominion and yet still be under the jurisdiction of [Holy Roman Emperor] Charles V' (Reynolds 2010: 91–100). Andrew Cole suggests that the dominoes of domination revealed in this feudal past—Europe's 'subinfeudation'—inspired Hegel's insight in the *Phenomenology of Spirit* that the master is 'really the slave': each lord 'stands below a greater lord' in '*ever-ascending orders of domination*' (Cole 2014: 79–80).

For the French, a compensation requirement equivalent to that in the US takings clause[9] quickly provoked a dilemma of prohibitive expense and by 1793, civil unrest led the National Convention to mandate *un*compensated abolition of feudal titles (Koskenniemi 2021: 458–73). Hegel cast feudalism's division of dominium as a 'madness of personality' (*EPR*: §62R, 91/148), but denounced outright confiscation. The consolidation of dominium—its becoming 'full', as private property—signified for Hegel the necessary overcoming of the division between '*concrete* mastery' (possession) and '*abstract* mastery' (ownership), since if the latter 'is deemed to accrue to another', then the former could only 'consist in an indebtedness': a right to 'insuperable' debt would mean that right is 'empty', all possibility of its actualization foreclosed (*LNR*: §25, 73/27). The absolute power that Vitoria ascribed to sovereignty was thus in need of qualification, and Hegel recalled reforms undertaken by the eighteenth-century Prussian King Friedrich II, which made private property more than 'mere domination' by the sovereign, as exemplars of such 'enlightened absolutism' (*VPR 4*: §75, 253). In this vein, notes to the early lectures assert that 'the principle that feudalism should be overcome was wholly good', but disapprove of *dominium directum* 'simply being annulled': '[I]t had to be accompanied by compensation' (*LNR*: §25–26, 74–75/28–29).

Hegel did not however endorse an indefeasible constitutional right to compensation: 'only rarely' could the State be 'bound by right' to pay it (*LNR*: §125, 225/175). He distinguished the illegitimate claims of German nobles and

https://doi.org/10.1017/hgl.2024.34 Published online by Cambridge University Press

émigrés in France to compensation for lost privileges; rights to public office should not be indemnified, but when rights that have the 'form' of private property are abolished, including vassalage, 'those who gain thereby must pay compensation to the losers' (*LNR*: §125, 225–26/175–76). The early lecture notes further suggest that, within the logic of limitation implied by compensated expropriation, the law as public settlement is private property's condition of possibility:

> It is therefore necessary that every servitude should be terminable, and the price must be determined by legislation [der Preis muß gesetzlich bestimmt werden]. *That there is private ownership at all, follows from this* [Daß Privateigentum überhaupt sei, folgt hieraus]. (*LNR*: §26, 74–75/29–30; my translation italicized)

For Brudner, in contrast, the lawgiver does *not* determine the price; rather the State must compensate expropriations 'at a value judicially determined as *fair*'—meaning for Brudner market value, 'the metaphysical values realized in exchange' (Brudner 2013: 83–84, 96). Joseph Sax recalls that although Grotius is considered the 'the father' of the takings clause, he was in fact 'a firm advocate of government regulation of prices' (Sax 1964: 54), and for Hegel—'the philosopher' of the clause—we could say the same: the passages from Hegel's lectures cited above suggest a far less dogmatic commitment to the principle of compensation, much less one that is fixed by market value (*der Preis muß gesetzlich bestimmt werden*).

III. Absolute property, absolute abstraction: thinking right

Any 'absolute' right to property derived—for Hegel—not so much from dominium, or value, as from *phenomenology*. The oft-cited section of the *Philosophy of Right* on the absolute right of 'appropriation' (*absolute Zueignungsrecht*) is immediately followed by this remark:

> That so-called philosophy which ascribes reality—in the sense of self-sufficiency and genuine being-for-and-in-itself—to immediate individual things [Dingen], to the non-personal realm, as well as that philosophy which assures us that spirit cannot recognize truth or know what the *thing-in-itself* is, is immediately refuted by the attitude of the free will towards these things [Dinge]. (*EPR*: §44R, 75/126–27)

The predominant English translation of Hegel's archaic term—*das Zueignen*—to 'appropriation' flattens a far more plastic notion suggested in usage contemporary to Hegel: *consecrate*, attribute, convert, devote, consign, *father*, assume, adapt, enclose, *address* (Ebers 1793). The above passage, largely overlooked in

https://doi.org/10.1017/hgl.2024.34 Published online by Cambridge University Press

English-language analyses of §44, frames Hegel's use of *Zueignungsrecht* as phenomenological, positing free will as 'the power to push aside the curtain of phenomena' and exposing 'the entire world of things to be "manifestations" of the world of persons' (Scholz 2009: 56, my translation; see also Hüning 2002: 235–62; Mohseni 2014: 59; Städtler 2017: 372). The free will can neither claim to know what things really are, nor forswear knowledge of them, and the phenomenological crux of Hegel's theory of property might be dubbed—in contradistinction to Locke—a labour (of thinking) theory of property. Property is the unassailably phenomenological structure of the *capacity to determine property*, and for Hegel, self is concomitant with determination.

Hegel's striking examination of '*das Zueignen*' in earlier lectures defines it as 'taking possession' by one of three modes: i) seizing; ii) marking; or iii) imposing a form on a thing (*LNR*: §§19–32, 67–81/21–35). Physical seizure is the 'in the highest degree the most limited and temporary' mode and exemplifies the 'imperfection of laws': since matter 'does not belong to itself […] when I seize it, it is mine', but one 'cannot go on holding things in detention, in bodily possession, indefinitely' (*LNR*: §20, 67–68/22–24). Neither can marking suffice. As mere 'objective representation', the mark is arbitrary, indeterminate, a 'most imperfect way' of taking possession: European settlers in the Americas did not achieve ownership of land simply by planting flags, nor, *pace* Locke, could land-use alone 'impose a form' (*LNR*: §19, 67/21; §21, 70–71/24–25; §23, 72/26; *VPR H*: §58, 66).

Corporeality collapses as Hegel considers the exemplary physical object of property, *res nullius*, in the cadaver of a wild animal: 'The negative condition [for my taking possession], namely that the thing should be ownerless (*res nullius*), is here self-evident, or rather relates to the anticipated relationship to others' (*LNR*: §18, 66–67/21; §31, 80/34–35). But in his analysis of the wild prey dispatched by *multiple* hunters, Hegel quickly explodes materiality as connected and interstitial. In the forensic disaggregation of the kill, the 'inner dividedness' of the individuated *res nullius* is on display: its apparent singularity dissolves in its 'intrinsic externality', its 'sensuous manifoldness, its various levels of life' (*LNR*: §20, 67–68/22–24). Here, matter can accrue, fracture and disperse, and a litigative dismemberment ensues: this is where 'legal disputes arise […], the understanding [decides] how essential one or the other part or aspect is, and so (determines) the right to the thing itself' (*LNR*: §20, 67–68/22–24). Thinking through this juridical scrimmage over the innards of the hunted wild animal, Hegel seems to anticipate Walter Benjamin's identification of that 'most ancient' form of reading: 'to read what was never written… reading before all languages, from the entrails, the stars, or dances' (Benjamin 1978: 336). Judgement arises already dissected, as 'original division', *Ur-Teil*— 'every *thing* is a judgment [Alle Dinge sind ein Urteil]' (*EL*: §§166–71, 243–48; Tanabe 1971). Any 'essential correspondence' between

https://doi.org/10.1017/hgl.2024.34 Published online by Cambridge University Press

intelligence and intelligibility, of laws natural or artificial, always already takes place against the 'abyss of reality' (Negarestani 2018: 31). Absolute right (*das Zueignen*) thus delivers immediately and irrefutably the 'problem of too much law' (Cover 1983: 41): the abyssal contestation of matter occasions 'positive right', the necessity of a decision founded on understanding (*LNR*: §20, 68/23).

For Hegel therefore, positivist legal science could never exhaust the meaning of right. Rather, there is a 'point' at which 'right *must become positive*', but positive law and philosophical science are 'approaches' that 'can […] remain indifferent to one another' (*EPR*: §3A, 28–31/65–68). Legal slavery exemplified this tension between legal science and philosophy: citing the French *Code Noir*, he describes how legislation merely derives validity from its status as legal source of authority, whereas right *in itself* is right by virtue of reason (*VPR 4*: 538). To a degree, Hegel's commitment to *philosophical* science gave him licence to be selective. Some aspects of positive law he deemed irrelevant for his understanding of right, others (such as the divisions of dominium, discussed above) were essential, if only for having produced an erroneous and empty entitlement.[10] Right, moreover, is restless. Even in situations of peace, the *possibility* of coercion *remains* the *necessity* of coercion, for coercion can only 'be annulled *by coercion*' and is '*only rightful insofar as it destroys coercion*', and therefore 'right must *be*', irrespective of legislation (*LNR*: §44, 96/49–50). The permanence of property must also remain in question: 'That I own a thing is something that happens in time' (*LNR*: §27, 76/30–31). For Hegel, 'imposing a form' is the 'most essential' mode of possession—more so than seizure, or marking—precisely because it makes possession 'durable', and hence gainful (*Erwerb*) (*LNR*: §21, 70–71/24–25). Possession can become ownership—'the aspect governed by right'—only when this '*non-sensible, timeless aspect*' is introduced (*LNR*: §24, 72-3/26–27).

Zueignungsrecht demarcates then not a simple duty of material accumulation—as per Brudner—but rather a capacity to produce enduring formal abstractions, a release from indebtedness to the physical: for ownership in the sense given here—*pace* Commons's account, cited above—is *by definition* the introduction of the 'non-sensible, timeless', its *intangible* form. Hegel's account of 'imposing form' is paradigmatic of the teleology at work in Europe's embrace of property as selfhood, as an ideology of 'human development', and instrument of the alienation of labour; as Max Stirner later intuited, in this developmentalist account, the one indispensable *thing* for property is the *human,* and the distinct mark of the human is indebtedness, *lack*—for 'no beast has its essence appear to it as a task' (Stirner 2000: 293). For Hegel, form is a matter of 'body and spirit': 'By imposing form I determine myself, I separate the determinate activities from me' (*LNR*: §22, 71–72/25–26). In order to *master* oneself—to 'divest [oneself] of arbitrariness'—and in order that one *not be enslaved*, one is paradoxically required to be 'capable of taking on *the form of the thing*' (*LNR*: §29–30, 78–80/31–34; *EPR*: §57, 86/141). Only this way

https://doi.org/10.1017/hgl.2024.34 Published online by Cambridge University Press

can one 'hand [some self] over' as 'something external'—*service* (*LNR*: §30, 79–80/33–34). The human *must* moreover be able to 'separate [themself] wholly or in part from [their] body' *because* 'an animal cannot' and, most unlike the wild animal, the human is not 'something independent' and does not '[lose] its independence by being tamed', must *be tamed* to be free (*LNR*: §16, 65/19; §21, 70/24–25). At the same time, for Hegel, that the human should be so free is foremost *a thought* (*der Mensch soll eine Freie sein, dies ist ein Gedanke*) (*VPR H*: §258, 235), and thought itself imprescriptible, expressing a 'boundless infinity of the absolute abstraction of pure thinking, of universality' (*LNR*: §3, 53/7). Since the *abstract* is unbound—absolute—then in the vein of Aristotle's characterization of metaphysics as 'the only *free* science', Hegel arguably derives from *absolute Zueignungsrecht* an immanent *injunction to think*: a slave is one who 'does not think himself' (*EPR*: §21, 53/96).

In the matter of thinking oneself (to be) free, one is tempted to imagine that Douglass might have concurred,[11] but it is difficult to avoid the fact that Hegel accepts a basic juridical correspondence between intelligence and intelligibility that is racialized in advance. The interpretation that Hegel perpetuated the myth of the *servile slave* often leans on one phrase derived from his student's notes: 'If someone is a slave, his own will is responsible' (*EPR:* §57A, 88/143).[12] Often overlooked is the extent of Eduard Gans's revision, which eliminated from this passage a crucial distinction (between '*an sich*' and '*für sich*'): the text of §57 and its accompanying notes in all other versions do rather suggest that for Hegel the notion of *slave* servility is paradoxically implicated in the very assertion that humans are *by nature* free; in his notes to the same passage, he refers to the enslaved in the West Indies as 'victims of the general condition' (cf. *VPR H:* §57, 65; *VPR 3:* §57, 226; *VPR 4:* §57, 209; see Nesbitt 2008: 122–24). Hegel's brief considerations of slavery are nevertheless emphatic in the conviction that *African* slavery is distinct, notoriously prescribing *Bildung* and Christianity, even slavery, as civilizing remedies to Africans' ostensible servility. Arguably, Hegel precisely vindicated racial slavery by racializing Statehood: student notes to his final *Rechtsphilosophie* 1831 lectures record that, '[w]ith the Negroes, there is no progress or state building. The same with the Eskimos' (*VPR 4:* 922; my translation).

Of course the 'compulsion to think' has never been reducible to a 'Western enterprise' (Negarestani 2018: 410, 485), but in linking *thought*, *form,* and *law* together Hegel's account essentially consolidates a refusal of non-Western peoples' juridical capacity through the continuing denial of their ability to *abstract*. The *imposition of form* necessitates that right is uttered, and known—hence, a discursive operation: property turns on the appropriative and jurisgenerative capacity of *naming* implied in the logocentric correspondence of *nomos—Name/nehmen* (to take) (*LNR*: §17, 66/20; Schmitt 2003: 326). For Hegel, the law of nations (*jus gentium*) had long distinguished that *imposing a form* is 'the most complete mode of use', and

https://doi.org/10.1017/hgl.2024.34 Published online by Cambridge University Press

thus accorded simple priority in right to 'the most advanced, more civilised peoples' (*LNR*: §21, 70–71/24–25). This deference to early modern law extends to philosophy what had for centuries served as a *modus operandi* of lawful imperialism—disaggregating humanity via the rubric of civilization. The consequent exclusion of non-Europeans from the capacity for reason and state-building likely also underpins Hegel's tentative deliberations on how to distribute the societal costs of abolition.

IV. Hegel and the slaveholder indemnities, 1822–68

Hegel's 1818–19 lectures presented an embryonic version of the *Philosophy of Right*, in his own notes to which the matter of slaveholder compensation transpires elliptically. In the following passage on slavery, the only feasible context of *abolition* (not expressly mentioned) must be inferred:

> Slavery—without compensation, is higher right—if *justo titulo*, State (must) compensate (if it *could* not)—if it however has the power, it need not, then it has the absolute right to do it—the slaves themselves need not worry about it. (*VPR 1*: §407, 149; my translation, emphasis in original)

Notes to the *Rechtsphilosophie* lectures written six years later by Hegel's student, K. G. von Griesheim, expand on this cursory analysis:

> [E]ven if by laws the slavery is justified, guaranteed, the slave has nevertheless no obligation to remain, how the master is compensated, who bought and held *bona fide* slaves, is a matter of the State [Sache des Staats]. In North America, where the State initially legally sanctioned slavery and later abolished it, it ransomed them [hat er sie losgekauft]. (*VPR 4*: § 68A, 239; my translation)

Leaving aside the problem of the '*bona fide* slave', or whether the misleading formulation is Hegel's or his student's, this second remark appears upon first glance to prematurely report a compensated abolition of slavery in North America as if it were history. Far from being abolished, slavery in North America in the 1820s was undergoing a process of expansion. Where gradual emancipation had already been enacted in the northern US states, this was achieved through prohibition of the trade and 'free womb' laws.[13] Cases of *private* purchase did occur—but no *State* purchase of slaves took place other than in the District of Columbia in 1862, some thirty years after Hegel's death (Sumner 1862). The source of the error is not immediately obvious.

https://doi.org/10.1017/hgl.2024.34 Published online by Cambridge University Press

These two fragments from 1818–19 and 1824–25 are (to my knowledge) Hegel's only commentaries on the matter and bookend a critical period in which US lawmakers tentatively began to tout estimations as to the cost of abolition. The timing of the two notes suggests that Hegel was prompted to consider the matter by an international arbitration awarding US slaveowners compensation for slaves 'carried away' during the 1812–14 Anglo-American war, which set a timely precedent for subsequent slaveholder indemnifications paid by Haiti, Britain and the US. The arbitration aimed to resolve a dispute that had 'plagued Anglo-American relations for a quarter of a century', and concerned the 'taking' of slaves—though not necessarily their emancipation (Quarles 1996: 200). During the US Revolutionary War, both the US and Britain viewed slaves of the enemy as 'booty' (Quarles 1996: 157). From the mid-1770s, the British promised loyalists compensation for slaves impressed into fighting their side; US states also compensated owners for impressed slaves, although on the US side anxieties about the 'threat' of advancement were high. To overcome US slaveholder reticence, 'substitution' was permitted (whereby slaveowners could offer slaves to dodge the draft) (Quarles 1996: 55–57, 67). Of the 50,000 slaves 'carried away' with the British during that war, many were forced back into slavery and US slaveholders hoping for restitution of their lost 'property', provided for under the 1794 Jay Treaty, were disappointed (Wiecek 2018: 56; Quarles 1996: 200; Sinha 2016: 52). Thousands more slaves joined the British troops or fled behind British lines in 1812–14 war. Drafters of the 1814 Treaty of Ghent were thus anxious to avoid another failure: Article 1 of the Treaty provided that all 'possessions', 'any slaves or other private property', 'carried away' with the British were to 'be restored without delay' (Oakes 2014: 117–23; Finkelman 2014: 172).

The parties agreed to refer their differences to arbitration in 1818, and a year later appointed the Russian Czar Alexander I as sole arbitrator in the case. For the British and US statesmen involved, slaveholder compensation likely 'paled in comparison' to concerns of maritime hegemony, territorial integrity and colonial expansion (Ostdiek and Witt 2019: 562). In deference to the law of nations, the British claimed never to have resisted the indemnification (Lindsay 1920: 414); in 1820, Britain agreed a £400,000 indemnity to Spain upon the latter's abolition of the slave *trade* (Griggs and Prator 1952: 106). Ambiguity remained not as to whether a slaveholder indemnity was *due*, but whether the Treaty covered slaves originating in territories the British had never occupied. Curiously, compensation was not mentioned in the Treaty at all, only restitution, but with the arbitral decision, this slippage was tacitly settled. In 1822, the Czar awarded US slaveowners 'just indemnification' for the loss of slaves and $1,204,960 representing the value of 3,601 slaves was finally paid by Britain and distributed to the slaveholders in 1828.[14] The *Morning Chronicle*, of which Hegel was a 'regular and assiduous reader' (Petry 1976: 15; Buck-Morss 2000: 844, 859), reported both the award

https://doi.org/10.1017/hgl.2024.34 Published online by Cambridge University Press

and its reverberations: in 1824, slaveholders organized in London and drafted a Petition to the King demanding that they too receive full indemnification upon slavery abolition in the West Indies.[15] The Ghent Treaty arbitration provided a critical precedent and its evaluations became a 'yardstick' for the British slaveholders, who soon demanded an indemnity of sixty-four million pounds (Draper 2009: 79–94; Heyrick 2010: 31–32). The British Parliament legislated in 1834 to compensate the slaveholders to the tune of twenty-million pounds, as well as a so-called 'apprenticeship' period during which slaves were to remain slaves, which ended prematurely in 1838 (Fogel and Engerman 1974). The loan constituted 'the largest single financial operation undertaken by the British State to date', amounting to five percent of the national income—equivalent to around 200 billion pounds in today's terms (Draper 2009: 270).

The fragment from Hegel's 1818–19 notes keenly anticipates how such debates would develop long after his death: a State with 'the power' and hence 'the absolute right' might indeed abolish slavery *without compensation*. For Hegel, however, *blame* rather resided in the *totality*—'Schuld […] Aller, des Ganzen' (*VPR 2*: 243)—and this sense that it would be a fallacy to impute the responsibility for slavery exclusively to slaveholders was widely shared at the time. In the US, the question of a slaveholder indemnity proved almost as unpopular with northerners unwilling to acknowledge such complicity in the economy of the South, as with proslavery southerners (Fogel and Engerman 1974: 382–83). Up to and during the civil war, Lincoln maintained the belief that immediate, *uncompensated* abolition unfairly penalized slaveholders for participating in a legally sanctioned activity, its profits diffused throughout the economy. Soon after compensated abolition in the District of Columbia, in January 1863, he issued the Emancipation Proclamation —a 'war measure' declaring all slaves in seceding states to be free—recommending that compensation be paid to slaveholders 'who shall not have been disloyal', through government bonds issued to states that abolished slavery up until 1900.[16] As recognition that the North had shared in slavery's profits, he deemed compensation 'just and economical'; relative to war expenditure it was even 'prudent'—but with a thirty-seven year grace period for slaveholding states, it was anything but expedient. Towards the end of the civil war, Lincoln again failed to win support from his cabinet for a compensation settlement of 400 million dollars to southern slaveholders (Kleintop 2018: 6–7). The passage of the Fourteenth Amendment in 1868 finally wiped out US slaveholders' claims for a federal indemnity.[17]

As mentioned in the introduction, the value of slave property had by 1860 made any prospect of a fully compensated abolition practically inconceivable. If Hegel ever considered that the exercise of eminent domain was contingent on such axiological stakes, he expressed it only in one parenthesized comment: *what 'if* [*the State*] *could not' pay* (*VPR 1*: §407, 149)? In this regard, the difference between

https://doi.org/10.1017/hgl.2024.34 Published online by Cambridge University Press

compensation *at a price determined by the legislature*—as suggested by the Hegel of the *Rechtsphilosophie* lectures—and a compensation requirement *indexed to market value*—as suggested by *Brudner's* Hegel—is acute. This dilemma became only truly apparent in the months after Hegel's death, in a rare debate on abolition and compensation prompted by the revolt led by Nat Turner in Virginia (Tomlins 2020: Chapter 6). In early 1832, James Gholson and other Virginia legislators deliberated and decried proposals for abolition—compensated or otherwise—as 'monstrous', claiming that discussion of abolition alone 'impaired the property value of slaves', and attempting to silence the debate (Curtis 2012: 135–36, 143). But if talk has axiological corollaries, slaveholders quickly learned to invoke the Fifth Amendment to better advantage: the requirement to compensate could also be used to demonstrate the 'financial infeasibility' of abolition (Kleintop 2018: 47). Invoking hereditary slavery and claiming that owners of female slaves had a 'reasonable right […] to their increase' as much as any orchard owner has to fruit, the slaveholders worked to value abolition so high as to preclude it—marked with a *de jure* a price which was *de facto* unpayable: over 100 million dollars for Virginia's 400,000 slaves (Curtis 2012: 138–40). This foreclosure was popularized in one 1832 publication by Thomas R. Dew, a proslavery Professor of History, Metaphysics and Political Economy (Kleintop 2018: 51–56; Stohler 2019: 118–19). Applied to federal abolition, the associated costs of compensated emancipation had by the 1860s soared to over three billion dollars, exceeding the value of all other property in the South (Piketty 2020: 237–38; Beauvois 2016: 215).

V. Redeeming property? Compensation and ransom

The terminology of *ransom* (*der Loskauf*) in the comments attributed to Hegel in 1824–25 marks an interesting historical shift in the term's currency, useful for thinking through the impacts of the slave economy on legal and economic thought. Hegel's use recollects a lost meaning: ancient Christian philanthropic practices of slave manumission equated *ransom* with *redemption*, which connoted both purchase and deliverance. This association was maintained well up until the mid-nineteenth century (Sumner 1862; Kurtz 1978: 256). One influential text on Christian thought in the antebellum US—Jonathan Edwards's *History of the Work of Redemption*—offers this earlier paradigm of ransom as an unwitting deconstruction of the commodity form. Edwards suggests that the distinction between *debt* and *purchase* is 'more relative' than 'essential': 'He who lays down a price to pay a debt […] purchases liberty from the obligation. And he who lays down a price to purchase a good […] satisfies the conditional demands of him to whom he pays it' (Edwards 1836: 230; Tomlins 2020: 74). Whether or not this will 'suffice', as Edwards intended, 'concerning the meaning of the purchase of Christ'

https://doi.org/10.1017/hgl.2024.34 Published online by Cambridge University Press

(Edwards 1836: 230; Tomlins 2020: 74), his conception of 'redemption' intimates an essential slippage between the property form and matters of debt, and servitude.

To the enslaved, this slippage required no theological gloss, and Frederick Douglass's experience of such 'redemption' was transformative in more than one sense. When his associates rallied to pay for Douglass's *own* manumission in 1846, he not only denounced the act of being forced to purchase what was 'self-evidently' his as a 'ransom', but recognized that the term 'ransom' denoted a very public form of extortion: not charity, but rather 'proof of the plundering character of the American government' (*FDSW*: 53–54). Douglass broke ties with William Lloyd Garrison's American Anti-Slavery Society after fellow Garrisonians (though not Garrison himself) censured him for the manumission payment, and later found common cause with the millionaire abolitionist Gerrit Smith in the matter of land reform, which amply illustrated an insight the US legal realists would acknowledge only a century later: namely, that 'dominion over things is also imperium over our fellow human beings' (Cohen 1927: 13). The abusive conditions of slavery could well be maintained without the legal fiction of human chattel, and Smith regarded land monopoly an even 'greater evil' than slavery itself, since it produced 'manifold more victims'; in 1857 he devised a plan of compensated abolition *and* land redistribution requiring a total federal budget of $525 million (Stauffer 2004: 143; Stauffer 2007: 218; Douglass 1856). Douglass privately endorsed Smith's plans, corresponding to him that a federal ransom in the US was 'by no means So repulsive' (*TFDP 3:2*: 74–75).[18]

It never happened, but when the Fourteenth Amendment was passed in 1868 it also introduced (through its due process clause) the doctrine of 'incorporation', ultimately extending the federal constitution's compensation requirement to all US *states'* exercise of eminent domain powers (Ackerman 2012). Subsequently, Du Bois recalled that any 'poetic justice' of distributing the 'lands of their masters' to the formerly enslaved was forestalled because Congress failed to budget for any land purchases, and government thus possessed neither the power to confiscate, nor the money to expropriate (Du Bois 2007: 22). Du Bois wrote that the legacy of the Freedman's Bureau, a US government body established in 1865 to protect the rights of emancipated slaves, was 'the work it did not do because it could not': availing itself of limited 'forfeited lands' and 'Confederate public property', it ultimately took up the task of informing the freed slaves that 'their land was not theirs, that there was a mistake—somewhere' (Du Bois 2007: 27, 29, 32). After twenty years of abolition, Douglass could only lament that the 'freedmen' remained 'at the mercy of the former slave-holders' (*TFDP 1:5*: 210). The very constitutional amendment that had nullified the US slaveholders' claims to an indemnity at the same time entrenched the redistributive limit of the takings clause, newly legitimized and consolidated without the stain of human chattel. In Patricia

https://doi.org/10.1017/hgl.2024.34 Published online by Cambridge University Press

Williams's words: 'Blacks went from being owned by others, to having everything around them owned by others' (Gowder 2021: 66).

After federal abolition had been accomplished without compensation, Douglass's tone on the matter of slaveholder indemnification shifted significantly. Where he had once pointed to the British case as exemplary, he now declared that the compensation awarded to the slaveholders by the British 'marred the beauty and perfection of a glorious triumph of truth and justice', and denounced the thesis of vested rights as a 'trick' (*TFDP 1:4*: 222). As early as 1824, the British abolitionist Elizabeth Heyrick had called for compensation to be made 'in the first instance, where it is most due; […] to the slave […]' (Heyrick 2010: 31–32) and Douglass later described Heyrick as a 'prophetess' (*TFDP 1:2*: 82). Her intervention is credited as successfully popularizing immediate, uncompensated abolition on both sides of the Atlantic (Wiecek 2018: 152). In his account of how racial prejudice creates 'the conditions necessary to its own existence', Douglass would further capture how deference to the doctrines of vested or acquired rights (alluded to in Hegel's references to '*justo titulo*', 'legal sanction') served this era of transition by translating white guilt into black debt: for the 'office of color […] simply advertises the objects of oppression, insult, and persecution. It is […] the black letters on the sign telling the world where it may be had' (*FDSW*: 654). The 'demonic ambiguity' of *Schuld* (as debt/guilt) disseminates that 'guilt is a genealogical category' (Hamacher and Wetters 2002: 83),[19] and Douglass's account of racial prejudice in the postbellum South posited the indebtedness of slavery's victims in a genealogical relationship to the guilt of its perpetrators: slavery is the 'greatest injury this side of death' and yet, 'it is hard to *forgive those whom we injure*' (*FDSW*: 652).

Douglass's experiences of, and insights into, ransom provide a striking illustration of Spillers's claim, that 'laws regarding slavery appear to crystallize in the precise moment when agitation against the arrangement becomes articulate in certain European and New-World communities' (Spillers 1987: 78). Ostensibly intended to curry slaveholders' acquiescence and thereby expedite the end of slavery, the very possibility of indemnifying slaveholders arguably expressed only the unavoidable recognition of what successive slave revolts had exposed as an irrepressible liability: slavery's bankruptcy foretold in struggle (Beauvois 2016: 253; Draper 2009: 101). In that vein, the fact that the takings clause 'crystallized' in 1791, just four months after the uprising in Saint Domingue, has received surprisingly little attention in scholarship to date. In 1831, following the Nat Turner rebellion, Virginia's slaveholders quickly grasped on the clause's protection of *value* as a way to foreclose debate on abolition. And at the end of the 1860s, in the wake of 'a general strike that involved directly in the end perhaps a half million people' (Du Bois 1998: 67)—at arguably the very moment in which powers of confiscation might have served the case of southern land reform—uncompensated takings

https://doi.org/10.1017/hgl.2024.34 Published online by Cambridge University Press

became 'almost entirely discredited', to the extent that, up until today, though '[t]here may be disagreement on what constitutes a taking, there is near consensus that takings should be compensated' (Hamilton 2007: 4).

Hegel was not privy to these later developments, but may have had the foresight to consider the jeopardy of pricing compensated abolition in North America beyond what the State could afford. However, he appears to have never considered those stakes for the only republic founded by the formerly enslaved: the only sign that Hegel concerned himself with Haiti's 1825 ransom is the remark, cited above, that 'the slaves themselves need not worry about it'. The same year, in 1819, Haiti's King Henri Christophe worried about the matter in correspondence to the abolitionist Thomas Clarkson, proclaiming that for 'free men' to accept such a condition would be to '[cover] themselves with infamy!' (Griggs and Prator 1952: 176). Outside of Haiti, Douglass was one of remarkably few nineteenth-century commentators to recollect the case of Haiti's ransom at all (*TFDP* 1:5: 467).

Meanwhile, Hegel stuck to the maxim that the coerced (*gezwungen*) are eminently distinguishable from the conquered (*bezwungen*): 'by his ability to die the subject proves himself free and entirely above all coercion'; 'A people is dragged into slavery, it wanted this itself, it wanted to keep itself alive even as a slave, this was its own will' (*NL*: 91; *VPR 4*: §91, 272; my translation). In this vein, Von Griesheim's notes to Hegel's lectures approvingly record a 1553 slave revolt in Venezuela: 'they gave up everything, even life' (*VPR 4*: §91, 272; my translation). If Hegel gleaned this obscure example from Alexander von Humboldt's contemporaneously published travelogues, he did not—as Humboldt had—liken these historical events to the contemporaneous situation in Saint-Domingue (Humboldt 2008: 298–99).[20] In fact, in the mid-1820s Hegel was still unable to find any convincing sign of slave revolts, still describing the 'choice' of slaves in the West Indies in the starkest of terms: slaves could always be free *and dead* (*doch können sie als frey sterben*), and that they were neither evidenced a 'partial disposition', amounting to mere 'conspiracy' on their part, presumably short of revolution, and 'a demonstration of a self-consciousness still wanting' (*VPR 2*: §57, 243).

Such conclusions might be best understood in terms suggested by Moten: that 'particular interplay of blindness and insight' which operates in the relation between the 'problematic of *overlooking*' and that 'of a regulative and disciplinary *overseeing*' (Moten 2018a: 191, 155). For Hegel's deliberations betray either a highly limited knowledge or wilful neglect of the realities of the transatlantic economy. By the eighteenth century, a slave's 'ability to die' had acquired acute axiological corollaries: in the 1730s, British maritime insurers excluded all slave deaths ('Natural, Violent or Voluntary') from indemnification, but by the 1780s, slave resistance was 'actively expected', and policies began to disaggregate the indemnification of human chattel in transatlantic passage with regard to the manner of a slave's death: they insured slaveowners for the value of any slaves 'killed, or thrown

https://doi.org/10.1017/hgl.2024.34 Published online by Cambridge University Press

into the sea in order to quell an insurrection on their part', but *not* the value of those who took their own lives (Rupprecht 2007: 17, 21). In 1783, a London court hearing the *Zong* case confirmed the distinction, ruling that the ship's owners could claim insurance for 122 slaves the crew had murdered—ostensibly on the grounds that the ship was running out of supplies—but that ten slaves who threw themselves into the sea were not covered by the policy: 'They withdrew themselves from speculation' (Baucom 2005: 169). Recalling three slaves he witnessed jumping into the sea during Atlantic passage, Olaudah Equiano wrote that two were drowned, 'but they got the other, and afterwards flogged him unmercifully for thus attempting to prefer death to slavery' (Equiano 2013: 42).

Indeed, irrespective of whether a subject may 'prove' through such withdrawal that they are 'above all coercion', as Hegel claimed, permitting the enslaved to do so clearly presented slaveowners with a greater liability than murdering the slaves themselves. Exactly one week after Hegel's death, on 21 November 1831, slaveholders in Virginia began to petition the General Assembly claiming reparations for slaves killed as a result of the 'suppression' of the 'open insurrection and rebellion' led by Nat Turner, citing legislation passed in 1691 guaranteeing '4000 lbs of tobaco [*sic*] for each slave so destroyed'.[21] These structures of compensation developed across England's New World colonies over two centuries, precisely in order to attend to the dilemmas of discipline, value and fugitivity—by insuring against the 'costs' of any slaves refusing to surrender unto death.

Conclusion

It is axiomatic in takings discourse that sovereign power is now essentially and crucially conditioned on a deferral to the market to determine the cost of such power ever being exercised. By tracing the consolidation of the 'vested rights' thesis during the global operations of imperialism and transatlantic slavery, and in particular at moments critical to their abolition, we can discern that the bugbear of legal realist and Marxist responses to US takings doctrine in the early twentieth century—its essential conflation of the *axiological* and *ontological*, property's descent into 'mere' value—was already implicit in Virginia slaveholders' calculated invocations of the Fifth Amendment in 1832, *as leverage*. In this article, I have attempted to frame the significance of this application of the takings clause with respect to the putative disintegration of physicalism in US takings thought, and the conceptualizations of dominium suggested by Hegel's lectures. *Pace* Brudner, Hegel's conceptualization of property is (like thought itself) an abstract and abyssal operation, and therefore a monopoly on law—which is, to borrow Robert Cover's term, the very ambition of the 'jurispathic' state—must always confront the problem of 'too much law'. While Hegel's early theorization of property and its 'imposition of

https://doi.org/10.1017/hgl.2024.34 Published online by Cambridge University Press

form' equivocates considerably on the question of vested rights and value, it is far less ambiguous on according this monopoly a racialized, civilizational distinction.

The takings clause's principle of compensation has more than survived abolition and decolonization: in the twentieth century, it has been extended—more or less successfully—as a fundamental tenet of international law. Pistor has recently suggested that demands for compensation for expropriations may perennially thwart attempts at radical social transformation, to the effect that 'a fundamental restructuring of the legal systems that support capitalism may be impossible', or at least not achievable by any means *'peaceful or affordable'* (Pistor 2019: 224, 233). But if the *price* of the exercise of authority can foreclose its *lawful* exercise, then *peace* (whether in the sense of 'dialogic community', or simply justice) was never part of the clause's bargain. The essentially economic function of the colour line—as elaborated by Douglass and further problematized in the work of W. E. B. Du Bois—is precisely its intrinsic linkage of racialization to profit. Once colour was operationalized 'in the world's thought [as] synonymous with inferiority', then the colour line 'began to pay dividends' (Du Bois 1915).

Ciaran Cross
Freie Universität Berlin, Germany
ciarancross@gmail.com

Notes

[1] Notable exceptions in takings literature include Cohen (1927), Treanor (1995), Wenger (2003) and Dagan (2021).

[2] The legislation also attempted to compel slave populations into highly unpopular 'repatriation' or 'colonization' schemes. One thousand grants of $100 each offered to former slaves willing to emigrate, but no individual is recorded to have applied (Finkelman 2008: 374–75).

[3] Abbreviations used

EL =	Hegel, *The Encyclopaedia Logic (with the Zusätze): Part I of the Encyclopaedia of Philosophical Sciences with the Zusätze,* ed. T. F. Geraets et al. (Indianapolis: Hackett, 1991).
EPR =	Hegel, *Elements of the Philosophy of Right*, trans. H. B. Nisbet (Cambridge: Cambridge University Press, 1991)/*Grundlinien der Philosophie des Rechts oder Naturrecht und Staatswissenschaft im Grundrisse*, ed. B. Lakebrink (Stuttgart: Reclam, 2018).
FDSW =	Douglass, *Frederick Douglass: Selected Speeches and Writings*, ed. P. S. Foner and Y. Taylor (Chicago: Chicago Review Press, 2000).

https://doi.org/10.1017/hgl.2024.34 Published online by Cambridge University Press

LNR =	Hegel, *Lectures on Natural Right and Political Science: The First Philosophy of Right*, ed. O. Pöggeler, trans. J. M. Stewart and P. C. Hodgson (Oxford: Oxford University Press, 2012)/*Vorlesungen Über Naturrecht Und Staatswissenschaft: Heidelberg 1817/18. Mit Nachträgen aus der Vorlesungen 1818/19. Nachgeschrieben von P. Wannenmann,* ed. C. Becker et al. (Hamburg: Meiner, 1983).
NL =	Hegel, *Natural Law: The Scientific Ways of Treating Natural Law, Its Place in Moral Philosophy, and Its Relation to the Positive Sciences of Law,* trans. T. M. Knox (Philadelphia: University of Pennsylvania Press, 2000).
PSS =	Hegel, *Hegel's Philosophy of Subjective Spirit Vol. II Anthropology,* ed. & trans. M. J. Petry (Dordrecht: Reidel, 1978).
TFDP 1:1–5 =	Douglass, *The Frederick Douglass Papers. Series One: Speeches, Debates, and Interviews, Volumes 1-5,* ed. J. W. Blassingame (New Haven: Yale University Press, 1982–92).
TFDP 3:2 =	Douglass, *The Frederick Douglass Papers. Series Three: Correspondence, Volume 2: 1853–1865*, ed. J. R. McKivigan (New Haven: Yale University Press, 2018).
VPR H =	Hegel, *Die Philosophie Des Rechts: Vorlesung von 1821/22,* ed. H. Hoppe. 2nd edition (Frankfurt: Suhrkamp, 2005).
VPR 1–4 =	Hegel, *Vorlesungen über Rechtsphilosophie 1818–1831 / Band 1–4*, ed. K. H. Ilting (Stuttgart: Frommann-Holzboog, 1974).

[4] Douglass's exact birthdate is unknown but approximated as 1817–18.

[5] *Pennsylvania Coal Co. v. Mahon,* 260 US 393 (1922).

[6] According to Brudner's Hegel, 'the person *must* acquire things', there is 'a moral necessity for acquisition' (Brudner and Nadler 2013: 114; original emphasis).

[7] '[T]here is no reason to limit property to tangible things'. Cf. Brudner and Nadler (2013).

[8] *Slaughter-House Cases*, 83 US 36 (1873).

[9] Arts. 2 and 17, Declaration of the Rights of Man and the Citizen (1789). See Koskenniemi (2021: 220).

[10] As Allen W. Wood notes in the Cambridge edition (*EPR*: footnotes to §62, 410–11).

[11] '[Douglass] became a Stoic […] in the Hegelian sense of wanting and *being free in thought* […] Douglass and Hegel are quite on par with each other' (Tibebu 2011: 70–71).

[12] For example, see S. B. Smith (1992: 113); Williams (1997: 147); Menke (2013: 32). Zamir suggests these views are attributable to St. Louis Hegelians (Zamir 1995: 127–30).

[13] 'Gradual' abolition schemes entailed a compensatory element by extending slavery for a fixed period. 'Free womb' meant manumission at ages ranging from 18 to 28. See Beauvois (2016: 5, 166).

[14] Award of the Emperor of Russia of 22 April 1822, dispute between the United States of America and Great Britain about the interpretation of the first article of the Treaty of Ghent of 24 December 1814 (Moore 1898: 359).

[15] Report on the Meeting of West India Merchants and Planters (held the previous day) at the City of London Tavern. *Morning Chronicle,* 11 February 1824.

https://doi.org/10.1017/hgl.2024.34 Published online by Cambridge University Press

[16] See 'Annual Message to Congress', 1 December 1862, in *Collected Works*: https://quod.lib.umich.edu/l/lincoln/lincoln5/1:1126?rgn=div1;view=fulltext

[17] US Constitution, Fourteenth Amendment, Section 4: '[…] any claim for the loss or emancipation of any slave […] shall be held illegal and void'.

[18] Indeed, formerly enslaved Africans in Jamaica optimistically sent a contribution of $51 towards US emancipation. Abolitionists also proposed a potential loan from Britain to Texas to purchase and liberate all the states' slaves (Horne 2012: 106; Fladeland 1976: 183).

[19] Hamacher and Wetters trace the etymology of '*ation*' to 'provenance': 'guilt is a category of descent' (Hamacher and Wetters 2002: 83).

[20] Von Humboldt drew on the account of José de Oviedo y Baños. In San Felipe, 1553, black slaves rose up and proclaimed as King their leader Miguel, who went on to appoint ministers, councillors, officials, 'even a black bishop' (Oviedo y Baños 2004: 161–64).

[21] The petitions can be read through *The Nat Turner Project* portal: https://www.natturnerproject.org/claims-and-petitions. The development of these laws in Virginia and other colonies, and their significance for modern property thought, is the focus on my ongoing research.

Bibliography

Ackerman, A. T. (2012), 'Incorporation of the Right to Just Compensation: The Fourteenth Amendment vs. The Takings Clause', *Property Rights Conference Journal*: 1.

Baucom, I. (2005), *Specters of the Atlantic: Finance Capital, Slavery, and the Philosophy of History*. Durham: Duke University Press.

Beauvois, F. (2016), *Between Blood and Gold: The Debates over Compensation for Slavery in the Americas*. New York: Berghahn Books.

Benjamin, W. (1978), *Reflections: Essays, Aphorisms, Autobiographical Writings*, trans. E. Jephcott. New York: Harcourt Brace Jovanovich.

Blaufarb, R. (2016), *The Great Demarcation: The French Revolution and the Invention of Modern Property*. Oxford: Oxford University Press.

Blight, D. (2020), *Frederick Douglass: Prophet of Freedom*. New York: Simon and Schuster.

Brett, A. (2003), *Liberty, Right and Nature: Individual Rights in Later Scholastic Thought*. Cambridge: Cambridge University Press.

Brett, A. (2014), *Changes of State: Nature and the Limits of the City in Early Modern Natural Law*. Cambridge MA: Princeton University Press.

Brown, B. (2001), 'Thing Theory', *Critical Inquiry* 28:1: 1–22.

Brudner, A. (1995), *The Unity of the Common Law: Studies in Hegelian Jurisprudence*. Berkeley: University of California Press.

Brudner, A. (2013), 'Private Property and Public Welfare', in J. Penner and H. Smith (eds.), *Philosophical Foundations of Property Law*. Oxford: Oxford University Press.

https://doi.org/10.1017/hgl.2024.34 Published online by Cambridge University Press

Brudner, A. and Nadler, J. M. (2013), *The Unity of the Common Law*. Second Edition. Oxford: Oxford University Press.
Buck-Morss, S. (2000), 'Hegel and Haiti', *Critical Inquiry* 26:4: 821–65.
Chandler, N. D. (2013), *X—The Problem of the Negro as a Problem for Thought*. New York: Fordham University Press.
Cohen, F. S. (1935), 'Transcendental Nonsense and the Functional Approach', *Columbia Law Review* 35:6: 809–49.
Cohen, M. (1927), 'Property and Sovereignty', *Cornell Law Review* 13:1: 8–30.
Cole, A. (2014), *The Birth of Theory*. Chicago: University of Chicago Press.
Commons, J. R. (1924), *Legal Foundations of Capitalism*. New York: Macmillan.
Cover, R. M. (1983), 'THE SUPREME COURT 1982 TERM. FOREWORD: NOMOS AND NARRATIVE', *Harvard Law Review* 97:4: 4–68.
Curtis, C. M. (2012), *Jefferson's Freeholders and the Politics of Ownership in the Old Dominion*. Cambridge: Cambridge University Press.
Dagan, H. (2021), *A Liberal Theory of Property*. Cambridge: Cambridge University Press.
Davies, M. (1998), 'The Proper: Discourses of Purity', *Law and Critique* 9:2: 147–73.
Davies, M. (2007), *Property: Meanings, Histories, Theories*. Abingdon: Routledge-Cavendish.
Derrida, J. (1982), *Margins of Philosophy*, trans. A. Bass. Chicago: University of Chicago Press.
Douglass, F. (1856), 'The Land Reformer', *Frederick Douglass' Paper*. Republished by *Jacobin,* 20 February 2020. Available at: https://jacobin.com/2020/02/Frederick-Douglass-Accumulation-Wealth-Land-Reformer
Draper, N. (2009), *The Price of Emancipation: Slave-Ownership, Compensation and British Society at the End of Slavery*. Cambridge: Cambridge University Press.
Du Bois, W. E. B. (1915), 'The African Roots of War'. *Atlantic Monthly* 115:5: 707–14.
Du Bois, W. E. B. (1998), *Black Reconstruction in America 1860–1880*. New York: Simon and Schuster.
Du Bois, W. E. B. (2007), *The Souls of Black Folk*, ed. B. H. Edwards. Oxford: Oxford University Press.
Ebers, J. (1793), *Vollständiges Wörterbuch der Englischen Sprache für die Deutschen*. Leipzig: Johann Gottlob Immanuel Breitkopf, Sohn und Compagnie.
Edwards, J. (1836), *A History of the Work of Redemption*. Edinburgh: T. Nelson and P. Brown.
Equiano, O. (2013), *The Interesting Narrative of the Life of Olaudah Equiano: Or Gustavus Vassa, the African*. Cambridge: Cambridge University Press.
Finkelman, P. (2008), 'Lincoln, Emancipation, and the Limits of Constitutional Change', *The Supreme Court Review* 1: 349–87.
Finkelman, P. (2012), 'Slavery in the United States: Persons or Property?', in J. Allain (ed.), *The Legal Understanding of Slavery*. Oxford: Oxford University Press.

https://doi.org/10.1017/hgl.2024.34 Published online by Cambridge University Press

Finkelman, P. (2014), *Slavery and the Founders: Race and Liberty in the Age of Jefferson*. London: Routledge.
Fitzmaurice, A. (2014), *Sovereignty, Property and Empire, 1500–2000*. Cambridge: Cambridge University Press.
Fladeland, B. L. (1976), 'Compensated Emancipation: A Rejected Alternative', *The Journal of Southern History* 42:2: 169–86.
Fogel, R. W. and Engerman, S. L. (1974), 'Philanthropy at Bargain Prices: Notes on the Economics of Gradual Emancipation', *The Journal of Legal Studies* 3:2: 377–401.
Gamio, L., Méheut, C., Porter, C., Gebrekidan, S., McCann, A. and Apuzzo, M. (2022), 'The Ransom: Haiti's Lost Billions', *New York Times*, 20 May 2022.
Gowder, P. (2021), *The Rule of Law in the United States: An Unfinished Project of Black Liberation*. Oxford: Hart Publishing.
Grey, T. (1980), 'The Disintegration of Property', *Nomos* 22: 69–85.
Griggs, E. L. and Prator, C. H. (eds.) (1952), *Henry Christophe & Thomas Clarkson: A Correspondence*. Berkeley: University of California Press.
Grotius, H. (1901), *The Rights of War and Peace (De Jure Belli ac Pacis)*, trans. A. C. Campbell. New York: M. Walter Dunne.
Hamacher, W. and Wetters, K. (2002), 'Guilt History: Benjamin's Sketch "Capitalism as Religion"', *Diacritics* 32:3/4: 81–106.
Hamilton, D. (2007), *The Limits of Sovereignty: Property Confiscation in the Union and the Confederacy during the Civil War*. Chicago: University of Chicago Press.
Heyrick, E. (2010), 'Immediate, Not Gradual Abolition (1824)', *Pamphlets on West Indian Slavery*. Cambridge: Cambridge University Press.
Horne, G. (2012), *Negro Comrades of the Crown: African Americans and the British Empire Fight the U.S. Before Emancipation*. New York: New York University Press.
Humboldt, A. v. (2008), *Reise in die Aequinoctial-Gegenden des neuen Continents*. Band 2. Project Gutenberg TEI Edition. Available at: https://www.gutenberg.org/files/24746/24746-h/24746-h.html [accessed Jan. 2023].
Hüning, D. (2002), 'Die "Härte des abstracten Rechts": Person und Eigentum in Hegels Rechtsphilosophie', in D. Hüning, G. Stiening and U. Vogel (eds.), *Societas rationis. Festschrift für Burkhard Tuschling zum 65. Geburtstag*. Duncker und Humblot.
Kelsen, H. (2005), *Pure Theory of Law*. New Jersey: The Lawbook Exchange, Ltd.
Kleintop, A. L. (2018), *'The Balance of Freedom: Abolishing Property Rights in Slaves during and after the US Civil War'*. Unpublished manuscript. Northwestern University.
Koskenniemi, M. (2021), *To the Uttermost Parts of the Earth: Legal Imagination and International Power 1300–1870*. Cambridge: Cambridge University Press.
Kurtz, M. (1978), 'Emancipation in the Federal City', *Civil War History* 24:3: 250–67.
Lindsay, A. G. (1920), 'Diplomatic Relations between the United States and Great Britain Bearing on the Return of Negro Slaves, 1783–1828', *The Journal of Negro History* 5:4: 391–419.

https://doi.org/10.1017/hgl.2024.34 Published online by Cambridge University Press

Logan, R. W. (1941), *The Diplomatic Relations of the United States with Haiti, 1776–1861*. Chapel Hill: University of North Carolina Press.
Menke, C. (2013), 'Hegel's Theory of Second Nature: The "Lapse" of Spirit', *Symposium* 17:1: 31–49.
Michelman, F. (1967), 'Property, Utility, and Fairness: Comments on the Ethical Foundations of "Just Compensation" Law', *Harvard Law Review* 80:6: 1165.
Mohseni, A. (2014), *Abstrakte Freiheit: Zum Begriff des Eigentums bei Hegel*. Hamburg: Felix Meiner.
Moore, J. B. (ed.) (1898), *History and Digest of the International Arbitrations to Which the United States Has Been a Party, Vol. I*. Washington: G.P.O.
Moten, F. (2018a), *Stolen Life*. Durham: Duke University Press.
Moten, F. (2018b), *The Universal Machine*. Durham: Duke University Press.
Moten, F. and Harney, S. (2016), 'Indent (to Serve the Debt)', in J. Burton, S. Jackson and D. Willsdon (eds.), *Public Servants: Art and the Crisis of the Common Good*. Cambridge MA: MIT Press.
Nedelsky, J. (1994), *Private Property and the Limits of American Constitutionalism*. Chicago: University of Chicago Press.
Negarestani, R. (2018), *Intelligence and Spirit*. Cambridge MA: MIT Press.
Nesbitt, N. (2008), *Universal Emancipation: The Haitian Revolution and the Radical Enlightenment*. Charlottesville: University of Virginia Press.
Nickel, J. (1976), 'Justice in Compensation', *William & Mary Law Review* 18:2: 379–88.
Oakes, J. (2014), *The Scorpion's Sting: Antislavery and the Coming of the Civil War*. New York: W. W. Norton & Company.
Ostdiek, B. and Witt, J. F. (2019), 'The Czar and the Slaves: Two Puzzles in the History of International Arbitration'. *American Journal of International Law* 113:3: 535–67.
Oviedo y Baños, J. de (2004), *Historia de la conquista y población de la provincia de Venezuela*, ed. T. E. Martínez. Madrid: Biblioteca Ayacucho.
Patterson, O. (1982), *Slavery and Social Death*. Cambridge MA: Harvard University Press.
Petry, M. J. (1976), 'Hegel and "The Morning Chronicle"', *Hegel-Studien* 11: 11–80.
Piketty, T. (2020), *Capital and Ideology*. Cambridge MA: Harvard University Press.
Pistor, K. (2019), *The Code of Capital: How the Law Creates Wealth and Inequality*. Princeton: Princeton University Press.
Pradella, L. (2014), 'Hegel, Imperialism, and Universal History', *Science & Society* 78:4: 426–53.
Quarles, B. (1996), *The Negro in the American Revolution*. Williamsburg: University of North Carolina Press.
Reynolds, S. (2010), *Before Eminent Domain: Toward a History of Expropriation of Land for the Common Good*. Williamsburg: University of North Carolina Press.

https://doi.org/10.1017/hgl.2024.34 Published online by Cambridge University Press

Rupprecht, A. (2007), 'Excessive Memories: Slavery, Insurance and Resistance', *History Workshop Journal* 64:1: 6–28.
Sax, J. L. (1964), 'Takings and the Police Power', *The Yale Law Journal* 74:1: 36–76.
Schmitt, C. (2003). *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, trans. G. L. Ulmen. New York: Telos.
Scholz, L. (2009), 'Hegels symbolisches Papier. Zum medialen Status des Dings', *ZMK Zeitschrift für Medien- und Kulturforschung* 0:1: 53–60.
Sinha, M. (2016), *The Slave's Cause: A History of Abolition*. New Haven: Yale University Press.
Smith, H. E. (2012), 'Property as the Law of Things', *Harvard Law Review* 125: 37.
Smith, S. B. (1992), 'Hegel on Slavery and Domination', *The Review of Metaphysics* 46:1: 97–124.
Spillers, H. J. (1987), 'Mama's Baby, Papa's Maybe: An American Grammar Book', *Diacritics* 17:2: 65–81.
Städtler, M. (2017), 'Eigentum als historische Substanz der Welt', *Hegel-Jahrbuch* 2017:1: 370–75.
Stauffer, J. (2004), *The Black Hearts of Men: Radical Abolitionists and the Transformation of Race*. Cambridge MA: Harvard University Press.
Stauffer, J. (2007), 'Frederick Douglass and the Politics of Slave Redemptions', in K. A. Appiah and L. S. Rockefeller (eds.), *Buying Freedom: The Ethics and Economics of Slave Redemption*. Princeton: Princeton University Press.
Stirner, M. (2000). *The Ego and Its Own*. Cambridge: Cambridge University Press.
Stoebuck, W. B. (1972), 'A General Theory of Eminent Domain', 47 *Wash. L. Rev.* 553–608.
Stohler, S. (2019), 'Slavery and Just Compensation in American Constitutionalism', *Law & Social Inquiry* 44:1: 102–35.
Sumner, C. (1862), 'Ransom of Slaves at the National Capital: Speech of Hon. Charles Sumner, of Massachusetts, on the Bill for the Abolition of Slavery in the District of Columbia. Washington', *Congressional Globe Office*.
Tanabe, H. (1971), 'Zu Hegels Lehre Vom Urteil', *Hegel-Studien* 6: 211–29.
Tibebu, T. (2011), *Hegel and the Third World: The Making of Eurocentrism in World History*. Syracuse: Syracuse University Press.
Tomlins, C. (2020), *In the Matter of Nat Turner: A Speculative History*. Princeton: Princeton University Press.
Treanor, W. M. (1995), 'The Original Understanding of the Takings Clause and the Political Process', *Columbia Law Review* 95:4: 782.
Vandevelde, K. J. (1980), 'The New Property of the Nineteenth Century: The Development of the Modern Concept of Property', *Buffalo Law Review* 29:2: 325–68.
Vandevelde, K. J. (2017), *The First Bilateral Investment Treaties: U.S. Postwar Friendship, Commerce, and Navigation Treaties*. Oxford: Oxford University Press.

https://doi.org/10.1017/hgl.2024.34 Published online by Cambridge University Press

Wenger, K. D. (2003), 'Slavery as a Takings Clause Violation', *American University Law Review* 53:1: 191–259.
Wiecek, W. M. (2018), *The Sources of Anti-Slavery Constitutionalism in America, 1760–1848*. Ithaca: Cornell University Press.
Williams, R. (1997), *Hegel's Ethics of Recognition*. Berkeley: University of California Press.
Wilson, M. B. (2019), 'Personhood and Property in Hegel's Conception of Freedom', *Pólemos* 1: 68–91.
Zamir, S. (1995), *Dark Voices: W. E. B. Du Bois and American Thought, 1888–1903*. Chicago: University of Chicago Press.

https://doi.org/10.1017/hgl.2024.34 Published online by Cambridge University Press