Human Rights As Property Rights

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Abstract

The history of the Americas (North, Central, and South America) is never a straightforward story to tell. Yet, it must be told through the lens of rights discourse—specifically human and property rights. Not only does this lens provide us with a clear view of the creation of the racial hierarchy juxtaposed with the creation of nations in the Americas, but it also allows us to recognize the knowledge structures, developed understandings, and normalized discourse that led us to these racial hierarchies and the definition of human rights as property rights. As Europeans colonized the Americas, human rights and property rights became unprecedently tangible and divisive. These two legal concepts became conflating as they relied on race to be actualized, and they provided (or at the very least supported) the definition of race as a distinguishing factor between different classes of humans. The human that informs human rights was always meant to be European, male, Christian, and white. The property that informs property rights was meant to be everyone else who existed within that space and could be exploited to benefit those who can claim human rights (those who can be grouped with the humans who inform human rights). They did not mean the same thing, but they did the same thing by actualizing racial segregation in the Americas. Although these terms were used to make a division, black and Indigenous peoples in this region have been able to resist the actualization of human rights as property rights. The story of this region told in this thesis will include a different (and non-Western) definition, understanding, and actualization of human rights and property rights.
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I must first and foremost thank my parents for all that they have done for me, for always reminding me of my roots, and believing in me no matter what. Without their hard work and the grace of God, I simply would not be here. Thank you to my thesis supervisors Christiane Wilke and Atiya Husain for giving me consistent insight and encouragement. Lastly, a big thank you goes out to my friends and family members who made my time spent away from this thesis inspirational.
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Introduction

What transformed the ‘New World’ into America\(^1\)? Was it the mixture of people from all over the world, their infrastructure, and their financial and social independence from Europe? Most importantly, would any of those things be relevant without the idea of conquest? Conquest excuses and requires torture, genocide, manipulation, and displacement. The conquest of African and Indigenous space is essential to highlight when we discuss the creation of America. Claiming the land of Indigenous folks as their own and the economic reliance on the trans-Atlantic slave trade laid the foundation for future immigration to the region, the infrastructure that holds the area together today, and the region’s financial and social independence from Europe. The conquest of African people, or rather, the process of conquering African people, is a process that demonstrates how human rights and property rights were actualized in relation to one another and therefore share characteristics. In addition, the conquest of the Americas included the dispossession of Indigenous peoples’ land and identity, the claiming of their land as property, and the denial of Indigenous peoples’ sovereignty.

According to Sylvia Wynter, this process physically began on the shores of West Africa in the 1440s but conceptually started earlier in the fifteenth century as the birth of numerous epistemological revolutions in Europe like secularism, Enlightenment, and planetary vision, made conquest imaginable and practical.\(^2\) The specificity in the region where these revolutions took place led to the exclusionary creation of the category of ‘man.’ As man became a European invention which could only be created on land/space—as Wynter has shown, I argue that the process by which Africans became ‘negroes’ and then became slaves was a process that divided

\(^1\) America and the Americas in this instance (and throughout the chapter) refers to North America, Central America, South America, and the Caribbean.

Americans as either property (black people) and humans (white people).\(^3\) To further support the strong connection between the man/human and property actualized in rights, I will rely on the works of Sylvia Wynter and Cheryl Harris. I argue that Wynter’s understanding of the ‘othering’ of black folks in the creation of ‘man’/human, in conjunction with the propertization of black bodies (capital property) and the propertization of whiteness (as non-capital property) that Harris points out, work together to demonstrate that the ‘human’ and property are actualized in the same way (as rights) as a result of colonialism.

Human rights are rights that all humans are entitled to. Rights are entitlements, duties, or obligations that we allocate to ourselves or one another.\(^4\) Human rights dictate how we treat each other (duties). They dictate our standards for ourselves (obligations) as a distinct and separate species.\(^5\) Rights are entitlements that can be taken up (or not); they can be anti-social and ineffective.\(^6\) The human must be defined for the principle of human rights to exist, and it is in this definition that the root of our issue with human rights lies. The exclusionary definition of the human sets the tone for applying rights as either a tool of empowerment or oppression. The definition of human, human rights, and rights are problematized throughout this thesis as we discuss the development of all three terms in relation to abject\(^7\) others.

The title of this thesis is ‘Human rights as Property rights’ because I have felt — for a long time—that they mean the same thing. I should specify that I never bought into the idea that

\(^3\) Ibid.
\(^6\) Ibid.
\(^7\) When referring to the “abject” other, I am developing from Butler’s explanation of abjection. Abjection is the social process of creating cast-offs from society. According to Butler, the abject person/being is unintelligible to those in society. The abject other is someone who cannot inhabit the norms, categories, and discourse of those who are a part of society. For more on Abjection according to Judith Butler, read Bodies That Matter: New York: Routledge.
human rights and property rights were separate, detached or opposite legal concepts. I have always had a feeling of academic discomfort with the legal concept of human rights, and I continue to struggle with its definition. I am aware of the great work within the field of human rights to understand its relationship to coloniality, whiteness, and power by scholars such as Franz Fannon, Costas Douzinas, and Brenna Bhandar. Yet, I still felt dissatisfied because they did not touch on a few key points. Firstly, the manner that human rights rely on property rights to actualize themselves on black bodies. Specifically, human rights require the dehumanization of black people. It involves the process of Africans becoming slaves and slaves becoming negroes (..and later on negroes becoming black bodies).

Secondly, human rights and property rights were developed as knowledge structures and popularized discourse. This is an important point I felt was missing because many scholars discuss the definition of man/human. Still, they do not discuss it as a process or an exhaustive creation that, much like other legal concepts, changed and evolved as the needs, desires, and goals of society changed. This means that these definitions are seemingly set (from our realities as racialized people, we know them to be set). Yet they are also not put in a solidified manner because we know from the work of Sylvia Wynter and Cheryl Harris that the man that informs human rights and the property that informs property rights have adapted and transformed into our current understanding of these legal concepts. They may closely resemble previous definitions, but they are not the same. Lastly, there is the fact that these definitions of human rights and property rights are not universal and that they are not the only definitions known or actualized in the region. Indigenous legal orders in the Americas have their definition of man and property regarding human rights and property rights. These understandings of human and property have little to do with the definitions set by European colonizers in the region. They highlight the
adaptation aspect regarding legal concepts like human rights and property rights in America. It must be noted that all of my points are within the context of America and the formation of the colonial ‘New world.’

As I became interested in property rights in my undergraduate studies, I found humanism in property rights issues and topics. When I use the term humanism, I speak of the discursive, interpreted, and developed thought that produced the overrepresented Western Man, as explained by Sylvia Wynter. This means that humanism, as referenced in this thesis, is a process created by humans to ensure belief in one’s status, rights, and therefore superiority (for some). Humanism is not enate because we are human and it is not naturally bestowed on us by a higher being. Instead, it is our own making (or at least the making of those who can come together and claim the title of ‘human’ over those they claim are not of the same status).

Humanism is a process of classification that should include everyone (regardless of race, gender, religion, sexual orientation, and other identifying titles). Still, it has a history of creating a division where white, heterosexual, Christian, men rank highest, and humanism continues to play a role in the division of humanity. It is dependent on distinguishing different groups and establishing the relationships between these distinguished groups. Wynter discusses this division as one created by and upholding the placement of ‘the overrepresented genre of man,’ which was, in essence, the Western or European man. Another way of phrasing the ‘overrepresented genre’ is the popularized or normalized discourse/category. Humanism, to me, has less to do with empathy and more to do with rhetoric, group mentality, ambition, power, and superiority.

Race, property, and humanity are similar and rely on one another to be individually defined. Human rights are a racially restrictive form of property, dependent on a racialized

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definition of the human and a racialized actualization of rights. Therefore the ‘human’ aspect and the ‘rights’ aspect both individually rely on race. Property is something belonging to someone and having limited or restricted access to it. There is no true natural definition for property other than the assertion of its existence and its relation to the person that names it, claims its belonging, and benefits from it. John Locke discusses the origins of property with God’s creation of man and is best known for stating that God created the world in certain hierarchies but that all men were equal and, therefore, all men could make their property.⁹ Locke assumes that along with creating us all equal, God also gave us the earth as a commons and something we can all share. In making this assumption, he leaves space for white people to claim slaves as property and allows for the dispossession of Indigenous lands on the principle of terra nullius and the “idleness” of Indigenous societies.¹⁰ Using Locke’s ideals, one can essentially do as they wish on property they have bought or worked on, therefore attaching work with value, value with property, and property with ownership. This rhetoric is why slavery and the dispossession of Indigenous space were economically and politically influential. It is also the reason why value is closely tied to currency and ownership (capitalism) in the Americas and ground settler.

Locke’s definition is not the modern definition of property or property rights but one of the standard definitions from which our current and critical understandings come. Lastly, on this point about Locke, his idea of all men being equal meant white, cis-gendered, heterosexual, Christian men. By explicitly stating in American slavery legislation that certain folks are property, Locke is naming who is and who can be property and what rights they do or do not deserve. Locke played a pivotal role in establishing the 1682 Fundamental Constitution of

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¹⁰ Ibid.
Caroline, which legally justified slavery.\textsuperscript{11} His ‘theory of slavery is evident in the Constitution of Caroline and found the states' legislation. Locke is not only accredited as a theoretical contributor to the Carolina Constitutions because of his theoretical justification for slavery but also wrote clauses for the Constitution.\textsuperscript{12} If someone had not used their land in the way Locke and British settlers understood or accepted, then they could become a commodification and something that could be claimed like land. Under this rhetoric, enslaved Africans and Indigenous peoples of the Americas were people who were either considered property or limited in their rights. The title of property is that of limited rights or no rights at all, and this title propagated the transformation of the ‘New World’ into the Americas. The Americas marks the moment that land and people became European property and not just conquest (as was the goal and accomplishment of the ‘New World’).

Brenna Bhandar describes how slavery directly resulted in the understanding of property in the United States of America as that of a white man’s value and status associated with their ability to use the commons (land) and make it fruitful as an extension of themselves.\textsuperscript{13} By demonstrating this actualization of property and property rights. I posit that Bhandar highlights a three-step process required to create or actualize property. To first name a thing, secondly, award it value, and thirdly claim and own it. These three things must take place for a subject to become property and for property to be realized. Therefore property rights are the rights awarded to the object claimed as property of someone who has, on their own, human rights. Bhandar states that just as the US and Canada’s economy was built off the labour of African slaves and exploitation

\textsuperscript{11} Mills, C. ‘Locke on Slavery’ in \textit{The Lockean Mind}.
\textsuperscript{12} Ibid.
of Indigenous folks and their land, so was their understanding of property.\textsuperscript{14} By showing the direct and transparent relationship between the creation of property law with the design of racialized beings in Canada and the US, she makes it evident that property laws have been manipulated to ensure the marginalization and exploitation of certain groups of racialized individuals in America.\textsuperscript{15} This thesis aims to take this point a step further by saying that the environment of abjection and exploitation during colonialism that created property, property rights, and relationships to property in North America (which Bhandar pinpoints) also created humanism, human rights, and relationships to humanism in the Americas. Not only were these terms solidified during the same timeline by the exploitation and propertization of marginalized people in the Americas, but they were used for the same purpose and implemented the same kind of abjection.

In the first chapter, I explore the process of transforming Africans into negroes and slaves as the Americas were created through the analysis of three images. In the second chapter, I use the work of Sylvia Wynter and Cheryl Harris to further explain the process of reification that Africans faced during the creation of the Americas, along with the creation of the human that informs human rights and the creation of property that informs property rights. I use both authors to reflect on each other’s work, to supplement each other’s arguments, and to further the discussion of rights. In the third chapter, I explore how Indigenous peoples' land and identity were stripped from them for the creation of the Americas and how their definition of human and property (and actualization of them as human rights or property rights) differ significantly from the Western legal order. I do so by discussing works and stories recounted by Leanne Simpson,

\textsuperscript{14} Ibid at pg 10.
\textsuperscript{15} Ibid.
John Borrows, Aaron Mills, and Robert Nichols. This thesis uses images, theoretical frameworks, and storytelling to explain the statement ‘human rights as property rights’ because I believe this claim requires the support of varying methodologies. My following work demonstrates how (chapter one), why (chapter two), and when (chapter 3) my claim ‘human rights as property rights’ holds. I should note that there are limitations to the statement ‘human rights as property rights’ and that these limitations are set by its very definition and scope. To be clear, human rights as property rights is specific to the context of racialized beings in the racialized created America. Outside of this knowledge and discourse, there are other definitions of human rights and property rights that are not exploitative and do not require violence or dispossession. The conclusion of this thesis serves as a critical reflection of the work presented in this thesis and may be interpreted as contradictory. Rather, I suggest that you read the conclusion with an open and redefining mind as I posit that there is a way to move forward with humanism and property. I hope to make it clear that human rights as property rights has a definitive yet complex meaning but that when stripped down to the titles and concepts of humanism and property, there is an opportunity to move forward. The conclusion is not my way of tip-toeing away from my thought-provoking thesis title, instead it is my way of hoping for a future where we live with the realities of human rights as property rights and move forward without having to exploit other individuals.
Chapter 1:

Scenes of Property and Humanity
To demonstrate how the process of becoming slaves was a transgression that resulted in the process of becoming man (and therefore human) and defining property, three illustrations will be analyzed and discussed in this chapter. The first image is the reproduction of an engraving named “Inspection and sale of a Negro”, the second image is a drawing named “escrava Anastácia,” and the last one is a drawing called “Igbo Landing 8.” These three images have been selected to illustrate the process of turning, recategorizing, and transforming Africans into slaves. These images point out that slavery is the system that actualized the Western concept of man and produced racialized white people as man/human. Slavery also actualized the idea of property by producing slaves as racialized black people. These images will highlight the brutal realities of slavery made possible due to a system that fundamentally awarded and took away rights. The creation of this type of rights distribution system not only stood at the core of the conqueror's understanding of human rights and property rights, but it bound these two legal concepts to each other. These images and this chapter’s discussion of slavery do not even remotely cover all the harsh and nefarious realities enslaved African people faced from the fifteenth century onwards. It was, in every way, much worse than any single chapter, image, word, or story could depict. I begin using Sylvia Wynter and Cheryl Harris’ works in this chapter to help explain how these images relate to the Western legal concepts of human rights and property rights.
Image 1: From African to “the Negro”

Entitled “Inspection and sale of a Negro.” Engraved in 1854.\textsuperscript{16}

The first image was engraved in 1854: "Inspection and sale of a Negro.” It is 9 x 13 cm (3.5 x 5.25 in) in size and was reproduced as a photo-mechanical print between 1960 and 1980 for the Library of Commons.\textsuperscript{17} The creators of this engraving were white Europeans. The purpose of this image was to add an illustration to a text that was written tracing the life of a slave trader named Théophile Conneau (also known as Captain Canot). American author and journalist Brantz Mayer wrote this book, and this image is credited to engravers Whitney, Jocelyn, and Annin.\textsuperscript{18} This engraving group is credited with other engravings of Africans and Europeans for books throughout the 1850s. Namely, they engraved an image called “The Emigration” in 1855 for a book depicting the treatment of slaves published by Thomas Bangs Thorpe.\textsuperscript{19} They also engraved another image for Brantz Mayer’s book about slave trader Théophile Conneau; this other image is called “Branding a Negress.”

\textsuperscript{20} According to Mayer’s book, the image of the “Inspection and sale of a Negro” is set in what is now Kambia, Sierra Leone.\textsuperscript{21} Théophile Conneau describes the image as a depiction of notorious slave trader Jack Ormond Jr. inspecting a slave for sale. He describes the process as one that required examining the African man or, as Conneau calls him, “the subject.”\textsuperscript{22} Muscles, joints, armpits, and groins were examined to ensure quality and missing teeth were noted as a defect warranting deduction. Mouths, voices, and toes were also inspected to provide insurance companies were of quality before boarding the ship.

\begin{thebibliography}
\bibitem{17} Ibid.
\bibitem{18} Ibid.
\bibitem{22} Ibid.
\end{thebibliography}
On the left is another white European slave trader sitting on a crate, smoking what seems to be a cigar and watching the inspection take place. There is also a quill, some ink, and a book on the crate that he is sitting on, which suggests that he is somewhat recording the transaction. The right side of the image depicts another white European trader discussing with three African merchants. I note that these are African merchants and not negroes as the title does not mention a plurality of subjects being sold. An African in this image is depicted as free, autonomous, and in equal bargaining power as Europeans, while a Negro in this image is depicted as an item for sale. The title implies that the one individual being inspected for purchase is the negro. Therefore there is an assumption that the other black people in the image are not regarded as negroes but instead African merchants. The picture depicts the inspection of a negro, but in its description, in Mayer’s text, the black merchants who have brought the slave to sell are named Africans. The merchants are wearing jewelry, hats, and guns, which suggests that they are the ones who forcibly and violently took this man from his home.

The white man doing the inspection is of particular interest in this image because Jack Ormond Jr. (also known as “Chief of the River,” “King of the River,” “Mongo,” or “Mongo John”) was a biracial man. Educated in England and the child of a notorious slave trader himself, Ormond Jr. returned to the coast of West Africa after his father’s death to take over his mother’s estate and his father’s business. Ormond had a black African mother who belonged to one of the most powerful families in the region. In terms of placement and identity as human, this places Ormond Jr. in a position of great power. Being partly white (which was the European classification of human) and partly upper-class African (regarded as superior human within the

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23 Ibid.
region in West Africa), this dual status ensured that Ormond Jr. was not property. With this power, Jack Ormond Jr. became a fundamental slave trader in Guinea. He supplied the demands of labour in Cuba, Brazil, and other countries in Latin America. For a period, Conneau worked for Ormond Jr. and learned the traits of a successful “slaver,” as they were called.\textsuperscript{25} Jack Ormond Jr. and his biracial status are of relevance here because of the manner the image is depicted. There is no sign of the inspector's pigmentation in this image. While detailed shading is used to show the darkness of skin for the African merchants and the man being inspected, there is no shading for Ormond Jr. This indicates that within the context of slavery in Africa, being mixed race was more culturally identifiable with whiteness or Europeans than blackness or Africans. This may have something to do with the line of work Ormond Jr. took part in and his education in Europe, but he was respected by Europeans with whom he did business. It is challenging to capture skin tone variations in engravings, which could be why they chose to make Ormond Jr. appear white. Yet, the decision not to engrave him as a dark-skinned subject or ‘negro’ like the one being inspected or the African merchants is a clear indication of the relationship that race, social status, and power held at the time the image was engraved.

This image demonstrates the transactional aspect of slavery and further posits that the creation of the Negro aligned with the period when quantification became a means of reification. This image also portrays the exploitive and violent moment of transformation from human (African) to property. The image's inscription is important and shows the intention behind the decision to immortalize that moment. Why did someone choose to engrave this onto a boat and describe what it meant, if not to memorialize it somewhat and to remember this process? This demonstrates that the act of purchasing Africans was something that not only had to be placed

\textsuperscript{25} Ibid.
but had to be recognized as the renaming of Africans. This image immortalizes the value that Europeans gave Africans by giving them a new title. It provides proof of ownership or success by renaming the African man as the Negro in the image's title. The negro is being “inspected” for “sale” like an object or goods. The African being inspected (the negro) in this image is not only minimized to an aspect of the trade, an object worth a certain amount after damage or potential has been determined, but is depicted as a creation of whiteness (and capitalism) and inserted as a part of white history. This image represents the beginning of slavery as it shows the first step required to dehumanize Africans and turn them into a commodity.

The creation of social order in America required the migration of multiple societies from other(many) continents to one continent, specifically the migration of colonizers to a continent that was not their place of origin. For this reason, Wynter argues that skin tone and pigmentation differences became conflated with social status. As blackness became the determinant for people of African ancestry (instead of their national/ethnic/tribal origin), this difference in skin tone signified the social status of slaves. The negro is not African; it is the opposite of African as it is the property of Europeans. The title of negro is the opposite of the title of African because it is not self-created; it does not encapsulate the richness of culture, language, and diversity in the continent of Africa. I should note that even the title of African was tainted the moment settlers reached the continent. Yet the title of negro contradicts the idea of unity or ethnic tradition as it erases the identity of Africans and replaces it with the title of entity or subject. The negro is the creation and the belonging of Europeans, as the title is given to commodified, non-human, and exploited subjects with no historical or geographical ties to a place and no relevance of their own. The title of negro not only dehumanizes African identities but it itemizes its people,

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26 Ibid at pg 25.
redefines their status, and stipulates their fixed value. For this reason, the African had to be transformed into the negro for the trans-Atlantic slave trade to take place.

This image shows how racial identity is associated with value as it stipulates that Africans must not be of the same calibre of humanity as the Europeans purchasing them if Africans can become objects sold. In her article titled “Whiteness as Property,” Cheryl Harris discusses the classification of ‘Negro’ as a title established to encapsulate all black people in America (African or not, slave or not) as something less than white or human.27 This was rationalized by the fact that not all Africans were slaves, but virtually all slaves were not white during this period in America. This racial otherness became a ranking of humanness that justified the enslavement and subordination of black people as “negroes.”28 This classification of different races determined social status and intelligibility as racialized white identity came to represent freedom in the form of non-enslavement and perceived superiority.

In contrast, racialized black identity represented restriction through enforced enslavement and subordination.29 This equivalency of race, specifically white and black, with the legal status of free or slave is essential to the social and fiscal construction of race. This is because it showcases the market in which negroes were awarded value. A market that ensured the equivalency of race and legal status so that black people in America remained worth tremendously less than white people. This is to say that in addition to the valued fiscal difference between white and black, negroes were exchangeable and given a monetary value.

In contrast, white people were considered inestimable in economic value; a legal difference in value limited the mobility rights, social rights, reproductive rights, and expression

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28 Ibid.
29 Ibid.
rights of back people. Slaves were systemically valued less than settlers as their humanity, or their ability to be human (express themselves, live freely, etc.), was consistently limited and restricted. This cyclical value of “less than” aids in discussing how Africans became negroes and slaves.

Having identified how Africans became reified as negroes and devalued as human, it is fitting to note how the racializing of property was also portrayed in this image. The creation of the negro and the transformation of Africans to the negroes signifies a point where humanity was stripped, and the title of property was awarded to Africans. This is not only because the enslaved Africans' names, tribes, and practices were forgotten but also because the term negro denotes the ownership of someone else. As said earlier, the term negro is a title and not a name. It is not even an identity like ‘African’ as it is not tied to any land or indigenous people; the negro is property. We also know that property is something belonging to someone and is given rights by the owner. For this reason, when an African is made into a negro, they no longer have the right to their bodies or destiny and are given rights in relation to their owner, their owner’s duties, and their owner’s obligations. The creation of the negro is of note when discussing the evolution of rights, humanism, and property because it vividly illustrates that they were created in an exclusionary, restrictive, possessive, and dispossession process.
“Escrava Anastácia” was drawn between 1817 and 1818.\textsuperscript{30}

This image is named “Escrava Anastácia,” which translates to “female slave Anastacia” in English. She was drawn at some point between 1817 and 1818 by a Frenchman, Jacques Etienne Victor Arago. He joined a French scientific expedition to Brazil as a draftsman between December 1817 and January 1818. In his description of the image, he cites the sex of the person drawn as male. The image was not named when it was created, nor was the person in the image’s name. The image has now been feminized, and most reproductions of the image are modified accordingly. He produced other drawings for his book “Promenade Autour du Monde Pendant Les Années 1817, 1818, 1817 et 1820.” The other images include a mask covering the whole face and leaving two holes for the eyes, which were made to prevent African slaves from committing suicide by eating dirt. The image of Anastacia became popular among Afro-Brazilians after it was found and featured in Rio’s Museum of the Negro in 1968 for an exhibit commemorating the anniversary of the abolition of slavery in Brazil.

This is the only image of the chapter that only has one individual in it. There is the distance of an ocean from home and where this picture was drawn, and there is a clear separation/seclusion from other Africans. There is no confirmation of where she is from. Still, most Afro-Brazilian stories state some sort of royal lineage ranging in geographic origin across the coast of Angola and Nigeria. She was brought to Brazil and sold to a Portuguese plantation owner. The name Anastacia was given to her by this plantation owner. The plantation owner forced her to wear an iron collar and face mask to stop her from speaking. There are many stories about why she was forced to wear this mask.

32 Ibid.
33 Ibid.
34 Ibid.
Some say it was the intimidation of her beauty, disobedience, or activism. In some accounts of her life, she was known for having healing powers and performing miracles, which granted her the title of saint to enslaved Africans at the time. For all the reasons listed above, she became a political and religious figure for African diasporic people. She represented the brutality of slavery, the continued legacy of racism, and resistance to these powers.\textsuperscript{36} She became a political figure for members of the black consciousness movement (movimento negro).\textsuperscript{37} It is unclear at what point she became a political or religious figure; the lack of an explicit timeline regarding her redefinition is essential to note. It is important to note that the power of reclamation and status is not always related to the settler’s notions of time and space. It is not imperative to mention when she became a highly regarded figure because it is only necessary to note that her role and status in society went from being property to the ideal of independence and strength.

Religiously, she was claimed as a Catholic and Umbanda figure as both faiths have devout followers of hers. In the Catholic faith, she has become a devotional figure with the saintly reputation of having the power to intercede in the lives of her devotees. For this reason, in the private shrines of people’s homes and churches in Brazil, you may find a statue of her amongst other popular Catholic saints. At one point, there was a petition to get her recognized by the Catholic Church as a saint.\textsuperscript{38} She is also a figure of help for her followers in the Umbanda faith. Umbanda is a faith that encapsulates Roman Catholicism, African tradition, and spirituality.\textsuperscript{39} Umbanda is specifically an Afro-Brazilian religion. Umbanda practitioners are an ancestral/sanctified spirit who evolved to a higher plane of spiritual existence due to her

\textsuperscript{36} Ibid.
\textsuperscript{37} Supra note 25.
\textsuperscript{38} Ibid.
\textsuperscript{39} Ibid.
suffering. Like the Catholic followers, Umbanda followers have statues and shrines of her and other preto velho (old black women). Today her following continues to grow as in many Brazilian cities, one will find images of her, like in the image above, in shrines, t-shirts, prints, figurines, plays, and other performances.\footnote{Ibid at pg 34.}

This picture is essential to accurately trace slavery and the creation of the negro and slave as more than simply the ‘other’ but the untalkable, inhuman, and unintelligible. As discussed in the analysis of the image titled “The Inspection and Sale of a Negro,” the transition from African to the Negro made the African a subject, and the change from the Negro to the slave made the African a body. The specificity of gender is essential when unpacking the three-step atomization process of Africans. Without the physical violence against black women, the social reproduction of ‘racialized creations’ and ‘property’ would not exist. The continuation of slavery was contingent on the copy of physical slaves and the physical violence and terror inflicted on slaves— not just the concept of blackness and slavery.

The physical silencing of Anastasia signified the reification of blackness in the creation of America. When I speak of blackness in this chapter, I am talking about blackness as the itemized, and reified expression of the African—tuned negro and the negro turned slave. The inability to express oneself infers a failure to think, which leads to the conclusion that slaves were not people as they could not (were not allowed to) believe. Blackness and the black subject were not to speak, express themselves, and not to dictate how those around them treated them. By stripping the distinguishing aspect of sex, black women were essentially meant to be a symbol or an “iconographic.”\footnote{Spillers, H. (1987). Mama’s Baby, Papa’s Maybe: An American Grammar Book. Dialectics, 17(2), 65–81.} What the physical silencing of black women (with masks like the one Anastacia is wearing) shares with the ungendering of black women is symbolism. The fact
that this picture was initially gendered as male also symbolizes the ungendering of enslaved Africans because Anastacia’s gender was determined at the moment of documentation and chosen by the creator of the depiction. Anastacia's image is a pictorial representation of the non-human and the restrictively intelligible being. This image explicitly shows a black woman's violence and restriction in the Americas in the nineteenth century. To further the final comment made while describing the image of the “Inspection and Sale of a Negro”, if black people became items through the transactional aspect of slavery, then the physical silencing of the black subject is a further step in itemization. This next itemization step is to prove black subjects' inhumanity by making them black bodies. Spillers can describe this final step as how slavery transformed the African female into the “principle point of passage between the human and the non-human world.” This transformation in the role of the black female in America was essential for re-categorizing the black subject as the black body because the physical, psychological, and metaphysical manipulation imposed by white men carried out the ideas of distinction between human and non-human.

Black women were seen as non-human and unintelligible to white society because they were considered property. The gendered aspect of slavery was essential to defining black identity as unhuman and lacking a natural distinction. Physically and symbolically, silencing a black woman's voice is a sign of control over the entire black identity, even the unborn, as the black woman is the creator of black life. To understand the gendered aspect of slavery and its pivotal role in dehumanizing black people, it is essential to note that extreme violence and exploitation

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42 As described by Hortense Spiller, the term ungendered is specific to the process of erasing past genders and social/cultural identities of black bodies. For more, refer to “Mama’s Baby, Papa’s Maybe: An American Grammar Book.” Diacritic.
43 Ibid at pg 77.
44 Ibid.
were necessary for the system of slavery to function and for what Spillers describes as the theft of the “captive body”\textsuperscript{46}.

To clarify, for the benefit of white people in America, there had to be a target on a group of individuals that had already been “othered” and redefined. Therefore, to further “other” black people for the benefit of white folks in America, Spiller argues that a process of ungendering took place to dehumanize black people.\textsuperscript{47} Ungendering is the process in which a slave owner chooses which aspects of gender are pertinent to them and apply these levels of gendered role/aspects individually to each slave. This ensures that no black person was fully gendered, so they were assuredly not equal to the gendered white man and woman.\textsuperscript{48} What Spiller calls the commodification of blackness, I call the creation of the negro and slave as it is what transgressed the ungendering of black people and made race the predictor of normative gender.\textsuperscript{49} The negro became a “praxis of ungendered flesh” resulting from an environment where identity was stripped, and blackness was commodified. An environment where many other aspects of blackness were already re-defined by their owners—such as identity, language, and tradition— to further set them apart. When we compare the image of Anastacia to the earlier image, we can see the ungendering, seclusion, and captivity very clearly. The fact that it is a stand-alone image of just the face asserts a separation from her community, and the mouth covering and collar indicates that her body (specifically her face) was treated like a commons that could be manipulated in any way colonizers saw fit.

\textsuperscript{46} Supra note 35, at pg 67.  
\textsuperscript{47} Ibid at pg 72.  
\textsuperscript{48} Ibid.  
\textsuperscript{49} Ibid at pg 68.
Cheryl Harris points out moments in American history where the distinction between man and property was made clear with the difference between white and black. As she notes, the exclusion of black people in the House of Representatives in 1787 is a topic totalized by the fact that slaves are not considered men, they are not considered citizens, and therefore they are considered property which does not need representation.\textsuperscript{50} This line of reasoning should remind you of a statement made earlier on in this chapter regarding the physical silencing of Anastacia and should serve as continued proof that slavery created a sort of logic, a sort of system of English language that gives reasoning and legal merit to the actions of white folks at the time.

The history of slavery, specifically seen through the lens of black women, is a story of violence and itemization. This is because the bodies of black women were legally defined and bound by the grounds of property and property growth. Like a house that could be flipped for more excellent value or as a means of making a return from an investment, black women were seen as something with face value and could gain value and (pro)create value in the future. In states like Virginia, children of black women always assumed their mother's “condition” or status. This meant that white male slave owners could choose to plan for their future labour needs and force the women on plantations to have sexual intercourse with them. These children would result from business planning as they would become slaves, increase (or replace) slaves on the plantation, and meet the market's needs. This exploitation of black female slaves in a breeding role is directly related to economic properties and gain.\textsuperscript{51} This specified ‘breeder’ role further exhibits the exploitation of ungendering Spiller discusses. It demonstrates how black women within slavery were only seen as speechless, thoughtless, and emotionless machines from

\textsuperscript{50} Supra note 21.  
\textsuperscript{51} Ibid.
which property was produced. This means that the role of “birthing” was not about giving life, but the manufacturer’s role as the lifelessness of the child stripped black parents of the role of parent.\textsuperscript{52} It is essential to note the lifelessness of the children born throughout slavery, as the lack of parental roles also insinuates the lack of child roles. If the concept of mothering is interrupted by property relations, then the idea of children is also interrupted by property relations.\textsuperscript{53} The part of a ‘breeder’ is further atomized by the fact that black women were meant to breed non-human beings that were not to have emotional connections, physical attachments to their parents, and psychological recognition of family or home. These children were meant to have labourer skills and nothing else; literacy and cultural teachings were neglected. This manufacturer's role reinstates the inhumane treatment of black people during slavery as it not only dehumanized black mothers but also reified their children by classifying them as property.

Although the original image lacked specificity, the Afro-Brazilian community not only gave the person in the image a name but a gender and an essential role in their social and religious structures. It could be suggested that the ungendered and unnamed aspect of the image is an act specifically done to further enforce the idea of the black “captive” body, non-humanity, and restrictive intelligibility. The fact that there is no story to the image from the Frenchman who drew this picture is also important because it further silences the person in the image. They are not allowed to tell their story because of the mask and because the artist did not ask them to tell their story. That is why it is essential to acknowledge that the Afro-Brazilian community gave the person in the image a voice, a story, and an African identity to go with it. They gave her a story of resilience, not for Anastacia's life but her death and their sacrifice. By telling “escrava

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\textsuperscript{52} Supra note 35, at pg 77-79.
\end{flushleft}
Anastacia’s story, the Afro-Brazilian community reclaimed their history and culture by granting her the very thing that was (at the time of slavery) unreachable and considered impossible. The person in the image went from being a slave to returning to being an African. Anastacia went from being a documentation of enslavement, restriction, and inferiority to being an image of freedom and resilience. This, in my view, is the true sign of resistance and hope as it shows nature that property can be reclaimed as human.

We can see how Afro-Brazilians have created a ‘pièce de résistance’ with the image of “escrava Anastácia.” Her story and power reside in their creation and ability to award such status. Brazil and its vast population of Afro-Brazilians need “escrava Anastácia," and although the image was already there, the resistance and message behind her were essentially created. Afro-Brazilians freed Anastacia by reproducing a version of Anastacia that does not appease to the colonial goal and instead asserts the goals and desires of Afro-Brazilians. The power of reclamation is of note in the tale about this image and the person in this image because when we discuss the transition from the negro to the slave, we highlight the evolution in which the black person became more and more of a subject (became less and less human). The African was not unreal but unreachable because it was not an identity that could be retrieved after becoming a slave.\textsuperscript{54} Yet Afro-Brazilians proved this wrong by reclaiming Anastacia’s story and generationally, spiritually, and socially making Anastasia a strong African woman. What this means in terms of property rights and human rights is that the allocation of human was only granted to those who could exercise their rights. Therefore Anastacia was (in every sense of the word due to her added physical restrictions) property, and her rights were only concerning those who claimed to own her. Suppose I assert that rights became property during the creation of

\textsuperscript{54} Supra note 35.
America so that humans could become property. In that case, I can say that because the
definition of human has evolved since the creation of America (to reflect more than the ideal
“fit” of European colonizers), Afro-Brazilians are now considered human within this Western
and settler understanding of humanity. Afro-Brazilians are now using their power as
determinants of humanity and are giving Anastacia her human rights back by reclaiming her
property(body) and giving her a story. This leads to the conclusion that if one asserts that
humans can become property, then there is an opportunity for that particular property to return to
human through the redistribution of power and the re-configuration of relationships between
folks. We know this to be true in the case of Anastacia because although she died a slave, she
lives on today within communities of free and autonomous Afro-Brazilians. Her continued
relevance keeps her alive in a sense, and most importantly it makes her free. Free from the
conceptual, spiritual, and physical shackles imposed on her by colonizers.

The African became a forgotten or unreachable title for slaves because the economic and
social dependence on race created during slavery entrenched the binding of race and identity.
The union of race and identity forced all individuals in the Americas to interact within a racial
currency that made race the determinant of social and economic value. This would validate the
ideas of whiteness and blackness as identifying factors of one’s character, value, and social
status. Treating Africans like chattel and transporting them, branding them, and inspecting them
like goods was an acknowledgement that they were not human or, at the very least, not the
European prototype of human. Yet, when in the Americas and specifically restricted from doing
things that they were physically capable of doing (e.g. speak, think, move freely), the
similarities between the two groups of people could no longer be ignored and therefore needed
more robust justifications and restrictions. Race became that justification, and the economic
dependency on race led to an economic expectation for white people in the Americas. The black body was seen as an open space with ample possibility, ready to be colonized and exploited in the eyes of European colonizers in the Americas.\textsuperscript{55} Black people were seen as objects that would grant white people the tools (economically) to meet their expectations of racial superiority and privilege. Race was—and continues to be—a weapon. If we identify race as a weapon like a gun then we would identify whiteness as ammunition. This is because, like a bullet, whiteness ensured the death of free Africans (and solidified the label of enslaved negro). Within the functionality of race, whiteness ensured that white people upheld their financial status and met their financial expectations by inflicting physical, mental, and emotional violence against black people. Slavery enforced a racial currency, an economic dependence on race, and a racial hierarchy as it became necessary for the survival of white identity and the maintenance of white superiority in the Americas.

\textsuperscript{55} Supra note 21, at pg 24.
Image 3: Re-Becoming African: black alternatives to humanism and resistance.

Image by Donovan Nelson named “Igbo Landing 8.”

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The third image, drawn by Donovan Nelson, depicts a ship full of slaves who committed mass suicide in 1803 as they were taken to the Americas. Donovan Nelson was born in Jamaica and spent the later years of his life in the United States of America. He studied illustration, portraiture, and figure painting in schools throughout the United States of America, including the New York Academy. The image was drawn in 2009 and was a part of a collection of images depicting the tale of slaves committing mass suicide. It is 54x 52 inches. They are each charcoal on paper drawings and were a part of the Collection of Valentine Museum of Art in New York. There is no information online about where the image is now, but the Valentine Museum of Art is a community based and focused museum that is open to the public.

The image is named Igbo Landing after the location off of St. Simons Island on the coast of Georgia, also known as Ibo, Ebo, and Ebos Landing. Similar to the image “escrava Anastácia,” there are many different stories about what took place in 1803. Let us begin with the points that all stories and parties agree with. Africans from the Western coast of Africa, specifically from Nigeria, had been purchased and put on a small vessel heading for the coast of Georgia in the United States of America. They survived the middle passage, yet once the boat reached Dunbar Creek (a winding creek in the center of the island), they committed mass suicide and died in the water. It is the why and how that gets interpreted differently within the black community in the United States of America, specifically on St. Simons Island. As a starting point, it should be noted that there are letters written by the slave trader stating the financial loss and mismanagement of his parcel as they “took to the marsh.” According to these manuscripts

59 William Mein to Pierce Butler, May 24, 1803, folder 27, box 6, Series II: Plantation Management, Miscellaneous Correspondence 1802-1803, Butler Family Papers (Historical Society of Pennsylvania, Philadelphia).
—which can now be found at the Historical Society of Pennsylvania— the death toll was about ten to twelve captive Africans.60 A consistent point in oral recantations and reinterpretations of the event holds that the water was a sort of passageway or intrinsic connection back to the motherland. This is why the slaves chose to kill themselves by drowning.

A popular version of the story tells the tale of the Africans flying over the water back to the West coast of Africa or walking/floating above the water.61 Another version of the story states that the Africans on the boat saw the treatment they were going to endure and decided to escape this fate by committing suicide. There is a version that reveals the reasoning for mass suicide, the work of a ghost-like chief of their tribe, a sort of spirit that led the Africans on the boat to sing their tribal songs and jump into the marsh.62 These stories originated from the people working on the island of St. Simon’s when the slaves arrived. There were witnesses to this event, white and black alike, who have shared the tale of this story. Many of them have a singing aspect and have the same refrain in their recantation, “the water carried us here, the water will carry us away.”63 Some stories state that bounty hunters salvaged certain Africans for a small fee, but most conclude that the bodies of those ten to twelve Africans were never found. For this reason, people believed those waters were haunted by the spirits of those who died that day.64 The ultimate understanding of black recantations of the events is that those individuals chose to live in death rather than captivity.

This image is essential to note in the history of slavery as it shows the only way that turning the African into a negro and then a slave could be halted. Death by suicide was the only

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60 Supra note 51.
61 Ibid.
62 Ibid.
63 Supra note 50.
64 Ibid.
way to take control over their bodies, and this further relegates the status of blackness in the context of slavery. The only way to prove their livelihood or humanity was to exacerbate their self-actualization and autonomy by deciding to take their own lives. In essence, bringing their own physical life was better than having social, mental, and emotional life is taken away from them by white people in the Americas. This image is unlike the others analyzed in this chapter, illustrated by a black person born many years after the fact. This image is not a perception or an interpretation of the facts by a European in the early nineteenth century and does not capture the physicality of whiteness. The mask in Anastácia’s picture signifies the white man’s physical tool of oppression, and the white men in the image of the “Inspection and sale of a Negro” are physically assessing and judging the “quality” of the black man in the picture. This image only has a small ship in the far background, which can be interpreted as leaving the European or white influence in the back. As the artist pushes the boat away in the background, Nelson distorts the freedom and autonomy of the African people from the physical and psychological tools of colonization/whiteness/Europeans. There is little physical attachment to whiteness and no European input in creating this image. This further expresses the symbolism of suicide as freedom or abolition of slavery as it demonstrates an ending to the cycle of slavery. A story or part of history that is not controlled by or serving the gaze of white people. To counter the efforts made by Europeans to itemize Africans and categorize them as slaves, negroes, and blacks, this image shows that they were people who could think on their own, communicate their thoughts, and decide their fate. What stands out most in this image is its serene nature. The closed eyes, the peaceful look on their faces, the manner that their heads floated above the water, and the multitude of faces in the water. This is the reclamation of history, the reclamation of time, the reclamation of unity, and, most importantly, the reclamation of identity and freedom.
I understand that this image as the ending note of slavery is unfamiliar and non-traditional, as many people point to the legislative abolition of slavery and the integration of black people as the end of slavery. Yet as we know today, economies and states in the Americas continue to benefit from the sufferance of black people and the maintenance of white superiority. Although the physical aspects of slavery—police brutality and over-incarceration excluded—have ended, the mental and institutionalized racial segregation from slavery and its one-sided benefit system continues. The black person in the Americas is still seen as something that can benefit or harm the white state and not as a person with whom cohabitation can exist. Therefore the image drawn by Donovan Nelson shows freedom from the expectations of whiteness and the threat to its superiority. It offers space by eliminating the chance of becoming a slave, becoming the belonging of whites in the ‘New World,’ becoming an item, becoming unhuman, and facing such extreme segregation that self-worth and autonomy are forgotten ideas. This picture symbolizes blackness as humanity instead of an economic and social racial status.

Mignolo suggests that we redefine the human by asking what it means to be human rather than how or why to be human. This image drawn by Donovan Nelson demonstrates what it means to be human (rather than how or why), and the tales supporting the image explain what it means to be human. The image and stories do so by reconceptualizing humanity as something that is not fixed, not even explicitly living, but something spiritual and ensues freedom and autonomy in ways that are unfathomable in Western science or logic. Most interestingly, this image signifies an in-between of the image of the “Inspection and Sale of a Negro” and Anastácia as it signifies the step between being renamed as a negro and later being renamed as a

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slave. It shows that the only options for Africans were slavery and death and that there was no conceptual or literal space for black people to *live*. Or at least live in the way defined by white people—as being physically and mentally human and having rights to use or exercise.

It must be noted that by using images of slaves drawn by Europeans, we continue the narration or centring on whiteness. Although there is the establishment of the violence and propertization of black people from these images, they are still creations of two white men. Although modern artists like Donovan Nelson could not have been there when the people on the ship going to America decided to commit mass suicide, it is more accurately depicted by his imagination than if Europeans on the boat drew the event in real-time. As Toni Morrison highlights, black people can imagine the unimaginable because of the generation of suffering black people in America have had to face.\(^{67}\) In this sense, I believe that Nelson is producing knowledge or a framework from which self-generated systems can name or identify humanity. This framework places man (as the Westernized definition) in the background and an aspect or kind of human, but not the universal human. When we talk about the knowledge of the image, this point regarding the understanding of those Africans who chose death over slavery also needs to be highlighted. The placement of the boat in the image as a symbol of whiteness can also be interpreted as sociogenesis, as it demonstrates that the Africans are in this position due to how they are seen and how they (would have been forced to) see themselves. That knowledge is not only what others tell us what we are but what we decide to be as well; it is the information of being seen and seeing yourself. Although the underlying notion of sociogenesis or DuBois’ double consciousness is that I am black because that is how I am seen/perceived by the other

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Nelson presents the choice of not being seen by the other— in this case, the other being white Americans. By choosing to die rather than be seen in a society that will not even notice you (really), the sociogenic line of reasoning for this death does not include the perspective or eyesight of Americans but the unity and inclusion of Africans. Those Africans were saying they were who they were in relation to one another and to their families/identities in Africa and how those individuals saw them—as free humans. They were asserting their humanity and ability to make their own choices regarding duty and obligation. By killing themselves, they ensured they would not complete the process of becoming property. By exercising this right, they assured that property rights would not restrict their rights and further proved their humanity. This image, therefore, depicts subjective and decolonial knowledge.

Denise Ferreira da Silva and Katherine McKittrick put it best when they explained that the concept of race causes the “naturalization of colonial relations between Europeans and non-Europeans.” From the evidence presented in the chapter above, it should be clear that the idea of the race did the work to naturalize colonial relations through slavery and the transformation of Africans. The evident reclamation of history and black autonomy further demonstrates the white-centred and property dependent definition of the ‘human.’ The stories depicting Anastacia and the Igbo Landing show that those considered capital properties have come to find their voice and have expressed themselves. As slaves, they could resist the title of property and assert that they may also have the legal properties of a type of human other than the Westernized idea of man.

Both images show powerful resistance to being turned into property. We can see in Anastacia’s case that the rich stories popularized about her that emerged after her death recreated

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68 Ibid.
her into a complex human. The Africans portrayed in the Igbo Landing are drawn in a way that resisted their commodification through suicide. In both instances, this reclamation and redefinition of human (and freedom) are partly done by artists and the communities. This tells us that the foundation of being recognized as a human is not exclusive to our understanding of human rights but that human rights are a consequence of said recognition. This also tells us that the recognition of the human is based on one's relationship with others (those who are not seen as human). The following chapter will discuss this process of recognition and its history as I attempt to establish the understanding (and recognition) of humanity as defined by Europeans and the understanding (and recognition) of property as defined by European settlers in the Americas. By demonstrating that these understandings were actualized through rights, the final chapter will further establish the power of recognition within communities and the vital role that recognition plays in humanism, human rights, property, and property rights.
Chapter 2:

Theoretical ‘man’ and Propertized ‘man’
In her introduction to “Inventing Human Rights: A History,” Lynn Hunt describes the manner that human rights were actualized through the history of its wording from the late seventeenth century to the mid-eighteenth century.70 As she writes, “… sometime between 1689 and 1776 rights that had been viewed most often as the rights of particular people— freeborn Englishmen, for example— were transformed into human rights, universal natural, what the French called Les droits de l’homme or “rights of man.”71 Hunt describes how the language of human rights evolved as the individual’s ability to empathize with others evolved. She identifies the beginning of the eighteenth century as the point when the decisive change in the meaning of the ‘self’ took place for some people.72 Sylvia Wynter and Cheryl Harris would argue that the event that took place within this timeline that created this change in the meaning of the self was not so much one of empathy and “new kinds of reading” as Hunt argues but as a result of the othering of black people during slavery and in post-slavery Americas. It is important to set the time and space of the texts assessed in this chapter as it guides the assessment of the concept of human, property and rights. The eighteenth century is when the story defining the human that informs human rights begins, according to Wynter. This century also marks the shift in the meaning of the self and others concerning property. Harris describes how chattel slavery created a form of property that identifies one as legal property or person due to their racial status. Hunt says, “They are not just human rights as opposed to divine rights, or human rights as opposed to animal rights. They are rights of humans vis-a-vis each other.” She likely meant vis-à-vis each other to mean in relation to each other. Yet, Wynter and Harris inform this part of Hunt’s statement to mean—dependent on each (group of) others. Human rights depend on others, like

71 Ibid, at pg 21.
72 Ibid.

non-Christians, enslaved Africans, and anyone else who cannot claim whiteness or be classified as the overrepresented genre of man. This is because vis-à-vis can mean in comparison to, but its direct translation is face to face. When European settlers came face to face with each “type of other,” specifically the atrocities of slavery and the mistreatment of black people in the Americas, human rights were created. This chapter aims to answer one of the questions asked by Hunt in her introduction, as she says, “The claim of self-evidence, crucial to human rights even now, gives rise to a paradox: if equality of rights is so self-evident, then why did this assertion have to be made in specific times and places?”

Why did the assertion of human rights and property rights have to take place in the eighteenth century in the Americas and Europe, and what had to be taking place during this timeline for the assertion of human rights and property today?

To Wynter, the assertion of human rights was made possible because of the creation of a type of human (known as the overrepresented genre of man) that was adaptively created during the eighteenth century. This type of human was made to select those who could fit within the description of human and limit those who could claim human rights. To Harris, the assertion of property rights (and inadvertently human rights) was made possible during the eighteenth century because of slavery, race relations, and the distinction of different types of property by racial status. Wynter’s *Unsettling the Coloniality of Being/Power/Truth/Freedom: Towards the Human, After Man, Its Overrepresentation--An Argument* and Harris’ *Whiteness As Property* provide collaborative analyses of knowledge structure and legal structures about the human that

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73 Ibid at pg 19.
defines human rights and the property that defines property rights. Wynter’s work explicitly discusses the knowledge structure of humanism, and Harris discusses the legal structures of property. They both rely on the othering of black bodies to distribute and identify rights. When using Wynter’s understanding of Man1 and Man2 to create an overrepresented genre of Man, one can read Harris with an understanding that whiteness is more than just property— it is also humanism. Alternatively, using Harris’ traits to characterize how whiteness is property can be applied to Wynter’s historical and knowledge-based understanding of the overrepresented man to understand how the creation of the human (as the overrepresented genre of man) also meant the creation of human rights. Using these two texts to read each other, the claim that human rights are property rights will become clear. This is because what we understand to be human, property, and rights were created due to the ‘othering,’ the violence, and the manipulation of black bodies. Having established that slavery catalyzed the creation of property, the human, and rights, this chapter questions whether human rights and property rights can be considered separate legal concepts.

**Reading Wynter**

Sylvia Wynter was born in Cuba and raised in Jamaica. She grew up and spent her formative young adolescent years during a pivotal point in the anti-colonial struggle in Jamaica. She witnessed the election of the first post-colonial Prime Minister of Jamaica and saw the uproar of working Jamaicans while going to elementary school.76 Her interest in reading led her to study Spanish literature and receive a B.A. and M.A in modern languages (Spanish). Wynter

is strongly influenced by the work of Franz Fanon (specifically *Peau Noire Masque Blanc*) and Caribbean novelists and historians like Roger Mais, George Lamming, and Elsa Goveia.\(^\text{77}\) There is undoubtedly a modernist approach to Wynter’s work, from which she credits the reading of Adorno and Walter Benjamin as they allowed her to reimagine the creation of the modern age and “...think about an alternative way to think about the real. How it is instituted, produced, rather than merely how it is.”\(^\text{78}\) She spent time in Guyana during a period of riot and civil unrest between Indian and black Guyanese people. She taught Hispanic literature (at the University of West Indies), Comparative and Spanish Literature (University of San Diego), Third World Literature (University of San Diego), and Spanish (Stanford University). She also founded a Journal called *Jamaica Journal*, where she emphasized the past's role in informing the present and future. This journal aimed to “live imaginatively through the furnace of the past.”\(^\text{79}\) In total, Wynter has published over forty-five essays, six dramas, one novel, and one critical text. This makes her several things: a critical writer, a dancer, a novelist, a historian, a playwright, an actress, and a modernist philosopher.

In *Unsettling the Coloniality of Being/Power/Truth/Freedom*, Sylvia Wynter discusses the process by which ‘Man’ was socially created, enforced, and overrepresented in a manner that ensures being/power/truth/freedom remain the belonging and wielding of those who can claim to be ‘man’— specifically white Christian Europeans.\(^\text{80}\) Since human rights are an articulation of freedom and this type of freedom is immersed with coloniality, its interaction and dependence on coloniality further grounds the assertion of human rights as property rights. In this essay, she

\(^{77}\) Ibid, at pg 158.  
\(^{78}\) Ibid, at pg 165.  
\(^{79}\) Ibid, at pg 148.  
\(^{80}\) Supra note 73, pg 257-337.
traces the history of the creation of what we know to be ‘man’ by assessing how Portuguese and Spanish colonizers upheld Judeo-Christian tenants throughout the eighteen century as they colonized land and created a range of knowledge to define man. It is important to note that Wynter does not define ‘man’ or humanity but explains what the human means in the knowledge domain created between the fifteenth and eighteenth centuries.\footnote{Ibid, at pg 275.} This means that there is no set or fixed definition for the human but that there is a range in which man has been defined by those capable of doing so because of their powerful placement (colonizers). Wynter defines humanism as knowledge and, therefore, something that can be developed, adapted, and redefined as dominant rhetoric/ideology changes rather than fact or natural creation.

According to Wynter, there have been two definitions of ‘man’ within this timeframe and knowledge structure. Man1 and Man2 are best described as theocentric, God-fearing (Man1), and biocentric, secular (Man2). She explains Man1 and Man2 in many ways throughout her text as a creation of title and identity initially formed in the sixteenth century by Spanish settlers and transfigured throughout the eighteen century. She explains this by stating that Man has been defined by

Two descriptive statements of the human: one for which the expansion of the Spanish state was envisaged as a function of the Christian evangelizing mission, the Other for which the latter mission was seen as a function of the imperial expansion of the state; a dispute, then, between the theocentric conception of the human, Christian [man 1], and the new humanist and ratiocentric conception of the human, Man2 (i.e., as homo politicus, or the political subject of the state).\footnote{Ibid, at pg 269.}
She describes the struggle of the new millennium as that of ‘man’ versus ‘human,’ specifically the present bourgeois ethnoclass of ‘man’ versus the cognitive and behavioural autonomy of the human species. In Wynter's opinion, the overrepresentation of the bourgeois ethnoclass of ‘man’ led to the coloniality of being/power/truth/freedom. She describes the invention of man, as we know and overrepresents today, as an attempt at avoiding subordination from the Church. Yet, in preventing this subordination from God, Europeans began subordinating others. Thus, the politically subjected version of ‘man’ could no longer be affected by God or its regulatory institution of the Church but based on colonial power and racial differences.

The development from theoretical human (Man 1) into the humanist and race-centric human (Man2) was a result of a change in modalities of “adaptive truths” about the self, others, and the world. These adaptive truths are what Wynter describes as different social and categorical productions of ways of being human that lead to varying understandings and modalities of truths. As she says:

the adaptive truth-for terms in which each purely organic species must know the world is no less true in our human case. Therefore, our varying ontogeny/sociogeny modes of being human, as inscribed in terms of each culture’s descriptive statement, will necessarily give rise to their varying respective modalities of adaptive…..the way we at present normatively know Self, Other, and social World is no less adaptively true as the condition of the continued production and reproduction of such a genre of being human and of its order.

These varying modalities of truths dictate one's interactions with the self, others, and the world. This means that as social and categorical productions change, so does how we interact with one

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83 Ibid, at pg 260.
84 Ibid, at pg 269.
another and adaptive truths. Therefore, our present and normative understanding of self, others, and the world are adaptively or transformatively true. Wynter holds that truth's adaptive feature also applies to our reproduction and overrepresentation of this particular mode of being human and the order of man within the definition of human.\textsuperscript{85} The development of Man2 from Man1 is important to note as it establishes the human as a product of our knowledge-based creation of the overrepresented genre of man (created by those who have the power to do so and uphold it) and it provides a definition of humanity as an adaptive truth.

Descriptive statements are used to rationalize, actualize, and enforce ideas of what it means to be human and ‘man.’ Wynter refers to descriptive statements as “governing master codes on the heavens.”\textsuperscript{86} The descriptive statement of the genre of human (what it means to be human) had to redefine its “othering” for it to develop from Man 1 to Man 2, which meant that there had to be a newer, more irreversible kind of other. The enslaved Africans became this other. As ones spirit became the signifier of life and flesh became the signifier of death in the process of creating Man2, the “space for otherness” became one where individuals were identified as either flesh and non-living (determined to death) or living with spirit (determined to live).\textsuperscript{87} This meant that black people, for example, could become black flesh but could not be considered living because they did not have a spirit.

According to Wynter, reason was to replace the Redeemed Spirit and turn symbolic life (good) and death (evil) into rational and irrational.\textsuperscript{88} In this process, reason allowed the overrepresented type of man to become a balanced figure between natural and supernatural. This meant that Man2, the man that informs human rights, was not only able to control their

\textsuperscript{85}Ibid, at pg 269.
\textsuperscript{86} Ibid, at pg 271.
\textsuperscript{87} Ibid, at pg 279.
\textsuperscript{88} Ibid, at pg 287.
autonomy but control that of other lesser beings. Man was no longer bound by their sins or the church but was now called to their creator's divine or “upwards” nature. This ability to become better or self-actualizing by calling upon their upward nature justified the behaviour of those who were able to wield this power. This became a basis for coloniality as the degree of rational perfection and imperfection explained, or more specifically gave a reason, for the European conquest of land and people.89 Ultimately, according to Wynter, what took place in the eighteenth century that created or adapted the idea of the human was a change in a descriptive statement, the addition of a definitive “other,” and the replacement of God with reasoning. By tracing what some have pinned as a natural progression to the rights of man and the man that informs this declaration of rights, Wynter is showing us that humans and humanism are made and moulded to the needs of a dominant population.

The idea that reason is something that is naturally granted and therefore possessed by Europeans is of note as it signifies a point where humanity became a right. To have reason, claim humanity, and own slaves became the determinant of the human (or at least the overrepresented genre of man) and the characteristics/rights awarded to them. When discussing the aspect of entitlement related to the overrepresented genre of man, it becomes evident that the racial, social, and economic divisions associated with this entitlement describe ownership or possession as a trait that only those who transformed from Man1 to Man2 can claim. “The invention, label, and institutionalization” of enslaved Africans and Indigenous people of America became what Wynter describes as the “physical referent to the projected irrational/subrational Human Other to its civi-humanist, rational self-conception.”90 Which meant that an ‘other’ could exist in the

89 Ibid.
90 Ibid, at pg 281-82.
European definition of human. However, the ‘other’ was to be identified and defined with dichotomies, theories, and assumptions of power/truth/freedom. The other was necessary to determine the overrepresented genre of man but could not live/be/exist as more than a definition.

There is an element of restraint to point out in this definition of ‘man’ regarding rationality, reason, and the secularized political subject. This definition of man is dependent on control of the self (repression) and the restraint of others (oppression). Descriptive statements and the idea of reason are essential to understand in Wynter’s work because she uses them to explain human rights through humanism. Having established that the human is the overrepresented version of man and by selecting how those who can be classified as such actualize their privilege and status, Wynter is showing the rights that humans (as an overrepresented version of man) have. Folks that were able to identify as the overrepresented genre of man had rights. These rights were actualized by working towards the common ‘human’ goal, having the ability to decide their fate because of self-actualization, and being able to describe themselves as superior descriptively.

The “space of otherness” described by Wynter displays how reasoning and descriptive statements are human rights as they are rights that can be expressed by those who can identify as the overrepresented genre of man. This “space of otherness” became a chain of being that rated the levels or degrees of rationality by a group's mode of being (religion, culture, norms), with the West at the top of the chain and Negroes at the bottom. As the Indian and Negro were the human others to Man 1, the native and slave (what Wynter calls the nigger) became the human other to Man 2. Negroes were considered the last link between rational humans and irrational

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91 Ibid, at pg 288.
92 Ibid, at pg 300.
93 Ibid, at pg 318-319.
animals as they were co-classified with apes and Christian traditions relating to Blackness (or any sort of darkness in colour) was linked to demons, sin, and illness. This ensures that the subordination of Negroes would take place no matter the changes or no matter the distance from the Church because it guaranteed that the overrepresentation of Man would be “normal” and that the European would become the reproduction of the singular mode of being human (that excluded the ways of being that were not European and Judeo-Christian). This also ensured that the negro could be reconfigured as a slave or another term of entrapment and restriction/restraint.

Race is another topic that Wynter delves into by using reasoning and descriptive statements. I assert that her discussion of race is a discussion of human rights because of how she uses her knowledge of reasoning and descriptive statements. By naming race as the answer to the colonial question, she specifies that race is a reiteration of the ‘genre of man’ issue and the ongoing production/reproduction of the overrepresented genre of man. She points to Dubois’ ‘colour line’ to show how race became a central function in determining (previously and currently) the descriptive statement of the human. For Wynter, the colour line is an example of the institutional and discursively enforced separation of categories of beings. Not only is race a reiteration of the ‘genre of man’ issue, but it also upholds the overrepresented version of Man. Race is a tool of restraint for the self and a tool of restraint enforced onto others. Race is how this restraint, or repression/oppression of power (through rationality), manifested itself as colonization took place. Human rights were expressed and awarded ‘reasonably’ within the knowledge and descriptive statements regarding race. As Wynter writes:

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94 Ibid, at pg 301-303.
95 Ibid, at pg 288.
96 Ibid, at pg 310.
… the Spanish Crown had, from early on, initiated the adoption of new grounds of legitimacy that would eventually make the Requisition document unnecessary. The councils of jurists/theologians that King Ferdinand set up for this purpose had come up with a formula that, adopted from The Politics of Aristotle, would not only enable the master trope of Nature (seen as God’s agent on Earth) to take the latter’s authoritative place but would also affect a shift from the Enemies-of-Christ/Christ-Refusers system of classification to a new and even more powerfully legitimating one. It was here that the modern phenomenon of race, as a new, extra humanly determined classificatory principle and mechanism of domination (Quijano 2000), was first invented, if still in its first religio-secular form. The indigenous peoples of the New World, together with the mass enslaved peoples of Africa, were now to be reclassified as “irrational” because “savage” Indians, and as “subrational” Negroes, in the terms of a formula based on an a-Christian premise of a by-nature difference between Spaniards and Indians, and, by extrapolation, between Christian Europeans and Negroes.”

The reason enslaved Africans were still considered Human others, although they adhered to laws and worked towards the so-called common goal, is that they did not share the traits listed in the descriptive statement of ‘Man 2.’ They could be labelled a ‘human other,’ but they could not be man, so race became an additional qualification for man. The process of turning race into humanity enforces these restraints. It ensures that those who are defined as man and benefit from its overrepresentation continue to benefit from this status by exercising their human rights at the expense of those who are defined as Human Others.

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97 Ibid, at pg 296.
The close reading of Wynter’s *Unsettling the Coloniality of Being/Power/Truth/Freedom* done in previous paragraphs should have identified the definition of human and human rights according to her historical, theological, and discursive approach. The adaptive aspect of these definitions was slightly touched on and merited reiteration before analyzing Harris’ work. This is because, conclusively, although used as tools to oppress black and Indigenous people, Wynter is saying that these terms are adaptive. Although humanism works to continue and uphold the overrepresented genre of man, it also works to allow for future adaptive truths to arise and redefine/re-reason our knowledge frameworks. Not only is the title of man and the ability to claim association (or title) to the overrepresented version of man a manner of wielding the property aspects of man, but the steps required to get to this title resemble the steps listed by Harris in her work.

*Reading Harris*

Cheryl Harris is an African-American legal scholar. She is internationally known for her work in critical race theory and her analysis of law by providing insight into the intersection of critical race theory and civil rights law in the United States of America. She attended university at Wellesley College and went to law school at Northwestern. From her work at one of Chicago’s leading criminal defence firms and the City Attorney’s office, she has been able to draw strong legal conclusions between slavery and the issues black people in the United States of America continue to face today. She served the first black mayor elected in 1983 and said, “It really was a pivotal moment in black politics, as it turns out, in national politics. He [Harold Washington] came in promising reform. He wanted to install ethics, accountability, transparency;

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98 Supra note 74, at pg. 1710.
these words were unknown [at the time in Chicago]”. Harris organized many significant conferences that helped engage U.S. legal scholars and South African lawyers when South Africa was drafting their democratic constitution. While working with lawyers from South Africa, Harris noticed how whiteness presented itself globally. This helped her understand how critical race theory presented itself throughout the world in law.

Specifically, the way that whiteness is presented and defended in law throughout the world to ensure the suppression of black people. This combination of her legal knowledge, her lived experience as an African American woman, and her experience with black South Africans led her to form a strong basis for property and property claims about slavery and whiteness. The relationship between racial identity, property, and the exclusion of black people is a connection that could not be avoided in all of the situations Harris faced leading up to the publishing of her article “Whiteness As Property” in 1993. This racial connection grounds her work discussing admission policies, Hurricane Katrina, and anti-discrimination laws. She has taught at the University of California, Los Angeles (UCLA) since 1998 and is now the Rosalinde and Arthur Gilbert Professor in Civil Rights and Civil Liberties at UCLA Law School.

Cheryl I. Harris demonstrates that whiteness is a form of property or is perceived as a form of currency that makes their lives more valuable than non-whites. Stemming from the rhetoric that justified slavery in America, Harris explains how the propertization of whiteness makes white folks ‘human’ compared to non-racialized white people. As she describes the logic used by colonizers to deem themselves superior to enslaved Africans and Indigenous people in

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100 Supra note 74, pg 1707-1791.
America, she displays that making people objects and excluding them from land ownership created a gap between racialized white folks and non-white folks. The system of chattel slavery was dependent on the forced inferiority of Indigenous and African people. Harris demonstrates how race and property worked concurrently towards the goal of maintaining "racial and economic subordination." Slavery formed a type of property dependent on race and created a legacy of racialized property. Chattel slavery not only broadened the definition of property to include certain humans but also specified the definition of property to black bodies. Property, according to Harris, is something that can be used to elevate one’s status or used to gain something.

By saying that whiteness is property, Harris says that when able to claim the status of whiteness, it can grant the claimant the power to control their destiny, live freely in the U.S., and be considered full legal citizens. She describes the legal structure of property in the U.S. as derivatives of Lockean and Benthamite theorizations of property with natural and actualized characteristics. She also points to the eighteenth century as the beginning of discourse surrounding property. She demonstrates that since then, the inclusion of ownership/possession/entitlement has changed the justifications of property and property ownership/possession/entitlement. Yet while making these claims and explaining how whiteness is property due to the value of whiteness, Harris is essentially criticizing the humanism that informs the type of human that Wynter discusses. Harris illustrates that the issue of human/human rights and property/property rights holds a third proponent when talking about the creation of the Americas; that of whiteness.

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101 Ibid.
102 Ibid at, pg 1716.
103 Ibid.
When tracing the physical violence of slavery, specifically against black people, one is tracing the history of property rights in North America. Violence is required to sustain the concept of property and the human as it ensures that there be a party in control and inflicting violence, therefore providing the gap between the victim and the abuser. Specifically physical violence inflicted by and for the benefit of those who created the term and are legally acknowledged as humans—white people. What indeed maintained the economic and social control/standing of whiteness is that those who were able to claim it did so by inflicting violence against black people. Whiteness has the property rights of freedom and the ability to inflict physical pain onto others for their social and economic benefit. Whereas blackness has the property rights of bondage and restriction, black bodies were seen as something that could be tamed or adjusted to meet the needs of white people. Blackness became purchasable by those with enough money and had the legal functionality as an extension of their owner. By 1705, States like Virginia legally established slaves as real property that could be transferred, inherited, or considered collateral. The increase in enslaved Africans arriving in the Americas increased the number of members of a different race joining the region, and as they were sold and used for labour, they became slaves. As economic relations in the Americas were founded on the institution of slavery and the idea of property, the amalgamation of slavery, race, and economy took place. The U.S. economy became dependent on slavery, so it became dependent on race as a currency determinant of value or worth. Human rights were reserved for white people or those who could claim whiteness, and black people were given rights by their relationship and use to white people—thus granting them the rights of property.

104 Ibid, at pg 1720.
105 Ibid, at pg 1727.
When understanding property rights, Harris uses Lockean and Benthamite theorization to show how the properties of whiteness are exercised as rights. By highlighting four property rights functions of whiteness, Harris demonstrates that whiteness is property because whiteness has the right to dispossession, the right to use and enjoyment, the right to reputation and status, and the right to exclude. What Harris does by discussing slavery is brought forth the fact that property rights were actualized through physical violence and harm towards black people in the U.S. This is evident because as she defines the rights that make whiteness what it is—property—she is describing what rights black folks were stripped off and excluded from. Harris is illustrating that property rights are rights so deeply actualized through violence and legal institutions (legal restriction) that black people cannot claim them. These rights are meant to ensure that black people remain the property of white folks in the U.S.

There are more evident examples of property rights as human rights in Harris' work, such as her analysis of the Plessy and Brown case. In her research, Harris shows old and newer forms of whiteness as property and how in both cases, the property interest of whiteness was upheld and recategorized in a manner that could still ensure the protection of (and exclusionary title of) whiteness. I assert that to maintain said property interest, the qualifications of whiteness had to be further defined as humanness. This is evident as Harris discusses the Plessy case, where a black male of light skin complexion (white-passing) was forcibly removed from the whites-only section of a train. Mr. Plessy made two critical claims to the court, firstly, that legalized racial separation led to racial subordination and secondly, that stripping him from the

106 Ibid, at pg 1731.
107 Plessy v. Ferguson, 163 U.S. 537, 551 (1896).
ability to claim whiteness was robbing him of property (in the form of reputation and
treatment). Although Plessy’s lawyers made compelling arguments about the arbitrary
identification of race and argued that whiteness held property value, the court disregarded these
claims and decided in favour of the railway company. The Brown case (Brown I, as Harris
puts it) asserts within its decision that racial subordination within racial segregation exists and
that the education system cannot and does not serve black Americans in the same or equal
manner that it serves white Americans based on race. For this reason, the Brown case is
encouraged by Harris because it demonstrates a step forward in acknowledgement and legal
adjustment to rectify the wrongs of the past.

Yet, Harris points out that the level of acknowledgement in both Brown cases (Brown I
and Brown II) is done on a surface level to maintain and ensure the superiority of whiteness and
the interest property value of whiteness. As she argues that the form of whiteness dismantled
in Brown I was an old form of it, one that did not include all of the ramifications and rewards of
segregation. Essentially Brown I only addressed the type of whiteness that was also discussed in
Plessy and failed to consider the astuteness of institutionalized segregation in the U.S. social and
political fabric. It dealt with the type of entitlement that was limited to the breach of a specific
environment (like a train, but in this case, schools) rather than acknowledging that there is
inequality in all social, political, and economic programs in the U.S. Brown II’s order to
desegregate does the same thing by creating the type of social and political outrage that specific
school boards or states refused to do so. Harris states that desegregation was to be done at

109 Ibid, at pg 1747.
110 Ibid.
111 Ibid, at pg 1753-1754.
112 Ibid, at pg 1752-1756.
113 Ibid, at pg 1755.
“deliberate speed” rather than immediately because whiteness was given the property claim to thwart, slow down, manage, or control how desegregation would occur.\textsuperscript{114} Harris suggests that desegregation, the solution for the meticulous, historical, and violent creation of race in relation to property and personhood, is problematic because it is creating a solution on the terms of those who have benefited from the maintenance of white superiority. This shows that although the courts could acknowledge racial segregation, racial subordination, and systems of oppression and even attempt to rectify them, the American judiciary would not identify whiteness as the offender. In avoiding this accountability, the interest value of whiteness increases as it becomes untouchable by the law. I believe these cases demonstrate the development of whiteness as a kind of human rights property. I mean that the claim that human rights is property is not wholly actual but that it can be true because, in the economic, political, and social framework of the U.S., whiteness is the legal person/citizen/human.

I believe the idea of whiteness as property with interest is critical to juxtapose with the description of blackness, specifically black bodies, as a present or depreciated property. These are not the exact terms used by Harris in her article to describe the black body, but this can be inferred as she describes the actualizing of race through property. Property can be used to gain or increase one’s status, but it is (and must be) at the expense of another, and this means that the “other” is necessary to the definition of property as well. If whiteness is property, then so is blackness. They are not the same type of property, as made evident by Harris, but they are both a form of property. Race was not an aspect of the economy at the time; it was the economy of the ‘New World’ and the Americas.

\textsuperscript{114} Ibid, at pg 1754.
Slavery and its exploitation, violence, and dehumanization created the primary source of income in the Americas, and race became the identifier of property and humanity. In this economy, the black person is a superior good that continues to gain demand as their consumer (white folks) earn more income. Thus making it a consumer-driven economy that truly encapsulates capitalist ideas of supply and demand. The white man had the ultimate power to create (literally) their capital and to create and maintain their economy of superiority by procreating with white women. They only acknowledged their white children and passed them down ideas and practices of white superiority. This gave white men control of their economic environment (capital) and social environment (whiteness and white superiority). The propertization of slaves allowed for total control of the economy and society. White men controlled the creation of property, the creation of ‘people’ and ensured the dysfunction of the black family. This is crucial to note as it means that whiteness was not only the standard socially created by white men but literally (discursively), physically (violently), and mentally (manipulatively) upheld by this demographic as well.

Whiteness was valued not only for having rights that black people could not have and shaping social relations, but whiteness was also deemed as the ability to enslave black people and enforce the idea that those who did not own slaves were not slaves themselves. This created split forms of property rather than one fixed definition because white folks owned whiteness and blackness. Thus, whiteness is property and blackness is property as well —but they are not the same kind of property yet held and determined by the same party (white people). A key aspect that made whiteness interest property rather than present/depreciated property was that they could own those whom they named black bodies, call them slaves, and distribute property rights
to them. In the economy of slavery, the masters were the only inhibitors of freedom, as freedom was theirs and theirs only to own.\textsuperscript{115}

This close reading of Harris’ Whiteness As Property should have clarified the critique of humanism within her work, although perhaps not the intention Harris had in mind. Her definitions of property and property rights depend on the uplifting and maintenance of whiteness and those who can claim it to their benefit to live a ‘free’ life. Although property in North America is meant to uphold this separation and keep those who can claim whiteness legally apart from those who cannot, legal change (specifically from the judicial decision) provides a hopeful resolution, according to Harris. As the Board decisions were half empty in still maintaining whiteness as interest property, it was also half full for taking a step in acknowledging that racial segregation creates a separate and unequal social distinction between black and white Americans.\textsuperscript{116}

\textit{Reading Harris & Wynter}

The connection between Harris’ whiteness and Wynter’s overrepresented version of man is made possible for three reasons. Firstly, the close reading of Portuguese and Spanish colonization from the sixteenth century onwards that Wynter provides establishes the bounds, range, or limit of knowledge from which man's overrepresented genre can be conceptualized. Secondly, Harris’ close reading of American law by assessing the \textit{Plessy} and \textit{Brown} cases demonstrate that the interest in whiteness is instilled and maintained by judicial decision in the U.S. Thirdly, the origin of both titles, both characterizations or descriptive statements comes

\textsuperscript{115} Ibid, at pg 1716.
\textsuperscript{116} Ibid, at pg 1751.
from the same confusing yet dominating place: of race relations, colonization, segregation and violence. Wynter starts the discussion of domination dependent on racial differences in the sixteenth century as Portugal and Spain colonized Latin America. Harris continues this discussion in the U.S. in the 20th century by discussing the legal frameworks supporting the overrepresented man genre (whiteness).

Wynter describes what Harris discusses as a change through law and property rights as a change in history/discursive/critical thinking. They both fundamentally discuss the shift in definition and use of humanism or human rights and property or property rights. These definitions do change but stay close to one fundamental construct: race. Just as race is interchangeably physical and social, real and not real, it is also property and human. Harris explicitly states that whiteness is property, but reading this with Wynter’s analysis of knowledge structures in mind leads to the conclusion that whiteness is humanity as well (or, at the very least, the overrepresented genre of man makes the type of human that informs humanity). Therefore, when I say that human rights are property rights, I am simply pointing out that they depend on the overrepresented version of man or what Harris establishes as whiteness. The humanism that forms human rights can equate to the whiteness that forms property rights, and it is within this context that human rights can be understood as property rights. Whiteness is property, but the property that whiteness claims is man (and therefore the human) because Wynter tells us that the ability to have reason and to take part in creating descriptive statements is what makes man (specifically Man2). The descriptive words that Wynter explains have evolved from an ‘objective set of facts to what Harris describes as legislation and constitutional facts from the Plessy and Brown cases.
I understand humanist projects of conquest, expansion of space, and production as racialized acts. This is because they rely on the association of man with race, specifically whiteness, and this is where human rights as whiteness meet. What began the relationship between black and white people in the Americas was a project of self-actualization for Europeans. The distinction of race created ‘blackness’ and awarded colonizers the right to assert more spatial conquest and racial superiority.\textsuperscript{117} Black bodies had to become nonhuman for white people to conquer the New World, conquer the bodies of enslaved Africans, know their humanity, and ultimately justify their conquest as self-actualization.\textsuperscript{118} According to Wynter, the European Christian could only rise to the top of the human hierarchy by inventing and subjecting black and Indigenous people as the "Other."\textsuperscript{119}

Harris and Wynter demonstrate how race was used to identify others and how property was used to define those determined as an ‘other.’ This meant that all other modes of being human were ruled as lacking the West’s “ontological absolute self-description,” meaning that ‘others’ were acknowledgeable, pertinent to the existence of those who were ‘man,’ and real but that they were not ‘man’ or human. Although the other differed significantly from man in definition, they shared the exploitation and ignorance of the bodies and actual premises of those most greatly and adversely affected by the transformation of the “theological descriptive statement of the human.”\textsuperscript{120} The ‘other,’ as Wynter describes it, is demonstrated by Harris as property because black people were negroes and slaves; they were not considered human. The relationship that the ‘other’ has in defining ‘man’ and its reliance on black bodies and flesh is

\textsuperscript{118} Supra note 46, at pg 24.
\textsuperscript{119} Supra note 70.
\textsuperscript{120} Ibid, at pg 282.
very similar to that of property in determining human rights, as Harris describes it. When Wynter argues that the othering of black people is a part of the overrepresentation of ‘man’ and is supported by stigmatization and deprivation, this can be interpreted as what Harris suggests as the assurance of whiteness property interest by upholding stereotypes and biases that were developed from stigmatization and deprivation as well.

I contend that rights are a separate yet distinguished aspect of Wynter and Harris’ works as they explain the process of creating property and the human through rights. Without the ability (or inability) to have reason and the ability to yield whiteness, neither title of the overrepresented genre of man nor whiteness would be meaningful. Their readings tell us that rights have come to replace race and religion in justifying colonization. From the eighteenth century, Wynter tells us that man was adapted from a religious figure to a political one (with rights as the identifying difference)\(^\text{121}\), and Harris tells us that property developed from a race-specific definition to one that involves legal, social, and economic order (specified and identified by rights)\(^\text{122}\). Therefore whiteness could only become property with rights, and Man1 could only become Man2 because of rights. By this, I mean that without the reclamation or reclassification of rights as human-made instead of God-given, the overrepresented genre of man would not exist, and without the classification of rights as property rather than simply racial (but also God-given), whiteness would not be property. This further relates to human rights as property rights because it grounds that the rights are the same. They are not the same because of the textbook definition of the characteristics of rights but because they are defined by the same desire for self-actualization and furtherment from a Christian God’s determination. As the following paragraph of this portion will highlight, they rely on the oppression of some “other” group. In both evolutionary

\(^{121}\) Supra note 74.
\(^{122}\) Supra note 73.
descriptions of rights, Harris and Wynter make it clear that there needs to be a climate of oppression and exploitation for rights to be legally binding and used.

Rights are racial, as they essentially describe what can or cannot be done and who can (white) and cannot (black, Indigenous, and other racialized migrants) do things. Harris describes this by illustrating how different forms of property are defined by whiteness and its ability to own (themselves and others). Wynter describes this by showing how being a part of the overrepresented genre of man makes one the creator of descriptive statements and more (the ability to express themselves/others and to own themselves/others adaptively). The development of rights as a means of ensuring the title of human and property (and the benefits of human and property) is essential to establish while discussing human rights and property rights. It is not enough for me to say that human rights are property rights because the human that informs humans rights and property that informs property rights are essentially the same— due to colonization and dependence on race (or at the least were informed by and defined by the same events and actions in history). This statement can be elaborated by establishing that the —so-called— rights of man are not different from the rights of property. There continue to be instances throughout the world where private property is awarded more judicial freedom and right than human beings, and this is because rights between the two are not different. Rights were founded on the abjection of an “other,” and for rights to exist, there must be a continuation of an abjected “other,” and they must continue to be exploited. The statement human rights as property rights brings forward the idea that from the beginning of colonization and particularly during slavery in the Americas, rights had one meaning, and it is from this that the human and property were developed. Rights ensure the definition and use of property and human remains the same since
the eighteenth century. Not only were rights created in the same environment and for the same reasons, but they also did the same thing.

Wynter highlights the relationship between those terms by ensuring that the title of her article puts being, power, truth, and freedom together with slashes instead of commas. They are not separate ideas but ones that arose symbiotically or, at the very least dependent on the same historical, cultural, scientific, and political factors. For Wynter, unsettling the coloniality of being/power/truth/freedom means unsettling the overrepresentation of the colonial form of being/power/truth/freedom—so unsettling the overrepresentation of ‘man.’ As Harris’ work elaborates on the capitalist perspective of slavery and discusses whiteness as the overrepresented genre of man outside of religion, we see how power/truth/freedom closely relates to property and property rights. To amalgamate the two texts and further demonstrate their relation to each other, let us say that power/truth/freedom represent to Harris the rights allotted to folks who can claim whiteness property rights. We see that the task at hand is not only to unsettle the definition of man and humanism but to unsettle the definition of property and allocation of property rights. Wynter’s work discusses the social, historical, and ‘other’ dependent creation of the ‘human.’ In doing so, the placement of the African diaspora becomes clearly defined within human rights. Harris’s work discusses the legal order that upholds the overrepresented genre of man as white. In doing so, the placement of the African diaspora also becomes clearly defined within property rights. The black ‘other’ is not human but creates the human; it is property but does not have property rights.

Continuing the reading of Wynter through Harris, we could reinterpret the title of her work to mean the coloniality of ownership/possession/entitlement as there is synonymity between ownership and being, power and possession, and entitlement and freedom or truth. This
shared rooting in eighteenth-century Americas means that rights/human/property is also an appropriate grouping that must be decolonized. The creation and upholding of the overrepresented genre of man—like the creation and maintenance of whiteness—is what holds these terms together and grounds them as legal and social constructs because without whiteness and the overrepresented version of man (at the expense of the black other), we would not have our current understanding of rights/property/human and human rights/property rights. This leads me to ask if there can be another type of man or human without a “space of otherness” to maintain a social hierarchy, division of labour and the abjection of some by society, especially after spending so much time establishing that the space that defines Diasporic Africans is contaminated by colonialism because it defines them as human beings and not man (having rights but not human rights). I use ‘man’ in the sense that Wynter describes its European development and overrepresentation and the manner that Spiller describes the engendering of Black folks.123 The diasporic African could not only wield the rights associated with the human title but lacked the gendered aspect that specified the type of human they were. They were beings, bodies, and other non-human specific titles that made their status fall into a classification/genre/type that (obviously) further separated them from the overrepresented genre of man and established them as an “other.”

Is it thoroughly contaminated and incorrigible? If it requires the space of otherness to exist or be understood, then I would argue that it is irrecoverable. This means that there is still hope for the definition of man or human outside of the white, colonized, Western understanding of the law. The following chapter and its discussion on Anishinaabe constitutionalism provide insight into this hope.

123 Supra note 41.
Chapter 3:

Humanity From a Different Perspective
The purpose of this chapter is not to compare the struggles of colonialism between Indigenous people and enslaved Africans in the Americas or even to compare the relationship between property/humanity that both groups were influenced by being violently manipulated by European settlers. However, it is to note that Indigenous laws still stand. The purpose of the chapter is to demonstrate, with specific examples from Anishinaabe teachings, that there currently exist different definitions and ideas that create the human and distinguish which rights they have as well as property and property rights. By discussing the relationship between property—actualized through dispossession—and Indigenous people, the first portion of this chapter will make it clear that the Western legal practice of creating/naming property depended on the theft of Indigenous peoples' spaces and identities. With this understanding that the abjection of Indigenous peoples contributed to the Western legal rhetoric of property and black folks' abjection, this chapter will switch gears and fully engage with Anishinaabe legal traditions and rhetoric. The next portion of the chapter is meant to give context and put into frame what it means to conceptually exist—as human or another—outside of Western legal traditions in the Americas. Specifically, by using the story of a young woman’s journey around the world and throughout different periods with an otter named Ngig, this chapter will illustrate that human/human rights and property/property rights do not particularly need to be reconceptualized but can be reclaimed. This chapter concludes on a note that further grounds the basis for reclamation rather than reconceptualization, as any hope for a new concept would entail the mixture of Indigenous and Western legal traditions. This mixture is impossible because these two legal traditions do not truly compare; they are not even grounded upon the same concepts and beliefs. Like water and oil, they cannot mix and to reconceptualize an American legal tradition that encapsulates a combination of legal rules (including Anishinaabe legal customs or specific
African legal traditions) would be an attempt at forgetting and perhaps even forgiving the history of Western legal practice as an oppressive, manipulative, and distinguishably harmful tool used to refrain and kill the personhood of Indigenous peoples and enslaved Africans in the Americas.

The three-step process illustrated and explained in chapters one and two elaborate that although slices and bits of West African traditions could have been passed down from generation to generation, they have not been preserved in their original language, style, or environmental setting. In contrast, Indigenous people in the Americas have traditions and stories passed down in their languages, within the same environment as their ancestors, and in the same style as initially told (with the same tools, instruments, and resources). Against all odds and challenges made by European settlers ranging from residential schools, the creation of “Indian status,” and systemic challenges like over-incarceration and over-policing (including police brutality and exploitation), Indigenous legal orders still hold in this “New World.” Not only is this something to note as a force of continued resistance, but it demonstrates that not all legal orders are centred on human rights as property rights (and that Western legal order is centred around human rights as property rights). Some have and continue to define, understand, and organize outside Western legal definitions. Anishinaabe legal orders will be discussed as separate legal understandings and humanism forms outside Western law. This is important in establishing the specific dependence on human rights as property rights within Western law. It confirms that the conversation of human rights has been defined so far ends where Anishinaabe legal order and constitutionalism begins. By discussing the agency, livingness, and counterintuitive definitions of human/human rights and property/property rights within Anishinaabe law, this chapter aims to demonstrate that there are legal orders that recognize humanity without the expression of non-reciprocal and exclusionary rights. For example, the distinction between human and non-human is understood
in Indigenous legal orders as one between kin (concerning one another), unlike the Western legal distinction of the beast and civilized (as one above the other). Legal systems outside of Western law not only exist but do so by holding on to their foundations which differ significantly (and are separate) from Western law. With examples from Anishinaabe constitutionalism, I will demonstrate that to reconceptualize man as Wynter suggests, we need to think entirely outside of legal orders that rely on and elevate humanity above other beings and the tools that promote this type of hierarchy (human rights and property rights).

Using Locke’s understanding of property and property rights, it is clear that the standards of property and its political society created the Americas and were used to dispossess, disenfranchise, and subjugate Indigenous peoples. This is made clear when Brenna Bhandar discusses Indian status and says that “the Indian Act and the imposition of private property relations it embodied were premised on the denial of First Nations’ memory of their relationships to land and place.” The relationship to land and the creation of property depended on the erasure or ignorance of already established comprehensions and relationships Indigenous peoples had with land and space. Bhandar points out that status became a form of currency during the process of Indianizing the Americas because the Indian status was state-regulated and Indian status held social and economic value. Bhandar writes,

“Thinking of seventeenth century debates over currency, in which Locke was an important player, I want to draw an analogy with the concept of Indian status, whose value derives from its abstract function as a sign—an identification and identity as a

125 Supra note 13, pg 9
126 I use the term indianizing because prior to settler intervention in the Americas, Indigenous peoples were not considered Indian. The weaponization of the title of Indian, which evolved from title to status due to the Indian Act is pivotal to Bhandar’s argument in her book, The Colonial Lives of Property.
recognized, bona fide subject entitled to reside upon and hold reserve land – and at the same time remains tethered to biological concepts of racial difference. In this way, Indian status both signifies a particular state controlled category of identity and reifies racial difference as an actual, embodied substance.”

The specificity of re-categorizing the dispossession of land as theft is also essential to note because, according to Robert Nichols, property and property rights are the tools that propagated the disenfranchisement of Indigenous peoples in the Americas.127 There are many essential points from Nichols’ *Theft is Property*. Firstly, our Western understanding of property (specifically concerning land) was created through theft. This was not only the theft of Indigenous identity but the theft of the relationships and arrangements established between Indigenous peoples and the land/space they inhabited. Therefore in the simplest of terms, theft is property.128 Dispossession, according to Nichols, is the process of creating property and taking it. Dispossession “transforms nonproprietary relations into proprietary ones while, at the same time, systematically transferring control and title of this (newly formed) property….. It is thus not (only) about the transfer of property but the transformation into property. In this way, dispossession creates an object in appropriating it.”129 This means that Indigenous peoples were stripped of their identity and the space they inhabited and shared and were also transformed into the property status of ‘Indian.’ Property in titles and area evolved into “property in the person”130, as Nichols puts it, because the creation of the status of ‘Indian,’ ‘Native’ and even ‘Indigenous’ is a manner of amalgamating all tribes and categorizing them as one for the English

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128 Ibid at pg.9.
129 Ibid at pg 30-31
130 Ibid at pg. 122-124
settlers. Property is therefore not only theft, as Nichols says, but it is also reinvention or re-titling. This demonstrates that human rights are also property rights— or at the very least, that Indigenous people also become property during the creation of Western (American\textsuperscript{132}) legal frameworks. It remains essential in its definition of human rights and property rights.

This chapter contributes to the idea that there is legal knowledge outside Nichols, Bhandar, and even Wynter’s understanding of humanism, property, and resistance. To demonstrate this distance, I ask that we drop all of the terms at the core of my thesis so far (property, property rights, humanism, human rights) and imagine a world in which rights are only defined and understood through relationships and that these relationships define each other’s role in maintaining our shared environment. In this scenario, everything and everyone is equal, the land is space, people have relationally specific responsibilities, and the law is general practice. This scenario is both in a particular region and not in a region at all. To aid in this visualization, I offer some passages from a story told in John Borrows’ book \textit{Law’s Indigenous Ethics}.\textsuperscript{133}

\begin{quote}
“The young girl learnt from nature’s increasingly strained and wearied hand. Knowledge sprang from the hills. The lakes and trees were her treasured teachers. She learnt how to live well by observing the winds, waters, rocks, and plants. Her parents shared many stories about their origins as they studied together. Lessons flowed from the natural world. Analogies lived in the speckled strawberries and black-backed beetles. The family
\end{quote}

\begin{flushright}
\begin{small}
\textsuperscript{131} Ibid at pg.100.  \\
\textsuperscript{132} Inclusive of all of the Americas (North, Central, and South)  \\
\textsuperscript{133} Borrows, John. \textit{Law’s Indigenous Ethics}. University of Toronto Pres.  \\
To be specific, this story is not Borrows but one passed onto to him by his elders. This is also not a tale of some sorts, it is an origin story. 
\end{small}
\end{flushright}
applied what they learnt; her parents helped her see that good teachers filled the earth.”

“On one of these journeys the young woman met a small otter: Nigig. Nigig was playfully sliding down a muddy stream bank. Her energy was infectious. The young woman watched as the otter plunged in and out of the water. In this activity, the young woman saw a lesson she wanted to take to heart – life is more than food and shelter…..That day, as the young woman watched the otter, she caught a brief glimpse of life’s broader meaning. She saw how simplicity and intricacy were intermixed. At that moment, she knew she had found her next teacher. ”

“Nookomis spoke first: Our world is changing. It’s struggling. It needs help. We hope you can assist. We have a gift here. That bundle you found on the beach – we want you to take it. Use it. We’ve been watching you. We know you’ve learned good things from your community. But you’ve also walked beyond it, and that’s needed. The world won’t survive if we live only for ourselves. We’ve watched your journeys and we want to help you continue. But we can’t always be at your side. So we hope you’ll carry our teachings with you. We’ve got seven gifts for you. They’re part of what’s called mino-bimaadiziwin – the good life. The pouch’s contents will help on your journeys. But, rest assured, it won’t be easy. You’ll need these gifts to find balance, to meet the challenges ahead. Anishinaabe have long used good medicine, bundled in special ways. But healing requires more than the gathering of plants, though this is necessary too. You need good principles and practices; standards, criteria, guides, measures, authorities, and

135 Ibid, at pg 7.
traditions to help out. As the old one taught, you need law: chi-inakaonigewin. When you don’t know where to turn, open this bundle—the laws within will guide you, even if they don’t settle every question. When she finished, the grandmother from the south addressed them. In time, each of the elders spoke about the gifts they brought from the seven directions. The two friends were told about love, truth, bravery, humility, wisdom, honesty, and respect—gikoomisinan gimishomisi-nan kikinoomagewinan – the Seven Grandmother/Grandfather Teach-ings. ”

This story is about a young woman’s journey through the world with an otter named Nigig by her side. The story Borrows tells focuses on the journey that led to an interaction between these two curious community members (the community being the earth) meeting with eight elders. These eight elders, who are all women, give the young woman and Nigig a bundle of teachings for them to conquer future issues in their journeys. The quotes from this story set the following portion of the chapter excellently. It illustrates that Indigenous legal orders are not a part of, or even comparable to, Western laws. It is not only a scenario or an imaginative world/state; this is the reality and legal knowledge of those living outside Western legal tradition. Indigenous peoples throughout the Americas have stories of similar agency that specify their connection to space and each other (including other species). It must be noted that this story and the rest of this chapter will inadvertently support my thesis statement that human rights are property rights within Western law (and Western legal traditions of the Americas).

The timeline of this story is important because the previous chapters focus on a specific time and space in the Americas—that of slavery and generally around the seventeenth century.

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137 Ibid, at pg 5-14
This story in Borrows’ book is either before this time or outside of our understanding of time. It has no set time as he does not say what year or century the woman was born, and there is no mention of any geographical/historical markers. Yet, the story has an environmental, discoverable, and imaginable setting. He sets periods as ‘difficult,’ ‘in danger, or ‘changing’ and states that the only period this story can be set in is within one of ‘growth’ and ‘transition.’

This story is not only starting before colonialism and slavery, but it starts outside of the knowledge or understanding of time within the frameworks that we understand as (or include) pre-colonialism and pre-slavery. One could interpret the setting of the story recounted by John Borrows as proof of humanism before Western intervention in the region of the Americas. However, this perspective would still be restrictive and dependent on Western definitions and understandings of legality and personhood. Therefore, this story proves there is agency, life outside of time, and even humanism (as we have come to understand/know them).

All the folks in the story must be discussed in relation to thinking outside of the box of Western law. It is important to note that Nigig, the otter, is given a name and the young woman is not. Almost everyone else in the story is named by their name except for the main character—the young woman. The separation of actors by their relationship to one another rather than their humanism/property also works as a counter-narrative. This is because it forces the reader to recognize what we have come to know and understand as one (for example, animals as property) and see them as another (animals as having autonomy and a self). Although Nigig is considered a teacher to the young woman, it is said in the story that Nigig also wanted to learn from the young woman and her ways and that they became friends rather than one who leads and another who follows. Their relationship is mutual, based on gaining knowledge and caring for one another and the environment they live in.
It should be clear from chapters one and two that time and space define what justice looks like or means (and what terms related to justice, like human rights and property rights, look and mean). Therefore, keeping this in mind using the non-specific yet particular timeline and space in the story told in Borrows’ book— an understanding of justice, what it means to be human, and what property can be exacerbated outside the realm of the Western legal order. This means that concepts of property, human rights, and even justice can differ from legal tradition to legal tradition in the Americas and can all be cogent. It is, therefore, not the terms or concepts that hold issues or remain trapped in dependence on oppression but those who actualize and weaponize them. The purpose of this thesis is not to totalize the issue of human rights as property rights as an issue as a result of its creation by settlers. Still, it must be said that (1) the definition of human rights and property rights that is limited is distinctly the settlers' definition and (2) what limits the settler's definition of human rights and property rights is the very fact that it is the settlers definition of property rights and human rights.

The aspect of incommensurability is essential to the discussion of Indigenous laws and Western laws. As earlier established, the factors that define Western law, such as time, space, and title, are not valued or described in the same manner in many Indigenous communities. Discussing how Indigenous constitutions, specifically the Anishinaabe constitution, are not measured in the same way as liberal North American constitutions further cement that they cannot be compared. The immiscibility of Anishinaabe and settler law, pointed out as an issue in pluralism and liberalism in North America by Indigenous scholars, speaks to a more significant issue of scale (and scope) in the American judiciary altogether and legal definitions/teachings. Just as it is not tangibly possible to detach any legal system in America from colonial constitutionalism (even liberal constitutionalism), it is impossible to disconnect terms derived
from this legal system from colonial constitutionalism. Even our understanding and applications of what we now call ‘contracts’ were not understood within Anishinaabe law. The idea of treaties, for example, was, as Leanne Simpson explains, “an agreement that is an ongoing reciprocal and dynamic relationship to be nurtured, maintained, and respected.”

Heidi Stark develops our understanding of treaties from an Anishinaabe perspective by saying that they are not comparable to a contract. Specifically, treaties are not seen as binding terms, rights, and obligations definitively set for everyone involved at their signature time. This is because needs, standards, and expectations change with time (as well as nature, our surroundings, and our relationships to one another). In this understanding of treaties, they are renewable contracts that encourage their participants to meet regularly and assess the needs and issues they may face. Settlers also engaged in this interpretation of treaties, as the Treaty of Niagara of 1764 was periodically renewed until 1854. This means that something as fundamental as the basis of a contract or one's understanding of a contractual agreement between parties was substantially different between Canadian (settler) law and Anishinaabe law. In Anishinaabe law, treaties both mean and are the same thing, as they mean constant communication, which is actualized in the fact that they are renewable and flexible. Yet in Canadian law, treaties mean sharing space and resources but are actually public and governmental resources that are made inaccessible to some and ensure a hierarchy in living standards.

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140 Ibid.
142 Ibid.
It should be highlighted that in Western constitutionalism, treaties were an essential tool used to ensure the absolute colonialism of the Americas, its peoples, and its space. Treaties did so by allowing Western settlers to impose their understanding of land as property—rather than a responsibility—onto all habitants of the Americas. The treatment of land as a responsibility and living entity rather than a piece of inanimate and manipulative property is the distinct difference between the Anishinaabe legal order (their use/meaning of the term ‘treaty’) and Western legal order (their use/meaning of the term ‘treaty’). This point demonstrates the aspect of incommensurability as it shows that within the Western legal order, treaties explicitly did/do not mean the same thing as they did/do in the Anishinaabe legal order. One is about control and ownership, while the other is about relationality to one another and responsibility. This also demonstrates that the Western legal definition of a treaty does not need to include that of Anishinaabe or other Indigenous people's legal description for them to be legitimate. It likely would not resolve the greater issues of settler colonialism in Canada if the Anishinaabe legal order (or other Indigenous legal orders) were forcibly integrated into Western law. Specifically, in the instance regarding treaties, we have two separate definitions, defined by each party and prioritizing their interests. Inclusion here is not only practically impossible (as it was never meant to be), but it is not necessary. A term like a treaty, human, or rights can mean two separate things to different groups in the Americas, and they can hold legal standing on their own.

Mills also describes the liberal (Western) assertion of obligation, duties, and rights as distinctly direct and based on the logic of reciprocity between two parties. This directionality, from party A to party B (only), does not include any other community member. As Mills writes:

“..imagine that A gifts B and, instead of returning a gift to A, B gifts C. Where legality turns on responsibility instead of an obligation, A isn’t necessarily done a harm and A
experiences indirect reciprocity. A’s analysis of B’s possible wrongdoing will turn on the relative need of A and C and, critically, on the relationships obtaining between each of them with B (and, if relevant, certainly between A and C). Although a rooted legality analysis doesn’t turn on this insight, it may well be that, from A’s perspective, A’s interests are best served by B’s gifting of C: given that A to Z are interdependent, A’s freedom depends on C’s gifts and, thus, as a general matter, A is interested in C’s empowerment.”

With the addition of party C and describing a way of fulfilling obligations, duties, and rights in a non-directional manner, Mills is demonstrating how Anishinaabe legal concepts of relationality, reciprocity, and responsibility are centred rather than split apart and individualized. This is an environment where reciprocity and obligation may be met by addressing someone unrelated to the initial interaction. The idea of reciprocity becomes one that encompasses unity as it encourages inclusion. As elaborated in chapters one and two, the concepts of obligation, ownership, and duties are core to our understanding of property and human rights. These legal concepts are what ties them together, both historically and conceptually and this example by Mills does an excellent job of pointing that out. He is explaining that there can be an environment within the Americas where exchange is not determined by the value of property or transferred through the use of property. Instead, the value of a transfer is determined by how it can be shared or distributed with third or outside parties and how this distribution may positively affect the community. This also distances the idea of a gift or service from the nuisance of obligations as it becomes a proud responsibility (to oneself and their community).

143 Supra note 126, at 867.
144 Supra note 108.
In the introduction, I note that this thesis began with an inner feeling, perhaps intuition. This chapter further asserts my hunch, which derives from being a black woman in North America. The fact that human rights are not always property rights at certain points in history and within specific communities in the Americas further posits that human rights are always property rights within my community and in the Americas (as Wynter and Harris note from the seventeenth century until now). It is important to note that focusing on Indigenous agency in legal systems in the Americas does not negate the specificity of the topics touched on in chapters one and two. They are not meant to engage in a matter of human rights and property rights outside the amalgamation of property, humanity, and enslaved Africans discussed in the previous chapters. I hope that this chapter has highlighted another pivotal point in this period. Indigenous people in the Americas were also exploited for property and human rights, as explained by Brenna Bhandar in her book The Colonial Lives of Property: Law, Land, and Racial Regimes of Ownership.¹⁴⁵ In fact, the agency in the definition of property, humanity, and their rights identified in this chapter as Anishinaabe tradition further establishes the amalgamation of human rights and property rights in the Americas. It presents Anishinaabe constitutionalism as proof of the settler-focused and legally fixed definition of human, property, and their rights.

¹⁴⁵ Supra note 7.
**Conclusion**

Human rights as property rights implies a conflation of humanism with property but denies the idea that they are equal or synonymous. Yet, this thesis continues to argue that if one was to accidentally type human rights instead of property rights, their statement would still be true within the American legal framework. This is because they *mean* the same thing as established by their dependence on race and the creation and abjection of the negro and Indigenous peoples. Yet they cannot *be* the same, not only for human sanctity and Western law but because of the lived reality of continued Indigenous storytelling and cultures. I hope to have made it abundantly clear throughout this thesis that there has been and continues to be an effort in the Americas (first established by settlers and now by whiteness) to maintain one definition and application of human rights and property rights that are fused by its dependence on racial segregation and exploitation. This one definition is for two terms and therefore grounds human rights as property rights in the Americas.

Having established that human rights as property rights holds as a statement, chapter three allows us to realize that the settler’s definition of man (or the overrepresented genre of man) does not need to include those who have historically been excluded for there to be another version or genre of man. This connection is explored in black studies as Walcott and Wynter bring forward excellent insights on the matter. Walcott uses the term “*Black life-forms*” because Euro-American definitions and practices of the ‘human’ offer Black life no conceptual or actual space within the human terrain within Western law.\(^{146}\) The author narrates that Black people must insist on “us too” being into the various genres of human’ in society. As he says, “The

Black life-form, therefore, is an acknowledgment that we exist, we are alive, we are a site of life.”

According to Wynter and her assessment of the civil rights movement, black folks realized that they did not require inclusion into the realm of what it means to be the overrepresented genre of man, and they concluded that blackness itself was sufficient. She highlights that the community formed during that era (composed of poets, novelists, organizers, and more) helped her realize this. By claiming and cultivating a vision of their humanity that challenged the one prescribed to them by the overrepresentation of Man as human, the activists during the Civil Rights era in the United States of America were forcing a separation between the definition of human and the definition of property. A dominant theme throughout this thesis has undoubtedly been the importance of community. What each chapter has illustrated is the power that community has as it is the work of a community that created the overrepresented genre of man, reclaimed the African-Americans counter-narratives (in the US and Brazil for the case of Anastacia), and upheld the many Indigenous narratives that are still reproduced today.

The purpose of this thesis was to establish how, why, and when human rights as property rights holds. The totalizing response to all three would be the creation of the Americas or specifically the colonial conquest of the Americas. As my introduction questions what transformed the land once named “the new world” into “America” and hints at the response being that of the creation of human rights as property rights, we must also realize that the opposite is also true because human rights as property rights is a reality due to the creation of the Americas. They are undeniably linked and this is the reason why the detachment from American

147 Ibid, at pg 10.
148 Wynter, S. "On how we mistook the map for the territory, and reimprisoned ourselves in our unbearable wrongness of being, ofdésêtre: Black studies toward the human project.” A Companion to African-American Studies, pg 107–118.
149 Ibid.
legal traditions or Western legal traditions would equate to the detachment of human rights as property rights. When we detach ourselves entirely from this Western legal definition of human (and human rights), we also detach ourselves from the description of property (and property rights) connected to it. Therefore, human rights are not always property rights. Once the reconceptualization of blackness rather than slave/negro becomes entrenched with the notion of a distinct kind of man and human, its bondage to property and property rights will be broken. I began this thesis with the assertion that human rights are always property rights for those subject to the process of becoming a negro and a slave. I know this now to be (at least partly) untrue because of the adaptive nature of definitions like ‘man.’ This is the hope that Wynter provides with her work in *Unsettling the Coloniality of Being/Power/Truth/Freedom: Towards the Human, After Man, Its Overrepresentation –An Argument*. Whatever we believe something to be now can be something different in the future. Even the things so culturally entrenched in a community –like religion– can change in role, power, and perspective with time. Yet, I also know human rights as property rights to be accurate within Western law because of the resistance that Anishinaabe constitutionalism, works like that of Donovan Nelson, and the reconceptualization of Anastacia by the Afro-Brazilian community provide (only) when detached from Western legal order. These findings disproved my assumptions that (1) the law was a universal concept and (2) it was always centred around human rights as property rights.

I hope to clarify that human rights and property rights are not the same in actuality/application/livingness because of rights. Although both terms signify similarity, human rights are (in actuality) specific to freedom and property rights are specific to oppression or exploitation. By definition, humanism and property can be equal as they imply a complicated combination of freedom and exploitation. Still, in the application, human rights and property
rights are opposites. This is important to note while discussing the scope of human rights as property rights because it establishes that the aspect that connects them and makes them sometimes synonymous is not the ‘rights’ aspect. Rights are not only the thing that sets them so dramatically apart in Western law. It is also the aspect that limits and restricts them. Having the title of my thesis be ‘human rights as property rights’ was necessary because I want you as the reader to remember all of the things that connect them, that relate them to one another, and that makes them, at the very least, related. If you do not believe them to be the same, that is quite all right, but I hope that after reading this thesis, you will admit that they are very similar in history, features, and applications.

I could say that there cannot be a distance between property and humanity because of the dependence established and explained in chapters one and two. I could say that the reconceptualization of ‘human’ would require a tremendous change in political procedure and economic tendencies that are core to American identity altogether and that it would practically be impossible to do. I could also say that no matter what the version of man, it is founded on Man1/Man2 and that this is why the connection to property can never truly be escaped. Yet all of these points would be speculative because the type of ‘human’ related to blackness and separate from the overrepresented genre of man that emerged during the Civil Rights movement in the United States of America and was undermined by the American government. Perhaps if the Black Panthers were not forcibly dismantled, killed, and banished in the late seventies, we would have a response to all of my assertions regarding chapters one and two. Due to the degradation of civil rights activists who fought for this definition or type of human, we continue to fight for this type of human that is not connected to or dependent on property with hopes that, much like Anishinaabe laws, they hold a distinctly separate yet remembered and respected definition.
I do not consider human rights and property rights to be irremediable, and although the purpose of this thesis was to further point out the holes in their development, I contend that this machine can be fixed. We just had to know what was wrong with it to be able to repair it or establish on getting a new one. This is because all law is dependent on change, relationships with each other, and fluctuation. I think there is something to salvage from the human rights process. The discursive and rhetoric-dependent process that Wynter describes should not be thrown away and can be reused to benefit black and Indigenous peoples in the Americas. I accept that there is something to salvage in property and propertization in this current society, as we have gone too far in this Western economy to believe that money honestly does not equate to power (and freedom). After writing about human rights and property rights, I’ve concluded that my true apprehension is with rights. I touched on the problematic nature of rights at the end of chapter two to complete the theoretical discussion on human rights and property rights. Still, I did not directly point to rights as the overarching issue. In my opinion, humanity and humanism should be saved, and property can (and inevitably will) be protected, so should we keep the rights part? This is a question I cannot answer within the conclusion of my thesis, but it needs to be said before I close this piece of writing. I don’t think we need the actualization of rights and our current understanding of them as a tool because this thesis has helped us realize that it is a weapon. What I took away most from my research on Anishinaabe Constitutionalism, Donovan Nelson's work, and Anastacia's life according to the Afro-Brazilian community is the notion that we do not need rights to be human or to share space/property. The title that makes humanity or property a legal status and therefore, robust, actionable, and (in most instances) oppressive is the word ‘rights.’ Humanity and property have had a complicated history of being redefined due to their relationship and proximity to rights. This closeness makes me wonder how concerted,
liberating, and hopeful an evolved definition of rights could be to the legal concepts of human rights and property rights.
Bibliography


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