



# Eighteenth-Century Fiction and the Law of Property

Wolfram Schmidgen

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## EIGHTEENTH-CENTURY FICTION AND THE LAW OF PROPERTY

In *Eighteenth-Century Fiction and the Law of Property*, Wolfram Schmidgen draws on legal and economic writings to analyze the descriptions of houses, landscapes, and commodities in eighteenth-century fiction. His study argues that such descriptions are important to the British imagination of community. By making visible what it means to own something, they illuminate how competing concepts of property define the boundaries of the individual, of social community, and of political systems. In this way Schmidgen recovers description as a major feature of eighteenth-century prose, and he makes his case across a wide range of authors, including Daniel Defoe, Henry Fielding, William Blackstone, Adam Smith, and Ann Radcliffe. The book's most incisive theoretical contribution lies in its careful insistence on the unity of the human and the material: in Schmidgen's argument persons and things are inescapably entangled. This approach produces fresh insights into the relationship between law, literature, and economics.

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*Für meine Eltern*





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## *Introduction*

This book examines how the eighteenth-century novel, along with legal, economic, and aesthetic texts, represents the relationship between persons and things. It contends that this relationship is dynamic and that its complexities have escaped commentators on eighteenth-century culture, too many of whom have relied on simplifying distinctions between the human and the material, mobility and immobility, body and space. A remarkable amount of cultural work has gone into linking persons and things, yet much of it has escaped critical scrutiny. In this book I argue that we can recover essential elements of such cultural work by focusing on an aspect of eighteenth-century fiction that has not received much attention: the description of material reality. My argument rests on the basic Marxist assumption that the social, political, and psychological structures of a community are shaped by the interaction between human and material spheres, but it insists that such interactions are not exclusively defined by the economic. They are molded as well by cultural forces, and I show that the descriptive association of persons and things plays a critical role in exploring and exposing the limits of communal forms abroad, in the far reaches of empire, and in the contested union of Great Britain itself. Eighteenth-century Britain is an important case for such an argument because it reveals the persistence and permutations of a communal imagination that closely aligns persons and things. For reasons that will gradually become clearer, the differentiation between human imagination and material causality that became pervasive in subsequent periods is still marginal at this time. Communities of persons and things in eighteenth-century Britain are on the whole characterized by permeable boundaries, by a sense of open traffic across human and material zones. Only very gradually, and against considerable resistance, are these boundaries delineated.

This book is about this process. Using community as an overarching concept, it wants to grasp the history of objectification as a more

complex and varied process than it has traditionally been considered. While I subscribe to Georg Lukács's belief that "the history of the ceaseless transformation of the forms of objectivity" is absolutely central to the understanding of human existence, I have always been puzzled by the reluctance of Marxist critics to consider in greater detail the struggles, twists, defeats, and regressions that shape the history of objectification.<sup>1</sup> Within traditional and nontraditional Marxist criticism, most energy has been spent on describing the total victory of capitalist commodification. This has promoted some questionable idealizations, which have blunted the historical specificity of categories such as "reification," "objectification," or "fetishism." Lukács himself (and after him Theodor Adorno, Lucien Goldmann, and Fredric Jameson) has tended to idealize the precapitalist commodity as an "organic-irrational, qualitatively conditioned unity" whose "*économie naturelle*" (to quote Goldmann) is vividly contradicted by the depraved capitalist commodity, a fragmented, alien structure deriving from a rationalist world of pure quantification.<sup>2</sup> Only slightly exaggerated here, such polarization tends to turn the history of objectification into a value-laden conflict between the good and the bad commodity, between humanist use value and dehumanizing exchange value.<sup>3</sup> Things, however, are not in reality that straightforward, and the readings I offer here try to be as responsive as possible to the dialectic complexities of what I see as a richly textured process of objectification that lacks obvious heroes or villains. I am assisted in this attempt by the transitional nature of Britain's development, its peculiar ability to foster complicated alliances between residual and emergent socio-economic forces. What eighteenth-century Britain allows us to see is the remarkable extent to which the forces of objectification are involved in a lasting, deeply ambiguous struggle to alter the traditional communal forms embodied in landed property.

My argument reinforces J. G. A. Pocock's seminal work on property, community, and personality in two respects. Like Pocock, I do not think there is much evidence to diagnose a triumph of liberal individualism before the late eighteenth and early nineteenth centuries. And like him I recognize the endurance of landed property as a dominant paradigm of social and political community. I disagree, however, when Pocock insists that civic humanism (for him the central expression of land's moral and political superiority) is exempt from the conduct of "human relations . . . through the mediation of things."<sup>4</sup> Civic humanism cannot be rigorously distinguished, within the concrete context of eighteenth-century debate, from philosophically less self-conscious notions of landed

property as a communal ground. It overlaps with actual, remaining feudal structures – and it has to if Pocock wants to validate his claim for civic humanism's wide significance.<sup>5</sup> What follows should be obvious: any act of grounding liberty and virtue in the possession of land relies on a materialist logic and can be studied within the legal framework of ownership as instituting a socially and psychologically formative link between persons and things. This is what Pocock denies and I strongly disagree with this denial.

Alongside this philosophical disagreement I wish to place another, more concretely historical point of differentiation. Pocock argues that the initial encounter between mobile and immobile forms of property in the late seventeenth and early eighteenth centuries quickly establishes opposite camps that henceforth engage in ideological battle. I can see how this may hold true for the arena of political debate, but the boundary between mobile and immobile forms of property is not that stable. In fact, it is in constant flux. If a differentiation eventually works itself out, it is only to be swallowed up again at the end of the century by a full reification of both mobile and immobile forms of property. In Pocock mobility and immobility tend to resemble disembodied discursive agents whose main concern is to win the debate. I hope to show not only a more fundamental interdependence of these two forces, but the existence of distinct hybrids that complicate the picture – forms of mobile property, for example, that behave in some respects like immobile property. These forces do not confine their activity to the sphere of discursive contest, and I will try to capture their participation in a transformative struggle with the communal forms of eighteenth-century society. To intervene in this way in Pocock's well-honed argument points to the difference between a history of political discourse and a literary criticism that is infused with a sense of literature's special figurative potential, a potential that allows it to go beyond the discursive statement of arguments and ideas. Discursive statement can, of course, draw on figurative language, but it is literature's – even eighteenth-century literature's – privilege to produce more integrated and more concrete representations of practice. In the following analyses I am interested in the constitution of ideas about community, but I am absorbed by the ways in which the novel figures the limits of community. It is through literature's extensive realm of figurative possibility that I will try to open a wider perspective on the problem of property, community, and objectification.

I have become increasingly conscious in recent years of how my recovery of more involved and unstable person-thing scenarios in

eighteenth-century British culture speaks to our present cultural and historical moment. My study contributes to the growing recognition of a significant historical kinship between our freshly globalizing, late capitalist, postmodern world and the eighteenth century. Such recognition has manifested itself most clearly in the now undisputed claim that the eighteenth century marks the beginnings of our own consumer culture, as the starting point of the massive commodification and boundless circulation of things that we face under global capitalism. Since it emerged into wider visibility, in Neil McKendrick's *Birth of a Consumer Society: The Commercialization of Eighteenth-Century England* (1982), this argument has generated an impressive array of new scholarship.<sup>6</sup> Yet the success with which the case for an eighteenth-century consumer revolution has been made necessitates, I believe, even broader claims for basic connections between the eighteenth century's and our world. When, after most of the work for this book was finished, I revisited Fredric Jameson's *Postmodernism: or, the Cultural Logic of Late Capitalism* (1991), I was struck by how some of the central terms of his analysis – the “waning of affection,” the “depthlessness” of cultural forms, the renewed cultural and economic centrality of space – resonated in significant ways with my emphasis on the porousness of persons and things and their shifting identities as they cross different geographic, social, and economic spaces.<sup>7</sup> For a moment it seemed as if a “long” nineteenth century had emerged whose structures of feeling – organized around notions of depth, interiority, and time – constituted an extensive cultural middle ground that separated two more closely related periods, the eighteenth century and the late twentieth/early twenty-first centuries.

For all its imprecisions, this insight was more than an optical illusion. While I am primarily concerned with the distinct characteristics of eighteenth-century literature and culture, I also hope to nourish the vision of the broader historical relationship I have invoked. The advances made in biotechnology over the past twenty years or so; the resultant commodification of the human body; and the growing power of the computer, digitalization, and miniaturization have made the distinction between persons and things once again an issue of burning political, economic, and legal significance. Science scholars such as Donna Haraway and Bruno Latour have prominently argued that we need to account for the mixtures of the human and the material that increasingly govern our lives.<sup>8</sup> I share with them a sense of urgency and the search for a language to represent these hybrid entities. It seems to me, however, that Haraway and Latour underestimate the conceptual and imaginative resources

on offer in eighteenth-century Britain. When Latour suggests that the “enlightenment” separates the social from the natural and thereby excludes things from political representation while persons become its sole object, he overlooks how deeply things in eighteenth-century Britain were involved in processes of representation. As late as 1792 Thomas Paine, for example, could be seen to clarify the distinction between persons and things in matters of political representation. Only after drastic political reforms, he argued, would “the right of every man . . . be the same, whether he lives in a city, a town or a village. The custom of attaching rights to *place*, or in other words, to inanimate matter, instead of to the *person*, independently of place, is too absurd to make any part of a rational argument.”<sup>9</sup> In the British constitution, Paine emphasizes, things have rights, and it is the rights of things that limit and alter the rights of people. Paine’s analysis points to a characteristic aspect of the construction of community in eighteenth-century Britain, and it forcibly reminds us that even in the so-called “enlightened” eighteenth century things have the power to occupy the position we are today used to reserving for human agents.

Latour contends that “we possess hundreds of myths describing the way subjects . . . construct the object,” but lack accounts of “how objects construct subjects.”<sup>10</sup> He is only half-right. In eighteenth-century Britain at least, the political and social functions of property and place indicate a rich mine for stories about how objects constitute subjects. This book wants to access this mine by probing fictional descriptions for the agency of nonhuman actors. It wants to show that Latour’s slogan, “we have never been modern,” has particular applicability to a community such as Britain, where modernization is mediated by premodern communal forms – by mixtures of persons and things.

If I hope to extend in this way the emergent kinship between our present and the eighteenth century, I also wish to correct a tendency that has appeared alongside this kinship. In the current excitement over a contemporary relevance that eighteenth-century literary scholars have not enjoyed for a while, the danger of erasing historical difference is acute. By emphasizing the intricate persistence of premodern communal forms in the eighteenth century, I wish to cultivate an appropriate sense of historical strangeness and secure a mediated relationship between the “then” and the “now.” The appearance of nineteenth-century structures of feeling as a middle ground might make more immediate identifications tempting, but I wish to insist on a more explicit situatedness. We need the strangeness of the eighteenth century as much as its increasing

familiarity. Needless to say, I cannot within the parameters of this book undertake the work of comparing past and present person-thing communities, but the following chapters will offer specific insights into how early modern cultures imagined those mixtures, hybridities, and marginal spaces that Haraway and Latour describe for today's technological culture.



*Communal form and the transitional culture of the  
eighteenth-century novel*

Landed property must be a central focus in any study of the construction of community in eighteenth-century Britain. Although the advances in domestic manufacture and foreign trade in the second half of the eighteenth century tend to stand out most in accounts of the rise of industrialism, these advances were more than matched by the significant growth of agricultural productivity in the period.<sup>1</sup> In addition to its crucial economic role, landed property remained, virtually undisputed until the end of the century, Britain's dominant social, political, and ideological paradigm.<sup>2</sup> The rapid expansion of movable forms of property in the eighteenth century – commodities, stocks, credit – challenged the real and ideological dominance of immovable property, but the rapidity with which movables spread did not result in a quick or fundamental transformation of the established world of immovables. Even Adam Smith, who considered the wide distribution of increasingly various and refined commodities a crucial measure of the difference between “civilized” and “savage” societies, in the end projected a national economy that historically emerged from the gains made on the landed estate and continued to be grounded in agriculture, which for Smith represented a privileged figure of productivity and secure wealth.<sup>3</sup> Landed property was too deeply entrenched, imaginatively and in fact, to be run over by what we have come to recognize, with good reason, as the “commercialization of eighteenth-century England.”<sup>4</sup>

The combative language I have used here is, of course, questionable on a more fundamental level. While many eighteenth-century commentators painted conflictive scenarios in which movable and immovable forms of property face each other as opponents – the one corrupting and fleeting, the other virtuous and stable – a more flexible perspective which recognizes the essential connection between all forms of property makes greater conceptual and historical sense. This book investigates the relationship between persons and things under the assumption that

“things” include movables as well as immovables, and that the boundary between “persons” and “things” is constantly redrawn. As the literature of the period reveals and as subsequent chapters will show, commodities can be immovable, land can be movable, persons can be viewed as things, things can assume human intentionality and, like human beings, they can have rights. I view the person-thing relationship as a complex tangle whose various forms and shapes emerge from distinct historical situations. I foreground property because the possessive is one of the essential modes by which we conceptualize and shape our relationship to things; in eighteenth-century Britain it vividly draws together social, cultural, political, and economic forces. To understand the depth of property’s influence on British culture, however, one has to look first to landed property. It is here that the most sophisticated conceptual work was done – in law and political economy – and it is here that the most significant literary interventions took place, in that new popular medium, the novel. In the pages that follow, landed property will not feature as the curious remnant of an older world, but as the most characteristic figure of eighteenth-century Britain’s long history of objectification. The evidence for its centrality is extensive, and I wish to touch here only on the areas of commerce, legislature, and constitution.

England’s most prestigious and significant body of legal learning, the common law, was so exclusively concerned with the seemingly endless ways of holding and conveying property that a majority of the legal conflicts arising out of the eighteenth century’s new commercial realities had to be adjudicated at the Court of Chancery, a court of equity that considered cases that could not be settled under common law.<sup>5</sup> It is symptomatic in this regard that one of the hallowed texts of the common law tradition, William Blackstone’s *Commentaries on the Laws of England* (1765–69), had virtually nothing to say on the law of contract, the area of law whose fundamental commercial significance made it the dominant paradigm of nineteenth-century law.<sup>6</sup> Common lawyers and the environment of common law were not exactly congenial to the mental and cultural habits of the new commercial classes. While the predictive dimensions of trade and stockmarket fostered habits that were increasingly future-oriented, common lawyers continued to consider not the most recent but the oldest precedent as possessing the greatest authority.<sup>7</sup> If their procedures obliged them to look into the past to authorize present practice, common lawyers’ relationship to the future was shaped by the stable transmission of current possessions. For them, the “mortmain,” the “dead hand” of property conveyance, not the “invisible hand” of

an interdependent market ensured future prosperity. Merchants and stockjobbers, meanwhile, dealt almost exclusively in a dynamic future whose profitable manipulation depended on the enforceability of contracts.

Even so, the authority of immovable property remained undisputed and the aristocracy and gentry were able to borrow large amounts of money on land that rarely functioned as a genuine security. As the equity of redemption illustrates, it was virtually impossible for moneylenders to recover money by forcing the sale of the land it was loaned on. Judges who felt that landed property had to be protected from the contractual obligations incurred by borrowing ruled overwhelmingly in favor of landowners, a pattern that was crucial in preserving and increasing the economic importance of land.<sup>8</sup> Protection was also forthcoming from the criminal law, which expanded exponentially between 1688 and 1820, adding more than 150 capital statutes to its books.<sup>9</sup> Almost all of these laws concerned offenses against property, including the notorious Black Act.<sup>10</sup> Their formulation and administration were largely in the hands of property owners who benefited from the fact that parliamentary representation and public office were tied to "the favourite safeguard of the age, the property qualification."<sup>11</sup> And because of primogeniture, coverture, and the restrictions that applied to their independent possession of things, women were automatically excluded from most of these aspects of public life.<sup>12</sup>

Cutting across the considerable ideological differences between common and natural law, concepts of property were central as well to defining the origins of society, the legitimacy of government, and the English constitution. This ideological function was strengthened by the successful Protestant settlement of 1689, which displaced strict genealogy and enthroned property rights. As the debate over the Bill of Rights shows, the limitation of the succession was argued largely in analogy to property law, and in the early eighteenth century even Tories began to be swayed by the argument that kings hold their crown by the same legal right as subjects their estate.<sup>13</sup> The developments of the seventeenth century sealed the final ascent of common law as the dominant national law and installed the language of property at the heart of politics. This heritage made it virtually impossible to talk about the legitimacy of government without mentioning property rights.<sup>14</sup> The first broad challenge to property's ideological dominance arrived somewhat belatedly in the heated political debates of the 1790s. But even in the nineteenth century, and notwithstanding successful parliamentary reforms, F. W. Maitland was

forced to exclaim that “our whole constitutional law seems at times to be but an appendix to the law of real property.”<sup>15</sup> While the ideological, social, and political force of landed property declined in the nineteenth century, the study of English law continued to depend on a firm knowledge of land law. It is safe to say that eighteenth-century Britain had not yet undergone the “social division of labour” by which Ernest Gellner characterizes the modern separation of state, culture, and society.<sup>16</sup> Despite attacks by political theorists such as Thomas Paine, eighteenth-century government and society were still intertwined, and it was landed property that kept them together by linking private right and public legitimacy, local and national government, and legislature, jurisdiction, and representation.<sup>17</sup> In Britain the eventual separation of state and society and the emergence of modern forms of national community are tied to the gradual removal of landed property from its social, political, and ideological functions, its demotion from its elevated position as a form of property with distinct civic capacities. If, for most of the eighteenth century, landed property is able to set the terms for the relationship of persons and things and thus for more comprehensive communal patterns, it finally loses that ability only when the distinction from movable property vanishes – at the point when both movable and immovable property have been fully reified.

The literary case studies I have assembled here show how vital the novel’s contributions to this protracted, complex process of reification were. The selection of texts I present is limited – I offer extended readings of novels by Daniel Defoe, Henry Fielding, Ann Radcliffe, and Sir Walter Scott and briefer analyses of Samuel Richardson, Henry Mackenzie, and Laurence Sterne – but my approach should produce specific insights even over the long period that these texts inhabit. In offering selected vertical probes across this period, I wish to lay open the various practices – legal, aesthetic, economic – appropriated by these novels to fashion their textual worlds, and I hope to gain in cultural specificity what I may lose in literary-historical coverage. My goal is to provide as clear a sense as possible of how exactly these texts intervene in their cultural environment: what these novels make us see about property and community, and how. If performed at the right angle and in sufficient depth, these probes should also open up “horizontal” narrative connections between the different case studies they yield. Yet the concreteness of these connections will ultimately depend on the extent to which I shall be able to make good my claim that a profound, ongoing cultural dialogue about property is shaping the communal imagination of eighteenth-century Britain.

One of the larger claims I can make confidently even at this point is that the novels I have chosen – many of them safely within the now accepted canon – have not been appreciated enough for the intensity and persistence of their concern with the relation between persons and things. The reasons for this are numerous and I will address the reluctance of literary critics to examine the novel's preoccupations in this area in a moment. I simply wish to underline here that the eighteenth-century novel's continued and sometimes laborious rehearsal of plot lines that turn on issues of property – dramas of lost and found heirs, of the right succession, the propriety of ownership, and of the "proper" marriage abound – should not be seen as a failure to address vital social and political issues. Questions of property are at the center of eighteenth-century culture and they define the community of husband and wife as much as the national community represented in parliament and the social community that "places" people in distinct ranks. It is thus not surprising that the semantic link between "plot" (signifying "a series of events," "a small piece of ground," a "ground plan") and "property" should be especially visible in eighteenth-century narratives. The novel's engagement with "groundedness," in particular, will occupy this study in a number of ways.

The prominence of such concerns in the modern genre of the novel is really a sign of the extent to which the culture of property in eighteenth-century Britain managed to retain a vital tie to feudal institutions, institutions that helped foster the impression of a vast continuity linking the centuries and that influenced Britain's public and private life well into the Victorian period.<sup>18</sup> Immune to the twin forces of modern revolution and constitutionalism, eighteenth-century England was, in Tom Nairn's phrase, a "transitional" society whose negotiation of residual feudalism and emergent modernity reached no convulsive conclusion. Without a clear socio-cultural dominant, England's negotiation of residual and emergent forces, of older and more modern forms of property, was itself dominant. "More than any other society," Nairn writes, England "established the transition from the conditions of later feudalism to those of modernity . . . Neither feudal nor modern, it remained obstinately and successfully intermediate."<sup>19</sup> Nairn has not been alone in arguing for such transitionalism, and David McNally, R. S. Neale, and Raymond Williams have offered similar arguments (one has to wonder, indeed, whether Williams's influential distinction of emergent, dominant, and residual forces is not itself a specific response to British transitionalism).<sup>20</sup> Drawing on these historians and critics, I want to argue that the notion

of a transitional eighteenth century is crucial to understanding the profile of possibilities exploited by the novel to articulate its communities of persons and things. Such transitionalism should contribute something to explaining, for example, why romance had such a powerful resurgence in the second half of the eighteenth century, and why it could overthrow what many critics saw as the cultural and literary gains made by Defoe, Fielding, and Richardson. And it should contribute something to the question of why the Gothic novel, with its cultivation of feudal fear, should become, in an age of revolution and enlightenment, a genre of delirious popularity. Generic atavisms such as these, it seems to me, emerge from British culture's ingrained ability – fostered by the persistence of property – to see the present in close vicinity to the past, to link even its turbulent commercialism to an always receding but never disappearing feudal past. It would take, indeed, writers from Ireland or Scotland such as Maria Edgeworth or Sir Walter Scott who were exposed to more drastic historical changes and who possessed an acute sense of cultural conflict, to produce novels that placed the feudal heritage beyond reach and enshrined it as a past that has come to an end. But even then, the work of assigning the past to a distinct place in history activates in someone like Scott a tremendous nostalgia for possessive modes of community. Here, too, we see a continuous transformation rather than abrupt departures: the communal function of landed property remains a constant focus for the eighteenth-century novel, whose exploration of new commercial and psychological possibilities is always in dialogue with older conceptions of identity and wealth.

Britain's expansive transitionalism raises some problems for the most influential account of modern communal forms of the past twenty years, Benedict Anderson's *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (1983). Anderson sees the appearance of modern communal forms and the imaginative procedures that shape them as a sudden convergence, a "spontaneous distillation of a complex 'crossing' of discrete historical forces."<sup>21</sup> As a general statement of the phenomenon under study, Anderson's formulation would seem to be at odds with my observations on eighteenth-century culture. Incomplete though they have been, these observations suggest that the emergence of modern communal forms in Britain must have been an indecisive and partial event. The obdurate persistence of landed property as the ultimate ground of social and political community indicates that the development of modern communal forms in Britain could hardly have been spontaneous. This becomes even more obvious once we consider the novel, which is

given central place by Anderson for developing the imaginative procedures requisite for achieving a more abstract sense of community that cuts across concretely localized regions. Anderson sees the novel as projecting the “‘homogeneous empty time’” needed for the development of modern communal forms, but his account of such projection implicitly discounts the eighteenth-century literary tradition.<sup>22</sup> For it is only in the nineteenth century, after the period Anderson considers critical for the birth of the modern nation, that the British novel begins to display confidence in the modality of the “meanwhile” (the term Anderson uses to characterize the complex multilevel plots he sees as essential in the production of time as a contentless, neutral dimension). Consequently, Anderson sounds as if it is only modern communal forms that require the imaginative work of the novel and as if the rise of the novel coincides with the rise of the modern nation state – which is patently not the case in Britain. I want to argue that the novel in Britain, for a much longer time than Anderson is willing to accept, figures and refigures traditionalist communal forms, but without coming very close to producing a sense of empty homogeneous time by the end of the eighteenth century. The novel is certainly moving toward such a sense of time, but for most of the century the more absorbing spectacle is not the literary construction of the new, but the recomposition of the old communal model. And this work of recomposition does not restrict itself to the domain of time alone.

However suggestive in many ways, Anderson’s privileging of time in his account of modern communal forms is finally limiting – especially when we consider that for most of the eighteenth century the spatial figure of the landed estate set the parameters for the communal imagination. In fact, much may be said for emphasizing space rather than time in considering the eighteenth-century communal imagination, but it would be a mistake simply to switch categories – no matter how tempting that might be, given the recent resurgence of space as a term of historical and cultural analysis.<sup>23</sup> We actually need a more comprehensive approach to the communal imagination, an approach that moves us beyond the problematic stress on homogeneous time and sudden convergence. If the novel eventually begins to figure time as a neutral framework that relativizes the locally grounded order of landed property, this development needs to be situated within the larger relational web of time, space, and practice that I consider crucial to understanding communal forms. Anthony Giddens has made much of such relationality in his account of modernity, and some of his claims provide guideposts for my discussion. In *The Consequences of Modernity* (1990) Giddens suggests that all social

community rests on a more or less complex, more or less mediated relation of time, space, and practice. The modernization of social relations in Western Europe begins, Giddens argues, in the seventeenth century and it involves three central mechanisms: the separation of time and space and their emergence as “contentless dimensions” that exist apart from social life; the development of what he calls “disembedding mechanisms” that “‘lift out’ social activity from localized contexts”; and the “reflexive appropriation of knowledge,” by which he means the “production of systematic knowledge about social life.”<sup>24</sup> These three interlocking mechanisms present the process of modernization as a basic shift in the relationship between time, space, and practice.

While Giddens is not interested in questions of community as such, his model puts the emphasis where it should be: on relationships. It avoids the danger of isolating time or space and replicating what appears to be their current existence as separate spheres. Because it foregrounds flexible relationships, Giddens’s model offers better access to what I see as the gradual establishment of more modern communal forms; it will enable a more attentive tracing of the subtle shifts, partial disturbances, and temporary realignments effected by the novel’s imagined communities. But instead of considering these issues in the abstract, I would like to move on to a more concrete discussion of the type of immobile property that best represents the traditionalist communal form with which the novel interacts.

## I

If there is one type of landed property that occupies, in one way or another, all the novels I examine in detail, it is the manorial estate. Recognized for some time as an idealizing trope of feudalism and baronial plenitude in seventeenth-century poetry, the manor also has an importance for the history of the novel that has not been registered.<sup>25</sup> In texts as diverse as *Robinson Crusoe* (1709), *Tom Jones* (1749), *A Sicilian Romance* (1790), and *Waverley* (1814), to name only the novels that concern me most closely here, the manor is central. In them the seventeenth-century manor becomes a deeply contested figure; it haunts these texts as inescapable ground, ideal state, delusive chimera, and sentimental image. The manor was not the dominant form of landholding in eighteenth-century Britain, and already in 1696 Samuel Carter estimated that only about a third of all British landed property was manorial.<sup>26</sup> Even if one adds E. P. Thompson’s remark that one should not merely count the acres in



estimating the importance of the manor, but consider also the often considerable number of farmers who made a living on the basis of customary tenures, manorial landholdings were not socio-economically dominant in the eighteenth century.<sup>27</sup> But if the manor as an actual community was on the decline in the seventeenth and eighteenth centuries, its ideological and imaginative value continued to be extremely high throughout this period.

Such value can be measured not only by the emerging tradition of the country house poem in the seventeenth century, but also – as befits an age increasingly self-conscious about the communal function of property – by the growing legal visibility of the manor. The publication in 1641 of Edward Coke's *The Compleate Copy-Holder, Wherein Is Contained a Learned Discourse of the Antiquity and Nature of Manors and Copy-Holds*, is the central event in the legal recognition of the manor as a distinct communal form.<sup>28</sup> Because of its general importance for what I shall be doing in the following chapters, it is necessary to look at Coke's text in some detail. To describe "the very forme of Manors, which is observed amongst us at this present houre" is Coke's declared goal.<sup>29</sup> In a first allusion to the political dimensions of his legal discourse, Coke presents the manor as a "little common weale" (52) whose "essential parts" have been in continuous existence from Saxon times to the seventeenth century (8). The two "material causes" of the manor are "Demesnes and Services," by which Coke refers to the manorial integration of land and social practice. He devotes a considerable part of his treatise to delineating what he prefers to call the "jurisdictions" or "fruits of a Manor" (22), those practices that belong to or grow out of the manorial estate. Among these he lists the lord's privilege of appointing a guardian for heirs who are too young to accept responsibility for the lands they inherit, or the payment of "reliefe," a certain sum of money that becomes due when a freeholder is at full age at the death of his ancestor (24, 30). To understand the significance of these and similar manorial practices, it is important to recognize what Coke's preferred metaphor of the "fruits" of the manor tries to make clear: that such practices are not rooted in the person of the owner, but in the land and the kind of tenure by which it is held. A particularly striking illustration of the way in which manorial land concretely embodies certain powers and rights is provided by the regulations regarding forfeiture. "If a Horse striketh his Keeper," Coke explains, "and killeth him: or if a man driveth his Cart, and seeking to redresse it, falleth, and the Cart wheele running over him, presseth him to death," "then immediately that thing which is the cause of that untimely death, becometh forfeited unto the

Lord" (45). Though not every manor possesses such duties, the example Coke offers here makes tangible the sense in which the territory of the manor has itself distinct rights incorporated into it, rights that, in this case, secure certain movable possessions of the dead against the claims of their relatives. These rights are, indeed, self-activating. As Coke's stress on the moment of death indicates – "*then immediately*" forfeiture takes place – no legal action needs to be brought to ensure forfeiture of these goods. No human agency is necessary, and it is the land itself that seems to be capable of legal action, preempting all other claims. It is in contexts such as these that Blackstone's decision to call one of his four volumes on the laws of England *Of the Rights of Things* suddenly makes striking sense.

This complex unity of practice and land, of right and territory, however, does not come about without the intervention of a third factor that Coke distinguishes as "the efficient cause of a Manor;" and that cause is time. In what must be the key passage of the entire text, Coke rises to the challenge of capturing this third factor as follows:

The efficient cause of a Manor is expressed in these words, of long continuance, for indeede time is the mother, or rather the nurse of manors; time is the soule that giveth life unto every Manor, without which a Manor decayeth and dyeth, for tis not the two materiall causes of a Manor, but the efficient cause (knitting and uniting together those two materiall causes) that maketh a Manor. Hence it is that the King himselfe cannot create a perfect Manor at this day, for such things as receive their perfection by the continuance of time, come not within the compasse of a Kings Prerogative. (52)

Time itself, a traditionalist time of "long continuance," joins the manor's two material causes, land and practice. It is the manor's venerable origin, dating back to the ancient liberties of Saxon England, that for Coke has made its union of practice and land as inextricable as it is irresistible. Coke's "little common weal" shows here its political face. In Coke's vision the manor reaches right back into England's ancient constitution, and it is such rootedness in a time before time that allows the manor to resist the prerogative of the king. And while manors can no longer be created, not even by the king himself, such temporal integrity is matched by considerable spatial fixity: manors cannot be enlarged (54–55), and can be divided only in a way that preserves the combination of demesne and service in each of the newly created units (61). The manor is thus a communal form in which the operation of a continuous, uninterrupted time has integrated land and practice to such an extent that they cannot

be separated. So complex and gradual is this process, in fact, that it can never be recreated by deliberate human action. In this sense the manor is a self-sufficient, self-shaping entity whose political independence hinges on the extent to which time has “knitted together” a particular title to land with a recognizable set of practices. We are dealing with a communal form, then, in which time, space, and practice are closely interrelated. Certainly, time and space are not the “contentless dimensions” Giddens suggests they become in modern society. On the contrary: if manorial space concretely embodies specific practices and thus possesses distinct qualities, then manorial time is also a qualitative, not a quantitative, force. As Coke’s invocation of time as “mother” and “nurse” suggests, time has powers of its own and, as the force that joins land and practice, it does not function as a neutral frame that measures human activity, but concretely participates in it.

Coke’s exposition may so far have seemed to favor baronial power (even as he carefully locates such power in the manor, not the baron), but that is only one part of his agenda, and probably not the most important one. Coke’s political strategy comes out clearly in his attempt to expand the ranks of privileged manorial tenants by suggesting that copyholders are *de facto* freeholders, and thus part of that important group of landholders who were seen to ensure British liberty because of their independence from baronial interference and their right to elect members of parliament.<sup>30</sup> This is a significant move because the title of copyhold – originally considered an inferior tenure because of the base services attached to it – rests on custom, and custom has a special relationship to time and to common law, and thus to the ancient rights and liberties of the English people Coke wants to defend against the encroaching Stuarts. Customs are, indeed, “defined to be a Law, or Right not written, which being established by long use, and the consent of our Ancestors, hath beene, and is daily practised” (68). This formulation recalls the emphasis Coke had laid on “long continuance of time” in defining the efficient cause of the manor, and he does, in fact, closely associate the manor with custom, even in the long central passage I have already begun to quote. He there goes on to state that the king cannot “create any new custome” and then argues that this untouchability of immemorial custom ultimately lies behind the king’s inability to “create a perfect Manor at this day” (53). Custom bolsters both the independence of the manor from royal prerogative and the independence of copyholders from manorial lords, a balancing act that shows how Coke utilizes custom as a

protective shield to prevent hierarchical power relationships from becoming oppressive.

Customs can be an effective shield because they embody a particularly close union between practice, land, and law. Antiquarian Thomas Blount tells us, for example, that "by the Custom of Warham in the County of Dorset, both Males and Females have a right equally in the partition of Lands and Tenements . . . And is so unusuall a Custom, that perhaps it may be hard to find the like elsewhere in England."<sup>31</sup> The local custom has here the power to defeat rules of primogeniture that otherwise govern all of England. It is with arrangements like this in mind that we need to approach expressions such as Samuel Carter's that "custom lies upon the land," that it "binds the land," or, to turn to Matthew Hale, that customs are "fix'd to the Land."<sup>32</sup> Coke himself suggests such an irresistibly close relationship between custom and land for the copyholder when he describes how "Costume . . . fixeth a Copyholder instantly in his land" (82). I find all of these expressions symptomatic because they exhibit the tendency of manorial communities to blur the distinction between practice and space, persons and things, human and material spheres.

In an already familiar pattern, custom's union with the land depends on a specific relationship to time. Coke makes the essential point when he states that "a Custome never extendeth to a thing newly created . . . what things soever have their beginning, since the memory of man, Custome maintains not" (75). The ultimate authority of custom lies in its immemorial nature, its source in a time before time. Blackstone draws out some of the implications of Coke's statement when he addresses the validity of custom at common law. To be legally valid, Blackstone argues, a custom must "have been used so long, that the memory of man runneth not to the contrary. So that if any one can shew the beginning of it, it is no good custom . . . It must have been *continued*. Any interruption would cause a temporary ceasing: the revival gives it a new beginning, which will be within time of memory, and thereupon the custom will be void."<sup>33</sup> Quite in keeping with the communal form of the manor outlined by Coke, custom "lies on the land" by virtue of being indistinguishable from the flow of time. For a custom to be valid, time has to be unable to measure it. The determination of the precise moment in which a certain custom began immediately dispels its authority as a binding social pattern. We touch here on the reflexivity of knowledge that Giddens notes as a modernizing mechanism. The inquiry into the precise circumstances that gave rise to a certain custom would produce precisely the kind of systematic knowledge of social life that customs have to elude in order to be binding.