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**THE *HORROR VACUI* OF THE COMMON LAW OF PROPERTY –**

**ON THE IMPOSSIBILITY OF UNILATERAL ABANDONMENT**

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It is one of the basic features of ownership rights that the authority they give to persons over the things they own is of potentially infinite duration. By virtue of being its owner, each thing that I acquire can be mine forever. Although the potentially unlimited duration of ownership rights holds true in theory, in many people’s lived experience the possibility to bring ownership rights to an end can be of equal significance; it *can* be mine forever but does it also *have to*? Abandonment, i.e. the unilateral divestment of someone from their ownership rights by “stepping back” from what they own that terminates ownership, seems to intuitively offer itself as one way to potentially end all proprietary ties one has with a thing.

Both judges as well as academics have however frequently pointed to the impossibility of unilateral abandonment in the common law of property, and this not only in situations in which abandonment would allow to escape responsibility for dangerous or harmful things. Rather, the refusal to let owners simply “step back” from their things is frequently explained by reference to a reluctance, or even a horror of unpossessed and/or unowned things that is said to inform the common law of property (cf. for instance Blackstone in his *Commentaries*). I refer to this feature as the law of property’s *horror vacui*.

As a result of the abhorrence of (proprietary) voids, many a judge’s reasonings and academic scholarship conclude, the common law renders it impossible to unilaterally abandon and rather ties owners to their things once acquired. It is suggested that there can, if at all, only be conceptual room for “bilateral abandonment”. Such statements are puzzling. They appear to too easily collapse the idea of abandonment into a transfer of ownership rights. Furthermore, the seemingly resulting divergence in the treatment of unilateral acquisition as generally permissible, and of unilateral abandonment as ostensibly impossible calls for further reflection – is abandonment maybe more than the mere mirror image of acquisition?

In addition, a comparison with the property law of some non common law- jurisdictions highlights that the *horror vacui* indeed appears to be a feature unique to the common law of property. In, for example, the French and German legal traditions, unilateral abandonment does not seem to cause the same worries, but is rather recognized without much complication and generally establishes the public authority as “owner of last resort” for abandoned things.

Starting from these observations, the paper investigates possibly viable explanations for the common law’s urge that everything be owned or at least possessed, and assesses how this plays out in the context of unilateral abandonment. I begin by briefly laying out the treatment of unilateral abandonment by common law courts as well as by academic scholarship to carve out the puzzles of “bilateral abandonment” and of the unequal treatment of acquisition and abandonment. The view of abandonment in French, Québec and German law as examples of civilian legal traditions will then be used to highlight the *horror vacui* as a feature specific to the common law of property.

The paper builds on these observation to canvass possible explanations for the impossibility of unilateral abandonment in the common law. I argue that the *horror vacui* is grounded in a specific view of the relations between owners and public authorities, and that it therefore expresses a specific and arguably unique conception of the normative significance of ownership. For that purpose, I provide a concise historical account of the common law of property that sheds light on the estates- system and specifically on the role of the Crown herein. I contrast this with the normative significance of ownership underlying the treatment of unilateral abandonment in civilian jurisdictions. In doing so, I attempt to show how the *horror* is reflective of a specific conception of these relations in the common law that can indeed explain a restrictive treatment of unilateral abandonment, but I equally explore the tensions of this position with the view of the role of owners’ underlying other aspects of property law. I identify the outlines of shifting views on the position of owners *vis-à-vis* public authorities, and thus of what appears to be an altered place of owners in the legal and political order, that a variety of more recent developments in the common law of property attest to.