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**Understanding Adivasi¹ Land Politics
in Kerala²**

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Abstract

In India, since the colonial period and continuing into the post independence governance, the relationships of adivasi groups with property have been defined by various incarnations of modern theories of *development*. These have become hegemonic and dominate even the contemporary radical positions on adivasi land policy. By examining the notion of private property, how it is introduced, how it works and how it is updated in non-Western contexts, this paper attempts to revisit the adivasi history and its historic problematical relationship with private property. The broader objective of the paper is towards understanding the adivasi claims on land, which are not fully guaranteed by the State. There is a pre-supposition of a condition where objective rights have objective indices. This assumption is questioned by investigations of adivasi land policies. A claim like '*right to land from time immemorial*' or '*rights to the land of our ancestors and deities*'³ creates a situation where objective rights have subjective indices or indices that cannot be incorporated or explained by existing property-ownership models. Such indices are indications of how people understand and act on notions of property, ownership, access and possession. This paper attempts to question the hegemonic histories of property, and in doing so it seeks to reach a different understanding of land politics by drawing from cultural and specific local practices and narratives of the adivasi groups of Kerala. By using a methodology that combines an analysis of official documents with popular narratives and practices, this paper demonstrates how such hegemonic histories of property are challenged and contested at a local level.

Introduction

While I was performing archival work in Calicut Regional Archives (CRA) in 2010, the assistant archivist there told me how in the 1980s CRA was instrumental in

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1 The term adivasi means original inhabitants. Terms such as 'savage', 'primitive', 'barbarian', 'aborigine', 'tribes', 'Scheduled Tribe', 'indigenous people', 'the fourth world', 'girijan', 'vanavasi' etc. are also used in to denote adivasis, each term with its specific connotations and history. In contemporary Kerala the term 'adivasi' is used to denote tribal groups and is also used by the tribal groups to represent themselves politically.

2 Kerala is a southern Indian state.

3 Such claims, which are seen as lying outside legal definitions, are frequent in adivasi struggles over land. They are often considered as non-legal expressions of ownership and even as ahistorical and symbolic assertions since in the actual policy negotiations for land, the adivasi communities use the language of private property. In this paper, I suggest that such claims have a clearly marked historical trajectory and are very much part of policy negotiations.

the state winning a case against *Mavoor Gwalior Rayons*, a private company at the time, now shut down. The case in question concerned mining rights and rights over mineral products claimed by the private company. According to the archivist, CRA was able to produce a set of documents in favour of the Government Mining and Geology Department, from late Nineteenth century colonial Malabar.⁴ These documents helped prove that mining rights, and other products of the land, were always, by default, owned by the colonial government (as opposed to being owned by a private company) hence this also applied in the State after independence; and so the private company lost the case to the State Government's Department of Mining and Geology. I analysed those colonial documents used by the government with great interest. They not only elucidated the debates on mining rights but also provided insights into how notions of property, ownership and possession were debated, negotiated and understood in a period that witnessed massive land settlements and diverse land claims. Similar instances are found in the adivasi rights over Minor Forest Produce (MFP).⁵

In the course of this paper, I will try to look into how notions of property/ownership models for land are derived in terms of what lies beneath the land and what is derived from the land, both of which are partial reproductions of a neo-physiocratic notion that progress can be obtained via land or labour on the land.

There is a received concept, the property-ownership model that privileges a particular theory of ownership and property; that is, in effect, only one type of land relation. However when seen through this property-ownership model, many other kinds of land relations, that lie outside this model, appear problematic. When adivasi notions of property and ownership become an issue, this can be seen as reflections of this very problem; that is, these conflicts arise because the property-ownership model is applied to heterogeneous land relations. To examine the nature of this problem, this paper will develop an understanding as to what is the property-ownership model of land relations, the conditions from which it emerged and its coherence – i.e. what is the grid and context within which this model was developed and what are the conditions under which this model makes sense. This I will use to analyse the land related policies of the modern state especially in relation to adivasi land claims.

Secondly the paper examines case laws and adivasi assertions about land that will show precisely why this model does not fit, and at what points the courts and the colonial government tried to reinterpret some of these concepts and expand their range of reference.

Thirdly, the paper will analyse the classificatory model that is used to find structures of property in contexts outside the dominant model and suggest that there can be property within other classificatory systems. My larger hypothesis here is that there was a purging and discrediting of non-economic, non-fiscal value and non-monetary exchange notions of land relations. In this process land becomes a value mediator between different systems such as legal and monetary exchange and 'adivasi' as an identity gets crystallised⁶ via the crystallisation of land. However other notions of property are embedded in spaces

4 Malabar is an area of southern India lying between the Western Ghats and the Arabian Sea. The name is derived from the Malayalam word Mala (hill) and puram (region) derived or westernized into bar. This part of India was a part of the British East India Company-controlled Madras State, when it was designated as Malabar District. It included the northern half of the state of Kerala and some coastal regions of present day Karnataka.

5 Later in this paper I will look at a particular case, Kalkkulam tribal society Vs Pharmaceutical Company, Trissur to show the ambivalence that still persists as to, to what degree possession of an object and access to an object are embedded in property.

6 Crystallization is the process by which communal identities, which were once diverse, get fixed, concretized or defined.

that were classified outside the economic registers during the colonial regime.⁷ ‘Sacred’ and ‘Waste’ spaces are analysed for such conceptualizations.⁸

Property and its Antithesis: Space, Savage, Time and History

Property and property rights are regarded as a consensual process that involves rational individuals and as a result a causal relationship is assumed between legal rights and property. From such an assumption it follows that legally protected rights will lead to security of land rights, which, in turn will make the conditions for land investments possible. Property has been defined as a *social relation* that defines the property holder with respect to something and against all others, and property rights are *enforceable* and can be legally defended (Razzaz, 1993: 341-355). It is also assumed that it is the recognition of the state that legitimizes property relations and assigns rights.⁹ This assumption becomes problematic when multiple claims are made on land. Plurality and multiplicity of claims render any causal relationship between law and land more complex and brings into question the essential binding of law with property.¹⁰

The dominant framework in which tribal claims to land are understood is one that sees such claims as expressions of traditions. Such a framework remained prevalent but it has been challenged and critiqued as well.¹¹ It follows that we should not treat property claims and property rights as overlapping and synonymous concepts. Property rights, as a category, are only a subset of the various property claims on land (Razzaz, 1993: 341-355). Past Narratives, History and Justice are systematically presented worldwide in people’s claims to land.¹²

This often produces an alternative frame of reference demanding a revisiting of both history and historiography.

It has been argued that property should not be considered as a static pre-designated entity and the centrality of space in understanding the material enactment of property should be paid attention to (Blomley, 2003: 121-141). Property creates an inside/outside divide and property’s existence relies heavily on what is treated as non-property. While secure tenure, state guaranteed ownership and recognized property rights are the *insides* of property, it creates its own *outside* which includes uncertain and undeveloped entitlements, claims, communal claims and forms of rights not guaranteed by the State. The foundational narratives of the emergence of property often begin from an *a priori* and often violent world before property (Blomley, 2003: 124). This violence is characterised by Locke as the world of ‘fears and continual dangers’ (Locke, 1988: 123). For Hobbes this space was one where there can be “no property, no dominion, no mine no thine distinct and the absence of government and property underpins a life of continual fear, the danger of violent death” (Hobbes, [1651] 1988: 186).

7 I use the term ‘space’ because the instances I am going to deal with pertains not just to the revenue or tax based territories, but also includes practices, beliefs and conducts that work together to form a landscape.

8 I use “sacred” and “waste” not as singular classificatory categories. They are not singular; nor are they self-referential. The trajectory of both these concepts with regard to the management of landscapes are more nuanced and conflicted. Interchanging narratives of supernatural and sorcery complicated any singular or unproblematic application of “sacred” while “waste” that started its journey off as a revenue category took interesting as well as unprecedented forms in Madras Presidency.

9 Omar Razzaz has critically analyzed such problematic assumptions by looking at the various claims on land in the north-east of Amman, Jordan.

10 Law was seen as foundational to the existence of property. For Jeremy Bentham “property and law are born together and die together. Before laws were made there was no property; take away laws, property ceases”. Bentham, 1978 (1843): 52.

11 Omar Razzaz argues that the tribal claims on land may not always necessarily be the expressions of customs or traditions as they are generally understood, but can very well be expressions of perceived rights, once-existed entitlements or interests.

12 In the case of indigenous people, it is the shared past of injustice at the hand of colonialists that weaves their histories and claims together.

Thus a connection is made between property, space, time and history and such a connection regards the world without property as located in another space and inhabiting another time. The notion of space and the figure of the savage are crucial to define property and the absence of law and property implies the concomitant presence of violence (Blomley, 2003: 125). Geography has been central to the conceptual mapping of savagery where conceptual barriers are drawn between the higher and lower societies according to their relationship to land. Civilization is seen as emerging with the development of permanent settlement, agriculture and industrialism and contains people who embrace “the possibilities of every foot of ground, of every geographic advantage” (Semple, [1911] 1968:56). Thus the history of private property marks the distinctions between good and evil, order and chaos, civilization and less civilization, historic and *ahistoric*, individual and communal etc.

In the early formulations of the theory of property a link is made between political society and property, according to which, assigning property rights becomes crucial to becoming a political society (Locke, 1988: 153). The concept of property is constructed in contrast to indigenous modes of political organizations and forms of property which as a consequence are regarded as historically less developed forms of European political organization, located in a natural state and thus not on par with modern European formations (Tully, 1993: 138-9). Moreover property as a concept is foundationally conceptualized in such a way that certain land relations are not seen as legitimate forms of property. Property as a theory with an analytical value is thus fundamentally associated with the idea of history and historical development and by implication includes concepts of time and space. Locke’s theory of property was woven into theories of progress and development; time and space are used to demarcate and define property as a concept. The co-existence of both the legitimate and the non-legitimate forms of property is recognized but the ‘other’ of property (which might not always be non-property, but a non-legitimate form of property) is said to gain its validity from the different time and space from which it emerges. In other words, if they do co-exist, the non-legitimate form of property and political society are said to be representing another time and space.

Political societies, according to Locke, are derived from the political powers of the individual members that enable them with certain productive and decision-making powers. These powers that rest with the individual in turn are derived from the labour power and the property rights of these individual members. Labour and property are in turn regulated through government and other administrative systems. This completes a circle which, to put it crudely, includes a group of individuals constituting a political society, the foundations of which are based on property/power which for the sake of human well being is regulated via the State (Tully, 1993: 76). This circular argument poses three problems in the application of this dominant framework. The first problem is that the concept of property is defined invariably and only in relation to people forming political society. Secondly, the concept of property is defined in negative comparison with what is not property. Thirdly, political societies are defined in a qualifying way in relation to property, in such a way to constitute some societies as illegitimate and incapable of the political society form. From the Lockean philosophy it followed that appropriation without consent is not permitted in societies where political societies exist though it is permitted in societies that are in a *natural state*.¹³ The application of the concept of consent in appropriation is twofold here. On the one hand it can be seen as imputing value to the ways in which societies are seen and even made into hierarchies

¹³ State of nature is defined as the state in which natural laws guide the actions of the individuals. It is understood as the hypothetical condition before the state’s foundation.

(modern, non-modern, propertied, property-less, civilized, uncivilized, less civilized, historical, non-historical etc.) and on the other hand it is one of the ways in which encroachment and settlement of uncultivated landscapes are justified. Thus appropriation without consent presupposes the existence of the state of nature and can be permitted as long as there is no question of rights. The next step is the characterization of certain land and landscapes as *terra nullius* or 'vacant' land. All land not actively under cultivation is said to be vacant and from this it follows; all vacant land is unproductive. This implied that all uncultivated land can be appropriated through cultivation and this gave moral consent to the appropriation of land through plantations and settlements.¹⁴

Thus the concept of property rests not just on the notions of ownership and possession, but on diverse historically identifiable constructs—the indigenous, the tribal, the primitive, civilization and progress, being but a few. The notion of the individual, who is the right bearing legal entity and is constitutive of any contractual agreements, lies at the foundation of the modern philosophy of property. The legitimacy of property arises not only from the validation of the different concepts that went into the making of property as a bundle of rights: ownership, possession, monopoly, control, access etc., but also on the constant negation of what is not property.

Through an analysis of cases from colonial Malabar this paper shows that the reinterpretation of land relations strengthens this hypothesis. Different ideas of ownership were emerging and the machinery of the colonial administrative had to recognize these as one form or another; either as leading to the formation of property rights (or not) on the basis of how, and against what, the negation happened. This leads one to believe that the difference was not really between what is *Western* and what is *non-Western*, geographically speaking, but between what validates the theory of property and what negates it. Whoever negates the theory, be it Amerindians or New Zealand Maori or the jungle communities or hill tribes of Malabar or Nilgiris, this reaffirms legitimacy of the property theory. If the colonial interventions of land settlement and surveys need to be justified, the native communities will have to be classified as having a distorted notion of property or none at all. If the native forms of property in land had to be identified as legitimate forms of property, there needs to be a category which does not have a legitimate property relationship among the natives themselves—the groups that later came to be known as 'adivasis.' This involves not just a negation of a certain form of property or its non-existence, but a systematic identification of certain other forms which would act as antitheses to the normative forms. Though it lies beyond the scope of this paper to examine the other global contexts where such a hypothesis is played out, I want to briefly mention that my paper tries to go beyond the frameworks offered by *Orientalist* critiques. This paper bears in its core, the political understanding that the concept of South, as we call it today, is much more than a mere geographical location.

Narratives, Disputes and Practices

Having dealt with the analytic/theoretical aspects with respect to the greater concerns of this paper; the remainder of the section focuses on two aspects drawing heavily from primary sources and archival work. Firstly, it analyses how the figure of adivasi gets shaped through notions of property and land in the late nineteenth and early twentieth century revisiting the colonial and nationalist archives and records in so doing. Secondly, the paper will shed light on how

14 In Kerala, this principle guided not just colonial settlements, but the post independent nation state's idea of development which became the rationale for the state supported migration to the highlands in Malabar. The migrant was seen as contributing to the progress of the nation by actively cultivating the land and reshaping the landscape.

certain local and culturally specific practices complicate the assumed linearity of these property/ownership models. The methodology used in this paper attempts to go beyond the “referential theories of meaning”.¹⁵ Instead it uses eight events to explain both aspects: three narratives, three court cases and two cultural practices. These eight events are symptomatic of a particular mode of thinking on both ‘property’ and ‘rights.’

Property, Progress and Personhood Narratives

The three narratives this paper uses to analyse the historical constructions of adivasis are property narratives, progress narratives and personhood narratives. All three narratives are taken from the colonial and national archives on Malabar.¹⁶ The three narratives were mutually constitutive and fed into each other and ‘tribal’ (as an administrative category) was implicated in these narratives to such an extent that the category was given legitimacy through them. The running thread of all the three narratives is centrality given to the notion of private property, which later became crucial in determining diverse claims on land. Early theories on property maintained that proprietary interests in things and objects are created through labour and determined by modes of production. This became instrumental to the colonial law in declaring certain territories and landscapes as *terra nullius*.¹⁷ The argument sustained that since the indigenous people did not labour on the land, they were not entitled to own the land they inhabited. Recent works on South Asia, particularly on India, have shown that the application of *terra nullius* was challenged.¹⁸ The British could not make the *terra nullius* argument in India as a whole because the pre-colonial Indian society was constituted by complex modes of production and had its own elaborate land tenure systems. However in tribal areas the *terra nullius* argument was applied to some extent by declaring vast tracts of land and forests and hills as wasteland and by issuing laws facilitating planters and cultivators to make claims on the land that had been declared as waste (Philip, 2003:103).

The concept of waste when it entered the revenue affairs of Madras Presidency took the form of the explicit problematic of progress. Waste, as we understand it today, is a revenue category implying an agricultural, social and economic ‘lag.’ This lag, in Lockean principles, buttressed both the idea and practice of territorial conquest. The twin design of civilization i.e. progress achieved through economic growth and transformation of moral conduct, was best expressed through waste. On the one hand, non-human circulations of objects, wildlife and concepts (land, cattle and value respectively) are achieved through waste. On the other hand human relationships to land

15 Referential theory of meaning was the most commonsensical explanation for the relation between language and meaning. The idea is that linguistic expressions have the meanings because they stand for things. In other words what a word means is what they stand for. In this view words are like labels. However, application of referential theories to analyze songs, stories and myths can lead to a problem. It is so because there is no one to one relation between narratives and their referents. Referentiality can’t be used as a test of truth here. It becomes complicated especially when there are multiple referents, (for example, a story or narrative has more than a single referent) or when there are multiple narratives and a single referent (for example there can be multiple versions of a single story/experience or sense data). Thus my larger project tries to develop a methodological tool that goes beyond “Referentiality”. That is, to look at a narrative not for what it stands or in terms of an external singular referent, but in terms of the structure of the narrative itself. That is, a narrative draws its meaning not from the veracity of the content of it, but from within the narrative itself.

16 During the colonial period Malabar was under the administration of Madras Presidency. The documents related to Malabar are in Tamil Nadu State Archives and Calicut Regional Archives.

17 This literally means a land belonging to no one. In its political implications the term *terra nullius* meant that no sovereignty was established in these lands by any. This further meant in Lockean terms that these lands can be appropriated through occupation and cultivation.

18 Post-colonial scholarship has come up with detailed accounts of tenure patterns in India that worked against the colonial impulse of *terra nullius*.

and practices are either confined to certain spaces or modified altogether by branding them as wasteful relations or wasteful practices. Thus an '*optimal regulation*', as Vinay Gidwani calls it in his elaboration of the liberal problematic of development (Gidwani, 2008: xx), was achieved through the introduction of waste.¹⁹

The attempt to attain a balance between circulation and confinement is illustrated through another social category of representation as well: the sacred.²⁰ Colonialism as a civilizational enterprise has already been illustrated in the works produced in different South Asian contexts. In this process both the Forest and Revenue Departments played central roles in purging both land and its people of various forms of waste. The proceedings of these two departments invariably generated a relocation of the agency of those who have proprietary interests in land. That is to say, the purging of land demanded that, the entity to be purged must be incorporated into the legal as well as administrative apparatus, either by keeping the structures intact or by expanding the scope of the structures. This was done through a systematic recording of the 'sacred' and the 'wasteful' and a subsequent legitimization of both. What appears to be shown was the inevitable denial and dismissal of all those matters that are out of place (conduct, objects, practices and landscapes) was in fact an attempt to relocate the agency and scope of the tribal groups to certain other legitimate spaces. In that sense, the colonial classification of waste didn't deny usufruct rights to tribal communities, but interestingly conferred those rights in certain other limited spaces, thereby erasing them from certain other geographical zones. In a similar way the colonial categorization of sacred did include customs but excluded the complex and multiple proprietary interests beyond the realm of the human. Thus this paper will move away from the default analysis of waste as an economic category and sacred as a moral category and argue that both circulation and confinement of nature was central to generating value. An analysis that considers a reversal of these associations, both waste as a moral category and sacred as an economic category, will yield results that will help us grasp alternative land narratives.

Narratives establishing a link between progress, personhood and private property, emerge from the colonial administrative records and missionary writings. The popular narratives about the tribes as lazy and non-cultivating etc. rest on the constitutive link between private property and personhood, which has its roots in the Lockean theories of private property. This constitutive link establishes the impossibility of progress when it comes to native and tribal people.

One interesting nineteenth century occurrence was the systematic study of the labour patterns of the natives by the Forest and Revenue Departments. In contrast to the missionary and ethnographic writings, the emphasis here was on the potential labour force of the natives, thought to be useful for the effective management of the space. A typology of labour was developed which served as a means of both description and administration of adivasi groups. Kavita Philip has argued in her work on colonial management of resources that the Forest and Revenue Departments used this typology to help them to find potential labour pools from among the native tribal groups (Philip, 2003:64).

19 Gidwani argues that that liberalism in India, organized around the problematic of development, attempted to assemble not merely the conditions for economic conduct but attempts to transform moral conduct as well. Posed in these terms, colonial government through its political-economic knowledge and apparatuses of security can be viewed as a modality of power that seeks to achieve an optimal regulation.

20 The term "sacred" demands a methodological clarification. The use of the term sacred differs for the colonial archives and popular narratives and stories collected from adivasis. Unless otherwise specified, the term "sacred" used with regard to the tribal communities denotes the complex nexus of gods, ancestors, ghosts and supernatural. In other places it is used as an extension of divine.

The Conservator of Forests for Madras Presidency, Major General H.R Morgan notes the labour practices of native groups in the following way, "In Wynaad the axemen are Corumbers²¹, and very good workmen. They also are very useful for Teak plantations, many are intelligent, and the great advantage of employing them is that they live in the forest all the year round, they fell and square timber with great precision, they can also be trusted in planting out operations ; for cart men, road labor Canarese²² are employed. Sawyers are obtained from Mysore and other parts. On the Anamallies, men from Palghaut are employed as axemen, they were very expert in dividing by means of wedges very large trees into planks suitable for dockyard purposes. The Kadirs, a jungle tribe, are useful for building huts, the Mahouts there and in Wynaad are generally Musselmen²³, whereas at Nellumbore and those parts, they are almost invariably Punniars²⁴, and as the Nellumbore elephants are used without harness, dragging by their teeth, the equipment of a Punniar and his elephant may be said to amount to nil. The local labor at Nellumbore is made up of Malayalums and some Moplahs, there are many trained men amongst them who understand planting and pruning." (Morgan, 1884: 46). It is interesting to note that the relationship to land and cultivation is seen as determining the 'progress factor'.

A detailed knowledge about the labour powers of the different tribes and groups are seen as important in effectively managing the landscape. This process of obtaining knowledge is invariably laden with value as some forms of labour and modes of relating to land are seen as superior to others and they are given a scientific purchase value. For example, one of the major concerns of the nineteenth century Forest Department was the *kumri* or slash-and-burn cultivation. *Kumri* was a form of shifting cultivation practiced by the tribes of Western Ghats.²⁵ *Kumri* was viewed as wasteful on the one hand and destructive on the other to the extent that "waste" and "destruction" were used synonymously in the records. H.R Morgan who was the Deputy Conservator of Forests for Madras Presidency states that the *kumri* or the slash-and-burn cultivation as the most harmful of all the varieties of cultivation in the world. He notes, "The aboriginal tribes must be found some other means of employment. They must be civilized. They must be encouraged to plant fruit trees and other crops than those they have been accustomed to. They must be taught trades. Congenial employment must be found for them by the Forest Department such as timber squaring, the collection of forest produce and deserving men should be employed as watchers, elephant drivers and *maistries*" (Morgan, 1884: 87). *Kumri* was seen as the most pernicious cultivation practice of all of the various practices carried out as *Kumri* required that huge amount of trees felled every year. The felling of trees, an unavoidable component of this mode of agriculture, came to be regarded as a wasteful practice for which the jungle tribes came under criticism.

Morgan remarks on the absence of property among the Kurumba tribes, which he regards as the major impediment to progress and civilization. He goes a step further and dismisses their livelihoods on account of their temporary nature. The practices of shifting cultivation, cattle grazing and hunting do not transcend time. He proposes property as the antidote to transcend the temporary nature of the practices of the tribes. He says "If he invests in a few fowls, sheep, or goats, the first peon who happens to see them will at once appropriate them

21 Corumber or Kurumber is a group classified under the category of tribes by colonial ethnographers.

22 Tribal groups from the region of Canara

23 Probably a local term for Muslim men

24 Punniar or Paniya is another tribal group

25 This was called punam in Malabar and *Kumri* in South Canara. In this form of agriculture bushes were cut and burnt. The land was ploughed with pre-monsoon showers and seed was sown as a pure or mixed crop. The land was abandoned after the harvest and allowed to recoup its fertility. Fresh jungle land was broken up for cultivation every year.

to his own use. If he grows vegetables, they too will be stolen from him and the unfortunate owner most probably be made to carry them to the house of his despoiler. How can the Curumber be expected to rise in the scale of civilization when he dare not possess property?" (Morgan, 1884: 87).

The Chenchus tribes of Madras Presidency were seen as a menace to forests for they were engaged in the wastefully cutting of trees. As a remedy it was suggested that they should be put under department works performing such tasks as planting and tending trees. Trees have value only when they reach their full maturity.²⁶ Felling and burning trees hardly a couple of meters high was seen as a sign of ignorance. Tribes that were engaged in felling "young trees" were employed in the Forest Department but it was complained that they are uncooperative. If the problem with Chechnu tribes was that they were felling trees before full growth, the problem with Koya tribes was that they disliked clear cutting and refused to cut trees. The trees they were asked to cut were much bigger than the ones they cut for their shifting cultivation. The reluctance to fell trees did not always indicate an inherent ethic against the destruction of nature in the tribal communities. This annual practice of setting fire to the forest was seen as yet another wasteful practice that needed to be repressed.²⁷

Two more aspects closely tied to the application of 'waste' were rewards and smuggling. Forest Department settlement projects for the tribal groups in Western Ghats are usually seen as their attempt to control and civilize those tribal groups. The department took measures to "domesticate" the wild tribes and even classified certain tribes as criminal tribes as an attempt to curb their criminal activities. It is interesting to note that such projects aiming to "civilize" tribal groups through introducing them to labour was paid by the Revenue Department even though the tribes were physically managed by the Forest Department. The Revenue Department funding was justified by the fact that civilizing the tribal groups meant managing wasteful practices and in a larger sense managing waste.²⁸ It was a major concern for the Forest Department that many tribal groups like Chenchus and Kurumbers were tied to a feudal system and were managed by outside plain dwellers. The tribes were indebted to them and as a result the plain dwellers and moneylenders made use of the tribes to appropriate the collected forest produce. In an attempt to rescue the Chenchus from moneylenders and plain dwellers, the Forest Department paid off the debts to moneylenders and traders. But interestingly, when the Chenchus were employed by the Forest Department, they were not paid in money. The amount of money spent as Chenchu wages was under another category called "rewards"- which was in the form of clothes, rice, concessions in forest grazing and collections. Smuggling was added as a forest offence by the mid-Nineteenth century.²⁹ Collection of timber and other forest produce without the permission of Forest Department was listed as smuggling. Collection of dry leaves and twigs and other "wastes", which were not listed as these were seen as customary rights of the tribal groups in Malabar.³⁰ However by the late nineteenth century these too were regulated by the Department. The collection of such "wastes", other than from reserved wastelands, became a crime implying legal actions against those who collect them.³¹

Another practice then viewed as 'waste' was *vetta* or hunting. Gaming and sporting was central to the activities of the British in the highlands and the image of 'shikhar' occupies a special place in the forest narratives. But *vetta* was

26 Administrative Reports of the Forest Department, 1889-1908, TNSA

27 Indian Forester, 1878

28 Administrative reports of the forests in Madras, 1907-1908

29 Forest Administration Report, 1888. TNSA

30 Malabar Annual Report, 1887

31 Annual report for the forests in Madras Presidency, 1897. CRA

different from *nayattu*- a term used to refer to the gaming activities of Royalty.³² Shifting cultivation and slash and burn cultivation always demanded that the cultivators did *vetta* periodically. The reason was that the forest animals were the main competitors for the jungle crops. In the absence of the ability to adequately fence or staying in permanently watch over the fields, the logic of this warfare against the wildlife was to exterminate all the potential pests from the surrounding forests before the crops were even sown. The standard method of *vetta* was the following: *vettakkaran* (hunters) armed with bows and often with nets were strategically deployed around a section of forest, and then beaters and dogs started at the other edge. The aim was quite simply to kill everything possible over that stretch of forest. Such a mass extermination of wildlife was criticised by the forest officials and was considered as a wasteful practice because it always killed or destroyed more than necessary. These remarks can be viewed within the larger framework of the property theories that went into the crystallization³³ of communities. Progress can be obtained through a systematic and prescribed use of land and a prescribed mode of cultivation and the realization of private property will lead to progress.

Lockean principles of property were used not only to justify this new conceptualization, but even to naturalize it. In the new classification all types of land was marked as one or the other categories of property and it propelled a natural progression model of civilization based on property (Philip, 2003:103). It was noted in the *Report of the Proceedings of the Forest Conference*, Simla, that "It is an important and most practical conception, for if you realize the idea of a forest estate to be cared for as a piece of property and protected by law, you will also acknowledge that a 'piece of property' if it is to be either managed or protected, must be defined as to its limits, and all questions of rights and obligation arising in those limits must be settled. If that is not done the forest is still in a fluid, non-crystallized state. It hardly deserves to be called 'property' and in consequence any real conservancy will be unattainable."³⁴

The underlying principle was that if property status has been conferred on forests, it can be fully made use of through extensive labour. The report went on to state that, "Law declares or recognizes that some persons have the right to appropriate things or become their owner. And other persons have the corresponding obligation to respect the rights and abstain from the act of interference. Now forest officers are the managers and controllers of forests and as such they enter into various relations with the public and with individuals"³⁵. The report cautions the officials on the possibility of native unrest, that, "the forest conservancy starts from the basis of property and it was important not to give into people's complaints over state control over forests as the government as proprietor cannot safely allow what a private owner would not and access to forest must be granted in such a way as to leave no doubt that it is regular recognition of right, by a power that is based on the respect for rights."³⁶

In the early Twentieth century the interests of Revenue Department and Forest Department came to a crossroads in colonial Malabar. The Revenue Department raised complaints against the Forest Department that the latter was slow to produce adequate revenue from the forestlands assigned to it. It should

32 It should be noted here that many tribal gods were hunters. The *vetta* practices done by the tribal groups were different from the gaming and sporting activities. While the latter centred on notions of leisure and pleasure, the former was almost a daily activity to prevent harmful to life. The notion of life was central to *vetta* which almost always demanded that the object of *vetta* be killed.

33 Crystallization is the process by which communal identities, which were once diverse, get fixed, concretized or defined.

34 Report of the proceedings of the forest conference, Simla, 1875

35 Ibid

36 Ibid

be noted here that Revenue Department of Madras Presidency was funding the training projects conducted by the Forest Department that aimed at transforming the tribal groups in the Western Ghats.³⁷ The Revenue Department regarded training those tribes (who were resorting to their previous practices of robbery, plundering and wandering) as a waste of resources. Forest Department's reply to this criticism emphasized the importance of the task they are attempting to carry out. For them, they were performing an important mission by assigning property status to forestlands, bringing them under state control and increasing the value of labour. They also argued that they were on a mission that sought to transform certain groups of people who, before the setting up of Forest Department, were engaged in wasteful practices. To use the environmentalist idiom that became popular in post-independence, they were performing the governmental task of protecting nature and natural resources via the application of scientific forestry.

The Revenue Department suggestion was that Forest Department should be placed under Revenue Department replacing their autonomous status, but the Forest Department resisted this proposal vehemently on the grounds that the nature of their task necessitated the revenue lag of which they were being accused. Philip argues that by the end of the nineteenth century, due to persistent institutionalization of scientific management techniques and engineering methods, and via the passing of forest laws in all parts of the country, the Forest Department was able to make large profits (Philip, 2003:79). The debate between the Forest Department and the Revenue Department points to the confusions that emerged in the systematise land use and land relations scientific way while maintaining the profit factor central. The underlying principle for the workings of both Departments was the theory of property and a particular projection and implementation of that theory.

It is also interesting to note that labour was obtained in ways often contradicting the colonial promise of breaking-down unhealthy land relations based on caste and bondage. Though several reports were written to analyze the bondage systems in Malabar and recommendations were made to improve the situation of the tenants working under landlords, and although the Wynad settlement plan put forward as its main objective making land available to the landless tenants, the Forest Department depended on the *Chettis* to obtain the pool of labour force they had in hand – namely the *Paniyas*—who were the bonded labourers of *Chettis*. Slavery, seen as an evil in humanist writings, becomes a form of labour.³⁸

Studies on the customs and habits of tribal groups were undertaken, which almost resembled the ethnographic studies of the preceding century but these studies and reports which became part of Forest Department's reports proved instrumental in analyzing and categorizing the labour patterns of certain groups. If early ethnographers like Edgar Thurston noted the subdivisions among the *Kurumbas* in relation to their practices and habits and social customs, the later studies focused more on the kind of relationship these people have to land and how the segmentation was not just based on social customs but on labour patterns and land relations.

At this point I would suggest that observations on labour coupled with land relation went into the crystallization of certain identities based on progress

37 The Forest Department had set up various projects to enroll tribal groups which practiced shifting cultivation and other practices which were thought as harmful to nature and natural resources. The aim of such projects was to induce a love for labor in these tribes. This also served as a means through which the Forest Department found labor pool from among the tribal communities as local knowledge came to be considered crucial to the successful running of departmental activities.

38 It was noted that "The chief relationship between the Forest Department and the Chetties lies in the supply of Paniya. The Paniya are virtually slaves of the Chetties. They own neither land nor cattle. On the whole they seem content with their lot, or resigned to it, and they appear to have little ambition towards social betterment". The Working Plan for the Deciduous Forests of the Wynad Plateau, 1929: 16.

and property relations. Certain modes of relating to land were seen as leading to progress and wealth and certain labour patterns as more promising than the others. A good example of this can be seen in the observations made on the three groups of *Kurumbas* of Wynad region.³⁹ The *Mullu Kurumbas* are seen as “cultivating wet lands’ and as people “who want little from the forest other than land to cultivate”. These people are seen as helpful in the proceedings of the Forest Departments and as having a better sense of nature than the rest. The *Bet Kurumba’s* are seen as good axe-men and as practitioners of shifting cultivation. They are observed as working in the neighbouring estates and as dependent on Forest Department for their livelihood. These two groups are put in sharp contrast with the a third group called *Jen Kurumbas* who are described as the “least civilized” because though they do some shifting cultivation, they mostly make a living by collecting honey, roots and fruits. The degree of civilization is measured in terms of the modes of appropriation of nature. This marks a shift from and provides a comparison with Thurston’s ethnographic writings and the faithful descriptions of local historians like Gopalan Nair. This was a shift from the anthropometrical narratives to typological narratives.

Private property and labour patterns provided a way of knowing the tribal groups not just for the revenue and Forest Departments but for the missionary writers too. Writings on the primitive groups in Malabar and Travancore were strongly rooted in the labour and property theories of Europe.⁴⁰ The disapproval of shifting cultivation as an agricultural practice was based on two important observations made. In shifting cultivation the concept of private property is negated and it yields high returns for less labour. Although shifting cultivation came under criticism for its destructiveness to forestlands and due to it being a non-scientific way of treating nature and land, the moral criticism always rested on the fact that it was contrary to the notions of labour and property, as they perceived it. These labour patterns and property models were ascribed to the laziness of the jungle tribes. In the late nineteenth century the Western Ghats were being turned into settlements and plantations by both English men and natives. The land was rich, the soil was good and the climate was pleasant and the fact that the tribes did not make use of these provided evidence that they indeed have an unproductive relationship to land and nature. Here in this narrative, land, labour and property are placed in relation not just to civilization and progress, but personhood. Thus the incapacity to labour and acquire private property is the incapacity to appreciate nature and relate to land as western races did.

The Forest and the Revenue Departments confronted two related problems in their relation to the tribal population in Malabar. For the Revenue Department the problem was often caused by tribal people entering lands, which were declared escheats. They cut trees from the reserved lands and collected products from forests were under the control of the government.⁴¹ The major problem of the Forest Department was caused by the hill groups and forest tribes who possess vast tracts of land but who will not relinquish them (even for a good price.) There are different versions of stories and narratives of tribal groups possessing lands and maintaining certain rights to land which the government was neither able to grant nor able to deny.

Now I will move on to the three cases under examination. These are cases involving native claims to land, products from the land and to tribal identity, re-

39 Working plan for the deciduous forests of the Wynad plateau, 1929:43

40 Samuel Mateer in his *Native Life in Travancore* gave detailed descriptions on the customs and habits of tribes inhabiting the Western Ghats including Wynad and Nilgiris. He has detailed sessions on the shifting cultivation practices of these groups, which he disapproves.

41 The Revenue Department files from 1870 to 1911 does not record any case where a claim is made on land by a member of the tribal group though there are many instances of other groups like Uralur and former proprietors of forests making claims on lands and forests.

spectively. These three cases are representative of three periods and are based on the foundational concepts of property.

Case 1: Ownership of Hills, 1860.

In 1856, Uralur, the community of people who are described as the 'trustees of the temples' in British Malabar put forward a petition to the collector of Malabar, furnishing a list of hills and lands to which they preferred a claim. This claim, as it was perplexing to the administrator of lands, was scrutinised and a committee was appointed in 1857 to look into the claim along with similar claims, which by then were growing in number. The claim was rejected on three accounts. Firstly the Kottikote Rajah (the local King) interfered with the lands and the trustees didn't oppose it; indicating the lack of exercise of ownership rights to the land. Secondly, there is no evidence to show that there was single ownership. Thirdly, and most importantly, the alleged property rights to the land are not based on the first principle on which rests the institution of private property. That is to say, they have not obtained their right of property through any labour of their own. This case is significant because for many years this remained as a legal precedent for the examination of possible claims on land by tribal and other native groups.

Case 2: Kalkkulam Adivasi Sangam Vs. Pharmaceutical Company

Though initially the idea was to open the markets for the betterment of the hill tribes, eventually issues arose as to what are the proprietary rights the hill tribes have on forest produce. The debate on property in land later shifted from land to the products of land, animals that move on land, the minerals that are beneath land etc.⁴² The case of *Kalkkulam Adivasi Sangam Vs. Pharmaceutical Company* is about the nature of rights adivasi groups, and the societies they formed, have on Minor Forest Produce (MFP). This particular case helps us examine the more complicated notions of ownership, possession and the different kinds of rights adivasis have not just on land and but also to that which is derived from land, in this case forest produce. The case revolved around the issue of whether or not adivasi groups have *ownership rights* over MFP. The Pharmaceutical Corporation of Thrissur, Kerala, to whom the adivasis were selling forest produce, filed a case against the *Kalkkulam Adivasi Sangam*, complaining that the adivasis were also selling the MFP to outsiders and keeping them for sale in stores. This opened up the debate as to whether the adivasis owned the right to collect and sell the MFP or whether that right should be regulated through some other state systems. A distinction was made between the right to collect MFP and the right to sell it outside without the permission of the State or any regulatory body. The pharmaceutical corporation argued that, though the adivasis could be vested with rights over the land to collect and possess MFP, they should not be given the ownership rights to dispose of the collected produce as they please.⁴³ The argument was that the right to *collect* and *possess* the MFP and the *access* to it should not and cannot be equated with the right of ownership over the objects collected, and so the adivasis *do not own* the MFP. The report on the discussion held by the minister and the collector concluded that the produce collected will be regulated through government departments but the *Adivasi Sangam* will continue to enjoy the right to access, collect and possess the MFP. This right would be periodically

42 Report on the Royalty of Elephants in Wayanad forests, 1889. A report on the royalty of Teak trees, 1895. Letter from the Collector of Malabar on cutting trees for railway sleepers and royalty related to that 1887. CRA

43 Kalkkulam Girijan Sangam Vs Pharmaceutical society, 1970 General administration files, Directorate of State archives, Trivandrum.

renewed through the government departments and for the collection the adivasis will have to pay a royalty to the Forest Department.⁴⁴

Case 3: Case of Kunduvadia community

The evaluation committees formed in the post-independence period made periodic enquiries and systematic recommendations to improve the living conditions of the Scheduled Tribes. Lack of written documents and evidence was seen as one of the major reasons why the tribal groups were in a perennial state of landlessness and economic backwardness. Land and economic status based on land become crucial when it comes to determining which are tribal groups as we can see in the case of Kunduvadia community. Kunduvadia, a former adivasi community in Wayanad, approached the Government of Kerala, the president of India at that time, and later the Supreme Court. They wanted to retrieve their tribal identity, something that they had lost some years before. They collected a number of documents and historical materials to prove that they are “true” tribes in accordance with the standards set by the constitution. The committee appointed to inquire into this case asked the Kunduvadia community to produce a number of documents many of which emphasized the importance of land and property to decide the tribal status.⁴⁵

The reorganization of the state has led to problems in deciding in what category to include certain groups.⁴⁶ The classification problems emerge from the criteria used for including and excluding people from the list. The Scheduled Tribes (ST) was not envisaged as a static list but recommendations were made periodically for new inclusions and exclusions from the list.⁴⁷ To delete those groups among the existing ST list, the criterion has been the attainment of economic stability as per the recommendation of the report of the 48th estimate committee of the parliament.⁴⁸ Land, by implication, becomes one of the deciding factors of economic stability.

Non-Economic Registers of Land and Property: An analysis of locally and culturally specific practices

This section will look at the registers which include land and property. In the land settlement records and colonial classifications, property and land appear either in relation to forest or in relation to revenue or agrarian/taxable territories. Any understanding of property or land was restricted to these realms; other spaces were classified either as religious or social. This is not to say that religious or social were not implicated in economy when it came to matters of administering the groups, but transactions, exchanges and understanding of value were strictly confined to economy. In this section, I look at *Kavu* and *Teyyam*, two phenomena strictly tied to the realm of religion (the divine) in an attempt to show how property, value and territory were being reproduced through these sacred spaces. These registers which are classified as non-economic by colonial classifications will help to critique the hegemonic versions of property ownership models through which the history of the

44 Minutes of the meeting to decide the ownership rights of MFP, Kalkkulam Girijan Society Vs Pharmaceutical Corporation, 1970.

45 a. Produce evidence that once they belonged to ST list and historically they were included among the tribes of Kerala. For this, they had to rely on the records by Thurston, the renowned anthropologist who produced 7 volumes on the tribes and castes of south India and Gopalan Nair, a local historian, who was part of the British administrative team.

b. Evidence for the land holding patterns among them

c. And the degree of landlessness prevalent among the community

d. And records of the economic status of the members of the community to decide whether they should be included in the list again or not.

46 For instance Malayan is Schedules Caste in Malabar and Scheduled Tribe in Travancore.

47 Revenue Department order dated 30-6-1961. G. O Ms NO.629. The terms of reference to the committee included

a. To prepare a list of communities who deserve to be included in the list of SC, ST and OBC but who have been left out (the historical and cultural background of these communities, their approximate number and territorial distribution to be given.)

b. To make recommendations to the government to delete those groups among the existing ST which have already attained economic stability as per the recommendation of the report of the 48th estimate committee of the parliament.

48 From the extract of recommendation number 105 made by the estimate committee in their 48th report submitted to the Parliament: “Keeping in view the recommendation made by the commissioner for scheduled castes and tribes in his report, that if the ultimate goal of classless and casteless society is to be attained, the list of SC, ST will have to be reduced from year to year and replaced in due course, by a list based on the criteria of income-cum-merit and the requirements of the article 46 of the constitution, which cast special responsibility of safeguarding the interests of the weaker sections of the society, especially SC and ST, the committee recommend that weaker sections of the society should be defined and criteria for special assistance laid down, on the basis of economic status and educational and social backwardness”.

tribal groups are written. Also this points towards the subjectivity of the owner. In contrast to the Western notion of a legal individual, these practices point toward subjects beyond human subjects; namely the divine and the sacred.

In 1854 the Forest Department had obtained forests adjoining the Wayanad forest belt and the deputy conservator of forests employed labour for these forests from among the Kurumba's of Wayanad. H.R Morgan notes that "The coorumbers (sic) had to be trained to fell only the largest and the best trees as they were in the habit of felling any tree that would just measure about 12 cubic feet as they were paid by the log. I introduced the system of payment by cubic foot. At one time, they gave much trouble. Every large tree was 'swami tree'⁴⁹ and could not be cut" (Morgan, 1884:44). The tribal groups are seen as a good source of labour when under proper supervision and control. Their refusal to cut trees was seen as problem, but it was also a problem when the tribal groups and the natives also cut trees. The act of cutting trees required a specific technique, which the natives lacked, hence cutting trees became a problem.⁵⁰ Encroachment of plots owned by the Department was seen as a crime and cases were filed under 'forest offences'. Another problem was the existence of *Kavus* (sacred groves) and the total reluctance of the tribal groups to cut trees from the *Kavus* which they saw as the habitat of ancestors and deities. The land where the *Kavus* are situated and the trees in the *Kavus* were seen as the owned by the ancestors (or the ancestor deities) and so it was not for humans to cut those trees or use those lands. The *Kurichia* group of Malabar believes that the spirits of the ancestors are tied to some giant trees in the forest and the ancestors live in those trees. Those trees inhabited by spirits cannot be cut or appropriated by anyone. Such practices raised enormous problems for the Forest Department.

John Elphinstone, more popularly known as Lord Elphinstone in the Madras Presidency, was a Scottish soldier, politician and colonial administrator. In 1837 Lord Melbourne appointed him governor of Madras. He served as governor from 1837 to 1842. During this period he built a house at Ketti, in the Nilgiris, on which his fame rests till this day. This house he built on a piece of land which originally belonged to Badaga tribes of the Nilgiris has many stories associated with it, most of which have to do with native resistance, primarily from the Todas and the Badagas. One of these stories goes as follows: Lord Elphinstone was very much attracted to the nature and climate of Nilgiris and fancied a patch of land in Nilgiris to construct his dwelling. However he didn't succeed in obtaining that land via a purchase because of objections from the Badagas. The reason the Badagas objected was that they, from time immemorial, sacrificed buffalo calves every year to a deity. This deity was supposed to be present in an old decayed tree growing in that area. His many attempts to persuade the Badaga moopan⁵¹ failed because of their continuous resistance to part with the land that they considered as the abode of their deity. However Lord Elphinstone was able to persuade the Badagas through drugs and drinks and finally managed to get the property from the Badaga headman. No sooner was the transfer concluded, than his Lordship began to enlarge the old building

49 Sacred tree

50 27 out of the 53 petitions filed under the Forest Department files and 16 in the Revenue Department files in the period of 1870 to 1880 are about the 'surmounting problem' of natives cutting trees. This complaint was done along two lines. One was the tribal groups who cut trees for the slash and burn cultivation which the authorities saw as decreasing the quality of the soil. Their practice of felling forest was seen as a non-judicious way of dealing with the valuable forests and its produces. Here we can see that even the act of felling and cutting trees acquired a level of skill that the tribal members were seen as lacking. The second was an administrative issue in which even after the conferment of Pattas (title deeds) and the distribution of wastelands and escheat lands, the natives were seen as encroaching the government lands and following earlier practices of cutting trees and felling timber. Revenue and Forest Department files, 1870-1880, CRA.

51 Headman

and in the course of time converted the property into his residence.

These two events from colonial records illustrate the resistance and reluctance of tribal communities to violate the property of their deities and this reluctance was seen either as obvious signs of animism or as barbarianism. Behind the English concept of nature was the idea of temporal progression and this progression was seen as instrumented through the passing of seasons. Nature was divided into predictable temporal compartments i.e. the four seasons (Philip, 2003:48). This predictable and regulated movement of nature was progressed into days, nights and years thus indicating a natural and linear movement of time. This idea of temporal progression was at the core of certain attitudes towards nature. The ability to appreciate nature was seen as a sign of progress; the capacity to adore nature was a feature expressing the fineness of minds. But worshipping nature and superimposing human characteristics to nature (and supernatural characteristics to humans) were perceived as an obvious sign of lacking this temporality. The colonial attempts to construct gardens in the Western Ghats were indicative of this particular attitude towards nature. It is interesting to note that copious amounts of money and energy were spent on both plantations and gardens. These gardens, it was believed, would bring refinement and order in a wild land. Gardens of highlands, metaphorically, harnessed the wildness of an inhospitable land. While these gardens were symptomatic of cultural sophistication and rested on the idea of 'acting upon nature', the *Thaivakkavus* (literally translated as the garden of god) of Madras Presidency tribes were viewed as ascribing subjectivity to natural objects. The line drawn between 'acting upon nature' and 'being acted upon by nature' separated gardens of men from gardens of the gods.

Patches of land or forests held as sacred are not regarded as a new phenomenon by environmental histories especially now that the subsistence practices prevalent in pre-colonial times are being revisited. In the wake of writing new histories of the sacred, attempts have been made to compare such lands to the ancient phenomena of sacred lands existed in Greece, Rome and many other parts of the world (Gadgil and Vartak, 1976: 152-160). Such works trace the history of primitive totemic religion of the hunter-gatherer where certain sacred locations existed within the clan's hunting territory. The Romans often personified the spirit of plant life. The forest king, to them, was the personification of sacred trees.⁵² Donald Hughes gives an explanation for why sacred groves disappeared from Europe. According to him groves lasted as places of economic and religious importance down through the Christianization of the Roman Empire.⁵³ It has been argued, by those who work on ecological histories, that protection of patches of forest as sacred groves, and of several tree species as being sacred, belongs to the ethos of religious conservation of ancient peoples worldwide.⁵⁴ This view has also been critiqued arguing that such practices may not be necessarily ecological, but were part of larger social and economic structures.⁵⁵

Sacred groves are widespread phenomena among the tribal groups of India. It is a common feature of groves is that they are held sacred. There are two major ways to understand this phenomenon. Firstly, the sacred groves

52 Subhash Chandran and Gadgil (1998). Sir James George Frazer in *The Golden Bough* (1922) argues that the origins of such groves can be traced back to the hunting and gathering people of the Palaeolithic age.

53 Hughes (1984) argues that as centres of pagan worship they became objects of Christian zeal. The Emperor Theodosius II of the 5th century AD issued an edict directing that the groves be cut down unless they had already been appropriated for some purpose compatible with Christianity. A few of them became monastery gardens and churchyards.

54 Madhav Gadgil and V.D Vartak (1976), Subhash Chandran and Gadgil (1998) and J.D Hughes (1984)

55 J.R Freeman(1999)

stand for the religious sentiments of the tribal groups. Sacred groves dedicated to local deities, or ancestral spirits, are protected by local communities. This view is developed from the colonial period by land settlement officers who didn't want to interfere with the religious activities of the natives. Records from colonial Malabar shows instances of how the colonial government were in favour of protecting such lands within the forest. One interesting example is a case from Malabar where the Forest Department officials were digging a well but met with no success in finding water. It was suggested that the solution to this problem is to do a *pooja* (worship) for the local deity in the nearest grove. The chief conservator of the forest issued immediate order to do the *pooja* so that the problem can be tackled.⁵⁶ The second view is that sacred groves stand for biodiversity and the sustainable practices of tribal groups. This view emerged primarily due to the interest in ecological concerns in the post-independence period. With the failure of the developmental models along with the rise of the biotechnology industry, local sustainability systems were revisited (Kamat, 2001: 29-51). As a result the adivasi groups and their sustainability models acquired a special place in the new projects modelled on local development.

The proprietary interests associated with sacred groves are glossed over in the spate of ecological romanticism. In Kerala, sacred groves are called *kavu* and many of them are dedicated to snakes. Though hunting and cutting trees are usually forbidden within these tracts of land, other forms of forest usages (such as honey and deadwood collection) are sometimes allowed. It has been generally argued that entry into and uses of *kavus* were strictly prohibited. But this argument does not hold true because access was allowed to tribal groups to collect medicinal plants and honey and other products though cutting trees was prohibited. When large quantities of timber were felled for railway and marine purposes, it served as a minimal curtailment of the timber market in Malabar. Also, the medicinal plants and honey collected from sacred groves were used for commercial purposes. It regulated the indigenous medicine's market dynamics in certain ways. Despite the fact that *kavus* were relegated to non-economic realms, they lead to market interventions in their own way.

The concept of *kavu* is an interesting one. There are two contesting interpretations of *kavus*. Ecological interpretations see them as stands of primeval forests, left undisturbed for deep religious sentiments and as abodes of vast biodiversity. This was sharply critiqued by J.R. Freeman who tried to look at *kavus* in their social and political context and argued against viewing them as botanical ideals taking them out of the local contexts in which *kavus* gained meaning and legitimacy (Freeman, 1999:257-302). He sees them as a cultural category with specific religious and political significance. This helps us to understand the ways in which the idea of 'sacred' related to space and property developed through land relations.

Physically *kavu* is a piece of garden or forestland, but what culturally demarcates it is that it is devoted for the exclusive use of particular deities; it is 'guarded' in their interests.⁵⁷ *Kavus* as a cultural construction depends heavily on local consensus. In these pleasure gardens (*aramam*) and retreats, the gods and goddesses sometimes gather to catch the breeze, full of fragrances from the flowers and groves. This is what is meant when one says that these places harbour a religious conception (*sankalpam*). "The *Kavu* is the place they have where they can ramble about. They can't always stay in the temple. In the pleasure garden, they will swing and sport. It must be that sometimes they are only conceptually present in the temple, while most of the time they are actually in the *Kavu*. They take their food here [in the temple] and take their rest there"

56 Forest Department Files, CRA.

57 The groves usually adjoin or are a short distance from an associated structural temple or Shrine, though sometimes the sacred structure may be within the *Kavu*.

(Freeman, 1999:269).

Freeman argues in favour of assumptions that prior to colonialism and industrialization India's culture was imbued with a set of beliefs that naturally held human demands on the environment in check, and that forests existed in an ecologically sustainable homeostasis. There is also an assumption that, religious value and institutions of Hinduism (or its folk-variants) are supposed to have somehow encoded and transmitted this ecological wisdom across generations. Modernist ecological concerns systematically reproduce and reconstruct certain models of idealised pre-colonial society. However, cases from Malabar show that even in the cultural constitutions of *kavu*, there is an undeniable degree of local consensus.⁵⁸ In Malabar, while some *kavus* are dedicated to deities, others are dedicated to snakes and some others are dedicated to ancestors and ghosts. They vary in size, function, practices, customs and taboos. And so, rather than any ecological or religious precept, what determined the functionality and the structure of *kavu* is the local power relation and social dynamics.

The general tendency has been to equate *kavu* with the temple models of divine property. The focus has been on the divine ownership of *kavu* and the human agents associated with *kavu*- either the prohibition of human agency or the divine mediation through human agents. Neither of these takes into consideration the agency of the tribal groups, who, on the one hand, in practice had access to such sacred groves, and on the other hand formulated narratives of the past around such groves. Analysing the twin agencies who exercised property interests (the divine and the human) rules out the ecological narratives of sustainability that are formed around *kavu*, it doesn't point out any actual mechanism through which tribal groups understood or acted upon a concept like *kavu*. On a larger scale, such mechanisms can also point towards the ways in which tribal groups negotiated with notions of access, possession and use rights. The idea of local consensus is central to understanding the concept of *Kavu* and an analysis of the debates around such sacred lands yields that no stringent rules existed in practice. In the nineteenth century Coorg⁵⁹, a debate arose around converting a patch of land into a coffee plantation, which happened to be the *kavu* of a local deity. The native people were of the opinion that converting a *kavu* into a coffee plantation is not contrary to the ideas of divinity provided that the profit from the coffee plantation went to the deity of the grove. This story stands in direct contradiction to the colonial construction of *kavu* as prohibiting any human agency. On one level this can be seen as human disturbance of divine property, the misappropriation of which can bring the wrath of the concerned deity. On another complex level this points out the ways in which the natives actually reconstructed the notion of *kavu* and property at a time monetary transactions were overtaking the erstwhile custom of "paying in kind". The notion of value was being reconstructed and the above incident can point towards native people's negotiation with changing concepts of value. In an interview, a Kurichia *moopan* (headman of Kurichia adivasi community) told me that "no humans could enter those parts of the forest where the deities and ghosts reside and the entry of outsiders was strictly prohibited. Such trespassing could bring the wrath of ghosts and might even result in epidemics".⁶⁰ However, "the headman could enter the *Kavu* and could even pluck leaves and fruits from certain trees which were used for healing practices". It is worthy to note here that, in many adivasi communities the indigenous "medicine man" was the *moopan* of that community. It is probable to read from such accounts that certain medicinal trees were preserved as the intellectual property of certain

58 J.R Freeman(1994)

59 A place located in the eastern slopes of the Western Ghats

60 Field notes are from Wayanad and from among the Kurichiya adivasi group.

communities by means of *kavus*.

By the beginning of the Twentieth century all products derived from the land were brought under the regulation of the Forest Department. This involved a systematic monitoring of the objects beneath the surface (mining rights), that which moves on the land (royalty of elephants, tigers etc.) and that which is derived from the land (trees, tree products, honey, wax etc.). For the latter this created a new category Minor Forest Produce (MFP) that was earlier considered as constituting solely customary and usufruct rights. Adivasi communities were allowed to collect MFP from private and government forests (except Reserves) but even such permissions varied depending on the nature of multiple claims that were growing at the time of its implementation. The collection of dry leaves and twigs and other “wastes” of trees were also subjected to variation. In such a scenario, *kavus* provided the native communities with an opportunity to exercise certain usufruct rights which they deemed in accordance with the will of their deities. Case studies from Malabar show though cutting trees was prohibited in *kavus* as a general principle, collection of dry leaves, plants and honey was based mostly on the local consensus.

However *kavus* provides another way of looking at space and property; though deities were the owners of *kavu*, the physical land on which *kavus* situated were often owned by *Janmies*⁶¹ in Malabar. In theory there was a dual nature to this proprietary interests - firstly, in principle, *kavu* and its belongings were the property of deities and secondly, most of the time, the patch of forest on which the *kavu* was situated was the private property of local landlords. One deciding factor of the access to groves was the medicinal practices of the adivasi communities. Unlike divine property, *kavus* hardly had any administrative structure or a body of members regulating the access and activities surrounding the physical structure. *Kavus* or its deities were not pre-decided in its origin either; they were constructed as and when individuals were conferred divinity in which local stories as well as rumours played a major part. Instances from colonial Malabar show that even certain British men were seen as having divine powers and were installed as the deities of *kavus* in the highlands.⁶² The most interesting story is that even Europeans were worshipped as demons and there were a number of sacred groves dedicated to such Europeans. On a remarkable form of demon worship in Tinnevely, Bishop Caldwell wrote that “... [A]n European till recently was worshipped as a demon. From the rude verses which were sung in connection with his worship, it would appear that he was an English officer, who was mortally wounded at the taking of the Travancore lines in 1809, and was buried about twenty-five miles from the scene of the battle in a sandy waste, where, a few years ago, his worship was established by the Shanans of the neighbourhood. His worship consisted of the offering to his manes of spirituous liquors and cheroots.”⁶³ A similar form of worship, or propitiation of demons, is recorded by Bishop Whitehead from Malabar. He was told that “the spirits of the old Portuguese soldiers and traders are still propitiated on the coast with offerings of toddy and cheroots. The spirits are called Kappiri (probably Kaffirs or foreigners). This superstition is dying out, but is said to be common among the fishermen tribes of the French settlement of Mai (Mahe).”⁶⁴

A *teyyam* is generally considered as religious phenomenon but I would argue it too is heavily grounded in notions of territory and property. *Teyyam* are local deities attached to the networks of shrines among the Hindus in Malabar. The ritual performance is referred to as *teyyattam*. *Teyyams* are either deities

61 Landlords

62 Thurston (1885)

63 Caldwell (1849)

64 Thurston(1885)

of temples or in many tribal groups they are ancestors of the community. What marks *teyyams* territorially is the belief that *teyyams* can't cross a river. In a period when rivers marked the boundaries of regions this served as a way to keep the *teyyams* within the territory as their property. In northern Malabar alliances between two groups were made primarily through marriages and through the exchange and adoption of *teyyams* of one territory by another. Both *kavu* and *teyyam* point to the fact that economy was not the only register in which land as a property and spatial territories were marked. The most popular *teyyam* among tribes is the *Mavelimanra Teyyam*. He is believed to be their first King and who lost his lands to three gods who cheated him. This is a version of the story of Maveli who was cheated by Vamana, a popular story part of Kerala Hindu Mythology. One recurrent motif in the tribal *teyyams* is the loss of rights over land. There are *teyyams* of Melorachan, Uthappan and other ancestral figures. The thread that weaves these three *teyyams* together is the story of how they lost their land to outsiders and how they were enslaved. Deceit and treachery becomes central to such *teyyam* narratives as they believe that the only way in which one could lose land and rights is treachery. There are other stories too, that involve this idea of treachery. One is that of a headman of a tribal group in Malabar who helped English officials to construct roadways in the hilly forests. The officers, having used the local knowledge of the headman killed him and he came back as a spirit to haunt them. They had to tie his spirit onto a giant tree with chains. That tree, known as the *moopan* maram, which they consider as sacred, is still there on the side of the road. Knowledge and land, snatched as a result of treachery, underlies many a tribal practice and narrative.

Contesting claims: interpretation of land relations in Malabar

The objective of this section is twofold: first, to show how property and land were conceptualized in a period of active land settlements and land rearrangements; and second, to show that the concept of property was developed and actualized in relation to the authorized categories under which the diverse claims were permitted. This section will illustrate how land was persistently read as an extension of private property even when the claims made oppose this idea, the significance of legal evidence, how cultural categories such as customary law were created to house those concepts that cannot be accommodated within the theory of private property, how different notions of property were accommodated into those categories where the British recognized difference, and how they constructed the industrious and lazy native. This will show how categories of property became hegemonic and histories of those who lie outside these categories were written in ways that resulted in their marginalization.

The Revenue Departments reshaped property theories in their attempts to confer property rights and title deeds on the natives. They had a tough time since certain models were already in place and they had to first find a rationale for why there should be a rearrangement. The law courts and the revenue settlement department enforced policies to the detriment of all sections of agricultural population except a few *Janmies* (Varghese, 1970: 101). These policies culminated in open rebellion by Moplas and the government was forced to appoint a special commissioner to investigate into the causes of the widespread Mopla riots.⁶⁵ In the beginning the special commissioner dismissed outbreaks as caused by excessive and fanatic religious impulses on the part of the Muslims. However, later in the report it was mentioned that the causes for the outbreaks were

⁶⁵ Mr. Strange had been appointed as the special commissioner in 1850 to investigate into the causes of the revolt and his report concluded that great injustice had been done to the cultivators in Malabar the reason being that the law courts did not take into account the ancient usages and practices

not just religious but economic as well. Though the special commissioner and the governing bodies recognized and identified the unlimited powers enjoyed by a few *Janmies*, they still saw them as self-regulatory. The principle was to allow the landlord to raise money on his lands to the full value of the land, yet without parting with his title, and at the same time guarding tenant's interests. So whenever a tenant complained of unreasonable eviction by a landlord, the government was reluctant to interfere through legislative actions. Collector Conolly stated that "any law providing compulsory arbitration to settle land disputes in place of the current practice of leaving them to civil courts would strike at the principle of all private property".⁶⁶ He went on to instruct the courts to codify their rules and regulations with regard to different tenures in such a way that there is some amount of uniformity in their interpretations and to take into consideration ancient usage and customs.⁶⁷

The report on the proposed settlement of land in Wayanad, in 1888, records that one happy result of the settlement will be the real, though gradual, enfranchisement of the industrious class who will be able to obtain land for their own cultivation which have hitherto been included in *pattas* held by the *Chettis*. The argument had been that hitherto the tax being only on cultivation, the *Chettis* held large areas for which they paid nothing but which their *Paniyar* and others would be glad to have held and cultivated. So long as tax was on cultivation, the report observed, the lands are practically monopolised by the *Chettis* and kept out of cultivation.⁶⁸ The decision to levy tax on occupation than on cultivation can be then seen as a way to increase the productivity of land by making the landholders relinquish excess lands and bringing them under cultivation. It was hoped that the cultivation has been substituted by occupation, the people will hold only what they intend to cultivate, relinquishing the rest which will thus be available for fresh occupation.

There were different categories under which the Revenue Department permitted land claims in the nineteenth century. Though these cases were considered purely as part of the revenue and land settlements, tribal groups were affected in these cases. The first category under which the Revenue Department started giving the lands for cultivation was the wasteland category. Englishmen often settled in Wayanad and claimed wastelands for cultivation. At first mineral rights were not included in the *patta* but as a result of an 1859 case, it was written into *patta*.⁶⁹ Here it is important to note that in the official document that was used later between buyers and a seller of parcels of land was *patta* issued by the government. But the *patta* as an official document did not always translate into 'title deed' (Kumar, 1992:46). *Patta* was not a title deed in the strict sense, but a document showing the details of the land and the details of the ownership. Thus multiple ownerships were not registered within the *patta* because *patta* was meant to be in the name of a single owner and single form of ownership. Also *patta* registered just the ownership rights that a person has over land, all the other rights, such as the right to sublet, alienate⁷⁰, and other related rights such as mining rights, rights to collect produce etc. were not recorded initially in *patta*. This gave rise to situations where a native sell the land to one person and the rights over the land were sold to another.

66 Collector's reply, Correspondence regarding the relation of landlord and tenant in Malabar, 1852-56, CRA

67 Ibid

68 Ibid

69 All mineral rights in the land are reserved to the government and should minerals be thereafter discovered on the land, the person cultivating on it will come under such fresh obligations in respect thereof as the government may think fit to impose, provided always that market value of any improvement effected shall be paid to the landholder before the portion of land containing such improvements is resumed by the government.

70 "Alienate land"- an administrative term used in land records

From 1859 to 1860 a number of petitions were made to the collector over the mining rights of land and rights over lands, which were declared as government property after the sale. These were instances where British settlers and planters bought lands from natives to find that those lands were escheated.⁷¹ Also there were instances where the native landholder sold the land to one person and the mining rights of the land to another person and after the land being escheated both these persons made separate claims on the same land.⁷² William Logan who was appointed to make enquiries into the probability of people having owned land, and had property rights over land, says “what has happened in every country where an aboriginal race has had to flee before the faces of more enlightened settlers, also happened in Malabar. The aborigines took refuge in the mountains and forests and left the more open, more fertile and more hospitable plains to the new settlers. I once counted members of no fewer than 13 different tribes of slaves and jungle folk among one party of coolies in Wayanad. And it will be readily understood how, under such circumstances, it would be erroneous to expect to find in the wilder parts of a wild country like Wynad, the same exact and rigid land tenures which are prevalent in the plains of a low country and in more open parts in Wayanad itself where the Nair military colonists settled most thickly”⁷³. He maps a history of property in the regions of Malabar but dismisses the possibility of property among the tribal groups of Malabar. What is interesting for my inquiry here is how the colonial exploration into the rights that existed in land lead to the explanation that the aboriginals of the highlands and the tribal groups don’t or can’t have property. If the government had to acknowledge the existence of or evidence of property interests in lands, it was necessary that property’s anti-thesis- the property-less savage- needs to be systematically found among the natives themselves.

The above discussions of the data from the colonial Forest and Revenue Departments and insights from the locally and culturally specific practices point towards two conceptions of property, one located in time and space (notions of time- time of the ancestors, time of the immemorial, time of deities, and spaces of the sacred, the divine, that are located outside the normative classifications of property) and one located within agrarian territories which can be mapped, measured and distributed. Claims that were made from time and space outside this were seen as having no legitimacy primarily because the conferment of property rights was based on written records and systemic evidence to adhere to. Yet, it was difficult to disregard the claims made by natives and as a result what happens is an attempt to mark time and space in legitimate registers. This was done through systematically and periodically finding what lies outside the property, which led to crystallization of land in historical time and historical space. In this paper what I have tried to do is to lay out the different registers in which property, and land as property, was marked. The economic registers and the advances in capital paved way to conceptualize the value of land in ways that became dominant. That is not to say that the other registers in which land is marked would serve as an anti-thesis to economy or they are the *other* of economy and capital. The non-economic registers not being anti-economic registers, this would help us understand both value and property from outside the dominant hegemonic registers.

Most of the events described here happened in the late nineteenth or early twentieth century which coincides with the setting up and expansion of

71 Letter dated 18th July 1883, From G.L Yonge Eog, Honorary secretary, Wayanad planters association To the collector of Malabar, Calicut, Addressing the subject of escheat lands and the unsatisfactory condition of affairs as to the titles of land in the district.

72 Letter from N.A Roupell, esq, acting commissioner of Nilgiris to the secretary of the Board of Revenue.

73 William Logan’s Note dated 17th November 1880

Forest and Revenue Departments. In the process of marking revenue and tax based territories these departments encountered two related problems. Firstly, they encountered the need to acknowledge “aesthetic value of nature’ which has its roots in a cultural era in Europe, inaugurated by Romanticism. Beauty, pleasure and leisure needed to be taken into account while trying to transform the wastelands in Madras Presidency. The constant conflict between Romantic ethics and Enlightenment ideals are visible in the administrative measures of both these departments. Secondly, the existence of lands which are tied to supernatural elements (involving non-human agents) posed a problem. We can see from the narratives detailed in this chapter that there was a constant attempt to draw lines between nature and natives. A distinction was made between “pure nature” in the state of aesthetics and natives who do not appreciate the beauty of nature as Western races do. Likewise, a distinction was made between sacred lands and the ‘sorcerer-native’. However, such distinctions were challenged and complicated by native tribal accounts of supernatural, sacred and sorcery. Firstly, the back and forth movement in the adivasi stories of sacred and sorcery destabilizes the historical progressive narratives. There is a complex intertwining of the ideas of nature, supernatural, sorcery, sacred lands and history. *Kavus* provide a fine example where all these elements are placed in random orders, to the extent of creating a historical chaos. In the adivasi conception of time, an ahistoric supernatural entity inhabits the space of *kavu*, as does a historically marked European. They do not belong to two different temporal planes, but they move back and forth in the same temporal plane. The randomness with which a demon, a ghost, an ancestor, a deity, a sorcerer and a European (who is considered as a demon) enters and leaves the space of *kavu* destabilizes the lines that separate each from the other. The spatialization of time, and temporalization of space, become less feasible and more complicated with this back and forth movement along the time-space axis, as realized in a practice like *kavu*.

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