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## FOREWORD: LAND LAW IN ANCIENT TIMES

GEOFFREY P. MILLER\*

Of all the topics that concerned those charged with ordering legal affairs in ancient times, none was more important than the law relating to land. The art of conveyancing, quotidian today, was the equivalent, in ancient times, to the highest level of business law practice; the giants of the bar were those who, like Chaucer's Sergeant at the Law, were renowned as "greet . . . purchasour[s],"—titans who cut through the intricacies of the land law with ease, and whose conveyances were never subject to challenge: "al was fee symple to hym in effect; his purchasyng myghte nat been infect."<sup>1</sup>

The reasons for the importance of land law are not hard to fathom. Land was the principal source and reservoir of wealth in those days. To own substantial amounts of land was to be wealthy; not to own land was to depend on others who did. Land was where the action was. It is not surprising, therefore, that three of the papers presented at the Robbins Collection Symposium on Ancient Law and reprinted in this edition of the *Chicago-Kent Law Review*, concern land law specifically.

J.G. Manning's paper, *Demotic Egyptian Instruments of Transfer as Evidence for Private Ownership of Real Property*,<sup>2</sup> demonstrates the importance of land law in Ancient Egypt, as indicated, perhaps most tellingly, by the fact that documents concerning land tenure represent the single largest category of extant papyri in the demotic script. Manning's paper challenges the long-held belief that the government in Hellenistic Egypt tightly controlled land tenures; he argues that Greeks were not, in fact, the overwhelmingly dominant landowners in Egypt during that period, that Egyptians held substantial tracts of land, and that the Ptolemies maintained the pre-existing, Egyptian system of land tenures to a very substantial extent.

Manning also questions the view of earlier scholarship that land was massively held in public hands. He observes that there was a con-

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1. GEOFFREY CHAUCER, *General Prologue to CANTERBURY TALES* 318-20 (Robert A. Pratt, ed., Houghton Mifflin Co. 1974).

2. J.G. Manning, *Demotic Egyptian Instruments of Transfer as Evidence for Private Ownership of Real Property*, 71 *CHI.-KENT L. REV.* 237 (1995).

siderable amount of privately-held land and that written conveyances were ubiquitous. Manning's analysis can help explain how land may have been cultivated in a reasonably efficient fashion, despite the fiction that all land was "owned" by the Pharaohs. If the beneficial ownership was largely in private hands, rather than in the hands of the Pharaohs or of officially sanctioned temples, then individual incentives to maximize profit might have enhanced productivity as compared, for example, with a setting in which individual ownership was lacking. Manning's detailed analysis of the complex forms that land transfers could take substantiates his assertion that private ownership was much more common than much of the previous scholarship on Hellenistic Egypt has recognized.

Turning to Mesopotamian society, we find a similar focus on land tenure in the paper by Johannes M. Renger, *Institutional, Communal, and Individual Ownership or Possession of Arable Land in Ancient Mesopotamia from the End of the Fourth to the End of the First Millennium, B.C.*<sup>3</sup> Renger presents Mesopotamian society through this long time period as being characterized by many different forms of tenure, including corporate, collective, and individual ownership of arable land, as well as various types of tenancies and use rights associated with service obligations. What unifies the analysis is Renger's stress on the fundamental importance of the prevailing regime of land tenure for the overall structure of the society in which the land was held. Especially interesting in Renger's account is the fact that many of these forms of land tenure were in common ownership. While any comparisons between Mesopotamia and Egypt must be made with great caution, it appears possible that the common ownership observed in Mesopotamia was a function of the extensive irrigation systems in the region, which required cooperative construction and maintenance, in contrast with the flooding of the Nile, which was a gift of nature in Egypt.

Robert Ellickson and Charles Thorland's paper, *Ancient Land Law: Mesopotamia, Egypt, Israel*,<sup>4</sup> is an extraordinary survey of an immense distance of time and space—what the authors aptly, and humorously, refer to as "the ultimate in time-series data."<sup>5</sup> Throughout

3. Johannes M. Renger, *Institutional, Communal, and Individual Ownership or Possession of Arable Land in Ancient Mesopotamia from the End of the Fourth to the End of the First Millennium B.C.*, 71 CHI.-KENT L. REV. 269 (1995).

4. Robert C. Ellickson & Charles DiA. Thorland, *Ancient Land Law: Mesopotamia, Egypt, Israel*, 71 CHI.-KENT L. REV. 321 (1995).

5. *Id.* at 327.

the paper, the emphasis is on the potential for economic theory to explain features of ancient law. The authors disagree with those who claim that in ancient times people were so differently motivated than people today as to make standard economic modeling inapposite for such periods and places. In this project, Ellickson and Thorland illustrate that the institutional features of ownership in ancient societies can often be explained in functional, economic terms. It would be surprising if the case were otherwise. There is no reason to suppose that people of ancient times were fundamentally any different than people today: they loved, hated, fought, compromised, stole, gave, and strove to better themselves and to provide a good life for their children, just as people have done in all times and places. People appear to have rationally pursued self-interest from the dawn of history, and there is every reason to suppose that legal institutions would reflect that fact. Ellickson and Thorland's paper is the most significant recent contribution to the study of ancient land law; and it is sure to be a standard reference for any future scholars on the topic.

Taken as a whole, the papers on land law in this Symposium offer valuable insights into an enormous topic. Like all efforts of this type, they open as many issues as they resolve. One hopes that future scholars use these path-breaking works in future studies of particular features of the ancient law relating to land.

