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National, Colonial and International Entanglements in Nineteenth-Century Legal Discourses on Land Law and Land Registration Systems

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1 Entanglements are at the heart of the most recent debates in legal history, to be understood either as transnational phenomena closely connected to each other, without a real beginning or end, or as the product of a point of interweaving, or meeting, between different historical and geographical contexts and between synchronic or diachronic processes.

2 The aim of the article is to present the preliminary results of an ongoing research project that intends to investigate the 19th century entanglements generated by: the different systems of land registration in some European States; the relationship between Europe and its African colonies with regard to the land registration systems; the international scientific collaborations to address issues that could arise at the time of the introduction in the colonial context-specific land registration system.

1. Entangled history: Europe and the colonies

3 Transnational history, intercultural history, *histoire croisée*, and entangled history, despite developing different approaches and methodologies[1], as Pietro Costa argues, embrace the so-called "spatial turn".[2] This is meant as a "rediscovery" of space but also the time in their dynamic

1 Caroline Douki, Philippe Minard, "Histoire globale, histoires connectées: un changement d'échelle historiographique?," *Revue d'histoire moderne et contemporaine* 54, (2007): 7-21; George G. Iggers, Q. Edward Wang, Supriya Mukherjee, *A Global History of Modern Historiography* (London: Pearson Education, 2008); Marco Meriggi, "Intervento sulla World History," *Giornale di storia* 17 (2015): 1-10. See for *histoire croisée*: Michael Werner, Benedicte Zimmermann, "Vergleich, Transfer, Verflechtung. Der Ansatz der Histoire croisée und die Herausforderung des Transnationalen," *Geschichte und Gesellschaft* 28, (2002): 607-636; Michael Werner, Bénédicte Zimmerman, "Penser l'histoire croisée: entre empirie et réflexivité," *Annales: histoire, sciences sociales* 58, no. 1 (2003): 7-36. For transnational history: Guido Abbattista, "Una mappa per una svolta transnazionale," *Contemporanea* 14, no. 4 (2011): 773-780. Also: Shalini Randeria, "Geteilte Geschichte und verwobene Moderne," in *Zukunftsentwürfe: Ideen für eine Kultur der Veränderung*, ed. Jörn Rüsen, Hanna Leitgeb, Norbert Jegelka (Frankfurt am Main: Campus, 1999), 87-96; Thies Schulze, *Grenzüberschreitende Religion. Vergleichs- und Kulturtransferstudien Geschichte* (Göttingen: Vandenhoeck & Ruprecht, 2013).

2 Pietro Costa, "Oltre le frontiere: ipotesi per una 'entangled history' del discorso dei diritti nel secondo Settecento," in *Las Fronteras de la Ilustración: itinerarios entre historia y derecho*, ed. Giacomo Demarchi, Francesco Di Chiara, Elisabetta Fiocchi Malaspina, Belinda Rodríguez Arrocha (Madrid: Dickinson, 2021), 17-47, here 21. See also Massimo Meccarelli, Maria J. Solla Sastre, "Spatial and Temporal Dimensions for Legal History. Research Experiences and Itineraries," *Global Perspectives on Legal History* 6, (Frankfurt am Main: Max Planck Institute for European Legal History, 2016), https://www.rg.mpg.de/gplh_volume_6, particularly in this volume the contribution of Pietro Costa, "A 'Spatial Turn' for Legal History? A Tentative Assessment," 27-62. And also:

and structuring role, that brings out an infinity of entanglements[3] and lays many possibilities of elaborating narratives and their methodology - especially in the history of international law and its entanglements with colonial law.[4]

4 Entanglements are at the heart of the most recent debates in legal history, to be understood either as transnational phenomena closely connected to each other, without a real beginning or

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3 Thomas Duve, "European Legal History- Concepts, Methods, Challenges," in *Entanglements in Legal History: Conceptual Approaches, Global Perspectives on Legal History 1*, ed. Thomas Duve (Frankfurt am Main: Max Planck Institute for European Legal History, 2014), 29-66, here 61, http://dx.doi.org/10.12946/gplh1. Also: Thomas Duve, "Wie schreibt man eine Geschichte der Globalisierung von Recht?," *Juristen Zeitung (JZ)* 75, no. 15-16, (2020): 757-766, https://doi.org/10.1628/jz-2020-0256; Thomas Duve, "European Legal History-Global Perspectives: Working Paper for the Colloquium 'European Normativity - Global Historical Perspectives'," *Max Planck Institute for European Legal History Research Paper Series* 6, (2013): 1-24, https://ssrn.com/abstract=2292666; Thomas Duve, "Setting Europe in Perspective," in *The Oxford Handbook of European Legal History*, ed. Heikki Pihlajamäki, Markus D. Dubber and Mark Godfrey (Oxford: Oxford University Press, 2018), 115-139. Also: Joshua C. Tate, José Reinaldo de Lima Lopes and Andrés Botero Bernal, *Global Legal History: A Comparative Law Perspective* (London: Routledge, 2018). Concerning legal history and the relationship between time and space: Andreas Thier, "Time, Law, and Legal History- Some Observations and Considerations," *Rechtsgeschichte - Legal History* 25 (2017): 20-44. Also: David Carr, *Experience and History. Phenomenological Perspectives on the Historical World* (Oxford: Oxford University Press, 2014); David Armitage, "Horizons of History: Space, Time, and the Future of the Past," *History Australia* 12, no. 1 (2015): 207-225; Susanne Rau, *History, Space, and Place* (Abingdon: Routledge, 2019); Massimo Meccarelli, Maria J. Solla Sastre (eds.), *Spatial and Temporal Dimensions for Legal History. Research Experiences and Itineraries* (Frankfurt am Main: Max Planck Institute for European Legal History, 2016), https://www.rg.mpg.de/gplh_volume_6. See also: Lauren Benton, *A Search for Sovereignty. Law and Geography in European Empires, 1400-1900* (Cambridge: Cambridge University Press, 2010); Benton, "Introduction," *The American Historical Review* 117, no. 4 (2012): 1092-1100; Benton, Richard J. Ross, *Legal Pluralism and Empires, 1500-1850* (New York: New York University Press, 2013).

4 Bardo Fassbender, Anne Peters, "Introduction: Towards a Global History of International Law," in *The Oxford Handbook of the History of International Law*, ed. Bardo Fassbender, Anne Peters (Oxford: Oxford University Press, 2012), 1-24; Liliana Obregón Tarazona, "Writing International Legal History: An Overview," *Monde(s)* 7, no. 1 (2015): 95-112; Martti Koskenniemi, "What Should International Legal History Become?," in *System, Order and International law: The Early History of International Legal Thought from Machiavelli to Hegel*, ed. Stefan Kadelbach, Thomas Kleinlein and David Roth-Isigkeit (Oxford: Oxford University Press, 2017), 381-397. On methodology see: Koskenniemi, "Histories of International Law: Significance Problems for a Critical View," *Temple International and Comparative Law Journal* 27, no. 2 (2013): 215-240; Koskenniemi, "Vitoria and Us: Thoughts on Critical Histories of International Law," *Rechtsgeschichte-Legal History* 22 (2014): 119-139; Koskenniemi, "Expanding Histories of International Law," *American Journal of Legal History* 56, no. 1 (2016): 104-112. See also: Anne Orford, "The Past as Law or History? The Relevance of Imperialism for Modern International Law," in *Droit international et nouvelles approches sur le tiers-monde: entre répétition et renouveau*, ed. Mark Toufayan, Emmanuelle Tourme-Jouannet, Helene Ruiz-Fabri (Paris: Société de legislation comparée, 2013), 97-117; Orford, "On International Legal Method," *London Review of International Law* 1, no. 1 (2013): 166-197; Orford, "Scientific Reason and the Discipline of International Law," European Journal of International Law 25, no. 2 (2014): 369-385; Ian Hunter, "About the Dialectical Historiography of International Law," *Global Intellectual History* 1, (2016): 1-32. Walter Rech, "International Law, Empire, and the Relative Indeterminacy of Narrative," in *International Law and Empire: Historical Explorations*, ed. Martti Koskenniemi, Walter Rech and Manuel Jiménez Fonseca (Oxford: Oxford University Press, 2017), 57-80; Koskenniemi, "Colonial Laws: Sources, Strategies and Lessons?," *Journal of the History of International Law* 18, no. 2-3 (2016): 248-277. See also: Jennifer Pitts, *Boundaries of the International: Law and Empire* (Cambridge: Cambridge University Press, 2018); Paulina Starski, Jörn A. Kämmerer, "Imperial Colonialism in the Genesis of International Law – Anomaly or Time of Transition," *Journal of the History of International Law/Revue d'histoire du droit international* 19, no. 1 (2017): 50-69; Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2005).

5 Thomas Duve, "*Entanglements in Legal History. Introductory Remarks*," in *Entanglements in Legal History: Conceptual Approaches*, ed. Thomas Duve (Frankfurt am Main: Max Planck Institute for European Legal History, 2014), 3-25, here 5-6.

end[5], or as the product of a point of interweaving, or meeting, between different historical and geographical contexts and between synchronic or diachronic processes.[6]

5 The aim of the article is to present some preliminary results of an ongoing research project that intends to investigate the 19th-century entanglements generated by: the different systems of land registration in some European States during the nineteenth century; the relationship between Europe and its African colonies with regard to the land registration systems; the international scientific collaborations to address issues that could arise at the time of the introduction in the colonial context-specific land registration system.[7]

6 It proposes to examine these legal mechanisms of colonial expansion and to outline the entangled discourses between the colonial powers and their implications on the legal concepts of land ownership in both a colonial and a European context.[8] This paper will also analyse the creation of the *Institut Colonial International* in Brussels in 1894, whose aim was to promote the idea of a "rational and scientific colonisation".[9] It will also examine the procedure used by the *Institut* to discuss and establish universal principles on colonial law, taking as a case study land law and land registration systems.

2. Europe and the colonies: entanglements concerning land registration systems

7 The problem of land laws, land register systems and the consequent choice of the best system to adopt were questions that dominated the discussion both in the European states and in their respective colonial possessions during the 19th and 20th centuries, inevitably involving domestic, colonial and international law.

8 In the 19th century, private law codifications and the crystallisation of private property rights had been crucial to the discussion and adoption of specific land register systems. Concurrent to

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6 Jeffrey D. Burson, *Entangled History and Scholarly Concept of Enlightenment*, in *Contributions to the History of Concepts*, 8, 2 (2013): 1-24, https://doi.org/10.3167/choc.2013.080201.

7 This article is also based on some previous already published research, see: Elisabetta Fiocchi Malaspina, "Tracing Social Spaces: Global Perspectives on the History of Land Registration" in *Historical Perspectives on Property and Land Law - An Interdisciplinary Dialogue on Methods and Research Approaches*, ed. Simona Tarozzi (Madrid: Dickinson, 2019), 177-202 and Elisabetta Fiocchi Malaspina, "Techniques of Empire by Land Law: the Case of the Italian Colonies (Nineteenth and Twentieth Centuries)," in *Comparative Legal History* 6, no. 2 (2018): 233-251.

8 See the recent book of Emmanuelle Tourme-Jouannet, *Le droit international, le capitalisme et la terre. Histoire des accaparements de terres d'hier à aujourd'hui* (Brussels: Bruylant 2021).

9 Berber Bevernage, "The Making of the Congo Question: Truth-Telling, Denial and 'Colonial Science' in King Leopold's commission of inquiry on the rubber atrocities in the Congo Free State (1904–1905)," in *Rethinking the History of Empire,* 12 April 2018, https://doi.org/10.1080/13642529.2018.1451078. For the role played by the concept of property in the colonial context: Brenna Bhandar, *Colonial Lives of Property. Law, Land and Racial Regimes of Ownership* (Durham: Duke University Press, 2018).

the nation-building process was the nationwide unification of law and establishing land register systems.[10]

9 Land register systems and property were part of the legal discourse around achieving a certain level of security in the transfer of immovable goods. It was felt, without doubt, that protection of property lay at the core of good government, also affecting other fields of law, from administrative law to tax law. By protecting real property, states ensured a certain level of legal certainty between private individuals and encouraged private and economic exchange. The level of legal certainty regarding property transfer was guaranteed by the land register system and its different typologies.[11] In this perspective, one of the fundamental principles of land register systems was the publicity principle, which had repercussions on the certainty of ownership, security of tenure and reduction of land disputes.

10 Influenced by different cultural, political and economic developments, several land register systems emerged: particularly the land register systems established in France and Austria in the 19th century, and the Torrens system - established *ex novo* in the colony of South Australia in 1858 - serve as case studies for this analysis.

11 While drafting the French Civil Code, discussions evolved between the members of the commission around the transcription system, a land register system that originated from legislation passed during the French Revolution and the *coutumes de nantissement*.[12] For some of the drafters, transcription had to be considered and included in the Code concerning all transactions of immovable goods. At the same time, for other members, this was contrary to the idea of an absolute property right, crystallised in art. 544.[13] The drafters of the code ultimately supported the consensualist doctrine of transfer and thus considered all transfers as exchanges.

12 Under the Code, only certain legal transactions and certificates needed to be transcribed: it was mandatory to transcribe donations, for example, according to art. 939 ff., entailed estates

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10 See Fiocchi Malaspina, *Tracing Social Spaces,* 177-202.

11 Mathias Schmoeckel, *Übertragung von Immobilienrechten im internationalen Vergleich. Conference on real property law and land register* (Baden-Baden: Nomos, 2018); see also Amy Goymour, Stephen Watterson and Martin Dixon, *New Perspectives on Land Registration: Contemporary Problems and Solutions* (Oxford: Hart, 2018).

12 Fiocchi Malaspina, *Tracing Social Spaces,*177-202. For an overview see: Gaetano Petrelli, "L'autenticità del titolo della trascrizione nell'evoluzione storica e nel diritto comparato," *Rivista di Diritto Civile* 5, (2007): 585-640, here 594; Alan Sandonà, "Ridurre in un solo volume… Note sull'istituto della trascrizione tra la Rivoluzione ed il secondo '800," *Rivista di Storia del diritto italiano*, no. 84, (2011): 363-416; Emmanuel Besson, *Les livres fonciers et la reforme hypothécaire: étude historique et critique sur la publicité des transmissions immobilières en France et à l'étranger depuis les origines jusqu'à nos jours* (Paris: J. Delamotte, 1891).

13 Code Civil des Français, (Paris: Imprimerie de la République, 1804), art. 544, 134: "La propriété est le droit de jouir et disposer des choses de la manière la plus absolue, pourvu qu'on n'en fasse pas un usage prohibé par les lois ou par les règlements". See: Jean-Louis Halpérin, *Histoire du droit privé français depuis 1804* (Paris: PUF, 2012).

substitutions (art. 1069) and petitions of restitution (art. 958 ff).[14] However, as Gaetano Petrelli has pointed out, the lack of a homogenous discipline concerning transcription led to criticism of the Code itself, accompanied by severe repercussions on finance sectors and credit financing.[15]

13 To overcome this problematic situation and uncertainty of legal transfers, detailed provisions regulating the transcription system were issued, years later, with the *Loi du 23 mars 1855 sur la transcription en matière hypothécaire*, introducing the transcription system "in public registers of property as a whole".[16] This law disciplined the "transcription of mortgage, also providing for the recordation of all transfers of land and vesting all property rights and interest on land".[17]

14 The law of 1855 extended transcription to transfers of ownership, but registering real property was not deemed a legal prerequisite for the transfer of ownership. The transfer of ownership was by mere agreement. Therefore, the transcription system had no probative force. Nonetheless, the register's purpose was to inform about the legal status of immovable property. Registration was personal. Consequently, entries in the register were listed by the name of the owner and not by the immovable property itself (as, for example, in the *Grundbuch*).[18]

15 Some years later, in a completely different geographical, political context, another "model" of codification was enacted, legislating a different land registration system. A real property system, listing according to plots of land and citing their boundaries, existed in the Austrian territories from the 15th century.[19] The Allgemeines Bürgerliches Gesetzbuch (ABGB) unified Austrian

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14 Petrelli, *L'autenticità del titolo della trascrizione nell'evoluzione storica e nel diritto comparato*, 594; Franz Wieacker, *Storia del diritto privato moderno*, trans. italiana Umberto Santarelli (Milano: Giuffrè Editore, 1980), vol. I, 525. See Roger Nerson, *Les Dispositions du Décret-Loi de 1935 relatives à la Transcription en matière immobilière* (Paris: Libraire du Recueil Sirey, 1938), 6.

15 Petrelli, *L'autenticità del titolo della trascrizione nell'evoluzione storica e nel diritto comparato*, 594.

16 Frederik Vinding Kruse, *The Right of Property* (Oxford: Oxford University Press, 1953), 84. Interesting is the comment of Victor Fons on the importance of this law: "D'après ce titre clair et précis, il semblerait que son objet unique a été l'établissement de la transcription pour les actes translatifs ou modificatifs de la propriété immobilière. Néanmoins, la loi contient des dispositions de la plus grande importance relatives à divers points du régime hypothécaire. L'objet de toutes ses dispositions a été de donner une publicité complète tout à la fois aux transmissions totales ou partielles des immeubles, aux démembrements qu'ils subissent et aux charges dont ils sont grevés, et de procurer ainsi de la sécurité à ceux qui achètent des immeubles ou qui les acceptent pour gage des prêts qu'ils consentent à faire": Victor Fons, *Précis de la loi du 23 mars 1855 sur la* transcription *en* matière hypothécaire (Toulouse: Gimet, 1857), 6.

17 Boudewijn Bouckaert, "Title Systems and Recordation of Interests," in *Property Law and Economics (Encyclopedia of Law and Economics, 5, 2nd ed.)*, ed. Boudewijn Bouckaert (Cheltenham: Edward Elgar Publishing, 2010), 91-201, here 192. See: Laurent Pfister, "The Transfer of Real Property in French Legal History: Between the Consensualistic Principle and Formalities," in *Übertragung von Immobilienrechten im internationalen Vergleich. Conference on real property law and land register*, ed. Mathias Schmoeckel (Baden-Baden: Nomos, 2018),157-192.

18 Petrelli, *L'autenticità del titolo della trascrizione nell'evoluzione storica e nel diritto comparato*, 594.

19 Gerald Kohl, "The Austrian Land Register – History, Principles, Perspectives," in *Übertragung von Immobilienrechten im internationalen Vergleich. Conference on real property law and land register*, ed. Mathias Schmoeckel (Baden-Baden: Nomos, 2018), 113-132.

substantive property laws and entered into force in 1812. It established an Austrian land register system throughout all territories of the Empire, the so-called *Grundbuch* system, under which title registration constituted the property as a right *in rem*. Registration was therefore a necessary condition for the transfer of ownership, as stated in § 321 of the Austrian civil code: "Wo so genannte Landtafeln, Stadt- oder Grundbücher, oder andere dergleichen öffentliche Register eingeführt sind, wird der rechtmäßige Besitz eines dinglichen Rechtes auf unbewegliche Sachen nur durch die ordentliche Eintragung in diese öffentlichen Bücher erlangt".[20] Detailed legislation regulating the harmonisation of the discipline of the *Grundbuch* in all the territories of the Empire was issued only in 1871.[21]

16 Concerning the transfer of ownership, the *Grundbuch* and the French transcription systems are significantly distinct. French transcription followed the *solo consensu*, in which the mere conclusion of property sale transfers the property. The subsequent registration served only to protect the original vendor from third-party purchasers in good faith, whereas in Austria transfer of ownership was not valid until the transaction was registered in the *Grundbuch*. Thus, the contract of sale and the transfer of ownership were conceptually distinct in the *Grundbuch* system. The registration, therefore, had a constitutive effect.

17 Transcription and *Grundbuch* were two parallel systems functioning within property registration but resulting from two different legal concepts. *Grundbuch* differs from transcription in some crucial aspects: the implementation of the registration system, which is property-based instead of subject-based; the constitutive value attributed to registration; the registration principle, which states that an *inter vivos* transaction alone could not be considered a transfer or lead to the establishment of property rights. Other features of the *Grundbuch* were a judicial review of the formal and substantive requirements of the titles and strict compliance with the principle of continuity since the registration of an item could only be attributed to the person referred to as the owner in the land register.[22]

18 A paradigmatic example of a register system *ex novo* in a colonial context was the Torrens System, established in the British colony of South Australia in 1858 and developed by Australian politician Sir Robert Torrens. Inspired by the Merchant Shipping Act 1854, he largely reinterpreted and adapted its principles on the registration of ships and charges to the context of

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20 Allgemeines Bürgerliches Gesetzbuch (Wien: Hof und Staats-Druckerei, 1812), § 321, 64.

21 For a comment on them and their application in the Habsburg territories: Giovanni Gabrielli, "Lineamenti di una comparazione tra il sistema della trascrizione e l'ordinamento tavolare," in *Atti del Convegno di studio sui problemi del Libro Fondiario* (Trieste: Friuli-Venezia Giulia, 1974), 31-61; Giovanni Gabrielli, *Trattato di diritto civile: La parte generale del diritto. Vol. IV: La pubblicità immobiliare* (Milano: Utet, 2012), 179; Giovanni Gabrielli, Ferruccio Tommaseo, eds. *Commentario alla legge tavolare* (Milano: Giuffrè, 1999); Gianluca Sicchiero, *La trascrizione e l'intavolazione* (Milano: Utet, 1993).

22 Gabrielli, *Lineamenti di una comparazione tra il sistema della trascrizione e l'ordinamento tavolare*, 3-4; Laura Solidoro Maruotti, *La tradizione romanistica del diritto europeo. Vol. II: Dalla crisi dello ius commune alle codificazioni moderne* (Torino: Giappichelli, 2010), 146. See also Fabio Padovini, "La pubblicità immobiliare," *Rivista di Diritto Civile* 47, no. 6 (2001): 713-727; Padovini, "Semplificazione in materia di libri fondiari e di procedure di intavolazione," *Le Nuove Leggi Civili Commentate* 25 (2002): 499-506.

colonial land tenure. He also drew from the land register systems of the German cities of Hamburg, Lübeck and Bremen. His *Real Property Act 1858* introduced mandatory registration for all immovable property. As in the Austrian land register system, all changes of land rights had to be registered. Consequently, a real property system was established, assigning to every particular plot a parcel identification number.[23]

19 Furthermore, entry into the register was a constitutive element for the conveyance of property. The owner held a certificate of title; property could be conveyed by transfer of the title deeds, and also title deeds had probative value[24]. The validity of the title deeds was supported by the government records of all land titles. As a result, the purchaser's title upon registration was indefeasible and free from any defects affecting the vendor's title.[25] For the rare cases of fraud in which the owner suffered financial loss due to an error in the system, an insurance fund was set up to compensate the owner for his loss. Such guaranteed and marketable titles facilitated the conveyance of real property, enabling the property to be traded like commodities.[26]

20 The concept of establishing a land register system *ex novo* in a colonial environment, through which the colonisers could exploit lands and enable fast circulation of property rights through title certificates, was exceptionally well received in many other colonies. As a result, the European colonial states decided to introduce the Torrens system in many of their African colonies between the end of the 19th century and the beginning of the 20th century and many colonies of the East.[27]

3. Different entangled choices on land registration in colonial space

21 The problem of land registration and the consequent choice of the best system to adopt became a major issue in the nineteenth century. The affirmation of the codes, the technicality achieved by the enactment of certain special laws, as we have seen, during the mid-nineteenth century in

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23 Joseph T. Janczyk, "An Economic Analysis of the Land Title Systems for Transferring Real Property," *The Journal of Legal Studies* 6, no. 1 (1977): 213-233.

24 Maria Donata Panforti, "Torrens Title," in *Digesto delle Discipline Privatistiche, Sezione Civile* (Torino: Utet, 2000), 715-722; Edmund Rogers, "The Impact of The Australian Torrens System on the Land transfer Debate in the United Kingdom, 1858-1914," *Australia and New Zealand Law and History E-journal* 4, (2006): 125-132. Nicola Picardi, *La trascrizione delle domande giudiziali* (Milano: Giuffrè, 1968), 112; Lucia Di Costanzo, *La pubblicità immobiliare nei sistemi di common law* (Napoli: Edizioni Scientifiche Italiane, 2005), 147; Alejandro M. Garro, "Property and Trust - Recordation of Interests in Land," in *International Encyclopedia of Comparative Law* 6, part 8 (Heidelberg: Mohr Siebeck, 2004), 42; Pamela A. O' Connor, PhD Thesis, *Security of Property Rights and Land Title Registration Systems* (Monash University, 2003); Theodore B.F. Ruoff, *An Englishman Looks at the Torrens System* (Sydney: Law Book Co., 1957); Maria Donata Panforti, *La vendita immobiliare nel sistema inglese. Storia di un problema nell'analisi comparative* (Milano: Giuffrè, 1992), 90.

25 Kelvin F.K. Low, "The Nature of Torrens indefeasibility: understanding the limits of personal equities," *Melbourne University Law Review* 33, no. 1 (2009): 205-234.

26 Panforti, *Torrens Title*, 715. See also Albert J. Gillissen, "Sir Robert Torrens and the Torrens System of Registration," *Australian Surveyor* 26, no. 2 (1974): 142-144.

27 Arnold Guyot Cameron, *The Torrens System: its Simplicity, Serviceability and Success* (Boston and New York: Houghton Mifflin Company, 1915), 13 ff.

France and Belgium with regard to transcription, the measures and rules to be observed for the establishment of land registers in the Austro-Hungarian Empire in 1871, the introduction of the Torrens system in the colony of South Australia, the debates emerging in the Ottoman Empire for a radical reform of the land regime,[28] but also in Latin American countries, such as Argentina,[29] are a privileged observation point for addressing and developing research from a transnational and global perspective.

22 In colonial possessions, questions of ownership, property and land registration and the type of system to be set up were central to the management of the territory and to guarantee certainty in the transfer of property to those who for various reasons settled in the colony, such as nationals of the mother country or from other European states, or capital companies interested in investing.

23 At the end of the 19th century, the spread of the *Grundbuch*, transcription and Torrens systems in the African colonies resulted in contamination and transfer of legal norms.[30]

24 In the French colonies in Tunisia (1885-1892), the decree of 1 July 1885 introduced a land register system based on the Torrens system but also influenced by the French transcription and the German *Grundbuch* system.[31] This law of 1885 had some unique features: the "publicité" was "réelle", which meant that the land, not the owner, was registered (art. 18). The "immatriculation", or registration of land, was "facultative" (Art. 22). Concerning any "oppositions à l'immatriculation" a mixed land tribunal (*Tribunal Mixte Immobilier*) was entitled

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28 See the doctoral project developed by Ikhlas Naser (University of Zurich) entitled *Landownership and Property Registration in Late Ottoman Empire: Tanzimat Reforms, 1839-1876*, which examines the various reforms adopted by the Ottoman Empire on the land registration and ownership during the 19th century. See for the Ottoman reforms also: R. H. Davison, *Reform in the Ottoman Empire, 1856-1876*, (Princeton: Princeton University Press, 1963). See also: D.A. Howard, *A History of the Ottoman Empire*, Cambridge, Cambridge University Press, 2019; H. İslamoğlu, "Property as a Contested Domain: A Reevaluation of the Ottoman Land Code of 1858," in New Perspectives on Property and Land in the Middle East, Cambridge ed. R. Owen (Cambridge: Harvard University Press, 2000).

29 For debates on land registration systems in Argentina during the 19th century see: Pamela Alejandra Cacciavillani, *From Communal Property to Liberal Property: The Legal System of Property in Córdoba (1871-1885)*, forthcoming. See: Cacciavillani, "La influencia del derecho romano en la adquisición y en el sistema de transferencia de los derechos reales en el siglo XIX, Argentina," in *Historical Perspectives on Property and Land Law*, 95-110; Cacciavillani, *De comuneros a poseedores: Reflexiones en torno a la construcción de la propiedad privada en la comunidad indígena De Soto a finales del siglo XIX*, in Derecho PUCP, 82 (2019): 121-148. At the Max-Planck-Institute für Rechtsgeschichte und Rechtstheorie (Frankfurt am Main) there is an ongoing project, directed by Manuel Bastias Saavedra, entitled *IberLAND Beyond Property: Law and Land in the Iberian World, 1510-1850*, https://www.lhlt.mpg.de/2697247/iberland. For an overview of land law in historical and current perspective in the Latin American context see: Maria Paula Saffon, "Property and Land," in *The Oxford Handbook of Constitutional Law in Latin America*, eds. Conrado Hübner Mendes, Roberto Gargarella, Sebastián Guidi (Oxford: Oxford University Press, 2022), 578-597.

30 Flavio Guella, "Un 'libro fondiario' in Eritrea, tra diritto coloniale e diritto tradizionale," in *Il riconoscimento dei diritti storici negli ordinamenti costituzionali*, ed. Matteo Cosulich and Giancarlo Rolla (Napoli: Editoriale Scientifica, 2014), 167-193.

31 See: Abdelhamid Hénia, *Propriété et stratégies sociales à Tunis XVI-XIXe siècles* (Tunis: Faculté des sciences humaines et sociales de Tunis, 1998), 27; Christophe Giudice, "La législation foncière et la colonisation de la Tunisie, " in *Les administrations coloniales XIXe- XXe siècles, Esquisse d'une histoire comparée*, ed. Samia El Machet (Rennes: Presses Universitaires de Rennes, 2009), 229-239.

to establish the ownership of contested land (Art. 33 ff.) and at the same time an insurance fund was regulated: "fonds d'assurance destine à indemniser celui qui se trouvait lésé par l'immatriculation d'un immeuble ou par l'inscription d'un droit reel" (Art. 39).[32]

25 With the promulgation of the law of 1 July 1885, the legal consistency of property was definitively and unassailably established on the date of the applicant's application. In fact, land registration systems based on the Australian Torrens ensured its constitutive essence for certain acts or contracts and the publicity of certain legal facts towards third parties. In addition, through this legislative measure, all matters relating to registered buildings would fall under the exclusive jurisdiction of the French courts, which would also judge disputes over boundaries and easements.[33]

26 It was Paul Cambon himself, Résident Général of the French Republic, who, in his preliminary report on the law, outlined the "success" of the Torrens system and its advantages, identifying it as the result not of improvised legislation but of the "l'adaptation ingénieuse aux besoins de pays neufs, de principes hypothécaires appliqués depuis plusieurs siécles en Allemagne et que les législations européennes les plus récentes tendent de plus en plus à s'approprier".[34]

27 The legislation adopted in Tunisia and the Torrens system served as a model also for the Congo Free State (1885-1908). Relevance in this context is the *Ordonnance* of 1 July 1885. The government established the concept of state land, starting a consequent process of occupation based on legal title. As Johan Pottier pointed out, "European ideas of legal tenure, assumed to be universal, became central to the land laws of every colony. In particular, the colonial authorities assumed that the European concept of proprietary ownership covered the full range of customary land rights in Africa".[35] Article 1 of the *Ordonnance* of July 1885 stated: "A partir de la présente proclamation, aucun contrat ni convention passé avec des indigènes pour l'occupation, à un titre quelconque, de parties du sol, ne sera reconnu par le gouvernement et ne sera protégé par lui, à moins que le contrat ou la convention ne soit fait à l'intervention de l'officier public commis par

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32 Art. 1 "Les dispositions du code civil français qui ne sont pas contraires à la présente loi s'appliquent, en Tunisie, aux immeubles immatriculés el aux droits réels sur ces immeubles: " law published in *Régence de Tunis, Loi foncier and règlements annexes, recueil officiel* 1893, 18; Alfred Dain, "Le système Torrens, de son application en Tunisie et en Algérie Rapport à Mr Tirman Gouverneur de l'Algérie, " in *Revue algérienne et tunisienne de législation et de jurisprudence* 1 (1885), 285-356; Louis Tirman, *De son application en Tunisie et en Algérie* (Algiers: Adolphe Jourdan,1885); Paul Cambon, "Rapport sur la loi immobilière tunisienne du 1er juillet 1885," in *Régence de Tunis, Loi foncier and règlements annexes* (Paris: Augustin Challamel, 1893), IV-V.

33 Francesco Gautero, *Giustizia e proprietà fondiaria in Tunisia ed Algeria. Relazione a S.E. il Ministro di Grazia e Giustizia*, (Roma: Tipografia delle Mantellate, 1912) 53.

34 Cambon, "Rapport sur la Loi Immobilière Tunisienne du 1er juillet 1885 et sur les Règlements d'Administration rendus pour son exécution," XV.

35 Johan Pottier, "Customary Land Tenure in Sub-Saharan Africa Today: Meanings and Contexts," in *From the Ground Up: Land Rights, Conflict and Peace in Sub-Saharan Africa*, eds. Christopher David Huggins and Jenny Clover (Pretoria: Institute for Security Studies, 2005), 55-75, here 59; Johan Pottier, "Land Reform for Peace? Rwanda's 2005 Land Law in Context," *Journal of Agrarian Change* 6, no. 4 (2006): 509-537. See also Georges Brausch, *Belgian administration in the Congo* (Oxford: Oxford University Press, 1961).

l'administrateur général et d'après les règles que ce dernier tracera dans chaque cas particulier". Furthermore, Article 2 proclaimed: "Nul n'a le droit d'occuper sans titre des terres vacantes, ni de déposséder les indigènes des terres qu'ils occupent; les terres vacantes doivent être considérées comme appartenant à l'Etat".[36] The *Ordonnance* represents the first legal instrument for the regulation of State land and it laid the foundations of subsequent legislation concerning land tenure and the introduction of the Torrens system in 1889. This choice was also confirmed by the Belgian government in Congo in 1920.[37] While in Belgium, the French transcription system was implemented in 1851, it is interesting to note that in their colony of Congo, the Belgian government opted for the Torrens system and implemented it by a decree dated 6 February 1920. The decision to establish the Torrens system was an attempt at finding a compromise between guaranteeing the boundaries of "indigenous" land and protecting the interests of colonial landowners.[38] The same Decree entered into force in 1927 in Ruanda-Urundi. The legislation established that the "land title of the registered proprietor was paramount and indefeasible unless fraud had been committed. Furthermore, a person dealing with a registered proprietor need not be concerned about the validity of such title - he could rely on the Certificate Title as conclusive". [39]

28 In Eritrea, the Italian government introduced the *Grundbuch* under the Royal Decree of 1909. [40] Article 164 included the establishment of a probative land register system. Article 206 specified that "registration in the particular land registers is the only legal statement of rights over property and their transfer". Registration had to "be based on a legal document valid for the purchase and transfer of rights over properties according to the law applicable in the colony" (article 207). According to the land register, registration of the transfer of a right could not be done if the transferor was not the holder of that right (article 208).[41] According to article 209, any

36 See: *Bulletin Officiel de l'Etat Indépendant du Congo 1885-1886* (Bruxelles: P. Weissenbruch, 1886). See also Ruth Kinet, '*Licht in die Finsternis': Kolonisation und Mission im Kongo, 1876-1908: kolonialer Staat und nationale Mission zwischen Kooperation und Konfrontation* (Münster: Lit Verlag, 2005), 70 ff. See: Pierre-Olivier de Broux, Bérengère Piret, "«Le Congo était fondé dans l'intérêt de la civilisation et de la Belgique». La notion de civilisation dans la Charte coloniale," *Revue interdisciplinaire d'études juridiques* 83, no. 2 (2019): 51-80. See also for an complete overview of land law and land registration in the Congo Free State: Benoît Henriet, "Colonial law in the making. Sovereignty and property in the Congo Free State (1876-1908)," *Tijdschrift voor Rechtsgeschiedenis / Revue d'histoire du droit / The Legal History Review* 83, no. 1-2 (2015): 202-225.

37 See: Dimitri Yernault, *L'État et la propriété. Le droit public économique par son histoire 1830-2012* (Brussels: Bruylant, 2013), 50 ff. See also Dirk Heirbaut, "The Transfer of Real Property in Belgium in the Context of European Harmonisation," in *Übertragung von Immobilienrechten im internationalen Vergleich. Conference on real property law and land register*, ed. Mathias Schmoeckel (Baden-Baden: Nomos, 2018), 49-66, here 64.

38 Paul Dufrénoy, *Le régime foncier au Congo belge et l'acte Torrens* (Bruxelles: Hauchamps, 1934), 220; Theodore Heyse, *Régime de la propriété immobilière au Congo Belge* (Bruxelles: G. Van Campenhout, 1936).

39 Dirk Beke, "Land-law in Belgian Central Africa," in *Our Laws, Their Lands: Land Laws and Land Use in Modern Colonial Societies*, eds. Jap de Moor and Dietmar Rothermund (Münster: Lit, 1994), 57-67, here 65.

40 For an overview about the land registration system in Eritrea see: Fiocchi Malaspina, *Techniques of Empire by Land Law*, 233-251. See: Salvatore Mancuso, *Terra in Africa: diritto fondiario eritreo* (Trieste: ETS, 2013).

41 Ministero degli affari esteri, *Ordinamento Fondiario della colonia Eritrea* (Roma: Stamperia Reale, 1909), 71-72.

concession deed had to be noted in the land register within sixty days from the date of its stipulation, under penalty of cancellation of the same. All transfer deeds or declarations concerning ownership of property and any other right over property had to be registered as well. [42] Subsequently, Decree no. 1247 of 21 November 1918 established a title registration office in Asmara.[43]

29 The decisions taken in Eritrea also had an impact on property ownership and registration mechanisms in the Italian peninsula, which had chosen transcription as the system of land registration. The Italian case is very interesting because what was tried to be implemented in Eritrea, through the establishment of a probative land register, is exactly what had been sought to be introduced in the Italian peninsula for years, but without success. In Eritrea, a sort of experimentation was carried out with the parliamentary, governmental and political demands of the Kingdom of Italy: a way of seeing, analysing and understanding, starting from the colonial context, whether a change in the Italian peninsula was possible and above all feasible. The modification of the cadastral system and of the transcription, however, was always one of the central issues addressed by the Government and the Parliament, which set up commissions in order to draw up several reform projects, unfortunately without success[44].

4. Entangled national and international orders

30 The introduction of a specific land registration system into a colony and the reason for its choice were thoroughly debated by the *Institut Colonial International*. It was founded in Brussels in 1894 as an independent institution, whose aim was to engage and promote transnational exchanges between scholars, politicians, colonial administrators and experts.[45] Among the founding member, there were: Donald James Mackay, Lord Reay, undersecretary of State for the Indies between 1894 and 1895 and Governor of Bombay from 1885 to 1890;[46] Camille Janssen, honorary Governor-General of the Congo Free State and Secretary-General of the *Institut*

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42 Ibid., 72-73.

43 Lyda Favali and Roy Pateman, *Sangue, terra e sesso: Pluralismo giuridico e politico in Eritrea* (Milano: Giuffrè, 2007), 261. See: Fiocchi Malaspina, *Techniques of Empire by Land Law*, 233-251; Mario Bassi, *Manuale di diritto tavolare* (Milano: Giuffrè, 2013), 17-18.

44See Ippolito Luzzati, *Disegno di legge sugli effetti giuridici del catasto e sull'istituzione dei libri fondiari, preceduto da uno studio sul catasto italiano* (Torino: Unione Tipografico Editrice, 1891), 87. See: Francesco. Ferrara, "Il progetto Scialoja sulla trascrizione," in *Scritti Giuridici*, vol. II (Milano: Giuffrè, 1954) 469-475. Cfr. L. Galateria, *Della pubblicità immobiliare*, cit., 105 e ss. See: Fiocchi Malaspina, "Il libro fondiario in Venezia Giulia: alcuni profili storico-giuridici," in *Il riconoscimento dei diritti storici negli ordinamenti costituzionali*, eds. Matteo Cosulich, Giancarlo Rolla, (Napoli: Edizioni Scientifiche Italiane, 2014), 145-166.

45 Institut Colonial International, Notice, statuts et règlement, liste des membres et listes des publications (Brussels: Mertens, 1937), 5.

46 Ernest Lehr, *Reay (Donald-James Mackay, baron Reay de Reay, baron Druness, lord)*, in *Tableau Général de l'organisation, des travaux et du personnel de l`Institut de droit international, pendant les deux premières périodes décennales de son existence (1873-1893)*, (Paris: G. Pedone-Laurie, 1893), 328-329.

Colonial International;[47] Major Albert Thys, Leopold II's orderly officer and founder of the *Compagnie du Congo pour le Commerce et l'Industrie*.[48] Other founding members were the French economist and Finance Minister (from 1872 to 1883) Léon Say;[49] Joseph Chailley-Bert, a key figure in French colonialism and General-Secretary of the French Colonial Union for more than twenty years;[50] Fransen van de Putte, Prime Minister of the Netherlands in 1866 and *ancien ministre* of colonial affairs,[51] and lastly the professor of colonial law at the University of Leiden, Pieter van der Lith, who had been among the authors of the *Revue coloniale internationale* published in Amsterdam from 1885.[52]

31 The *Institut* focused on specific topics relevant to the colonial context: regulation of labour, tropical hygiene, acclimatisation of Europeans to colonial environments, and colonial monetary matters, as well as land law and land registration systems. Ulrike Lindner has highlighted the prevalence of, frequent and common cooperation in different fields of international and colonial law at the end of the 19th century. The work and the network created by the *Institut* "seem to have reached a surprising level of institutionalised exchange".[53]

32 Legal regulations were central to the *Institut*'s research, something also confirmed by the background of the members, most of whom were lawyers or pursuing a legal profession.[54]

33 It is interesting to notice that, despite the publication of numerous studies on, for example, "l'influence du climat sur la colonisation" (1894), the debate "sur l'enseignement colonial" (1900) or "sur le régime forestier aux colonies" (1912) In 1911, the *Institut* published the *Recueil*

47 Octave Louwers, "Camille Janssen," in *Biographie Coloniale Belge*, vol. 4 (Brussels: Institut Royal Colonial, 1955), 437-440.

48 Guy Vanthmesche, *Belgium and the Congo, 1885-1980*, (Cambridge: Cambridge University Press, 2012), 38 and 148ff.

49 Georges Michel, *Léon Say, sa vie, ses œuvres* (Paris: Calmann Lévy, 1899).

50 Stuart M. Persell, *Joseph Chailley-Bert and the Importance of the Union Coloniale Française*, in *The Historical Journal* 27, no 1 (1974), 176-184.

51 Paul Consten, *Fransen van de Putte [1822-1902] Het leven van een selfmade politicus*, (Nijmegen: Van Tilt 2019.)

52 Pierre Singaravélou, *Les stratégies d'internationalisation de la question coloniale et la construction transnationale d'une science de la colonisation à la fin du XIXe siècle*, in *Monde(s)* 1, no. 1 (2012): 135-157, here 151, https://doi.org/10.3917/mond.121.0135.

53 Ulrike Lindner, "New Forms of Knowledge Exchange Between Imperial Powers: the Development of the Institut Colonial International (ICI) since the End of the Nineteenth Century," in *Imperial Cooperation and Transfer 1870-1930. Empires and Encounters*, ed. Volker Barth and Roland Cvetkovski (London: Bloomsbury, 2015), 57. See also Florian Wagner, *Colonial Internationalism: How Cooperation Among Experts Reshaped Colonialism (1830s-1950s)*, PhD thesis (Florence: European University Institute, 2016), forthcoming with the Cambridge University Press. See also: Benoît Daviron, *Mobilizing labour in African Agriculture: The Role of the International Colonial Institute in the Elaboration of a Standard of Colonial Administration 1895-1930,* in *Journal of Global History* 5, no. 3 (2010): 479-501, https:// doi.org/10.1017/S1740022810000239.

54 Institut Colonial International, Notice, statuts et règlement, liste des membres et listes des publications, 5.

international de législation coloniale, a collection of laws intended, as the *Institut*'s founders had hoped, to promote legal debates, discussions and the prospects of specific legislation, decrees or norms to be adapted and used in very different colonial systems. Examples of this "borrowing" and cross-pollination were the application in African territories of the Torrens system, and of "typically European" land register systems, such as the *Grundbuch* or transcription.

34 Between 1898 and 1904, the *Institut Colonial International* published several volumes of detailed reports on how land ownership was regulated and introduced a specific real estate registration system within the various colonies of the different European countries. The ambitious objective was to map the whole "colonial world", giving the broadest possible picture, by collecting all legislations concerning the regulation of land law in the colonies. The first volume, published in 1898, was dedicated to British India and the German colonies; a second volume, issued the following year, focused on the Congo Free State and the French colonies; a third volume, published in the same year, dealt with the Philippines, Eritrea and Tunisia; a fourth, with the Dutch East Indies; the fifth volume in 1902 collected results from Laos, Sierra Leone, Gambia, Northern Dutch Borneo, Cape of Good Hope, Rhodesia, Botswana, Solomon Islands and Fiji.[55]

35 In providing data for these reports, the colonial administrations had to answer a series of exact questions to be analysed by the members of the *Institut*. Furthermore, the construction of a common platform to discuss specific colonial issues, such as land ownership, is characterised by questions, which take on the value of "universal" questions.[56] Most states with colonial possessions had to deal with various difficulties in managing land belonging to the government, indigenous people and private individuals or commercial companies.

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55 Land law was the topic of the 3er Serie of the publication edited by the *Institut Colonial International* [after the 1. Serie on labour law and the 2. On colonial administrators]. See also: Günther Kurt Anton, *Le régime foncier dans l'état indépendant du Congo: Rapport Préliminaire à la Session de Paris du 1er Août 1900* (Bruxelles: Mertens, 1900).

56 See Fiocchi Malaspina, *Tracing Social Spaces*, 177-202. For example, the questionnaire of the 1899 aimed to collect acts, regulations and orders in these specific areas: the land tenancy under which occupation was sanctioned, fee simple, emphytheusis, ordinary leases, clearance leases; the exclusion or admission of foreigners as grantees; the maxima and minima of the extent of waste lands obtainable by each planter; the prices at which waste lands were sold or leased, whether these prices were determined by regulation or by competition, and the conditions to which the resale of these lands were subject; the taxes to which planters were subject whether they were exempted from certain taxes and if so for how many years; whether compulsory labour still existed for village or other purposes, how far the people on the lands were exempted from such services and what the planters had to pay in consideration for the exemption; the rights of natives (chiefs, communities or private individuals) on the land, occupied or turned to any account by them before the conquest; the limits on the rights of the natives to sell, let, or sub-let their own lands and the conditions under which such rights could be exercised; the regulations that applied to deeds of sale and mortgages on lands belonging to Europeans and natives (public or authentic records, land registers, mortgages, registers, registry, books): Institut Colonial International, *Le Régime foncier aux Colonies, Tome I.- Inde britannique. Colonies allemandes* (Bruxelles: Mertens, 1898), 10-11.

57 Anton had participated in the commission in charge of an inspection in Java to verify the colonial practices of the Dutch colony. See: Joost Johannes Coté, "Raden Ajeng Kartini and Cultural Nationalism in Java," in *Connecting Histories of Education: Transnational and Cross-Cultural Exchanges in (Post)Colonial Education*, eds. Barnita Bagchi, Eckhardt Fuchs and Kate Rousmaniere (New York, Oxford: Berghahn, 2014), 175-197, here 194.

36 The *Institut Colonial International* instructed Günther Kurt Anton, professor in Jena,[57] to provide a comprehensive overview of the colonial legislations collected in the volumes, inviting him to present a final report in the occasion of *Institut*'s conference, that took place in London in May 1903, and then to attend the discussions among the members on land law and land registration in the colonies.

37 The outcome of the conference was the publication of Anton's *Le Régime foncier aux Colonies* in 1904 and it constitutes the last volume published within the *Institut Colonial International* series on land law. The volume explained from the outset that the systematic and comparative study of land regimes, highlighting their diversity, would contribute significantly to the "building of a unified theory".[58]

38 In particular, the problem that the members of the Institute had to face was which system of land registration (transcription, *Grundbuch*, Torrens system) was preferred in the colonial context.

39 Members of the *Institut Colonial International* were called upon to discuss their colonial experiences and, at the 1903 London session, Camille Janssen reported on the legislative and political techniques implemented in the independent state of Congo, of which he was governor from 1886 to 1892; Donald James Mackay reported on India, while Chailley-Bert on Indochina and Van Deventer on the Dutch East Indies.[59]

40 In particular, Janssen his first-hand experience in the Congo Free State for over thirteen years: "et nous avons pu constater non seulement les facilités qu'il accorde à la transmission de tous les droits immobiliers, mais encore les garanties dont il entoure ces transmissions sans qu'on soit obligé de s'astreindre à des formalités surannées". And he concluded by confirming the fast circulation of property transfer as a strength of the Australian system: "Dans le système Torrens on peut dire qu'en matière immobilière le titre de propriété est quasi aussi aisément transmissible qu'une simple lettre de change en matière mobilière"[60].

41 Among the speeches by the members of the *Institut Colonial International*, Martens' was the most interesting. The Russian jurist Friedrich Fromhold von Martens, member of the *Institut Colonial International* as well as of the *Institut de Droit International*, compared laws and decrees concerning land law and land register systems in the colonies and emphasised the need to formulate "universal principles to be adopted in the different colonial experiences".[61] Martens'

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58 See Kurt Anton, *Le Régime foncier aux Colonies*., III.

59 *Ibid*., III ff.

60 *Ibid*., 410.

61 Friedrich F. Martens, "Débats sur le régime foncier aux colonies (Session de Londres) 1903," 363 (author's translation).

speech in fact gives a complete understanding of the role played by the *Institut Colonial International* for colonial science. He energetically urged his colleagues that the need to discuss different colonial legislation should not be seen as a purely scientific exercise. All meetings of the *Institut* had to lead to results, or better still, to the elaboration of principles that could be adopted in the different colonial contexts. “Je crois qu'il ne suffit pas d'obtenir des échanges d'idées sur les différentes expériences, les différentes conditions, les différents systèmes, mais qu'il est absolument nécessaire d'obtenir et établir des principes qui forcent l'unité dans la législation coloniale et le système foncier à appliquer aux colonies”.[62]

5. Conclusion

42 This article focused on the history of property registration in the nineteenth century by considering the entanglements that occurred between the different systems of land registration in some European States during the nineteenth century; the relationship between Europe and its African colonies with regard to the land registration systems; the international scientific collaborations to address issues that could arise at the time of the introduction in the colonial context-specific land registration system.

43 Nineteenth-century discussions addressed the issue of land registration systems in order to provide certainty and security for real estate transfers not only in Europe but also in colonial possessions, where the creation of a new land registration system was possible, such as the Torrens system in South Australia introduced in 1858.

44 Furthermore, some examples, in which European systems of land ownership were introduced into the colonial context, were illustrated. These modified land register systems, to a certain extent, facilitated the expropriation of land by colonial powers. But there were more than economic interests at stake. The colonies also served as an experimental space, in which European colonial powers acquired knowledge on several land register systems under different circumstances.

45 The *Institut Colonial International*, founded in Bruselles 1894, encouraged the exchange of ideas about the various colonial experiences that states had collected in their particular situations, to create common and universal principles. International law and domestic law, or national law concerning land register systems and land law were part of the colonial discourse as it endeavoured to create and adopt universal principles of law, trying to establish a platform of common dialogue, with common premises, concerning different colonies, different colonial experiences and ultimately different cultural, social and political contexts.

46 The international exchange of principles of colonial law presupposed the definition of the general legal principles that Europe sought and established between the end of the 19th and the

62 *Ibid.*, 363.

beginning of the 20th century. Thus, space defined as private and public space, is determined by the choice of register systems introduced in Europe and the colonies.

47 The colonial context formed and traced the international space where a plurality of actors operated within a plurality of norms. This international space was characterised not only by its dynamics but also by its intrinsic diversity of forms and models, created with the common aim of guaranteeing the transfer of property rights. In this international space, economic, legal and political interests intertwined and formed an inextricable whole, "never finished; never closed".[63]

63 See Doreen Massey, *For Space* (London: Sage Publications, 2005), 9.