

**STUDIES IN HISTORY,
ECONOMICS AND PUBLIC LAW;
VOLUME XXVIII, NUMBER 3; THE
DISTRIBUTION OF OWNERSHIP;
PP. 351-563**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649146239

Studies in history, economics and public law; Volume XXVIII, number 3; The distribution of ownership; pp. 351-563 by Joseph Harding Underwood

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

www.triestepublishing.com

JOSEPH HARDING UNDERWOOD

**STUDIES IN HISTORY,
ECONOMICS AND PUBLIC LAW;
VOLUME XXVIII, NUMBER 3; THE
DISTRIBUTION OF OWNERSHIP;
PP. 351-563**

STUDIES IN HISTORY, ECONOMICS AND PUBLIC LAW

EDITED BY THE FACULTY OF POLITICAL SCIENCE
OF COLUMBIA UNIVERSITY

Volume XXVIII]

[Number 3

**THE DISTRIBUTION OF
OWNERSHIP**

BY

JOSEPH HARDING UNDERWOOD, Ph.D.

Professor of History and Economics, University of Montana



New York

THE COLUMBIA UNIVERSITY PRESS

THE MACMILLAN COMPANY, AGENTS

LONDON: P. S. KING & SON

1907

COPYRIGHT, 1907
BY
JOSEPH HARDING UNDERWOOD

PREFATORY NOTE

FOR opportunity and aid the writer is grateful to Professor Isaac A. Loos, of the University of Iowa; to Miss Margaret A. Schaffner, Ph. D., now of the University of Wisconsin, and to Professors Franklin H. Giddings and Edwin R. A. Seligman of Columbia University.

TABLE OF CONTENTS

CHAPTER I

OWNERSHIP

	PAGE
Outer Personality.....	11
Private Property and Estate.....	12
The Forms of Ownership.....	14

CHAPTER II

DISTRIBUTION

The Impossibility of Absolutely Private Property.....	16
Social Limitation of Property.....	18
The Impossibility of Permanency of Estate.....	20
The Continuity of the Progress of Liberty.....	22

CHAPTER III

ANCIENT OWNERSHIP

Primitive Possession.....	23
Primitive Communism.....	23
Barbarian Private Property, etc.....	24
Patriarchal Ownership, etc.....	25
<i>Dominium</i>	30
Hebrew.....	30
Hindoo, etc.....	32
Greek.....	33
Roman.....	34
Teutonic.....	40

CHAPTER IV

OWNERSHIP IN ENGLAND

Limitation of Ancient Slavery.....	41
Limitation of Ancient Land Ownership.....	43
Limitation of Ancient Corporate Property.....	47
Modern Liberty to Own Men.....	50

	PAGE
Modern Liberty to Own Land	53
Centralization under Henry II	54
Development of Taxation	56
Detachment of Political Character from Land Ownership	57
Detachment of Feudal Tenantry from Land Ownership	58
The Development of Modern Tenantry	60
The Right of Disposition	62
Incorporeal Rights	67
Right of Bequest	68
Modern Liberty of Corporate Ownership	73
The Trading Companies	74
Freedom of Association	77
Limitation of Ownership in the Nineteenth Century	78

CHAPTER V

LIBERTY TO OWN SLAVES IN AMERICA

Indenture	84
Black Slavery	89
Government Aid	94
Concentration	98

CHAPTER VI

LIBERTY TO OWN LAND IN AMERICA

Colonial Limitations	100
Development of Allodial Tenures	104
Legal Private Rights in Land	104
Rights of Possession	106
Rights of Use	111
Rights of Disposition	112
The Land Policy of the Government	116

CHAPTER VII

LIBERTY TO OWN CORPORATE PROPERTY IN AMERICA

Early Commercial Regulation	118
Beginning of Corporations	119
General Laws of Incorporation	122
Charters as Contracts	122
The Fourteenth Amendment	124
Ease of Incorporation	126
The Aggressions of Corporations	127
Concentration	129

CHAPTER VIII

LIMITATION OF SLAVE OWNERSHIP

The Abolitionists	133
State Opposition	134
The Civil War	135
Negro Freedom	136

CHAPTER IX

LIMITATION OF LAND OWNERSHIP

Social Subtractions from Private Property	137
From the Right of Possession	138
From the Right of Use	148
From the Right of Disposition	150

CHAPTER X

LIMITATION OF CORPORATE OWNERSHIP

The Abuse of Power	154
Public Partial Rights	157
Ultra Vires Acts	159
The Modification of Patent Rights	159
Modification of the Dartmouth College Decision	159
The Common Law	161
Constitutional Provisions against Monopoly	161
Constitutional Provisions against Combination	162
National Legislation and Cases	163
Police Regulation of Corporations	165
Of Banking and Insurance	166
Of Railroads	167
Of Incorporation	170
Public Promotion of Commercial Interests	171
Labor Contracts	171
Laws Protecting Labor in Employment	176
Laws Securing Labor in Employment	180
Strikes	180
Conciliation and Arbitration	181
Employers' Associations	182
Labor Unions	183
The Inefficacy of Laws	183

	PAGE
Ameliorations of Inequitable Distribution.....	184
Public.....	185
Charities	185
Municipal Ownership.....	186
Corporate	187
Profit Sharing.....	187
Stock Ownership.....	188
Coöperation	189
Insurance	189
Welfare Work of Corporations	190
Private Philanthropy	191
The Creation of a Social Interest in Private Property	192
The Centralization of Government	194
The Continuity of the Progress of Liberty.....	195

CHAPTER XI

THE ETHICS OF OWNERSHIP

The Inherency of Restriction	197
Shown in History	197
Shown in Law	197
According to the Theories of Property Right.....	197
According to the Economic Theory of Distribution	198
The Arrogance of Privilege.....	199
Stewardship	200
Economic Opportunism.....	202
Mutualism	205
Economic Republicanism	205
Socialism and Individualism	206
Social Gains from Readjustment.....	207