

# 7 WALKS / WALKS (PLACCAET)

Vermeir & Heiremans

*7 Walks* is an artistic research project of artist duo Vermeir & Heiremans. In collaboration with many guests and participants, its research trajectory aims to situate local practices of ownership in a broader social, legal and political context. The project responds to current debates about the necessity and position of art in today's society. With walking as its performative methodology, the project consists of site-specific instalments that connect the ecology of the arts with a natural commons – water.

*7 Walks (Placcaet)* elaborates on the feudal concept of *plura dominia* or the simultaneous uses by different entities of the same resource, in this case water. Next to a presentation in the *Zwalmmolen*, we discuss its relevance for today with small groups of visitors during short walks along the river Zwalm, in the company of four guest walkers with a different expertise on water and its many users.

## 7 WALKS (PLACCAET) IS WALKING WITH...

### DAVID AUBIN

Saturday 26 August – 3 to 5 pm

We were introduced to the concept of *plura dominia* during a workshop with David Aubin, professor of political science at the School of Political and Social Sciences at UCLouvain. He teaches courses on public policy analysis and evaluation. He is also conducting research on the comparative analysis of environmental policy, and the use of expertise and knowledge in the policy process. Until recently, we took water for granted, but today it is at the heart of our policymakers' agenda. The management of our water, source of all life, is a particularly layered issue that we discuss with David.

### LODE TANGHE

Sunday 3 September – 3 to 5 pm

Over the next three years the Province of East Flanders, together with many local partners, will work on making parts of the basins of the river Zwalm more resilient to the consequences of climate change. In the context of the program Water+Land+Schap 2.0, an operational chapter of the Flemish River Basin Management Plans, Lode Tanghe (Agriculture and Countryside Service) will be balancing water scarcity and flooding in the coming years. By retaining water in the river basins and the soil, water remains available longer for nature and agriculture during a dry period, but when it rains heavily, the water must also be able to drain away smoothly. To tackle this double challenge, a lot of concrete measures are scheduled. During a walk along the Zwalm, we talk with Lode about some of the micro projects that are currently on his work table.

### TOM VOS

Saturday 9 September – 3 to 5 pm

Water is a vital resource. We can think of it as a common good that is not tradable as other goods are. Or is it? Tom Vos is an academic researcher in corporate law. He is currently a full-time visiting professor at the Jean-Pierre Blumberg Chair at the University of Antwerp, where he conducts research on corporate governance. Tom is also a voluntary research fellow at the Jan Ronse Institute for Company and Financial Law at KU Leuven. During the walk with Tom we elaborate on how water differs from other commodities, and question whether it is justified for water to be exploited by private companies, and if so, what the governance of those private companies should look like.

### WALTER VAN DEN BRANDEN

Sunday 10 September – 3 to 5 pm

Between 2008-2010, the *Zwalmmolen* was restored under the supervision of historian Walter Van den Branden. In 1985 his interest was aroused in the technology and problems of the mill heritage and its surrounding landscape and he trained as an active master miller. Since 1991 he has been curator-head of the Provincial heritage site Mola Molencentrum in Wachtebeke, which also manages five wind and water mill sites. In addition to publications on mill heritage, he also published various building history studies on monuments and endangered sites. With Walter we will discuss the potential of the watermill heritage as an essential link in a process that can promote the rewetting of the landscape.

## PLURA DOMINIA REVISITED

### INTRODUCTION

Water fulfills a broad range of vital functions. It is indispensable as a resource for industry and agriculture, and as a raw material for drinking water. Water also has an important recreational and cultural-historical value and it is a sustainable means of energy and transport. It is also of great significance for the landscape and for nature. How to balance the different interests that speak from these various forms of water use? Imagining alternative narratives to govern these resources, we explore the notion of *plura dominia*, or how multiple entities simultaneously use the same resource in different ways.

Working on this project we have come to realize that water cannot be seen as separated from the landscape it helped create, and which in turn houses the water. If *plura dominia* outlines a possibility for collective governance of the water landscape, it also demonstrates how important it is to take into account the structuring role played by policies in the regulation of natural resource use. These are characterized by both significant state intervention and the legal codification of most rules. Their language is not neutral, on the contrary. Almost imperceptibly to most people, certain words seep into our vocabulary and create momentum to push certain frontiers.

A watermill is the perfect vehicle to help us disentangle the complexity of the water landscape. Watermills often have a status as relics of the past and are therefore seen as bottlenecks in the field of water management, rather than as a source of inspiration for the sustainable management of the wetlands around them. To understand the situation today in Flanders we will perform four walks with a focus on the *Zwalmmolen*, and its water landscape: the river Zwalm and its basins with numerous brooks and streams. Aiming to embed a historical narrative into a contemporary concern, water and its governance issues, let's first take a look at the many different uses and users of the waters in the Zwalm valley.

### THE VALLEY OF THE RIVER

The Zwalm is a source river. It is formed by no less than seven rivulets, all having different sources as their starting point. These lateral streams and their valleys, along with parts of the coulter and smaller crop complexes make out the Zwalm's water basin. The valley includes the historic centers of Nederzwalm, Roborst, Rozebeke, Ruddershove, Velzeke, Elst and Michelbeke. The Zwalm cuts through the valley grounds and walls on its way to the river Scheldt, which it joins on the border between the villages of Welden and Nederzwalm.

The river Zwalm is known for its strong but variable flow rate. Its sources generate a constant flow, but rainfall can raise the amount of water passing through its beds substantially. Maybe that's how the place got its name. One of the possible origins is *Sualman*, first mentioned in 1003, perhaps derived from the Germanic *swellan*, which means to swell. Also important is the fall of the river. The Zwalm has a fall of 1.5 m per km. This has been put to good use for building water mills. There were many water mills in the Zwalm basin, 13 of which are on the Zwalm itself. Today some of them have been restored after a long and slow process of decline due to progressing industrialisation. They occasionally operate as grain mills, one even generates electricity, and some have become hot spots for local tourism that offers signposted walking and cycling routes, such as the "Watermill Route".

The region is characterized by pronounced differences in relief. In his work the 19<sup>th</sup> century writer Omer Watez already saw its touristic potential and even introduced the term *Vlaamsche Ardennen* (Flemish Ardennes) to describe it, in reference to the hilly South part of Belgium. The Zwalm valley has a gently sloping left bank, while its right bank is steep. Because of these unique geological characteristics, the region is abundant with water sources and their water flows over time have further molded the specific form of the landscape. These water sources in turn inspired many local entrepreneurs, especially in the first half of the 20<sup>th</sup> century, to capture and bottle their water. Some of these local water brands are still around such as Konings- en Topbronnen (Brakel), Christiana Bronnen (Dikkelvenne-Gavere), Straalbronnen (Nukerke-Maarkedal), Ginstbronnen (Moortsele-Scheldewindeke) and the Roman beer brewery (Mater), which also produces a bottled water.

Surprisingly the picture looks less rosy for tap water. March 2023 *Farys* celebrated its birthday. It had been 100 years since the publication in the Belgian Official Gazette of the renaming of the *Compagnie Intercommunale des Flandres* as the *Tusschengemeentelijke Maatschappij der Vlaanderen voor Waterbedeeling* (Intermunicipal Society of Flanders for Water Distribution). Today intermunicipal companies provide various services in the public

domain for the participating cities and municipalities. When you open a tap in Munkzwalm the delicious water that comes out will be brought to you by *Farys*, but chances are that the water is not local. Although *Farys* produces its own drinking water (17,19 % in 2022), the company has to purchase most of their distributed drinking water from other water companies, such as *Water-link*, *Vivaqua*, *De Watergroep* and the Dutch company *Evides*. *Farys* has to pay for that. It also needs to maintain a transport network of 700 kilometers, which of course drives up costs. According to VRT journal the water supplier provides the most expensive tap water in Flanders.

Together with *Aquafin*, *Farys* is also responsible for purification of the sewage water. Since the realization of a water purification program, started in 1989, including a water purification station in the Brugghoek in *Roborst*, the quality of the water in the river Zwalm has improved enough to allow the fish to return. Some 14 different species have been observed. The zone with the most fish, both in terms of number and species, is the downstream zone with the storage basin of the *Zwalmmolen*. Since some of the species need to swim upstream to breed, the VMM (Flemish Environmental Organisation) has implemented European regulations that promote the construction of fish ladders. Written reports of rough fishways date to 17<sup>th</sup> century France, where bundles of branches were used to make steps in steep channels so that fish could bypass obstructions, but the first patented fish ladder was the one Richard McFarlan constructed in 1837 (New Brunswick, Canada) to bypass a dam at his water-powered lumber mill.

The *Vlaamsche Ardennen* have always attracted visitors, be it fishermen, people that come for a walk or cycling trip along the different country roads. Also the last owner of the *Zwalmmolen*, Marcel De Boe, put his energy in the revival of local cultural and nature tourism. In 1964 he turned the mill into a catering business that met the demands of the increasing day tourism in the Zwalm region. It is safe to say that the water in the valley and the landscape, are two of the regions main highlights. But merely by listing all the different uses of these common resources – the river and landscape belong to all and nobody in particular – it is not hard to imagine that managing all of the different interests related to them is a very complex matter. To give an example, the *Zwalmmolen*, which has been restored as an operating mill, and is even equipped with a water power installation, requires a quantity of water to activate its mill wheel, but of course diverting water from the river to the fish ladder potentially reduces the available volume substantially. While local farmers are not allowed to use water from the river to irrigate their crops, the life stock of their colleagues is saturating the ground with nitrates, which has an impact on the water quality of the river, and the fish in it...

In order to better coordinate all these interdependent uses that compete over the same resource the Flemish government has launched the *Blue Deal* program in 2020. Within the framework of this program local *water basin management plans* have been drawn up that focus on problems of water scarcity and drought. Of course governance issues on water are not a new problem. The history of people's relation to water illustrates diverging approaches to managing water resources. The Code of Hammurabi (Mesopotamië, 1793 BC) was one of the earliest written laws to deal with water issues. It included 4 articles on water use administration. Closer to home we take a closer look at the notion of *plura dominia*, the simultaneous use of the same resource by different entities. It seems to be a concept that is still relevant, even more, that has found a way to expand its reach and meaning into the contemporary. But before we go into that, let's go back to its origin, to the time when this territory was under the feudal rule of the Prince of Gavere. From the 12<sup>th</sup> century, the area of the Zwalm was given in loan to the Lords of Gavere and Zottegem. This situation remained virtually unchanged throughout the entire period of the Ancien Regime, until the French Revolution thoroughly altered the way land was governed.

### A PRINCE OF WIND AND WATER

In the year 1628, the *Raad van Vlaanderen*, the highest court of the County of Flanders, decided to republish a *Placcaet* that Charles V had edicted in 1547. In the Low Lands between the 16<sup>th</sup> and 18<sup>th</sup> century a *placcaet*, with attached seal, was a printed document that was publicly promulgated to inform the people about specific rules of governance.

In early times everyone had the right to build a water mill and to place a weir or lock in a water-course, provided that others suffered no damage, which was sometimes the case. Conflicts could arise between millers who individually adjusted the water flow of the river, hampering the work of other millers and causing harm to neighboring farmers and citizens because of flooding. With the advent of feudalism mill rights, the right to build and operate a water, wind or horse mill, came into the hands of the supreme lord. Gradually regulations were introduced such as the definition of the exact water level to which millers were entitled. This of course did not



exclude conflicts between competing interests.

The *placcaet* of 1547 decrees that “*niemand van onse vassalen ende ondersaeten van onsen lande ende graefschep van Vlaenderen, gheene vrymalerien ghebruucken en moghen*” (none of our vassals and subordinates of our land and the County of Flanders, can use the free mills). Next to that the right to construct a water, wind or horse mill can only be authorized by the Prince, “*mids daervooren te betalen jaerlics tonsen profijte zeker recognitie, ende zulck als nae de ghelegentbeyt van der zaeke redelick bevonden wordt*” (...unless against a yearly contribution to our benefit, and such as in the specific case would seem reasonable). In 1547 the region of Zwalm was part of the Principality of Gavere and Lamoraal van Egmont, the Lord of Zottegem and Governor of Flanders, was also the first Prince of Gavere.

The message of the *placcaet* of 1547 still clearly resonates what we know as the feudal system: a combination of legal, economic, military, cultural and political customs that flourished in Medieval Europe between the 9<sup>th</sup> and 15<sup>th</sup> century. Europe was structured around relationships that were derived from the possession of land. The feudal system was not about owning land, but about being master of it. Land was considered the property of God. The King merely distributed it among his lords who received land in the form of a fief, for the services they had rendered to the King. This fief or territory was a central element in medieval contracts. It consisted of a form of property or other rights that were granted in an hierarchic system that descended from king to lord to vassal, but excluded most other people. A vassal, for example, would hold the territory in fealty or *in fee* in return for a form of feudal allegiance, services, and/or payments. These fees were often land, land revenue or revenue-producing real property like a watermill, held in feudal land tenure.

The notion of *plura dominia* refers to the way land was managed before the private appropriation of land. It describes the simultaneous use of the same resources, in different ways by different entities. This also included all the practices that are currently considered as *public services*, such as justice or taxes. As we mentioned, at the time there were no landowners, only land users. Land belonged to God, and as such was indivisible, which spells out the two main principles of *plura dominia*.

#### PRIVATE PROPERTY’S ASCEND

The idea that ownership conferred exclusive rights to use and dispose of property, began to form in the 17<sup>th</sup> century. It was promoted by John Locke’s influential, though much contentious, philosophical justification of private property rights. As the most influential Enlightenment thinker, he became widely known as the *father of liberalism*. His statement about *self-ownership* is the basis for the Western liberal notion of personhood. But for him the person-property relation defines not only the self, it also connects persons to things, delineates private from public, in short the relation is instrumental in justifying ownership and organizing society.

In bringing property and person together we are at the root of Western capitalism. Locke argues that since we own ourselves, we also own our labour. Whenever we work on something we transform it so that it is connected to us. He maintains that if we take something out of its natural state and change it with our labour, we have a natural right to it. To his credit, Locke’s defence of private property came with three caveats, dubbed the *Lockean provisos*. These were meant to curb greed for property. Appropriating land and resources was only possible “if enough and as good” was left over for others, if those without property were provided for, and if only “as much as was practically useful was taken.” Clearly these provisos are rarely invoked today by defenders of private property rights.

The English and French Revolutions thoroughly altered the regime which governed land. The alteration marked the decline of the feudal simultaneous use of land and resources. The conception of exclusive and private property made its entry. The transition from a regime of possession to one of private ownership of property had many social, economic and ecological consequences. It opened up the flood gates that triggered the enclosures of common land, and paved the way for the industrialisation of England, and the continent. This was possible because these truly revolutionary changes were widely imposed in continental Europe throughout the 19<sup>th</sup> century through the dissemination of the Napoleonic civil code, which consecrates the advent of private property, conceived as an absolute power of the owner over his property.

According to the *Code Napoléon*, if you own the land, you also own what is above and below ground. In 1815 however, a few years after the adoption of the Napoleonic civil code, France, Belgium and other countries adopted what we know as the *mining code*. The code transforms all the minerals in the ground from private into public property, which the State can grant to private companies to exploit and harvest these minerals. A landowner would receive royalties on the mining infrastructure on his property, but not on what is collected from his land. The same law

applies to the air: the air is state sovereignty for military and commercial aviation.

Water distribution as we know it today only started in the second half of the 19<sup>th</sup> century. In 1815 lawyers did not anticipate the need to regulate the use of water, so the nationalization of minerals did not include water. In terms of property relations, the water you found on your land was yours. But water has proved uniquely difficult to regulate. It is mobile, its supply varies by year, season, and location, and it can be used simultaneously by many. For instance, an engineer could use the water of the river to generate energy, a miller divert it from its natural course but return all of it, while his farming neighbours would consume much of what they take to irrigate their land and all of them would drink it to quench their thirst. Water use sometimes excludes others, sometimes there is rivalry for consumption, which means in practice it introduces several types of potential conflict: absolute shortages, shortages in a particular time or place, reduction of the flow available to others, pollutants or other changes that make water unfit for use by others.

Due to its unique characteristics, water laws, which are most closely related to property laws, became a separate jurisdiction, concerned with the ownership, control, and use of water as a resource. Today the right to use water to meet basic human needs for personal and domestic uses has been protected under international human rights laws. The human right to safe drinking water was first recognized by the UN General Assembly and the Human Rights Council as part of binding international law in 2010. The UN passed a resolution stating that the member states “*recognize the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights.*” The human right to water places the main responsibilities upon governments to ensure that people can enjoy “*sufficient, safe, accessible and affordable water, without discrimination*”.

#### THE RULES OF THE GAME

For a long period the pervasive view of property relations has emphasised the priority of individual rights over broader cultural and community interests. Owning land attributed to the owner all the rights to it, yet from the start property ownership was not completely absolute. Art. 544 of the civil code states that property rights are absolute, but only within the limits of law and regulation. Public authorities can alter ownership rights for environmental and social purposes. They have the right to limit the owner’s use, and many so-called easements were put in place, in particular with regard to water. They can for instance install public access on a river bank, expropriate a pathway and make it public, or forbid extraction from groundwater. Property law is not only about extensive, durable and exclusive individual ownership as the basis for social order, it also encompasses more fragile, contextual, and limited rights of use that are highly regulated and maintained at the discretion of the state.

By the end of the 19<sup>th</sup> century, a new theory of property rights emerged, referred to as the *bundle of sticks*. This theory of rights shifts the focus away from the exclusive dominion exercised by the owner and instead posits that there is a diversity of title holders and, consequently, a plurality of rights that exist on the same thing simultaneously. It limits property rights since it emphasizes the rules and restrictions imposed on the owner who holds the *principle title*. The theory redefined land tenure as an overlapping and complex set of legal relations within which individuals are interdependent. This plays out both in continental law and in common law, differentiating between no fewer than eleven forms of ownership of the same thing. These regulate the rights of use, access, control, income...

Property as a bundle of rights introduces a flexible notion of ownership that emphasizes that title owners not only have rights but also responsibilities. Its similarity with the notion of *plura dominia* in feudal times is obvious. This is primarily what sparked contemporary interest in this historic notion, a form of governance that could inspire new narratives around property relations. Its layered approach seemed to hold a promise to understand property relations in a more stratified way, which could contribute to more sustainable and equitable practices to govern both natural common resources, as well as social common resources, such as art and knowledge. Attempts to revive feudal collective use rights by invoking their compatibility with the fragmentation of property rights may seem tempting, but a closer examination of the long list of rights reveals that there is one right to which all others are subordinated. Namely, the holder of the *principle title* has the power to alienate a thing and can at any time challenge other rights and older customs.

For that reason the concept of ownership, whether private or public, has proved incapable of legally capturing and therefore politically regulating certain uses of land, as well as certain other natural and social resources such as air, landscape, biodiversity, knowledge or water. If property laws develop in the direction water laws, they would increasingly

exist as a collection of use-rights, rights defined in specific contexts and in terms of similar rights held by other people. Property use will be phrased in terms of responsibilities and accommodations rather than rights and autonomy. But when considering property as a bundle of rights, as described above, then use rights would have no efficacy if they are cut off from the right to co-produce the rules of this use. Usage rights must be linked to the process that decides on the rules and must take into account the outcome of that process.

#### CAVEAT – ECOSYSTEM SERVICES

Jerome Fritel’s documentary about water markets – *Lords of Water* (2019) – confronts us with a world in which water has been privatized. We quote a scene from the film. “To save humanity Wall Street wants to start a revolution: make water profitable and create water markets just like oil markets. *‘Water falls from the sky and therefore it should be free. Whenever I hear that I always say diamonds occur in nature and they are not free. Water is a financial product, like any other financial product. We’re just at the beginning of this water financial revolution...*” The blue goldrush has begun. Can anyone stop it? Who will come out on top? The planet, the people or the market?”

As we mentioned at the beginning of this text, water performs a wide variety of vital functions. It is used by everyone, at the same time and often for different reasons, for different purposes. The profound all-encompassing abstraction of our physical world that we see at work in contemporary finance, a process that also started in feudal times, is gradually creeping into the world of natural resources, starting with air. With climate change a growing threat, economists came up with the idea of trading the right to pollute air, creating a financial incentive to curb emissions. This innovation provides an almost alchemical transmutation of the earth into a carbon matrix in which all activity can be reduced to the concentration and profitable exchange of the chemical element *carbon*.

It is worth paying attention to how finance capital in conjunction with conservation agendas is creating a new frontier of investment in environmental conservation. This vision introduced a systematic *eco-informatics* that can measure, standardize and break down nature into new kinds of services. Mapping and measuring these generates an extensive catalog of *ecosystem services*, applicable on a local and global scale. *Ecosystem services* are free benefits that we as humans receive from our natural environment. Just think of the bees that pollinate our crops, the trees that purify our air, give us shade, think of a relaxing walk through the woods and in the countryside... *Ecosystem services* are divided into three main groups: services that provide products (water, minerals, food) or that operate in the background (climate regulation, water quality, clean air, carbon storage) and *cultural ecosystem services*. For example, a green living environment, nature recreation and landscape heritage have a positive influence on the quality of our lives.

In 1997, ecological economist Robert Costanza and his colleagues estimated the annual value of *ecosystem services* and *natural capital* worldwide at \$16 to \$54 trillion. Much research has been done on how to realize that potential dollar value of nature, but to date these services and capital, with the exception of the polluted air (and some water), are not yet in an operational market environment. Pricing appears to be a difficult hurdle to overcome. Is the intensive work to create new ranges of products and to invent the corresponding markets is still in the stage of a large-scale reconceptualization of nature in monetary and tradable terms. Specifically, it involves a discursive framing of nature using financial terms that reorganize conserved nature into concepts that can be productively aligned with finance.

The construction of nature as a “service provider” is a significant choice of words. It is a conceptual step that enables financial investments in nature conservation. It also shows how “economic profit or political utility”, derived from this linguistic shift, is becoming a normalized form of world-making that excludes other values. This is, of course, a classic neoliberal recipe. Designing and legislating market-based incentives that appeal to the economic self-interest of a propertied class that can invest in it to make it all work... Who could be against that?

The Guardian newspaper reported 10 years ago, on 6 August 2012: “*The UK now has a natural capital committee, an Ecosystem Markets Task Force and an inspiring new lexicon. We don’t call it nature any more: now the proper term is natural capital. Natural processes have become ecosystem services, as they exist only to serve us. Hills, forests and river catchments are now green infrastructure, while biodiversity and habitats are asset classes within an ecosystem market.*” *Lords of Water* gives us a grim view of a future that trades water as a financial product. Although the example comes from an Anglo-Saxon context, the term *ecosystem services* also appears in the *Climate Adaptation Plan 2030*, and other policy documents, of the Flemish Government. It would seem that yet another layer of use may be added to water, but one that sounds worrying. Or does it also hold new possibilities for redistribution

of value?

“*Today, the realization of nature objectives is still too much filled in by governments and site management associations. We must actively work to convince farmers and private owners, for example, that they too can play an important role, even more so that they can get started with as a business. To this end, we are removing obstacles and looking at how stimulating instruments can be used additionally or differently. Compensation for the maintenance, restoration or development of important ecosystem services can be an option in this regard.*” (Flemish Climate Adaptation Plan 2030)

#### REFERENCES

Writing this text we were enlightened by a series of articles and publications. We brought together ideas and suggestions we found in the texts listed below, which makes us deeply indebted to all their brilliant thinkers and writers, in particular to David Aubin and Tom Vos. Our extended conversation with them has not only been very pleasurable, it also continues to be an inexhaustible source of inspiration.

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All policy papers available at: United Nations: <https://www.unwater.org>; Europe: <https://eur-lex.europa.eu/legal-content/NL/TXT/?uri=celex%3A32000L0060>; Flanders: <https://www.integralwaterbeleid.be/>; Local: <https://zwalmbeek.riviercontract.be/>

#### WALKS (PLACCAET) (2023)

Vermeir & Heiremans in collaboration with David Aubin, Lode Tanghe, Tom Vos, Walter Van den Branden. Design of glass work and poster in collaboration with Olivier Bertrand. Many thanks to Marion Abbey for installing her work Rayonne, that sheltered us from the sun... Co-production Boem vzw, Nadine vzw, Manoeuvre vzw and Jubilee vzw, in context of Kunst & Zwalm 2023 (over/met/in/door water). 26-27 August; 2-3 & 9-10 September 2023. Many thanks to Mola Molencentrum, Wachtebeke and to the community of Zwalm. Kunst & Zwalm is supported by the Flemish Community.