

Margaret Davies¹

Decolonising Property Justifications

For some time I have been wanting to revisit a question which has troubled Western liberal philosophy since its beginnings but which, in these neo-liberal times, has been largely sidelined. This is the question of what justification there is to hold property privately – most particularly land and physical resources. Until recent decades, the justifications for property were a relatively common theme in political philosophy. This attention to justifications had been longstanding, and persisted despite the foundational status of property to the economies of the capitalist West. Around 30 years ago attention to the question started to fade, though it has certainly not been abandoned by legal theorists of property for whom questions of justification and understanding property as a legal institution are intertwined. Whilst some hold to a sharp separation of the normative and the descriptive, in practice it is not possible to maintain such a distinction: the description of property relies on the justification made for it, and in justifying a thing, we need to know what it is (Davies 2015, pp. 3-4). In reality property has arisen from a set of historical, economic, cultural, and political circumstances in which the justification and the description are co-emergent. Libertarians, and others who believe property is reflective of freedom against a potentially hostile state, are more likely to define property as more absolute and more exclusive (Epstein 1985), while community-minded or environmentally-aware scholars will emphasise the obligations and responsibilities that accrue to ownership (Underkuffler 1990, Alexander 2008).

¹ Professor Margaret Davies is Matthew Flinders Distinguished Professor of Law at Flinders University. She completed her DPhil at the University of Sussex in 1992 on critical theory, and subsequently became a founding staff member at Flinders Law School. Margaret is the author of five books and numerous articles and chapters about the theory of law and property. She is a Fellow of the Academy of Social Sciences in Australia and a Fellow of the Australian Academy of Law.

Whatever the political outlook, liberal and Western justifications for private property normally start with the assumption that the social world is composed of autonomous human individuals, a character who is in fact both Eurocentric and androcentric. Both *private* property and the individual are elemental in the imaginary of liberal law. This individual is recognised in law as a subject or person, an entity that does not, however, entirely map onto the human person (see generally Naffine 2009): the legal person is an artificial construct that also includes institutions such as corporations. This part-human part-abstract subject is set against a world of objects or things that are not subjects – essentially the entirety of the physical world as well as a number of abstract objects created by human society (some of which, such as corporations, are also regarded as legal subjects). Private property presumes the subject-object distinction and indeed the entire fabric of the capitalist and colonial West is built from this imaginary in which there are autonomous self-owning subjects and objects that are other, passive, and capable of being owned. It is a matter of historical record that despite its logic and ostensible values, the distinction has not been made according to universal principle but rather according to power and politics: many human beings and entire classes of people have been and remain defined – legally and/or symbolically – as belonging to the category of object-nature-owned.

Several justifications for private property have been offered within Western theory, but the one that has been most powerful in colonial situations is based on the liberalism of John Locke (Locke 1967). His argument is very well known, and essentially proposes that, with some qualifications, when a person mixes their labour with the natural world, they gain a right of ownership over the resulting product. The argument assumes self-ownership in a context of natural abundance: it was perfectly calculated to underpin colonial expansion to areas of the world whose social arrangements did not reflect European norms of individual autonomy and

whose cultivation practices were wilfully misunderstood (Hsueh 2006). The labour of maintaining and reproducing human bodies is overlooked in Locke's defence of property, as are the extensive agriculture and land management practices of First Nations peoples (see e.g. Pascoe 2018). Moreover, the labour justification for property only takes into account the human contributions to production and entirely excludes biophysical inputs: the role of the earth – in evolving the plants, in compressing the rocks, in forming and recycling water, in hosting the fungi – is entirely foreclosed by the narrative of human creativity. It might be difficult to see these inputs as labour or as in any way creative, but this difficulty perhaps attests only to an impoverished Western imagination as opposed to any fundamental truth of the matter. In other words, the fictional individual enables rent-seeking on a massive scale: individual owners gain disproportionately to their own productive input because they essentially erase prior relationships and take the input of others and of the earth, for free.

Decolonising liberal justifications for property would necessitate an undoing of the grip that the liberal individual has on the imaginary of private property and understanding the connections that underpin human life (see generally Noisecat 2017). It may not be the criterion of labour (or similar) that is problematic here: after all, the continuation of all life depends upon constant production of new things. Rather, the problematic element is the attachment of the idea of labour to an individualised body who is artificially separated from their own conditions of being. Hence, to take the points mentioned above, a decolonised account of property would acknowledge several related points. First, it would start from an understanding that human beings are of the earth and intrinsically connected to it, rather than separate from it or having some god-derived special status. It would acknowledge second, that Aboriginal peoples did work the land extensively prior to colonisation in a sustainable, rather than an extractive, way. It would acknowledge third, that there is bodily labour in reproducing and sustaining human

beings, from the level of the whole organism to the cellular level. And it would acknowledge finally, the role of the earth in creating, providing, and maintaining processes of production. Individuals are nodes or elements in these cycles of production, but are not in any way independent of them, or even in control of them. What if, instead of going along with a character we know to be false, we consider how the truths of history and of interconnection with the nonhuman world might change our entrenched ideas about proprietorship?

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