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PROPERTY: CONCEPT, RATIONALE, CONTEXTS

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There is nothing which so generally strikes the imagination, and engages the affections of mankind, as the right of property; or that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe.¹

I Introduction

Property is both a concept and a legal institution. A lot of what is explored in this book concerns the latter – property as invoked in law and the property that relates to relations in Australian society. But in order to understand what is happening in property law it is necessary to understand a bit about the concept of property. Indeed, the two dimensions of property are inseparable and the concept is continually informing, justifying and reinforcing the institution.

This chapter contains two parts. The first presents a legal–philosophical analysis into the question: what is property? Here, property is described as an indeterminate concept that escapes ridged or fixed definition. Focusing predominately on real property, the part contends that property is about things; legal rights; evolves with respect to social relationships; and has a spatial dimension.

Following this, it is noted that property can be organised in three distinct ways: public property, common property and private property. While all societies promote a mixed property system, the most important in Western society is private property. However, despite the ubiquity of private property, it is rare for lawyers to consider the extra-legal or moral justifications for our possessions. For this reason, the second part of the chapter outlines four prominent justifications for private property. Those justifications relate to property derived from labour; human development and flourishing; economic efficiency; and natural or environmental use. While each has merits, this chapter also seeks to problematise and unsettle the theoretical basis for each justification.

II What is property?

Property is how people envision it – that is, what concept they have of it and also a social, political and legal institution, implemented to resolve particular conflicts in society.²

Private property is a dynamic social construct that is shaped by economic, legal, religious and philosophical factors. As C Edwin Baker observes: ‘Property rights are a cultural creation and a legal conclusion.’³ From this perspective the concept of private property is indeterminate⁴

1 William Blackstone, *Commentaries on the Laws of England, Volume II, Of the Rights of Things* (Clarendon Press, 1983) 2.
 2 Laura S Underkuffler, *The Idea of Property: Its Meaning and Power* (Oxford University Press, 2003) 121.
 3 C Edwin Baker, ‘Property and its Relation to Constitutionally Protected Liberty’ (1986) 134 *University of Pennsylvania Law Review* 741, 744.
 4 There is an alternative perspective that holds there is an objective or true concept of property. Richard Epstein, for example, describes private property in essentialist terms, arguing that private property means the ‘exclusive rights of possession, use and disposition.’ See Richard A Epstein, *Takings: Private Property and the Power of Eminent Domain* (Harvard University Press, 1985) 304.

and lacks an objective and stable unitary structure that can be discovered through empirical analysis or logical deduction. Yet, there are hundreds of books on property and many distinct attempts to distil the essence of property and offer a universal theory.⁵ While I believe attempts at a universal theory are futile – perhaps even counterproductive – there is broad agreement that property is about the distribution, allocation and control of scarce resources.⁶

This statement is an oversimplification, but represents a starting point for our purposes. A key point to underline is that property is intimately related to scarce resources i.e. where there is not enough of something to satisfy demand. If there is abundance of an item and no competition for its use then there is no need to establish a process for the distribution, allocation and control of the thing. While perhaps an obvious point, the importance of scarcity has increased in recent decades as a result of diminishing natural resources – a crisis that encompasses shortages of oil, copper cobalt, water and arable land.⁷ This, in turn, has resulted in increased instances of conflict⁸ as states and corporate entities scramble for control over what resources remain. The struggle between states in the South China Sea is a prime example and ought to give us pause to reflect on the central role that property plays in geopolitics.⁹

Beyond these preliminary points, the content of property includes four critical aspects – property as things; legal rights; social relationships; and the spatial dimensions of property. Each is considered in turn.

A Property as things

The most common response to the question ‘what is property?’ is that property concerns tangible things – for example, a book or a chair. Canadian theorist David Lametti supports this reasoning: ‘The intuitive appeal of making things the mediator of the relationship is evidenced by the pervasiveness of “thingness” in the layperson’s understanding of property.’¹⁰

Alongside tangible objects we might also recognise intangible items as property. English philosopher and social reformer, Jeremy Bentham, was one of the first to argue that the division of property into ‘real’ and ‘personal’ was obsolete and failed to account for a

5 For an excellent historical overview see Richard Schlatter, *Private Property: The History of an Idea* (Rutgers University Press, 1951). For a more recent book, written from the perspective of liberal theory, see Jeremy Waldron, *The Right to Private Property* (Clarendon Press, 1991).

6 An expanded description is offered in Peter Burdon, *Earth Jurisprudence: Private Property and the Environment* (Routledge Press, 2014). Here, an ecological description of property is presented that conceives of the institution as a relationship between and among human beings through tangible or intangible items. This statement is incorporated into the following working-definition: ‘Private Property is a human institution that comprises a variety of relationships among members of the Earth community, through tangible or intangible items. For human beings, it is characterised by the allocation to individuals or groups of individuals of a degree of control over the use, alienation and exclusivity of scarce resources, as well as a measure of obligation and responsibility to all members of the Earth community in the exercise of the property right.’

7 Michael Klare, *The Race for What’s Left: The Global Scramble for the World’s Last Resources* (Picador, 2012).

8 Michael Klare, *Resource Wars: The New Landscape of Global Conflict* (Holt Paperbacks, 2002).

9 Robert D Kaplan, *Asia’s Cauldron: The South China Sea and the End of a Stable Pacific* (Random House, 2015).

10 David Lametti, ‘The Concept of Property: Relations Through Objects of Social Wealth’ (2003) 53 *University of Toronto Law Journal* 325, 354.

growing economy, wherein land was not the sole source of wealth and power. For example, in Bentham's submission to the Real Property Commission in 1828, he advanced a unified system of property law that was broad enough to include 'newer proprietary rights such as shares in companies and copyright.'¹¹ As Nicole Graham suggests, Bentham helped introduce the idea of dephysicalised property: 'dephysicalisation means the removal of the physical "thing" from the property relation and its replacement with an abstract "right".'¹²

However, while tangible and intangible things are necessary for property, they are not sufficient. If property is just 'things', how can I keep somebody from taking the thing or from interfering with it? How can I give it to my friend or leave it to my family in a will? These questions highlight the importance of legal rights as mediator of property claims. A focus on 'things' captures the idea that property is about resources or scarce resources but legal rights help explain how people control or have power over objects.

B Property and legal rights

Property rights are created, conferred and protected by law. As Bentham argues: 'Property and law are born together, and die together. Before laws were made, there was no property; take away laws, and property ceases.'¹³ Yet, at the beginning of the 20th century lawyers were confused about the kinds of legal rights that pertained to property. The most sophisticated attempt to clarify this issue was undertaken by Wesley Newcomb Hohfeld.¹⁴ Consistent with Bentham's description of dephysicalised property, Hohfeld argued that the law weighs the 'aggregate of abstract legal relations' rather than deferring to 'figurative or fictional' categories.¹⁵ In the context of property specifically, legal rights do not refer to 'a tract of land or chattel' but rather 'denotes a right over a determinate thing.'¹⁶

For Hohfeld, the term 'right' can be analysed to reveal four fundamental categories of legal relations. First, the basic term 'right' describes a claim that is correlative to another person's duties. For example, if X has the 'right' to enter onto Blackacre, Y has a correlative 'duty' to not interfere with that right. By contrast, a 'liberty' (or privilege) is a right that does not entail obligations on other parties. It might also be conceived as a 'freedom', such as the freedom to accumulate property. Hohfeldian 'powers' describe the capacity to change legal relationships. For example, to say that X has a power means that they can voluntarily change their legal relationship with some other person through contract or a will. Finally, 'immunities' correlate with disabilities of another, for example, constitutional rights correlate with disabilities of the

11 Mary Sokol, 'Bentham and Blackstone on Incorporeal Hereditaments' (1994) 15 *The Journal of Legal History* 287.

12 Nicole Graham, *Landscape: Property, Environment, Law* (Routledge, 2011) 134. See also Kenneth Vandeveld, 'The New Property of the Nineteenth Century: The Development of the Modern Concept of Property' (1980) 29 *Buffalo Law Review* 325. Vandeveld notes at 358 that during the 1880s and 1890s, American courts began recognising new property interests and defining property as a right to value, rather than as a right to some tangible item.

13 Jeremy Bentham, *A Theory of Legislation* (Elibron Classics, 1931) 113.

14 Wesley Newcomb Hohfeld, 'Some Fundamental Legal Conceptions as Applied in Judicial Reasoning' (1913) 23 *Yale Law Journal* 16 and Wesley Newcomb Hohfeld, 'Fundamental Legal Conceptions as Applied in Judicial Reasoning' (1917) 26 *Yale Law Journal* 710.

15 *Ibid* (1913) 24.

16 *Ibid* 22.

government to act in certain ways.¹⁷ With respect to property, X may have an immunity from being fined for parking their car in a restricted area while Y may not have this privilege and so has a disability.

Put together, these items make up Hohfeld's eight fundamental legal conceptions.¹⁸ They have been reproduced in Table 1.1, together with their correlative and opposite concepts. (Note that in this table, correlations are represented vertically and that opposites run diagonally.)

Table 1.1: Hohfeld on rights

Right Liability	Duty No Right
Power Immunity	Liability Disability

Hohfeld's analysis continues to exercise tremendous influence over property discourse to the present day. Stephen Munzer notes that Hohfeld's vocabulary has 'no serious rival of its kind in intellectual clarity, rigor and power.'¹⁹ However, to define the specific rights that constitute property, lawyers commonly conjoin Hohfeld's analysis with the analysis provided by Anthony Honoré.²⁰

Honoré argued that private property is more complicated than simply holding a 'right' or 'dominion' over a thing. Property is more accurately conceived of as being a bundle of rights, liabilities, powers and duties.²¹ In regard to any potential item of property, the bundle could include any of the following standard incidents: 'rights to possess, use, manage and receive income; the powers to transfer, waive, exclude and abandon; the liberties to consume or destroy; immunity from expropriation; the duty not to use harmfully; and liability for execution to satisfy a court judgement.'²²

Importantly, Honoré does not claim that the 'standard incidents' are inherent or intrinsic to the concept of private property. His description relates specifically to the 'liberal concept of full individual ownership.'²³ Property rights may look quite different under communist, anarchist, libertarian or fascist political formations. Amongst liberal theorists, it seems clear that most writers would accept, at a minimum, what Margaret Radin calls the 'liberal triad' of legal rights – use, exclusivity, and alienability.²⁴

1. Use: The right to use and control the thing. This gives owners power and control over their property.
2. Exclusivity: Property rights provide owners with the exclusive right to determine how the thing is used. Exclusivity also allows owners to stop others from using or accessing their property.

17 Ibid 25–8.
18 Stephen Munzer, *A Theory of Property* (Cambridge University Press, 1990) 18.
19 Ibid 19.
20 Anthony Honoré, 'Ownership' in Anthony Guest (ed), *Oxford Essays in Jurisprudence* (Oxford University Press, 1961) 22.
21 Ibid 84.
22 Munzer, above n 18, 22.
23 Honoré, above n 20, 84.
24 Margaret Radin, *Reinterpreting Property* (University of Chicago Press, 1993) 121.

3. Alienability: Provides owners with right to sell, give away, abandon or even destroy their property. Alienability is the exclusive right of the owner and so long as there is no government regulation limiting use, the owner can alienate the thing as they see fit.

These three rights are the bedrock of a liberal conception of property. You will see them referred to in the literature as a bundle of rights or a bundle of sticks. Whoever possesses these three sticks has ownership over the property and it should also be noted that an owner can fragment their bundle and transfer individual sticks to others. For example, an owner of a house can temporarily transfer their use and exclusivity sticks to someone who is renting from them. The tenant does not have all three sticks and so cannot be identified as the owner.

Fundamentally, what liberal property rights provide an owner with is choice.²⁵ The rights attained by property holders provide individuals with the power to act in certain ways in relation to the rights of other people or groups of people. A property right ‘amounts to the decision-making authority of the holder of that right’ and can be used to exercise control over things and over the lives of other people.²⁶

C Property as a social relationship

Property rights are, by nature, social rights; they embody how we, as a society, have chosen to reward the claims of some people to finite and critical goods, and to deny the claims to the same goods by others. Try as we might to separate this right from choice, conflict, and vexing social questions, it cannot be done.²⁷

The third component is also very important. Property is not just about things or rights. It is about the relationships people have with each other in society and in the global community. This insight leads theorists to describe property as a social relationship. To paraphrase Jennifer Nedelsky, describing property as a social relationship represents a shift from ‘habits of individualistic thought’ to ‘habits of relational thought’.²⁸

The American legal realists²⁹ provided the first sophisticated articulation of the social or community aspect of property. Morris Cohen for example, argues that ‘it would be as absurd to argue that the distribution of property must never be modified by law as it would be to argue that the distribution of political power must never be changed.’³⁰ He goes on to argue that private property creates a legal relationship between the person holding private property and others.³¹ In support, Felix Cohen added an important modification to the bundle of rights metaphor. He writes: ‘Private property *is a relationship among human beings* such that the

25 Paul Babie, ‘Choices that Matter: Three Propositions on the Individual, Private Property and Anthropogenic Climate Change’ (2010) 22 *Colorado Journal of International Environmental Law and Policy* 223–56.

26 C Edwin Baker, ‘Property and its Relation to Constitutionally Protected Liberty’ (1986) 134 *University of Pennsylvania Law Review* 741, 742–43.

27 Laura Underkuffler-Freund, ‘Property: A Special Right’ (1996) 1 *Notre Dame Law Review* 1033, 1046.

28 Jennifer Nedelsky, *Law’s Relations: A Relational Theory of Self, Autonomy, and Law* (Oxford University Press, 2013) 25.

29 William W Fisher, Morton J Horwitz & Thomas A Reed (eds), *American Legal Realism* (Oxford University Press, 1993).

30 Morris Cohen, ‘Property and Sovereignty’ (1927) XIII *Cornell Law Quarterly* 13, 16.

31 Ibid.

so-called owner can exclude others from certain activities or permit others to engage in those activities and in either case secure the assistance of the law in carrying out [that] decision.³²

Building on this insight, scholars operating under the banner of Critical Legal Studies³³ have argued convincingly that the source and internal constitution of private property arises from social relationships.³⁴ Private property is something that is defined and constructed by human beings. It is not handed down by divine grant, nor does it 'emerge fully formed like Athena from Zeus's head.'³⁵ Rather, it is 'closer to a piece of music that unfolds over time.'³⁶ It gets its stability and certainty from an ongoing process of evaluation and adaptation to social, ethical and environmental tensions.

To support this analysis social relations theorists present an alternative to the liberal conception of individual autonomy. 'What makes autonomy possible', argues Nedelsky, 'is not separation, but relationship'.³⁷ From this perspective, the individualism that pertains to the liberal concept of private property is misconceived. People are not 'islands unto themselves' and best function to achieve their own goals in the context of 'social relations that support their own abilities to flourish'.³⁸ Individuals achieve autonomy not in isolation from the community but by a mixture of dependence and independence.³⁹ Dependence is a necessary prerequisite for 'free' individuals.⁴⁰ Ngaire Naffine summarises this point and its consequence for law:

Within relations we become what we are as persons; here, we must make sense of our lives, which in turn must be understood by scholars who wish to explain us. There is never a full separation between persons, and indeed, human beings draw their very identity from their relations. When they work well, relations are not only formative (but unavoidable) but also conducive to human autonomy and to the flourishing of the individual. It follows that the role of law is to regulate relations rather than to ward them off. Law's job is to ensure that they run smoothly and that they neither oppress nor harm us.⁴¹

At their best, property rights represent enforceable rules that give shape to human relationships. If the community deems the rules to be fair and the rules contain an appropriate acknowledgement of the social aspect of property, then they can assist in structuring a framework for allocation and distribution of resources that serves the common good. In this way, patterns of human relationships should not be conceived primarily as the clashing of individual rights, but in terms of the way 'patterns of relationship' can sustain a collective

32 Felix S Cohen, 'Dialogue on Private Property' (1954) 9 *Rutgers Law Review* 357, 373.

33 See Mark Kelman, *A Guide to Critical Legal Studies* (Harvard University Press, 1987).

34 Joseph W Singer and Jack Beermann, 'The Social Origins of Property' (1993) 6 *Canadian Journal of Law and Jurisprudence* 217. For an alternative origin story for property see Eric T Freyfogle, *On Private Property: Finding Common Ground on the Ownership of Land* (Beacon Press, 2009) 157–80.

35 Joseph W Singer, *Entitlement: The Paradoxes of Property* (Yale University Press, 2000) 13.

36 Ibid.

37 Jennifer Nedelsky, 'Reconceiving Rights as Relationship' (1993) 1 *Review of Constitutional Studies* 1, 8.

38 Singer, above n 35, 131.

39 Jennifer Nedelsky, 'Reconceiving Autonomy: Sources, Thoughts and Possibilities' (1989) 1 *Yale Journal of Law and Feminism* 7.

40 Eric T Freyfogle, *The Land We Share: Private Property and The Common Good* (Shearwater Books, 2003) 206–7.

41 Ngaire Naffine, 'The Liberal Legal Individual Accused: The Relational Case' (2013) *Canadian Journal of Law and Society* 1.

social life and the scope for individual autonomy.⁴² The social relations understanding of property simultaneously respects individual autonomy and also the need to develop oneself in relation to others.⁴³

This perspective of private property does not abolish autonomy or boundaries, it simply reconceptualises them. Rather than understanding property rights as ‘powers absolute within their spheres’⁴⁴ it interprets them as socially situated and contingent on their impact on others within the community. Put otherwise – a socially situated theory of private property gives rise to mutual obligations between and amongst property owners. Joseph William Singer explains: ‘Sometimes those obligations require nonowners to leave owners alone, but at times they require owners to exercise their property rights with due respect for the interests of others, including nonowners.’⁴⁵ This statement recognises that property rights can come into conflict and when they do it is necessary that the rights be defined (at least partially) with reference to the relationships they instantiate.

In summary, shifting the focus of property from individual rights to social relationships has the potential to promote the common good for human society. Lawmakers are better able to articulate laws for this purpose if they understand the kinds of relationships they want to foster or discourage. Private property can play a role in facilitating communal living by articulating rules that respect the interests of others and organise resources in a way that promotes efficiency, justice and environmental sustainability.⁴⁶

D The spatial dimensions of property

[P]roperty emerges from, exists in, and is replicated through space.⁴⁷

Lawyers may describe property as a bundle of rights, liberties, powers and immunities. They may also say that property is constituted by social relationships that evolve over time in response to those relationships. However, many descriptions of property fail to adequately identify its spatial dimensions.⁴⁸ Put simply – property does not exist in a vacuum – all tangible property exists and operates in a spatial context.

Paul Babie elaborates on these dimensions: ‘the space in which property exists, operates and has meaning in people’s lives; the space in which the social relationships that constitute property exist; the space where rights and relationships structure our lives; and the space that we structure through those rights and relationships’.⁴⁹ Through our choices and interactions with physical space, human beings are constantly engaged in a process of altering, moulding and structuring social space.⁵⁰

42 Nedelsky, above n 37, 8.
43 Laura Underkuffler-Freund, ‘On Property: An Essay’ (1990) 100 *Yale Law Journal* 127, 129.
44 Duncan Kennedy, ‘Toward a Historical Understanding of Legal Consciousness: The Case of Classical Legal Thought in America 1850–1940’ (1980) *Research in Law and Sociology* 3.
45 Singer, above n 35, 131.
46 Freyfogle, above n 40, 232.
47 Paul Babie, ‘The Spatial: A Forgotten Dimension of Property’ (2013) 50 *San Diego Law Review* 323, 327.
48 Ibid 325.
49 Ibid 325–6.
50 Paul Babie, ‘How Property Law Shapes Our Landscapes’ (2012) 38 *Monash University Law Review* 1.

Given the centrality of property to our lives, it makes sense that lawyers understand its spatial dimensions. Edward Soja contends that a ‘spatial turn’ in our thinking will ‘enrich our understanding of almost any subject’ but also has the ‘added potential to extend our practical knowledge into more effective actions aimed at changing the world for the better’.⁵¹ For example, a spatial understanding of property adds a richer context to the social relations theory and allows us to understand the unique role that property has as both the source and mechanism for achieving spatial justice.⁵² The term ‘spatial justice’ contends that justice has a geography and is unevenly distributed between different locations. Focal issues include struggles for rent control and decent wages in poor communities of colour;⁵³ gentrification of cities;⁵⁴ the privatisation of public space and the removal of spaces for the homeless;⁵⁵ and how built-in assumptions about planning reinforce existing distributions of income.⁵⁶

Moreover, a spatial understanding of property highlights that it is not only human beings, but also the land itself and non-human animals that are affected by the choices we make when exercising property rights. This is true whether we are considering the impact of human settlement on a waterway; land clearing on privately owned land; or the construction of artificial objects such as a car, book or pen. More controversially, a spatial description of property opens the thought that property relations are not one-sided relationships between human beings.⁵⁷ Rather, the land itself may play a role in shaping property choices and interactions. Aldo Leopold first articulated the basis for this point in his classic essay, *The Land Ethic*. Leopold notes:

Many historical events, hitherto explained solely in terms of human enterprise, were actually biotic interactions between people and the land. The characteristics of the land determined the facts quite as potently as the characteristics of the men who lived on it.⁵⁸

Most descriptions of property do not acknowledge this point and instead focus on human dominion and the myriad of ways that human beings control objects of property. However, on further reflection it is apparent that our interactions with *real property* are far from one-sided. Frequently, the decision to settle and construct a house are determined by factors such as water availability, fertile soil, protection from the surrounding hills, food and ocean access. Further, the choices that property owners make with regard to their individual blocks are influenced heavily by ecological factors. Soil type, rainfall, and wind speed, for example, play a crucial role in determining what varieties of plant life an ecosystem will sustain. The ‘choice’ to plant a particular type of tree can only be realised if the landscape is supportive. Of course this description may not be relevant for all kinds of property. But where it is true our legal imagination ought to be broad enough to recognise spatial dimensions.

51 Edward W Soja, *Seeking Spatial Justice* (University of Minnesota Press, 2010) 2–3.

52 Ibid. See also Susan S Fainstein, *The Just City* (Cornell University Press, 2011).

53 Soja, above n 51.

54 Nicholas Blomley, *Unsettling the City: Urban Land and the Politics of Property* (Routledge, 2003).

55 Don Mitchell, *The Right to the City: Social Justice and the Fight for Public Space* (The Guilford Press, 2003).

56 David Harvey, *Social Justice and the City* (University of Georgia Press, 2009).

57 Burdon, above n 6, 123–6.

58 Aldo Leopold, *A Sand County Almanac: Essays on Conservation from Round River* (Ballantine Books, 1986) 241.

III Justifying private property

The first person who, having enclosed a plot of land, took it into his head to say this is mine and found people simple enough to believe him was the true founder of civil society. What crimes, wars, murders, what miseries and horrors would the human race have been spared, had some one pulled up the stakes or filled in the ditch and cried out to his fellow men: “Do not listen to this imposter. You are lost if you forget that the fruits of the earth belong to all and the earth to no one!”⁵⁹

There are multiple ways property can be conceived and structured. For example, state or public property covers things like crown land, public parks, streets, roads and footpaths. Moreover, prior to the enclosure movement in 18th century England,⁶⁰ it was common for vast tracts of land to be held as common property. Today, common property refers mainly to the ‘global commons’⁶¹ which includes Antarctica, the high seas and deep seabed, the atmosphere, and space. Native title has also been theoretically defined as communitarian property because it is held jointly by a community and defined by internal community norms and customs.⁶²

Alongside these, the most common way of organising property relationships is private property. As Singer notes: ‘At the start of the twenty-first century, faith in private property as a mode of economic organization is as strong as it has ever been.’⁶³ This faith is promoted on the belief that private property provides the basis to enhance human freedom and is vital for individual flourishing.⁶⁴ However, it is also clear that Western societies have produced stark and crippling inequalities in the distribution of property.⁶⁵ If we are going to live in a society where a tiny fraction of the population control the vast majority of property, we need to have a responsibility to think clearly about how this can be justified. This is exactly what political theory has attempted to do over the entire course of human history – to provide justifications for why unequal allocations exist. In thinking about these justifications, we must also remain open to the view that property – at least, the current inequality of distribution – cannot be justified but perhaps those with less material wealth lack the social power to challenge the status quo.

Political theory has produced a wide variety of rationales to justify private property. I will describe and evaluate three key justifications.

59 Jean-Jacques Rousseau, *The Social Contract, A Discourse on the Origin of Inequality, and A Discourse on Political Economy* (Digireads, 2006) 145.
 60 Janet Neeson, *Commoners: Common Right, Enclosure and Social Change in England, 1700–1820* (Cambridge University Press, 1993) and Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge University Press, 1990).
 61 Susan J Buck, *The Global Commons: An Introduction* (Island Press, 1998).
 62 James Harris, *Property and Justice* (Oxford University Press, 2002) 103. Harris defines communitarian property as a situation when a community of persons have the following relationship to the land: ‘They have the benefit of trespassory rules excluding outsiders from the resource – in that sense it is their private property. However, whatever powers of internal division or transmission they possess are referable, not to the wider institution which contains the trespassory rules that confer protection against outsiders, but to internal regulations arising from their mutual sense of community.’
 63 Singer, above n 35, 1.
 64 Richard Pipes, *Property and Freedom* (Vintage, 2000).
 65 Thomas Piketty, *Capital in the Twenty-First Century* (Belknap Press, 2014) and Joseph E Stiglitz, *The Great Divide: Unequal Societies and What We Can Do About Them* (W W Norton & Company, 2015).