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Peter Garnsey

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[More information](#)

Introduction

The defence of private property has been a feature of philosophical, theological and legal discourse from antiquity to the present day. This book seeks to explore the ancient ‘foundational’ texts concerning ideas of property and their reception up to the early nineteenth century. I begin with Plato’s thoughts on property in the *Republic* as expressed in his vision of the ideal polity, or Kallipolis. Other texts or foundation narratives include New Testament passages on the community of the first Christians at Jerusalem and the poverty of Christ and his apostles, and a collection of texts on primeval humanity drawn from a variety of literary works. But in addition to examining the various discussions relating to property and property regimes, I set out to challenge the dominant historical paradigm that the ancient world made little, or in some accounts no, contribution to Rights Theory, and in particular to the right to private property.

I am particularly interested in the confrontation that occurs in the works of philosophers, theologians and jurists, and other literary genres, between regimes of sharing of one sort or another and private property regimes, and I study the ways in which the themes of the origin of private property, and the transition to private property from primitive communality (as I call it), are handled by authors from antiquity to the Age of Revolution and the immediately following decades.

In contemplating this enterprise I have found reassuring and at the same time cautionary words in John Dunn’s essay ‘The History of Political Theory’.¹ He talks of four different kinds of questions ‘that appropriately arise in attempts to understand the history of political theory’. The first two questions are: ‘What did the author mean by his or her text?’ and ‘What does that text show us about the author’s own society?’ Question four is: ‘What does the text in question mean for us, today?’ It is question three

¹ Dunn (1996), ch. 2, at 24–5.

Cambridge University Press

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Excerpt

[More information](#)

that especially interests me: ‘What has this text meant to others, reading it then and subsequently, and why has it meant that and not something else?’ Dunn explains:

Every great text (like any other human action) has an occasion – something which prompted it. But unlike most human actions, great texts also have a protracted and differentiated fate. That fate often stands (and indeed perhaps always stands) in a somewhat ironical relation to its author’s original intentions. But its very scope and variety are themselves a tribute to the unsteady but urgent power of the text itself.

Dunn enthuses about this approach: ‘The fate of great texts’, he says, ‘could be immensely fascinating, as well as exceptionally illuminating.’ He goes on to issue the warning that such a project would be intimidating, because brutally labour-intensive.

Dunn’s third question is effectively my question. It is of course essential that I study any given text itself, situate it within a contemporary context, and pay attention to the conditions (within the ‘horizons of the possible’) which framed its production. But I also want to see what happens to the ideas set out in the original texts as they come into the hands of other thinkers, and I want to follow those thinkers as they twist and turn them to suit their own interests. For we can be sure that the History of Ideas is not reducible to the study of supposedly fixed and unchanging concepts or ideas over time, shorn of the successive contexts in which they appear. In different periods, different perceptions produce more or less subtly different treatments of what is widely regarded as a central issue in social and moral life: property – its origins, legitimacy and status.

I take first Plato’s concept of communality as set out in some detail in the *Republic* and more briefly in the *Timaeus*, *Critias* and *Laws*. I ask (in Chapters 1 and 2) how his ideas fared at the hands of selected succeeding thinkers: Aristotle, Proclus the late antique Neoplatonist, Averroes the Aristotelian commentator of Islamic Medieval Spain, and sundry Christian humanists of Platonic persuasion in the Quattrocento. I end my survey with two writers who drew inspiration from Plato, Gemistus Plethon of Mistra (first half of the fifteenth century) and Thomas More. How Plato’s ideas ‘fared’ is an appropriate way to put it, as, beginning with Aristotle, commentators gave Platonic communality a meaning that Plato had not intended. The nature of the arrangements that Plato through Socrates imposes on the leadership of the city, that is, the Guards and Auxiliaries, has been misunderstood, so that what is in fact a regime of denial, both of private property and of individual family, has been read

Cambridge University Press

978-0-521-70023-8 - Thinking about Property: From Antiquity to the Age of Revolution

Peter Garnsey

Excerpt

[More information](#)*Introduction*

3

as a sharing of property and family. Such a regime, in the eyes of a number of modern commentators, is properly characterized as ‘communitistic’, to my mind erroneously. What is more, Plato’s prescriptions for the governing classes are generalized by later thinkers (with a few exceptions) to apply to the whole city.

In Chapter 3 I consider the nature of the first Christian community at Jerusalem as presented in Acts of the Apostles 2 and 4–5. The first Christians are said to have renounced private property and practised community of goods. These texts gave rise, in curious circumstances involving a deliberate misreading by Eusebius the ecclesiastical historian of an account of certain Jewish ascetic groups by the Hellenized Jew Philo, to a model or myth of the *ecclesia primitiva*. I trace through to the fourteenth century the rich and varied history of this model, as it was brought into service in the context of various reformist movements within the Church. It is a history which highlights Christianity’s ambivalence between radical world-rejection and desire for this-worldly power.

In Chapter 4 I look sideways at another, analytically distinct, foundation narrative of New Testament origin, which I call the *vita apostolica*, this being shorthand for the story of Christ, his words and his lifestyle, and that of his apostles. I show how the texts which advocate the renunciation of property and the embracing of poverty proved inspiring but also controversial within Christianity; and further, how these same texts had an unexpected impact on the development of Rights Theory in the late Middle Ages, in the context of the Franciscan poverty dispute of the late thirteenth and early fourteenth centuries.

‘By the law of nature everything was in common.’ So Gratian wrote in his *Harmony of the Discordant Canons*, or *Decretum*, an authoritative and highly influential digest of Canon Law published in Bologna in around 1140. The principle enunciated by Gratian had its origin in the myth of the Golden Age, which can be traced back in literature to the Greek poet Hesiod of the eighth century BC. Thereafter it passed through different readings and interpretations at the hands of poets, philosophers and theologians of antiquity, the Middle Ages and beyond. Gratian presented the communal/private dichotomy in such a way as to raise very sharply the matter of the legitimacy of private property. He caused additional anxieties among canon lawyers and theologians by illustrating the above dictum with reference to both Plato’s *Republic* and the Acts of the Apostles, and in such a way as to suggest that the regimes of communality set out therein were similar. In Chapters 5 and 6 I look at the ways in which the theme of communality is treated in discussions of the primitive

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Peter Garnsey

Excerpt

[More information](#)

or natural state of man, in classical pagan literature, in Christian writings of late antiquity and the Middle Ages, and in the works of philosophers and jurists in the seventeenth, eighteenth and early nineteenth centuries. I am particularly interested in the way the issue of the legitimacy of private ownership is handled in the context of discussions of first acquisition and the transition from the state of nature to civil society.

In Chapter 7 I consider a view that is widespread among modern historians of political thought and philosophers of law that the ancient world made no contribution to Rights Theory, in other words, that in this sphere at any rate there was an absence of foundation texts and authoritative authors coming through from antiquity. I argue that this view is mistaken. Focusing on the Roman juristic tradition as preserved in the emperor Justinian's sixth-century *Corpus* of Civil Law, but adducing additional evidence from other literature and from inscriptions, I show that the Romans had a very clear concept of positive legal rights, or rights that people can actually exercise as full members of a given society. In the Roman case these were rights held under the *ius civile*, Roman civil law, by Roman citizens *qua* citizens. Such rights included the right to own property according to Roman law. If my argument is correct, there are important consequences for the history of Rights Theory. Specifically, a reassessment is required of the precise contribution in the evolution of that theory, and of the right to property in particular, made by lawyers and philosophers operating in the Romanist tradition from medieval times to the Age of Revolution.

In Chapter 8 I sketch the history of natural or human rights, as distinct from the legal rights that were the subject of Chapter 7, from the twelfth century to the end of the eighteenth, with special reference to the natural right to property. In this case a formative stage in antiquity does appear to be lacking. I consider the hypothesis that slavery made it impossible, intellectually and in practice, for ancient societies to conceive of rights accruing to individuals as human beings, and more particularly human or natural rights to liberty and to property. Although ancient societies may not have had the concept of natural rights themselves, they did provide a platform upon which such a concept could be constructed in a favourable intellectual and cultural context. Such a context was provided by the rediscovery of Justinian's law books (around 1070) and Gratian's codification of canon law (around 1140), which coincided with a more general movement of cultural renaissance and renewal. The reception of natural law theory from antiquity – first systematized by the Stoics, subsequently transmitted to the Middle Ages in Christian dress – is particularly worthy

Cambridge University Press

978-0-521-70023-8 - Thinking about Property: From Antiquity to the Age of Revolution

Peter Garnsey

Excerpt

[More information](#)*Introduction*

5

of attention. It was from natural law theory that a fledgling natural rights theory was derived. The first natural right to see the light of day was the right to life, or self-preservation. In a brief case-study I show how this right emerged as a spin-off from the Christian doctrine of charity and then held its own as the primary natural right (and in the eyes of some thinkers, the only natural right) through to the eighteenth century. It did so rather at the expense of a natural right to property. Canonist lawyers fought hard for such a right, but at best secured for it the status of a natural but ‘adventitious’ or ‘relative’ right. And so it remained (at best) in the canonist tradition – whereas in the Romanist tradition, represented notably by the distinguished humanist jurist Donellus, an older contemporary of Grotius, property remained a legal right. It was John Locke who put the right to property on a pedestal, entailed by the primary rights to life and liberty. In the Revolutionary Age the French accorded property the status of an inalienable right of man, the Americans did not. Politics played a crucial part in both decisions. But political philosophy also made a contribution. Jefferson was influenced by the natural law tradition which gave the status of a natural right but of a lower order. It was the French who proved themselves the true Lockeanes.

Cambridge University Press

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Excerpt

[More information](#)

CHAPTER I

*Plato's 'communism', Aristotle's critique
and Proclus' response*

INTRODUCTION

Plato's ideal polity, or Kallipolis, is often characterized as a communistic society, in part or as a whole. Communism has been recently defined in this way:

[Communism is] the belief that society should be organized without private property, all productive property being held communally, publicly or in common. A communistic system is one based on a community of goods. It is generally presented as a positive alternative to competition, a system which is thought to divide people; communism is expected to draw people together and to create a community. In most cases the arguments for communism advocate replacing competition with cooperation either for its own sake or to provide a goal such as equality, or to free specific groups of people to serve a higher ideal such as the state or God.

The author proceeds to apply this (perfectly acceptable) definition to the ideal polity of the *Republic*: 'The idea of communism as collectively owned property first appears in classical Greece. Plato's *Republic* contains a notable defence.'¹

This claim is mistaken. There is no collective or communal ownership of property in the ideal state of the *Republic*. Rather, Plato has Socrates prescribe for the political leadership and military (the Guards and Auxiliaries) an *absence* of property (coupled with a denial of individual families), or, to view it from a more positive angle, a community of use and a community of minds, involving the sharing of basic accommodation and subsistence, women and children, feelings and emotions. These arrangements coexist with, and are materially dependent upon, a private property regime enjoyed by a separate class of producers. No proprietor

¹ Sargent (1998).

Cambridge University Press

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Peter Garnsey

Excerpt

[More information](#)

can own very much, as there are to be no extremes of wealth and poverty in this community. I will call this polity Kallipolis A (or KA).²

But perhaps the ideal polity that is sketched out in the late (and unfinished) dialogue, the *Laws*, is more appropriately viewed as 'communistic'. At first sight it does look a more deserving candidate. As described, this time not by Socrates, but by an anonymous Athenian, it is characterized by the sharing of property and other possessions, along with wives and children *throughout the city*. I will call this polity Kallipolis B (or KB). KB actually figures relatively little in the very considerable literature on Plato's property arrangements, from his own time to the present day. From time to time the matter of its relation to the regime of the *Republic* has been raised; in fact the case that it represents a different and distinct regime from that of the *Republic* has been made again only recently.³ The alternative, for which I will argue, is that it is more or less a restatement of the regime of the *Republic*. If this is right, then the property regime implied in KB will be no more communistic than that of Kallipolis A (KA).

After giving an airing (and no more) to KB, Plato confesses that it is for gods or sons of gods rather than humans, and moves on to the second-best city of the *Laws*, Magnesia. Magnesia, incidentally, is clearly not communistic, because Plato has given it a private property regime, albeit one in which control of property is not absolute. In this polity the 5,040 citizens or heads of families are allowed their own possessions as well as wives and children. Their property holdings are restricted in the cause of preventing extremes of poverty and wealth – an end shared with KA. Some land is held in common for the provision of public meals and religious sacrifices.

As I've said, the author of the dictionary definition is simply in error in saying that Plato sets out a defence for 'collectively owned property' in the *Republic*, with the implication that KA is such a regime. At least the mistake in this case can be picked up, because the author has stated what he takes communism to be. It is much more common for the term to be applied without an accompanying definition, and one is left to wonder whether it is being used strictly, to refer to communal ownership, or loosely, in some weaker sense. One suspects that for many, 'communist' or 'communistic' functions as a kind of umbrella term which can in principle be applied to a whole range of property regimes characterized by some sort of sharing or having in common, whether or not ownership of

² Plato calls his ideal state Kallipolis in *Rep.* 527c. ³ Laks (2000); (2001); Bobonich (2002).

Cambridge University Press

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Peter Garnsey

Excerpt

[More information](#)

productive property is involved.⁴ Such an all-encompassing definition of communism (whether stated or, more usually, implied) is unhelpful and misleading. There is a case for an all-inclusive and flexible term, but to use communism in this way is to court confusion. For want of a better term, I employ ‘communality’.⁵ Unlike communism, communality does not come already armed with a precise meaning. Nor, for that matter, again unlike communism, does it carry ideological baggage or historical specificity which can make its use problematic.⁶ Whatever term is employed, it is crucial that its use should be accompanied by close analysis (preferably with a comparative dimension) of the nature of any particular property arrangements, and must not be taken as a substitute for such an analysis.⁷

If I appear insistent on the matter of terminological precision, it is because I have become aware that Plato’s thoughts on property have suffered from misreading of various kinds over the centuries. The process predates the introduction of the word ‘communism’ in the nineteenth century. It begins with Aristotle, Plato’s most distinguished pupil, according to whom Socrates in the *Republic* prescribed the sharing of property, women and children throughout Kallipolis. I devote the last part of this chapter and the whole of the next to following the destiny of Plato’s thoughts on property as they were subjected to interpretation, simplification and manipulation at the hands of a chain of commentators from the fourth century BC to the fifteenth century AD, from Aristotle to Marsilio Ficino, the leading Platonist of the Italian Renaissance.⁸

⁴ So Mayhew (1993b), 313, n. 3: ‘When I speak of a city or class being communist, under communism, etc., I mean that at least in some area, in some way, the citizens share, own, or have something significant and typically private (namely women or property) in common.’ Mayhew is exceptional in defining his terms.

⁵ Burnyeat (1999) uses ‘communality’ for the arrangements for property and family in Kallipolis.

⁶ I do not exclude the use of ‘communism’ with reference to periods (historical or imaginary) earlier than the nineteenth century, where communal ownership of property is involved. It is to be noted however that (to the best of my knowledge) Marx does not use the term communism when he talks of ‘archaic’ or tribal communal property regimes in which production and appropriation were collective, e.g. in his *Precapitalist Economic Formations*. On the concepts of positive and negative community as developed by Pufendorf in the seventeenth century for property arrangements in the state of nature, see Chapters 5 and 6 below. Whereas Hont and Ignatieff (2005) are rightly content to use this terminology, Waldron (1988) talks in terms of ‘communism’, ‘primitive’ or ‘original’, even in the case where this term might mean ‘nothing more than an absence of private property rights in resources when they were created’ (148–57, at 149).

⁷ Thus Mayhew (1993a, b); (1997) applies the term ‘communism’ to the property regime of the *Republic* without describing the precise nature of that regime. The same is true of the otherwise useful discussion of Dawson (1992a).

⁸ For the later reception of Plato, see e.g. Burnyeat (1998); Lane (2001), with bibl.

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Peter Garnsey

Excerpt

[More information](#)

Plato was not an entirely innocent party in all of this. His discussion of the property issue is not clear-cut and unambiguous, and, as Aristotle complained, lacks detail. Aristotle says this, however, of the ideal polity of the *Republic* (KA), not that of the *Laws* (KB). The fleeting glimpse that Plato gives us of KB is so generalized, that it is an open question whether it is a version of KA or should be credited with independent status. I will argue that the former is the case. The account provided of KA is itself not without its ambiguities, notably where tension surfaces between the principle of reciprocity (introduced at the outset at 369b and implying social differentiation) and the ideal of unity. I regard it as significant that *the same equivocations* characterize Plato's presentation of KA and KB.

It is time for us to turn to the texts, paying special attention to those relating to the property regimes of the ideal polities of the *Republic* and the *Laws*. In this and the following chapter I will have little to say about Magnesia, the second-best city of the *Laws*. This is not because it was insignificant in later times. To pick out three examples from different epochs, it is clear that Magnesia was important to Aristotle, Plotinus and James Harrington. Aristotle's own ideal polity as outlined in the later books of the *Politics* draws heavily on the Platonic model. He, like Plato, allows private ownership of property within limits imposed in terms of amount of land, location and rights accruing to owners. In the mid-third century AD the Neoplatonist philosopher Plotinus tried to interest the Roman emperor Gallienus in the foundation of a Platonopolis in Campania whose constitution would be based on Magnesia and its 5,040 citizens and heads of families. His biographer and pupil Porphyry complains that the proposal was blocked by jealous opposition at court.⁹ The influence of Magnesia on James Harrington's *Oceana* (1656) is patent, especially with regard to agrarian arrangements.¹⁰ However, it is the property regime of the *Republic* which has been most clearly associated with the name of Plato and has made the greatest impact in the History of Ideas.

THE BEST CITY OF THE *REPUBLIC*: PROPERTY ARRANGEMENTS

In Book Three Plato sets out how the Guards who will govern his ideal city are to be chosen, and outlines an educational programme for them and for the Auxiliaries from whom the Guards are drawn. That done, all

⁹ Porphyry, *Life of Plotinus* 12. ¹⁰ See recently Nelson (2004), ch. 3, esp. 116–17.

Cambridge University Press

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Peter Garnsey

Excerpt

[More information](#)

is in readiness for the founding of the city. A suitable location is chosen and sacrifices are made to the gods. The first matter of substance is introduced: the accommodation of the Guards. This leads immediately to a statement on property (416d–417b):

The Guards should be furnished with housing and a general standard of living which will not hinder them from becoming the best possible Guards, and which will give them no encouragement to do wrong in their dealings with the rest of the citizens . . . In the first place, no one is to have any private property, beyond what is absolutely essential.^[1] Secondly, no one is to have the kind of house or store room which cannot be entered by anyone who feels like it. For their subsistence, which should meet the needs of self-disciplined and courageous warrior-athletes, they should impose a levy on the rest of the citizens, and receive an annual payment for their role as Guards which leaves them with neither a surplus nor a deficiency.

Plato goes on to forbid the Guards gold and silver and to give the general rationale for this regime, which is to ensure the safety of the Guards and of the city. Only by depriving themselves of land, houses and money can the Guards truly perform their role as Guards. ‘Once they start acquiring their own land, houses, and money, they will have become householders and farmers instead of Guards.’ In this way too they will escape the enmities that inevitably arise between people with property, and the city will not be torn apart by civil strife, stasis, the curse of Greek civic life.

Plato returns to the property arrangements of the Guards in Book Five.¹² In the meantime he has given an exposition of the Guards’ regime, including the sharing of women and children. He sets out the rationale and purpose for denying the Guards their own families, which are the same, he says, for the denial of property, now expressly linked to the family regime for the first time. The passage runs as follows (462–4, in part):

‘If we want to settle this, isn’t it a good starting-point to ask ourselves what is the greatest good we can think of in the organization of our city – the thing the lawgiver should be aiming at as he frames his laws – and what is the greatest evil? Then we can ask “Do the proposals we have just described match the features of this good? Do they fail to match the features of this evil?”’

‘Yes, that’s the best possible starting-point’, he said.

‘Well then, can we think of any greater evil for a city than what tears it apart and

¹¹ This must mean personal effects, basic clothing and so on, not productive property. Later, the Guards are said to possess only their bodies (464d9).

¹² There is a further, brief, summary at the beginning of Book Eight at 543a–c2.