

Giving and Including for Happiness

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Date : December 4, 2018

David Fagundes, [Why Less Property is More: Inclusion, Dispossession, & Subjective Well-Being](#), 103 *Iowa L. Rev.* 1361 (2018).

Money can't buy happiness, so the saying goes. But, does giving away property bring happiness? That is the proposition considered by Professor Dave Fagundes, in his new article *Why Less Property is More: Inclusion, Dispossession, & Subjective Well-Being*.

Professor Fagundes urges new thinking on the classic conception of property, moving away from possession and exclusion, long the centers of the construct, toward their more obscured counterparts, dispossession and inclusion. Starting with the notion that property historically has been justified for its utilitarian ends, he suggests that if we are not better off when we amass property and exclude, then a different conception of the rights inhering in property might better achieve these ends.

Professor Fagundes asks us to evaluate property from a hedonic perspective, pointing to literature that reveals that keeping property to ourselves does not improve subjective well-being. Indeed, it is quite the opposite—sharing and giving away property increases happiness in a number of respects. These dispossession and inclusion activities assist with decreasing debt, increasing mobility, and allowing individuals to refocus attention to more rewarding activities rather than on mere objects. Consequently, the real challenge is how to incorporate the hedonic upsides of inclusion and disposition into settled notions of property without doing too much violence. Professor Fagundes lays out strategies in the contexts of the sharing economy, charitable deductions, and property minimalization.

While the sharing economy represents a paradigm shift that emphasizes access over ownership, sharing promises the greatest hedonistic value when it is altruistic. That quality is generally lacking in many current sharing economy models, like Airbnb rentals, for example. Thus, Professor Fagundes recognizes the sharing economy's potential for increasing subjective well-being without necessarily endorsing all its manifestations.

The same concerns exist with charitable donations. Studies find less hedonistic value in such donations when they are rewarded by tax deductions. While eliminating tax deductions altogether might reduce giving and produce a net loss in societal benefits, Professor Fagundes proposes tiering—the amount of any deduction being determined by the impact of the giving.

The rise of micro-apartments and tiny houses may seem contrary to cultural expectations about size and status. Nevertheless, the phenomena has been tied to greater subjective well-being, from greater affinity for getting out of dwellings to the outdoors to greater interactions with neighbors. To encourage people toward minimalism, at least in housing, Professor Fagundes suggests eliminating home purchase incentives for the grand estate. He acknowledges that this may risk making even modest homes unaffordable for many. Even apart from that proposal, to facilitate choices to live smaller for those who wish to do so, Professor Fagundes proposes normalizing the codes for tiny houses and crafting dedicated codes for them. Targeted abandonment (with registries pairing givers and needers) should also be encouraged.

Professor Fagundes asserts that strategies of inclusion and dispossession can operate to enhance overall social welfare. He posits that the current debate over the right to exclude vis-a-vis inclusion falsely presents these concepts as in opposing roles. He states that “A strong right to exclude is no doubt socially optimal, but it is not dominantly

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The Journal of Things We Like (Lots)
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because owners' rights enable private wealth maximization. Instead, rights of exclusion and possession are necessary as prerequisites to enable the kinds of inclusive and dispossessive acts that are most likely to increase owners' well-being, and society's net welfare."

What is needed is the development of a "choice architecture" to facilitate policies of inclusion and dispossession, to prompt owners to exercise the rights to possess and to exclude toward the end of their best, other-regarding selves.

As suggested, with each of the methods identified by Professor Fagundes for realizing the hedonic upsides, significant societal downsides loom. However, there is yet value in his claims. There are no rules that prevent owners from including and dispossessing. But, the culture of property—with its almost sole emphasis on exclusion—prevents us from seeing the social value in the former.

Given that the right to exclude has long been tempered by larger societal interests—e.g., entry may be justified in case of threats to safety and owners are not allowed to exclude from spaces open to the public based solely upon race—accounting for the hedonistic value of ownership might operate to further expand access by non-owners, such as in the calculation of damages against an intruder or when a court chooses application of a liability rule in place of a property rule. The hedonistic value might be applied to reduce the net injury to the owner, in the end, possibly urging owners to allow entry. And, the recognition of the hedonistic value might be used to coax settlements between parties competing for the same rights.

If we concede that one of the ends of society is to increase happiness, individually and communally, then causing us to see the value of property from its hedonic attributes makes sense. Not only will owners be happier, but so will non-owners, the recipients of the giving.