

# Property Governance Through Resistance: Subversive Property Explores Progressive Potential for Property Outsiders to Re-create Spaces of Belonging and Propriety

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Sarah Keenan, [Subversive Property: Law and the Production of Spaces of Belonging](#) (2015).

Research exploring the intersections of law, property, and society through jurisdictional and international lenses has flourished in the last decade in response to a pressing need for analytical insights into the property problems that dominate much of our current political discourse. Debates about access to places and spaces, linked to a concern around “who belongs” in our countries, in our communities, and in public spaces and private places, raise important questions about the role that property plays in enabling exclusion or inclusion, particularly for marginalised “outsiders.”

Against this backdrop, Sarah Keenan’s new book has come along at a crucial moment. It offers an insightful analysis into how property rules prevent marginalised or outsider groups from developing a sense of belonging in places that are dominated by, and governed through, an insider norm.

What I most welcomed in this book is that Keenan offers a new way of thinking through the dilemma of how property can deliver progressive outcomes for marginalised outsiders. Notwithstanding her focus on excluded identities, Keenan remains optimistic about the role that property can play in countering dominant norms that prevent belonging and in supporting the production of new, resistant spaces of belonging through “subversive property” strategies that, over time, re-create places and spaces on their own terms.

Consider, for example, the “traditional” (though contested<sup>1</sup>) case of the mythical squatter outsider who matured, over time, to become a nascent citizen and property owner. The cases that Keenan tackles are both timelier and more challenging, and the book is all the more rewarding as a result.

Keenan engages with a range of methodological approaches, including property theory, critical legal geography, and phenomenology, pursuing a “problem-led” approach to the questions around property’s role in the construction of spaces of belonging, particularly for people who are deliberately constructed as “out of place.” As a socio-legal study, the frame is set not by the law but by the social justice problem. This orientation positions the book as an interesting counterpoint to other works concerned with property inequality and exclusion.

Some property theorists start from the law, constructing their theories on the scaffolding of familiar and well-established categories. Some challenge the assumptions of the canon by starting from the person, particularly the perspective of the marginalised, unpropertied subject.<sup>2</sup> And property scholars in the critical legal geography tradition typically take as their starting point the “site” or place, working to construct legal conceptions of space through which the governance strategies of property law and property politics can be understood.<sup>3</sup>

*Subversive Property* cuts across subjectivity and place to shine a fresh light on identity, belonging, and property relationships. Drawing on the associations between property and propriety, Keenan considers

both what it means to *have* property and to be properly oriented in space, with a particular focus on how “social properties” – captured in identity criteria such as whiteness, Christianity, and heterosexuality – determine who belongs.

While noting that “property tends to keep things in place, helping the world retain its shape and providing a strong linkage between the past, the present and the future” (P. 7), Keenan focuses on the opportunities for property and propriety to be subverted to reshape spaces of belonging. Using examples that range from case law challenges to Australia’s “Northern Territory Intervention” to queer women asylum seekers, Keenan argues that relations of belonging that do not fit the current conceptual, physical, and social orientation can, through sustained action, be “made to fit” by causing the space around them to adapt and reshape.

This book provides a timely account of the reach and significance of property analyses for legal scholarship both within and beyond the property community. From the familiar jumping-off point of “property as exclusion,” Keenan shines a light on the acute political, social, and personal dimensions of the governance of identity through spatiality, propriety, and belonging, over time.

Within the “progressive property” frame, Keenan locates her approach against recent work concerned with property, responsibility, and social/structural injustice. She finds common ground with approaches that emphasise a model of the property subject that is interconnected rather than discrete. Her approach pays attention not only to property rights but to their spatial effects and to the property subject’s responsibility for their use of resources.

Perhaps inevitably for a project that starts not from the safe harbour of the existing law but from urgent concerns about the role of the law and governance of property relationships in instances of acute social injustice, Keenan argues that:

For property...to operate as an instrument of meaningful political change, it must first be conceptualised in a way that pays attention to how propertied subjects come to be constituted, and the relationship between property and space, rather than just arguing that pre-existing propertied subjects should act with a greater sense of responsibility towards pre-existing social space.

(P. 61-62.)

Keenan’s analysis transcends the right to exclude, on the one hand, and progressive challenges around “inclusion”<sup>4</sup> or “sharing” on the other.<sup>5</sup> She expresses a broader concern with property as a spatially contingent relationship of “belonging” that is not merely dependent on, but capable of, (re)producing particular spaces and times – that, over time, produce the ultimate subversion when communities of resistance change the spaces and places they occupy and become normalised as conventional property.

Keenan’s analysis offers critical political potential for scholars concerned with social justice and inequality. It is a great read, wide-ranging, and deeply theorised but buzzing with real-world examples that demonstrate the potential of her approach to open new lines of action on the pressing property inequality issues of our time.

1. Despite the portrayal of adverse possession as an archetypal example of property law’s openness to outsiders under certain conditions, some scholars have argued that the property identities of “adverse possessors,” “squatters,” and “trespassers” have always been important,

- such that it is property “insiders” – for example, neighbouring landowners – who have been most able to convert use and occupation into property rights. Kate Green, *Citizens and Squatters: Under the Surfaces of Land Law*, in **Land Law: Themes and Perspectives** 229 (Susan Bright and John Dewar eds., 1998).
2. See AJ van der Walt, **Property in the Margins** (2009); Lorna Fox O’Mahony, *Property Outsiders and the Hidden Politics of Doctrinalism*, 67 **Current Legal Probs.** 409 (2014); Ezra Rosser, *Destabilizing Property*, 48 **Conn. L. Rev.** 397 (2015).
  3. See Antonia Layard, *Shopping in the Public Realm: a Law of Place*, 37 **J.L. & Soc’y** 412 (2010); Nicholas Blomley, *The Boundaries of Property: Complexity, Relationality, and Spatiality*, 50 **Law & Soc’y Rev.** 224 (2016).
  4. Daniel B. Kelly, *The Right to Include*, 63 **Emory L.J.** 857 (2014).
  5. Rashmi Dyal-Chand, *Sharing the Cathedral*, 46 **Conn. L. Rev.** 647 (2013).

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