

Uneasy Lies the Head that Owns Property

Author : Gregory M. Stein

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Paul Babie, *Private Property Suffuses Life*, 39 **Sydney L. Rev.** 135 (2017), available at [SSRN](#).

There is ongoing disagreement among property scholars about the fundamental nature of property. Some view property ownership as a bundle of unfettered rights while others envision property as a complex web of rights and responsibilities. [Paul Babie's](#) *Private Property Suffuses Life*, while technically a review of two recent books, manages to review those works while also offering additional insights into this larger skirmish.

At one level, "private property allows us to exert control over things and over people." (P. 137.) Under this view, owners enjoy "liberal freedom of choice about the allocation, control and use of things." (Id.) If an owner controls a particular asset, all others lack dominion over that same asset, which means that the owner "control[s] the lives of others." (Id.) An owner can use their property as they choose, and no one else may interfere. This broad conception of property is widespread in modern life, having arisen in England, spread to the United States, and then infiltrated the rest of the world, most recently Asia.

But, as Babie notes, summarizing Morris Cohen, "every choice a person makes determines the course of others' lives." (P. 138.) Property ownership is not just individual dominion, but also a web of relationships. Because of this interdependence, the state can restrict an owner's use of their property rights if that use harms others. Property ownership thus comes with responsibilities to neighbors. The same law that creates and protects property rights also can limit their power.

This is not to suggest that property rights and powers are in complete equilibrium, as Babie notes. There is always more individual choice than government regulation. Those who make use of their rights sometimes harm other people, and the law often allows that harm to continue.

Over time, as the authors of the two books Babie reviews note, people came to recognize that individual effort leads to control over land, then to control over personal property, and then to more widespread commerce. As land and later other forms of wealth became more and more privatized, this view of ownership had extensive effects on economic life.

This evolution coincided with the growth of international trade and consumer culture and with increasing urbanization. That trend continues presently, "[a]nd so today we continue to face the consequences of the suffusion and the spread of the power of private property to control all that we do in every part of the world." (P. 142.)

Where does that leave us now? Modern property owners recognize the degree of control that their ownership gives them over others. This leads them to defend their property rights vigorously, since those rights confer power and autonomy. "People the world over understand that property is power, the power to make the rules, to set the agendas, to make the decisions about how things are used." (P. 144.)

Babie uses climate change as a contemporary illustration of this type of externality. In this setting, individual choice and control can lead to collectively extreme effects on many others. Thus, property is both a force for extreme good and a force for extreme evil.

Property ownership guards personal freedom and is often protected by democratic institutions. At the same time, property ownership leads to extreme displacement and destruction. "It is paradoxical because it fulfilled a dream, while

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simultaneously portending a nightmare: that which seemed to produce equality, really did so only for some, while for many others it destroyed their understanding of relationship to land and to things.” (P. 145.)

Toward the end of his review, Babie makes a weak call for reducing these inequalities. He recognizes that those who benefit from property ownership could lessen these inequities while still enjoying net benefits from the property rules that have afforded them such advantages. Those who profit would continue to profit, if somewhat less, while still exerting control over others.

While Babie’s article is stronger on description than on recommendations, that is not his goal – he is, after all, reviewing the work of two other scholars. But in offering his review, Babie also provides a thorough and concise overview of the growth and development of modern property rights. He merges history with legal and economic thought, and he suggests that those who benefit should remember that they are thriving under a system that may be protecting them to the detriment of others.

Babie closes as he opened, quoting from Shakespeare’s *Henry IV, Part II*: “Uneasy lies the head that wears a crown.” Like Henry, property owners enjoy a form of power over others. “And so we have come to know the weight of that crown, and just how uneasily lies the head that wears it.” (P. 146.)

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