[Forthcoming in J. Priban (ed). 2021. Research Handbook on Sociology of Law. Cheltenham: Edward Elgar]

Chapter 26

Property as Socio-Legal Institution, Practice, Object, Idea

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One of the earliest expressions we learn as infants is “it's mine”. Squawking like the seagulls in *Finding Nemo*, “mine, mine, mine”, we assert control and authority over objects and spaces. Yet, as the film illustrates, such statements are often declaratory rather than assertive, possession is not always sufficient. Once developed, property rules can be culturally distinctive and jurisdictionally variable, even though, at their core, like multiply overlapping Venn diagrams, systems contain shared ideas, especially as a material, living practice concerned with land.

Recognising that formal written rules only go so far, empirical socio-legal studies collect information about how people talk of and use property, aiming to understand what the concept means in daily lives, how it operates and affects others. Researchers emphasise that property rules and concepts are not neutral or natural but rest on specific ontologies of law and belief. They ask whether property is best understood as a binary between inclusion/exclusion, a set of abstracted relationships between persons or a

system of governance. Today most academics would agree that property exhibits all of these aspects, although no single scheme can capture property in all places, at all times.

To consider how these multiple and fragmented understandings of property fit together, this overview considers four aspects; property as an institution, property as practice, property as a socio-legal object and property as an idea. It explains that institutions matter because without some form of governance system, property cannot be protected, managed or enforced. Property is a form of spatial governance, though one that is often revered as a private right rather than as a collective arrangement. Property practices, meanwhile, are critical to understanding how property operates "on the street", particularly when times are good. Property as socio-legal object considers both the thing being owned (the land, river or idea) as well as the thing representing the owning (a parchment deed or PDF). Property as idea discusses how important the imaginary of property continues to be, particularly as a private right, even in a time of widely acknowledged inequality, globalisation and climate change.

Institution

Socio-legal property scholars are alive to the power of a state's interpretation of property. Given the power exercised in the name of doctrinal legal rules demonstrated in elite places (courts and police stations) and on elite materials (parchment, paper or electronic files rather than oral narratives), property scholars reject the notion that property is *just* doctrinal law or *just* practices. Rather, with an eye to power, identity

and dominance, scholars focus on how institutions of government and the institution of property interact.

Property has long been intertwined with governance systems and suffrage. In England in 1647, between the civil wars, the soldier Thomas Rainsborough critiqued Lord Henry Ireton's assertion that only landowners should have the vote, objecting that "the poorest he that is in England hath a life to live as the greatest he" challenging the link between land ownership and decision-making (Levy 1983). For many centuries, English women were inhibited from owning property (McDonagh 2017), while in settler colonies racist framings of identity were critical in determining who could be a landowner in Canada, Australia as well as in Israel and Palestine (Bhandar 2018). It was 1928 before voting was disconnected from land ownership in England, illustrating just how long property ownership to recognition of identity and grant of democratic engagement were interlinked in long-established institutional moves. Even today, some jurisdictions facilitate citizenship following a property purchase.

Recognising property's institutional inevitability, the drafters of the American *Statement of Progressive Property* begin by recognising that "property operates as both an idea and an institution" and that "property confers power" (G. S. Alexander et al. 2008). Long ago this point was also made by Adam Smith, in his 1776 *Wealth of Nations*, where the early economist emphasised the connection between property and the State and its favouring of the wealthy: "Civil government, so far as it is instituted for the security of property, is in reality instituted for the defence of the rich against the poor, or of those who have some property against those who have none at all" (Smith 2019, V.i.b. 12). Without government or governance, property is hard to recognise or enforce. Conversely, decision-makers are incentivised to make property-protecting

decisions, both because decision-makers are often "landed" (Cahill 2002; Shrubsole 2019) and because property owners are often more likely to turn out to vote. While it is important to be cautious when generalising across jurisdictions and experiences, it is remarkable how common these patterns land ownership and governance are (Hall and Yoder 2018).

Yet despite the clear link between property and power, property acquisition is rarely questioned. William Blackstone, the eighteenth century English jurist who famously characterised property as "sole and despotic dominium", acknowledged in the next line, that "there are very few that will give themselves the trouble to consider the original and foundation of this right" (Blackstone 1830). Gerrard Winstanley, the seventeenth century English Digger, bluntly proclaimed that: "Those that Buy and Sell Land, and are landlords, have got it either by Oppression, or Murther, or Theft" (cited in Hill 2006, 85). Still today, there is a polite silence around the fact that, as Guy Shrubsole notes in his 2019 *Who Owns England*: "[h]alf of England is owned by less than 1% of its population" (Shrubsole 2019).

Modern legal systems conventionally find it easier to determine how to govern property once allocated than to allocate property fairly. Although shelter is a basic human need, the right to home under Article 8 of the 1949 European Convention of Human Rights, focuses far more on protecting people from having their home taken away than ensuring that people have one in the first place (Hohmann 2013). The same is true of agricultural land, also often critical to survival. Writing of land reform in Ethiopia, Mekonnen Firew Ayano (2018) describes land as "the main source—often the sole source—of income for rural dwellers and an expression of civic life". He writes that "to have rights over

land [in rural societies] is to be human: “To be landless is to be sub-human”” (citing Dunning 1970, 271, see also Fanon 2002).

In South Africa, the consequences of land theft still characterise life. At the end of apartheid 87 per cent of the land was owned by whites who constituted less than 10 per cent of the population. Bernadette Atuahene (2011, 987) explains how racially motivated property loss is still largely uncompensated in a country where “[t]he tears of these families have wet the pages of history and made them heavy with despair”. Compensation payments remain unmade due to logistical difficulties, differing conceptions and – of course - political choices even though empirical investigation indicates that payments can improve individual economic conditions significantly, if they are large enough (Atuahene 2011). In Israel and Palestine, property loss has often rested on a disagreement of how to demonstrate previous possession, what form agriculture takes (especially when people are not equally sedentary) or what a village looks like (Kedar, Amara, and Yiftachel 2018).

Indigenous people have had extraordinarily painful experiences of property loss, as Irene Watson describes:

> “Imperial Britain imposed *terra nullius*, of territory/land, law and people, and covered every part of my Nunga being with their myth of emptiness justifying the lie that a space existed/exists for their invasion, and settlement of the ruwi of my ancestors. Their claimed sovereignty denied ours and in planting the flag – supported by violence – an act of state, they violated the laws of the first peoples. *Terra nullius*, the muldarbi rule of law and international politics and its violence made Nungas and our laws invisible, while our ruwi become enslaved, commodified and entrenched in their rules of property”. (Watson 2002: 257)

With Australian land treated as *terra nullius*, it offered a notionally blank slate of land upon which a title registration system that manufactured new titles could operate. This fiction was prevalent throughout colonial land systems, colouring negotiations (Banner 2007; Bhandar 2018).

Yet as socio-legal scholars explain, there is a fundamental inconsistency in the idea of *terra nullius*. Writing of Canada, Shiri Pasternak (2010) is emphatic: "To suppress indigenous peoples" struggles is to eliminate the great obstacle they pose to capitalist accumulation and to maintain the racist assertion that Europeans discovered, paradoxically, a people of terra nullius (vacant lands)". *Terra nullius* is an intellectual contradiction: if the lands had been empty, the concept would not be required. Nevertheless, courts today still insist on a timeline that privileges the incomer. Sarah Keenan's analysis of the critical case of *Mabo v Queensland (No 2*) (1992) 175 CLR 1, explains how native title and native title holder/claimants were viewed through Anglo-Australian law, an act, which reasserted the dominance of the Anglo-Australian paradigm: "The native title doctrine is thus premised on the assumption that indigenous entitlement to land is a remnant of the past to be interpreted and judged by Anglo-Australian courts, rather than an ongoing reality to be determined by indigenous rules and customs" (Keenan 2010, 428). Indigenous laws are subjugated to fit into Anglo-Australian rules. These are institutional choices, with jurispathic ordering, to use Robert Cover's (1983) phrase.

As these struggles demonstrate, the institution of property needs Government to enforce it, and as Adam Smith long ago acknowledged, property is itself woven into institutions of Government. Rights to (existing) property are protected. In United States, the

"takings clause" famously limits state intervention in property, in Europe, the Convention on Human Rights has a more contextual approach to both deprivation of property and controls on use. These borders between private property and state power have become extraordinarily fruitful for doctrinal scholars aiming to understand where the lines are drawn (Allen 2007; Alterman 2010; Benson 2010; Xu 2019).

Programmatic decisions to introduce registration of property rights are similarly institutionally implemented both by governments and by international organisations. Peruvian economist Hernando De Soto (2010) argued that while poor inhabitants of developing countries are rich in assets, they lack the formal titles necessary to convert their assets into productive capital, limiting transactions and inhibiting state planning. Yet, despite the apparent logic, the outcomes of land registrations have not always materialised. In Ethiopia, Ayano's empirical research concludes that "the effects of Ethiopia's land registration, which is often cited as a model of this approach, belie the pluralist rhetoric and undercut officials' expectations" (2018, 1091). Women in particular often lose out under registration schemes. Henrysson and Joireman's (2009, 39) study concluding that in the Kisii region of Kenya: "women have weak property rights overall, they have limited access to formal dispute resolution systems because of costs involved, and even the informal systems of conflict resolution are beyond the means of many citizens". This gap between theory and practice, socio-legal scholars explain, lies in the fact that the strength of rights and the ability to enforce them go hand in hand, often property rights are apparent on paper but empty in practice. This disparity is exacerbated in governance systems where tenure and property rights are quite different concepts (Lund 2008).

Women have also suffered in Western property systems, often unable to acquire property rights in domestic contexts. One classic of the cohabitation genre is the English and Welsh case of *Burns v Burns* [1984] Ch 317, where after seventeen years of doing the washing, cleaning and childcare, paying for domestic items, Mrs Burns received no interest in the property as she was deemed not to have made a substantial contribution referable to the purchase price. Reviewing the dispute many years later, not least because the case would almost certainly be decided in the same way today, Dawn Watkins interviewed Mrs. Burns to tell her counter story in a context of law and narrative, giving her space to be heard beyond the "disordered creation" that the case report provides, outlining the extraordinary prejudice shown to this "mistress". For as Watkins reminds us: "whilst we might cry, 'Look what the law did to poor Mrs Burns!' we fail to acknowledge that *we* are 'the law' and we bear responsibility for our actions" (Watkins 2013: 68). These are institutional choices.

Property also governs mortgage rules, characterised by Belinda Fehlberg (1997) as "sexually transmitted debt". Courts that choose to "focus on the bad behaviour of the individual men and the institutions" in cases of mortgage undue influence, writes Rosemary Auchmuty (2002, 259), obscure repeated patterns. She found the protection of banks, building societies and other lenders to constitute "institutional oppression, in which institutions like the mortgage industry and the legal profession operate to protect a status quo which embodies norms benefiting the men who practise them and men in general". This leads us, Auchmuty says, to "ignore women's pain" (2002, 274).

Property is not going to go away. Even Marx argued in favour of abolishing bourgeois private property, rather than all property relations *per se*. One reason for Government's

attachment is, as Larissa Katz (2010) explains, that governments are invested in governing through property, which creates a patchwork of occupiers responsibility for safety, with regulatory and common law liability consequences if someone is hurt on their land (with limitations on open sites). Property tax revenue is also substantial, charging taxes on both exchange and use. Property tax revenues are increasing at a time when taxes on alcohol and cigarettes are declining. One of the consequences of land registration in Brazil, Jeremy Campbell (2015, 194) found, was that "taxes, liens and fees have begun to pile up. For peasants, the establishment of recognizable property has become an all-too-common prerequisite for dispossession and marginalization". Property remains a valuable income stream for governments whilst also imposing management obligations on owners. Recognising these benefits, institutions find it unattractive to move away from such a productive governance system.

Practice

Property can also be understood as a set of practices offering a productive site of socio-legal study where what happens "on the street" is of interest just as much as what happens "in court". Anthropological studies have long emphasised that people and social practices make property, even in its formal absence (Hann 1998). Socio-legal scholars bring to this an understanding that property practices can create "self-generating norms" and "social custom" (Blandy, Bright, and Nield 2018). "Everyday activities like fence-building, hedge-trimming, instructing children not to cross someone else's lawn, installing security systems or waging struggles over gentrification" are, for Amelia Thorpe, "central in sustaining (and reshaping) property

as an institution" (Thorpe 2018, 746). As Davina Cooper (2007, 628), explains, this emphasises "not just on what property *means* but also the work it does", an insight noted by Nicholas Blomley (Blomley 2016, 1827) in his identification of property as "a set of practices that serve to produce the 'effect' of property" from his reading of the Missouri River in the Black Bend case.

Understood as a social practice, expectations from social customs use the language and habits of property, developing relational systems of governance that emphasise getting along together in the day to day rather than resolving disputes in court. Taking examples of blocks of flats, easements and residential mortgages, Sarah Blandy, Sue Bright and Sarah Nield argue that we need to understand enduring property relationships, developing a more relational, flexible and multiple understanding rather than fixing on an apparently binary legal *ratio* or rule: "Woven within the idea of 'enduring'", they write, "is recognition that as the relationship is sustained through time there may be a degree of "give and take" to accommodate changes in the use of land, in the identity of the rights holders, in external regulatory and economic forces, as well as the parties" preferences for rigidity or flux" (Blandy et al. 2018, 88).

One striking finding from studying property practices is the connection between ownership and belonging, particularly the interchange between belonging to property (or places) and property belonging to people (or places). Sometimes this is expressed from very different ontological worldviews, the distinction, for example between a framing that "the land is mine" and an indigenous understanding that "I am the land". Working within the Anashabi community, Shiri Pasternak (2010) identifies a register of property that resonates around property as taking care, representing "a set of

practices that govern peoples' relationship to the land through forms of entitlement based on taking care of the land for future generations".

Belonging can develop in many contexts. Researching in a progressive fee-paying English boarding school, Davina Cooper (2007) identified property as being organised around relationships of belonging, finding there that property depends on relationships of belonging that are supported by authoritative practices, recognition, clarification, simplification, definition, and power. Investigating planning practices in Sydney, Amelia Thorpe (2018b) identified ownership as concerning a feeling of belonging to a particular place "this is *my* street, *my* neighbourhood, *my* city" alongside a feeling of being able to speak for that place. Ownership and belonging are often connected.

A related, recurring finding in socio-legal property scholarship is that people think of themselves as owners, even when doctrinally they would not be considered to be so. Nicholas Blomley's study of urban planting in bathtubs on urban boulevards showed that tubs could be understood as "markers of ownership". While some research participants considered the tubs a "public gift" to neighbours and passers-by, other saw the bathtubs and their planting as "private encroachment" (Blomley 2005). Similarly, Dave Cowan, Helen Carr and Allison Wallace's research on shared ownership considered how occupants perceive their legal status as well as the objects surrounding them (potted plants, cigarette butts or sweet wrappers). One participant reflected on how he had falsely been accused of throwing cigarette butts out of a window, understood that he was not legally an owner but linked this to a desire to take care:

> "Yes, I do [think of myself as an owner] … in the sense that, well, in the sense that I want to take care of it and I think that that is probably, rightly or wrongly, a characteristic of

> people that own things, but no, we're very aware that it's shared ownership and I think that we would like to, at some stage, own something" (Cowan, Carr and Wallace 2018, 760).

These acts of ownership do not correlate with formal, paper ownership, yet contribute almost Lockean ideas to rhetorical property acquisition, even if today, in these contexts, this would not hold up in court. Likewise, in their research on Heeley Park in Sheffield, Simone Abram and Sarah Blandy (2018) found residents reporting a sense of ownership after volunteering to plant and construct the site (on land initially leased from Sheffield City Council and subsequently bought with National Lottery funding). Property practices are not necessarily dependent on formal ownership.

Sometimes, practices are so effective that there seems to be so need for legal rules. In his study, *Order Without Law*, Robert Ellickson (2009) analysed how neighbours settled disputes when each has property rights. He found that his research participants, long-time ranchers of Shasta County, Northern California, in the 1970s-1980s, largely governed themselves using informal rules—social norms—that develop without the aid of a state or other central coordinator. While Ellickson's conclusion – that law is less important than generally thought - is limited by focusing only on neighbouring landowners, socio-legal research does confirm the efficacy of social dispute settlement processes. Daniel Fitzpatrick and Susana Barnes (2010, 233) also revealed consensus in their study of a new "bright line" land law in East Timor, granting ownership to those in possession on December 31, 1998. They found that: "in the absence of state-imposed legal order, resource users will look for shared norms or focal points to avoid social disorder and structure cooperative forms of property arrangements". There is widespread agreement that social order *can* produce agreed norms in harmonious

situations, particularly if practices continue over many years while times are good.

However, as Matthew Desmond chronicles in his book *Evicted: Poverty and Profit in the American City* (2016, 98), if push comes to shove and the rent is not paid, exclusion follows, often along discriminatory lines: “If incarceration had come to define the lives of men from impoverished black neighbourhoods, eviction was shaping the lives of women. Poor black men were locked up. Poor black women were locked out”. Reviewing *Evicted*, Lisa Alexander (2016, 431) argues that the book “reveals the contradictions between ‘law in action’ and ‘law in books’”, providing such extensive socio-legal research on the effects of America's “failure to consider housing a basic human right”. Property practices can only go so far, they cannot hold up an arrangement indefinitely if courts or bailiffs act otherwise.

Scholars also stress the scale of eviction practices, demonstrating the limits of agreement. In the decade between 2004 and 2014, people reported 308,454 housing discrimination complaints to American non-profit fair housing organizations and government agencies alone (Greenberg, Gershenson, and Desmond 2016)). In the United Kingdom the last quarter of 2019 saw 20,549 landlords granted repossession orders, while mortgage lenders obtained 4,183 orders for possession (Ministry of Justice 2019). Social norms cannot always facilitate progressive dispute resolution processes: court remains available as a last resort with doctrinally informed bargaining not just in the shadow of the law but well beyond. As Esther Sullivan (2018).concludes in her empirical study of forced relocation on mobile home parks where an estimated 18 million Americans live: legally permissible eviction drives poverty and reproduces inequalities, these practices affect both processes (dislocation) and persons (the dispossessed).

When assessing practices to understand when rights might outrun a landowner's indulgence, we should stress test from the perspective of the most vulnerable. To use André van der Walt's (2009) term, we should consider how rules and practices affect those "at the margins". Studying squatting, Lorna Fox O'Mahony (2014, 411) asks who is privileged: the "property insider" or the "outsider" (spoiler: it's invariably the insider). Relationships between social norms and legal order are highly dependent on identity and resources. Spatial contexts – incorporating culture, histories and politics - also matter. Squatting in abandoned army barracks in Christiana in Denmark is more acceptable than an empty bungalow in Aylesbury in England (Vasudevan 2017). Occasionally, crisis moments (an awful fire or virus pandemic) or emotionally engaging narratives (including films such as *Cathy Come Home*) can catch public imaginations. Otherwise, property reform is rarely popular with voters, so little changes. While social norms and shared practices can acquire and govern property independently of formal legal intervention, they do not do so for all.

Socio-Legal Object

Property as object incorporates two different ideas: (i) what can be owned (once, people) today things, intellectual developments, body parts, lines of code and land, conventionally through an abstraction such as an "estate" in the case of land; and (ii) proof of that ownership be that by physical title deed on parchment, vellum or paper, alternative an electronic file (evidenced by a PDF), both mechanisms to de-physicalise property through electronic registration.

Taking the thing to be owned first, scholarship has primarily focused on land (rather than people, body parts or ideas), though this has been extended, notably by Cheryl Harris (1992) who has explained whiteness as property, identifying its privilege and power. Even land, as Tania Li Murray (2014, 589) tells us, has different meanings: "what land *is* for a farmer is not the same thing as for a tax collector. Land may be a source of food, a place to work, an alienable commodity or an object of taxation. Its uses and meanings are not stable and can be disputed". If we cannot agree on what land is, then how can we agree on property? What is it possible to own? Should it be possible to own a mountain, a river or a landscape? (Borrows 1997, 63). Advanced indigenous thinking accords personality to the river, reflecting a more complex belief system than an assumption that a river can be condensed into a two dimensional estate owned by man (Charpleix 2018).

Property performances often rely on objects, with instruments of violence often critical to owning people and maintaining discipline while barbed wire and fence posts are commonly used to mark boundaries. Maps, theodolites, circumferentors and plane tables were central to creating boundaries, enclosing sites spatially and legally in early surveying (Blomley 2008). Evidence of vegetation and objects of enclosure (padlocks, hedges and fences) are still critical in deciding cases concerned with squatting and adverse possession (Fox O'Mahony et al. 2015). In early medieval land ownership boundaries could be narrated, while songlines in Australian have long demonstrated a more complex understanding of boundaries and limits, material, physical, temporal and spiritual (Morgan, Mia, and Kwaymullina 2008; Watson 2017).

For even if agriculture or material borders are not easily visible, this does not necessarily mean that that there is no cultivation or boundary. Toby Decoursay, a traditional knowledge holder of the Algonquin people explained to Shiri Pasternak (2010, 16): “I don't know if there's a boundary in there, but us, we just know *kamashgono-gamak*, stay there, just hunt there. There’s a lot of names on the territory… That’s what they say, me I'm going to *kamashgono-gamak* or *gasazibi*, they just say the name of the territory and the Chief is going to take care of that. And they know what direction to go and where is the name of the place. And that's it…”. The Algonquin systems of governance rests on deep understanding of ecological and social processes, guiding people in how to hunt and trap as well as on how to allocate the hunting grounds between community members. A lack of material objects does not eliminate property governance, even if some people cannot see it for looking.

The second way of thinking about property as object is the tangible forms of proof of ownership. Western property thinking has repeatedly moved from assessing physical use and possession to documents of ownership. James Campbell (2015, 62) describes in his study of Brazil how, once the need for proof arose, if people did not have the deeds, approvals or maps, they would sometimes make them themselves, curing and aging them placing the forged documents into a with crickets where the insects would over time “chew about the edges of the falsified title and defecate on the papers, lending them an antique look”. Even electronic registers of titles, require computers, electricity and broadband connections (Keenan 2019). And sometimes both the thing being owned and the thing doing the owning come together, notably in the documentation of an estate. The lease, as Caroline Hunter (2016) explains, is itself a “socio-legal object”.

Idea

In Western jurisdictions, particularly England and Wales, property can be understood as a bounded space, within which owners have protection, exercise some authority, acquiring status and responsibility. English property law is notoriously abstracted, as F. H. Lawson explains in his essay *The Rational Strength of the English Law*, describing English law of property as "more logical and more abstract than anything that to my knowledge can be found in any other law in the world". This quotation is drawn on by Kevin and Susan Gray to characterise a "rhetoric of realty" where "law comprises an axiomatic system of rules in which legal outcomes emerge as the sweet distillation of an invincible logical process" (Gray and Gray 2003, 5).

The transition from collective to individual forms of property in Eastern Europe and China, as well as the balance of personal and collective rights, continues to challenge any simple distillations. Concepts become absorbed into each other (Benda-Beckmann and Benda-Beckmann 2014) so that formal and informal systems both respect the principle of private property yet develop it for differing circumstances. Writing of Brazil, Boaventura de Sousa Santos (1977, 89) explains that that "Pasargada law achieves its informality, subtlety, and flexibility through selective borrowing from the official legal system". There is some – but by no means total - cultural homogeneity.

It is fair to say that socio-legal scholars have been critical of many established framings of property. Nicole Graham's (2010) critique of dephysicalisation explains how English legal concepts, imported to Australia in the late nineteenth century, have formed the basis for legal and cultural discourses unconcerned with the specific aspects of particular places. Property can divide up landscape and ecosystems, challenging

sustainability schemes, concerning owners if regulatory regimes are perceived as negatively affecting their property (O'Donnell 2020). In practice, such interactions between property and place challenge the perceived distinction between public and private law concepts: property ultimately encompasses a piece of land, vulnerable to climate change, requiring public environmental and planning law intervention. Yet the idea of property as a private right is difficult to dismiss, even in climate change mitigation debates.

Feminist scholars have also challenged conceptual taxonomies, distinguishing public from private and personal from real property, criticising boundaries for trying to break apart interactions that are inescapably relational. Jennifer Nedelsky (1990, 170) argues that boundaries are misleading in trying to understand human selfhood, particularly for women and children, whose boundaries "blur with nature, with their children, their families, their lovers" so that boundaries cannot and should not try either to capture either the nature of human selfhood or to govern institutions and concepts. Scholars also note that even if concepts are apparently simple when first developed, policy makers soon add to property when it suits them. Insa Koch (2018, 115) notes "the growing burden of enforcing good behaviour that is carried by local authorities and social landlords in the regulation of tenants", observing that property and housing law have long been about more than land and property rights, incorporating immigration, social policy and taxation into governance as well.

Even if property is not a single idea and is instead better understood as a series of relational practices between people, institution, objects and spatial settings, these underlying abstractions are doing powerful organising work, often used in colonialisation to justify land theft. The concept of an "estate in land" (rather than

allodial ownership) migrated to England from feudal Normans. The development of Torrens title travelled between England, Ireland and Australia (Bhandar 2015). Registration, suggests Alain Pottage (Pottage 1995)., rests on specific mentalities, bringing with it a transformation in the idea of title to land, particularly the dissolution of concepts of contract and conveyance in support of registered title. Property as an idea has been enormously influential.

The rhetoric of property as "mine", as pre-social, free of Government interference remains. Saying "my home is my castle" resonates, even though feudal owners and tenants would have had little understanding of a property concept free of social and personal obligations. Rhetorically, such assertions enable us to ignore questions of acquisition or allocation. As Margaret Davies (2019, 3)03/07/2020 14:38:00 explains: "Property is a socio-legal artefact that obtains at least some of its power by being naturalized: that is, the idea of property is sustained in part because an ingrained imaginary invests it with a status that is natural or at least pre-legal". In practice, of course, contexts vary enormously but the imaginary of the idea remains.

Conclusion

Empirical socio-legal scholars have continued to find an emphasis on "mine, mine, mine" but also, sometimes, on "ours, ours, ours" (Hann 1998; Carruthers and Ariovich 2004; Benda-Beckmann and Benda-Beckmann 2014). Property practices demonstrate belonging and caretaking, even without formal ownership. However, institutional analyses remind us that social and spatial norms can develop into formal property only with decision-makers' consent: we fail to acknowledge institutional power at our own

risk. Nevertheless, practices matter, property law is not just what is happening in books and sometimes repeated everyday acts can alter ownership (though not for all).

Fundamentally, however, property is just one system of spatial governance. However tempting it is to argue from universal abstract first principles, social-legal research demonstrates that property varies across time and space. There are shared traits but these are overlapping, rather than core. As socio-legal property research is drawn into debates about climate change, anthropocentrism and materiality, variations are increasingly acknowledged (challenging the cultural desire to unify or abstract, so exemplified by English property law). We have much to learn about property, both in the field and from books.

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