

LAW 311 Property Law and Theory - Syllabus

Assoc. Professor Douglas C. Harris
UBC Faculty of Law

Jan. 4th Introductions

Eduardo M. Peñalver, “Land Virtues” (2009) 94 [Cornell L. Rev.](#) 821 (828-32 only).

Jan. 11th What is Property?

Required Reading:

C.B. Macpherson, *Property: Mainstream and Critical Positions* (Toronto, 1978), 1-13.

Larissa Katz, [“Exclusion and Exclusivity in Property Law”](#) (2008) 58 U. Toronto L.J. 275-315.

David Lametti, [“The Concept of Property: Relations Through Objects of Social Wealth”](#) (2003) 53 U. Toronto L.J. 325-78.

Supplemental Reading:

Felix Cohen, “Dialogue on Private Property” (1954) 9 *Rutgers Law Review* 357.

Harold Demsetz, “Towards a Theory of Property Rights” (1967) 57 *American Economic Review* 347.

Robert C. Ellickson, “Property in Land” (1993) *Yale Law Journal* 1315-1400.

Kevin Gray & Susan Francis Gray, “The Idea of Property in Land” in Susan Bright and John Dewar, eds. *Land Law: Themes and Perspectives* (Oxford: Oxford University Press, 1998), 15-51.

T.C. Grey, “The Disintegration of Property” in J.R. Pennock and J.W. Chapman, eds., *Property: Nomos XII* (New York: New York U.P., 1980), 69.

Thomas W. Merrill, “Property and the Right to Exclude” (1998) 77 *Nebraska Law Journal* 730-755.

C.B. Macpherson, “Capitalism and the Changing Concept of Property” in H.E. Hallam et al, eds., *Feudalism, Capitalism and Beyond* (Canberra: ANU Press, 1975), 105-124.

Carol Rose, “Possession as the Origin of Property” in [Property and Persuasion: Essays on the History, Theory, and Rhetoric of Ownership](#) (Boulder: Westview Press, 1994), 11-23.

Jeanne L. Schroeder, [“Chix Nix Bundle-O-Stix: A Feminist Critique of the Disaggregation of Property”](#) (1994) 93 *Michigan Law Review* 239-319.

Joseph Singer, *Entitlement: The Paradoxes of Property* (New Haven: Yale University Press, 2000), 1-18.

Jeremy Waldron, *The Right to Private Property* (Oxford: Clarendon Press, 1988), 26-53.

Jan. 18th Property as Natural Right

Required Reading:

John Locke, “Of Property,” *Second Treatise on Government*, chapter 5, reprinted in Macpherson, *Property*, 15-27.

James Tully, *A Discourse on Property: John Locke and His Adversaries* (Cambridge, 1980), 53-55.

Barbara Arneil, “Colonialism: Locke’s Theory of Property,” in *John Locke and America: The Defence of English Colonialism* (Oxford: Clarendon Press, 1996), 132-167.

Supplemental Reading:

C.B. Macpherson, *The Political Theory of Possessive Individualism: Hobbes to Locke* (Oxford: Oxford University Press, 1962).

James Tully, *An Approach to Political Philosophy: Locke in Contexts* (Cambridge: Cambridge University Press, 1993).

Jan 25th Property and Class

Required Reading:

Karl Marx, *Manifesto of the Communist Party* (1848) excerpt from Part II “Proletarians and Communists” and from *Capital*, Vol. 1, chapters 32-33, as excerpted in Macpherson, *Property*, 59-74.

Douglas Hay, “Property, Authority, and the Criminal Law” in Hay et al. eds., *Albion’s Fatal Tree: Crime and Society in Eighteenth-Century England* (New York: Pantheon Books, 1975), 17-64.

Supplemental Reading:

Nicholas Blomley, *Law, Space, and the Geographies of Power* (New York: The Guilford Press, 1994).

Wallace Clement, *Class, Power, and Property: Essays on Canadian Society* (Toronto: Methuen, 1983), 210-224.

Morton Horwitz, “The Transformation of the Conception of Property” in *The Transformation of American Law, 1780-1860* (Cambridge: Harvard University Press, 1977), 31-62.

Jean-Jacques Rousseau, *Discourse on the Origin and Foundation of Inequality*, extract on “The Origin of Inequality” reprinted in Macpherson, *Property: Mainstream and Critical Positions* (Toronto, 1978), 29-37.

E. P. Thompson, “Custom, Law, and Common Right” in *Customs in Common: Studies in Traditional Popular Culture* (New York: The New Press, 1993), 97-184.

Feb 1st Property and the State

Required Reading:

Morris Cohen, “Property and Sovereignty” ([1927](#)) [13 Cornell L.Q.](#) 8-30.

James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven: Yale University Press, 1998), 33-52.

Nicholas Blomley, [“Law, Property, and the Spaces of Violence: The Frontier, the Survey, and the Grid”](#) (2003) 93 *Annals of the Association of American Geographers* 121-141.

Supplemental Reading:

John Borrows, “Questioning Canada’s Title to Land: The Rule of Law, Aboriginal Peoples, and Colonialism” in *Recovering Canada: The Resurgence of Indigenous Law* (Toronto: University of Toronto Press, 2002), 111-137.

[Bradley Bryan, “Property as Ontology: On Aboriginal and English Understandings of Ownership”](#) (2000) 13 *Can. J. L. & Jur.* 3-31.

Cole Harris, [“How Did Colonialism Dispossess? Comments from an Edge of Empire”](#) (2004) 94 *Annals of the Association of American Geographers* 165-182.

Bruce Ziff, “‘Taking’ Liberties: Protections for Private Property in Canada” in Elizabeth Cooke, ed., *Modern Studies in Property Law, Vol. III* (Oxford and Portland, Oregon: Hart Publishing, 2005), 341-360.

Feb 8th **Property and Development**
(1:30-3:30)

Required Reading:

Jeremy Bentham, “Security and Equality of Property” as excerpted in C.B. Macpherson, *Property: Mainstream and Critical Approaches* (Toronto: University of Toronto Press, 1978), 41-58.

Hernando de Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (New York: Basic Books, 2000), 39-67, 153-88.

Supplemental Reading:

[Thomas Flanagan and Christopher Alcantara, “Individual Property Rights on Canadian Indian Reserves”](#) (2002) 60 *Public Policy Sources* 1.

James Willard Hurst, *Law and the Conditions of Freedom* (Madison: University of Wisconsin Press, 1956), 3-32.

[Ann Varley, “Public or Private: Debating the Meaning of Tenure Legalization”](#) (2002) 26 *International Journal of Urban and Regional Research* 449-61.

Feb 12th **Faculty Colloquium, 2:30-4:00**
UCLL 176

Pitman Potter, “Changing Discourses of Property Law in China”

Feb 12th **Short Assignment Due**

Feb 15th & 22nd Reading Break

Mar. 1st **Property and Personhood**

Required reading:

Margaret Jane Radin, [“Property and Personhood”](#) (1982) 34 *Stanford Law Review* 957-1015.

Jennifer Nedelsky, [“Property in Potential Life? A Relational Approach to Choosing Legal Categories”](#) (1993) 6 *Can. J.L. & Jurisprudence* 343-365.

Supplemental Reading:

- Joan Gilmour, “‘Our’ Bodies: Property Rights in Human Tissue” (1993) 8 *Canadian Journal of Law and Society* 113.
- Thomas Hill Green, *Lectures on the Principles of Political Obligation*, as excerpted in C.B. MacPherson, ed., *Property: Mainstream and Critical Positions* (Toronto: University of Toronto Press, 1978), 101-117.
- S. Munzer, “Kant and Property Rights in Body Parts” (1993) 6 *Canadian Journal of Law & Jurisprudence* 319.
- Peter G. Stillman, “Property, Freedom, and Individuality in Hegel’s and Marx’s Political Thought,” J.R. Pennock and J.W. Chapman, eds., *Property: Nomos XII* (New York: New York U.P., 1980), 130.
- Proceed with Care: Final Report on the Royal Commission on New Reproductive Technologies* (Ottawa: Canada Communications Group, 1993).

March 8th Common Property

Required Reading:

- Garrett Hardin, [“The Tragedy of the Commons”](#) (1968) 162 *Science* 1243-8.
- Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge: Cambridge University Press, 1990), 1-28.
- Carol Rose, [“Common Property, Regulatory Property, and Environmental Protection: Comparing Community-Based Management to Tradable Environmental Allowances”](#) in Ostrom et. al., [The Drama of the Commons](#) (Washington: National Academies Press, 2002), 233-57.

Supplemental Reading:

- James Acheson, “Clearcutting Maine: Implications for the Theory of Common Property Resources” (2000) 28 *Human Ecology* 145.
- Daniel W. Bromley, ed., *Making the Commons Work: Theory, Practice, Policy* (San Francisco: ICS Press, 1992).
- Kate Green, “Citizens and Squatters: Under the Surfaces of Land Law” in Susan Bright and John Dewar, editors, *Land Law: Themes and Perspectives* (Oxford: Oxford University Press, 1998).
- Michael A. Heller, “The Tragedy of the Anticommons: Property in Transition from Marx to Markets” (1998) 111 *Harv. L. Rev.* 621.
- Jeanette M. Neeson, *Commoners: Common Right, Enclosure, and Social Change in England, 1700-1820* (Cambridge: Cambridge University Press, 1993), 58-71, 110-118.
- Bonnie McKay and James Acheson, eds., *The Question of the Commons* (Tucson: University of Arizona Press, 1987).
- Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge: Cambridge University Press, 1990).
- Elinor Ostrom, Roy Gardner, & James Walker, *Rules, Games and Common-Pool Resources* (Michigan, 1994), pp. 3-21.
- Elinor Ostrom et. al., eds. [The Drama of the Commons](#) (Washington: National Academies Press, 2002), pp. 3-35.
- Carol Rose, “The Comedy of the Commons: Custom, Commerce, and Inherently Public Property” in [Property and Persuasion: Essays on the History, Theory, and Rhetoric of Ownership](#) (Boulder: Westview Press, 1994), 105-162.
- Michael Taylor, “The Economics and Politics of Property Rights and Common Pool Resources” (1992) 32 *Natural Resources Journal* 633.

Mar. 15th Re-imagining Property

- Charles Reich, “The New Property” (1964) *Yale Law Journal* 733 as excerpted in Macpherson, *Property*, 177-98.
- G.S. Alexander, E.M. Peñalver, J.W. Singer, and L.S. Underkuffler, “A Statement of Progressive Property” (2008-09) 94 [Cornell L. Rev.](#) 743.
- Joseph William Singer, “Democratic Estates: Property Law in a Free and Democratic Society (2008-09) 94 [Cornell L. Rev.](#) 1009 (pp. 1020-29, 1046-62 only).
- C.B. Macpherson, “Liberal-Democracy and Property” in *Property: Mainstream and Critical Positions* (Toronto), 199-207.

Mar. 22nd Property and the City – FIELDTRIP

- Nicholas Blomley, “Property and Landscapes of Gentrification” in *Unsettling the City: Urban Land and the Politics of Property* (New York: Routledge, 2004), 29-74.
- Douglas C. Harris, “Property and the City: Condominium and the Transformation of Vancouver”

Supplemental Reading:

- Damien Collins & Nicholas Blomley, “Private Needs and Public Space: Politics, Poverty and Anti-Panhandling By-Laws in Canadian Cities” in *New Perspectives on the Public-Private Divide* (Vancouver: UBC Press, 2003), 40-67.
- Robert C. Ellickson, “Controlling Chronic Misconduct in City Spaces: Of panhandlers, skid rows, and public-space zoning” (1996) 105 *Yale L.J.* 1165-1248.
- Don Mitchell, *The Right to the City: Social Justice and the Fight for Public Space* (New York, 2003).
- Jeremy Waldron, “Homelessness and the Issue of Freedom” (1991) 39 *U. C. L. Rev.* 295.

Mar. 29th Student Presentations

Apr. 5th Student Presentations

Apr. 12th Student Presentations

Apr. 12th Research Paper Draft Due Date (Optional)

Apr. 26th Research Paper Due Date (last day of exams)