

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).

Topic: Is the estate system consistent with the values of a democratic society?

Perspective: Singer is a contemporary American law professor.

Property Law is Unique

Complications arise from placing limitations on the liberties of owners. Much of property law could be parcelled out to other courses: tort, contract, environmental law, etc. What is unique about property law? Discuss origin of rights; property law protects rights against the world; there are default sets of rights (unlike negotiating a contract); predefined bundle of rights ("estates").

Myths vs Reality

Americans indulge in Lockean myth of property rights acquired through hard work. This is different from how property was actually originally acquired. Suggests myths help us justify property ownership. Original acquisition of property differs from modern transactions.

Reasons for Estate System

Assuming land is legitimately acquired, owners have right to pass on a bundle of rights. Why should government interfere by creating and enforcing estate system? Is this consistent with democracy?

Merrill and Smith argue government restrictions lower transaction and information costs by creating clarity. These values are beneficial in democratic state – aids independent decision making. (Jen recalls "Seeing Like a State".) Author argues property law is actually complicated. (Jen doesn't see why complicated system can't be a simplification of a more weird system – property law strives for simplification in the face of complex expectations.)

Estate system balances owners' rights with other people rights that are valued in democracy. The law intervenes to protect a range of other interests (spouse, guests, customers etc).

Estate system reflects expectations of property rights, which add to complexity. Nuances vary by jurisdiction. Expectations culturally based – default expectation that owner can paint house any colour in US, perhaps not in France.

Questions:

Can land be legitimately acquired?

What fundamental principles of property law derive from moral rights consistent with democracy and what are actually cultural expectations?