

### Property is Sovereignty

In *Property and Sovereignty* Morris Cohen argues that owning property equates to having power over people in relation to things, or sovereignty. Cohen identifies that such power dynamics between people can be oppressive when unlimited. Yet, this article suggests that even with the potential for problematic power relations, the institution of private property is capable of providing public benefits and should therefore be maintained.

Indeed, private property can benefit society by providing certainty in transactions and thus encourage peace and human productivity. In addition, private property can provide a realm for personal freedom in a highly interdependent world. Furthermore private ownership promotes economic efficiency where one person or small group of people know a piece of land or a possession intimately and can therefore best understand the transactions which can take place around that property or possession.

The benefits of private property cease to contribute to the public good when they accrue to the few. By virtue of sovereign authority conferred through exclusive property ownership, the few who accumulate property can then exert control over the many. It follows that while justifications for property remain viable, to avoid fuelling a system of oppression anchored by private property, the rights conferred through ownership must be limited by considerations for the public good, as manifested through State regulation.

Cohen cautions that by separating private and public notions of authority, systems of oppression go unchecked and the few are permitted to accumulate power over the many. Thus, weaved throughout Cohen's argument is a call for lawyers, the judiciary, academics, the State, and industry to acknowledge that dichotomizing public and private realms of sovereignty is false and problematic. Private property and public sovereignty are interrelated concepts and this interrelationship must be acknowledged by a diverse array of actors to properly regulate private interests in contribution to the public good.

### Did Cohen get it right?

Cohen's approach to property balances a Marxist critique of ownership with a liberal justification for property. Ultimately, *Property and Sovereignty* is a pragmatic proposition that posits private ownership and sovereign state authority in one system of governance. Within this system of governance, both private and the public authority interact to provide community benefits, organize society and limit the potential for oppressive power relations.

Ultimately Cohen's ideas are robust and convey an astute understanding of 1920s America. These arguments maintain fundamental American values, such as individualism and the entrepreneurial spirit, while explicitly acknowledging the interdependence of humanity. Cohen's mature understanding of humans as both independent and communitarian underpins and strengthens his analysis of private rights in conflict with public regulation. I would argue that while this article is decades old, Cohen's ideas remain provocative and important, especially in contemporary America where the public and private divide has been upheld to the detriment of the public good.

### Did I get it right (apart from the obvious issues with alliteration)?

To be determined by you the class on Monday February 1<sup>st</sup>.