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Property Rights in Environmental Resources

by
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A thesis submitted in fulfillment of the requirements for the degree of Doctor of Philosophy, in Philosophy

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Abstract

This thesis examines the nature of property rights over environmentally sensitive resources and develops a new conception of property in these resources. It has implications for the design of property law, environmental law, and the ethical responsibilities of business in the use of resources.

I pursue this project by examining arguments employed in the defence of the institution of private property. These arguments are, on one hand, the “original appropriation” arguments of John Locke (1632–1704) and modern versions of this, that appeal to ownership of one’s labour and, on the other hand, arguments that appeal to utility and economic efficiency. I show how the central intuitions of these arguments can be used to construct a theory of property in environmental resources.

I argue that property rights do not conceptually conflict with duties of preservation and that they admit of more environmentally motivated restrictions than is often thought. They do not license uses that contribute unjustifiably to environmental hazards or that lower environmental quality below certain minimums. Government interventions in the form of land use planning, monitoring, and other activities are justified in principle. The public retains a say on legal limits to property use, reflecting the interest of the community.

The conception of property that arises is a form of private ownership with an element of stewardship. I argue that this conception better captures the moral reasons that justify property than does a traditional “full liberal” conception. The account is sensitive to a plurality of justifying principles and a range of object types and gives flexibility within a property regime. It rewards labour and productivity while curbing the more destructive potential of unrestricted rights.

I conclude the thesis with an application to the issue of climate change. I show that this conception of property gives the flexibility needed if necessary restraints on emissions are not to clash severely with property rights. I develop a proposal for fairly distributing the burdens of climate change mitigation.
This thesis is dedicated to my father

Kenneth Arthur Sheard

(1912 – 1998)
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Co-supervisor Stephen Davies provided valuable substantive comments but also a comprehensive education - long overdue - in grammatical form. This experience has completely changed my approach to my own students’ writing. I now think that a good grammatical shock treatment, delivered early, will set them up for life and prevent them from torturing their own future supervisors.

My other co-supervisor Tim Mulgan, before he left for St Andrews, provided specialist help on a number of issues. This was especially valuable for chapters 4, 6, and 7.

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E te matou Matua,
Whakapaingia tenei mahi.

Murray Sheard.
Tamaki Makaurau / Auckland
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