

# Toward an Ecocentric Theory of Private Property

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# The Idea of Private Property

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## ▶ What is Private Property?

‘Property is how people envision it – that is, what concept they have of it and also a social, political and legal institution, implemented to resolve particular conflicts in society.’

Laura S Underkuffler, *The Idea of Property: Its Meaning and Power* (2003) 121



# The Modern Idea of Private Property

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- ▶ The Politics of Property
  - ▶ An Indeterminate Concept
  - ▶ Liberalism and Individual Freedom
- ▶ Liberalism and Property:

‘In order for life to have meaning, some control over the use of goods and resources is necessary; private property is liberalism’s means of ensuring that individuals enjoy choice over goods and resources so as to allow them to fulfil their life project.’

Paul Babeie, ‘Idea, Sovereignty, Eco-colonialism and the Future: Four Reflections on Private Property and Climate Change’ (2010) 19(3) *Griffith Law Review* 528: 531.



# The Ownership Model

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- ▶ The Ownership Model
  - ▶ Decision Making Authority
  - ▶ Castle Metaphor

‘We presume that most uses of property are self-regulating, in that only the owner is legitimately interested and others have no legitimate claims to control what the owner does with his own property. Substantial freedom to control one’s property without interference by government regulation is believed to promote both individual autonomy and economic efficiency.’



Joseph William Singer, *Entitlement: The Paradoxes of Property* (2000) 3.

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# Critique of the Ownership Model

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## ▶ Critiques of the Ownership Model:

‘By conceiving property as ownership, we invite others to use their property without regard to the needs of others. We encourage them to consider their self-interest alone – to act as if no one existed but themselves.’

Joseph William Singer, *Entitlement: The Paradoxes of Property* (2000) 6.



# Private Property and Earth Jurisprudence

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- ▶ Toward an Ecocentric Theory of Private Property
  - ▶ Abandoning Private Property
  - ▶ Internal Reconstruction

- ▶ An ecocentric definition of private property:

Private Property is a human institution that comprises a variety of relationships among members of the Earth community, through tangible or intangible items. For human beings, it is characterised by the allocation to individuals or groups of individuals of a degree of control over the use, alienation and exclusivity of scarce resources, as well as a measure of obligation and responsibility to all members of the Earth community in the exercise of the property right.

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# Private Property and Earth Jurisprudence

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- ▶ **Elements of an ecocentric theory of private property:**
  - ▶ Private Property is a human institution;
  - ▶ Private property is about relationships with human beings and other members of the Earth community (not individual rights);
  - ▶ Human beings have a need to access the natural world;
  - ▶ Private property contains inherent obligations toward both human beings and other members of the Earth community; and
  - ▶ Place based property systems that respond to the subject matter of a property relationship.



# Justifying the Expansion

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- ▶ Argument for expanding the field of human ethics to include nonreciprocal duties/obligations to nature has been hampered by the limited criteria established in ethical discourse for identifying objects of responsibility.

- ▶ Example

‘The fact that man can have the idea ‘I’ raises him infinitely above all other beings living on earth. By this he is a *person*...that is, a being altogether different in rank and dignity from things such as irrational animals, which we can dispose of as we please. So far as animals are concerned, we have no direct duties. Animals are not self-conscious and are merely a means to an end. That end is man...our duties toward animals are merely indirect duties toward humanity.’

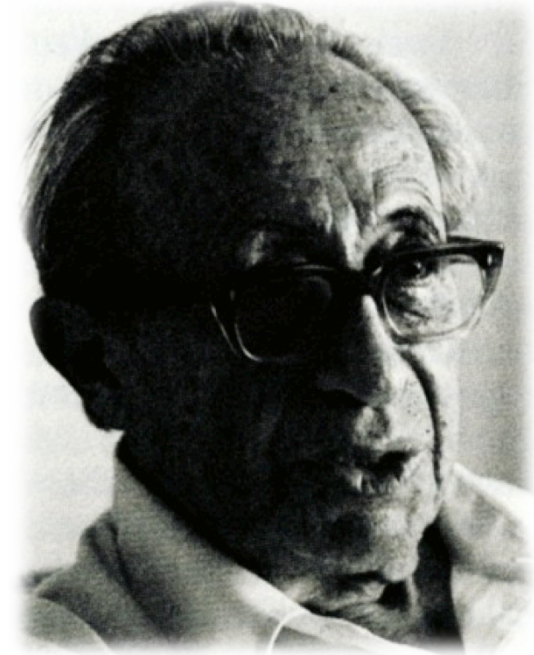
Immanuel Kant, *Anthropology from a Pragmatic Point of View* (1974) [first published 1798] 124.





# Justifying the Expansion

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▶ In response Hans Jonas argues:

‘Previous ethics...had these interconnected tacit premises in common: that the human condition, determined by the nature of man and the nature of things, was given once and for all; that the human good on that basis was readily determinable and that the range of human action and therefore responsibility was narrowly circumscribed.’

Hans Jonas, *The Imperative of Responsibility: In Search of an Ethics for the Technological Age* (1984) 1.

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# Expanding the Circle

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- ▶ Argument for extending ethics to include nonreciprocal human obligations to nature:
  - ▶ Environmental Crisis and Responsibility
  - ▶ Earth Community

‘The reality of one planetary ecosystem and how to live within its boundaries can only be grasped if we learn to think globally, holistically and responsibly.’

Klaus Bosselmann, *The Principle of Sustainability: Transforming Law and Governance* (2008) ix.



# Environmental Crisis and Responsibility

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- ▶ Environmental Harm and Technological Capacity
- ▶ Thomas Berry argues that human beings have become a 'macrophase power' however we only possess a 'microphase sense of responsibility and ethical judgment.'
- ▶ See also Hans Jonas who argues that the 'ought' or 'obligation to do' arises as a form of self-control to consciously exercised power.



# Earth Community

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- ▶ **Earth community**
  - ▶ Human beings exist as one interconnected part of a broader community that includes both living and nonliving entities.
  - ▶ The Earth is a community of subjects and not a collection of objects.



# Earth Community

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- ▶ ‘The ecological community is not subordinate to the human community. Nor is the ecological imperative derivative from human ethics. Rather, our human ethics are derivative from the ecological imperative. The basic ethical norm is the well-being of the comprehensive community and the attainment of human well-being within that community.’

- ▶ Thomas Berry, *The Great Work* (1999) 105

