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SEMINAR IN PROPERTY THEORY
Spring 2012 Syllabus

Fridays, 9:30-noon, Workshop in Political Theory and Policy Analysis, Tocqueville Room

This seminar will meet once each week for 14 weeks (we will likely skip one week of class toward the end of the semester for students to work on papers). The syllabus below lists nine topics. I expect those nine topics to take up all of our class sessions. If it looks like we will have surplus class time, I will have some backup topics and readings ready to go.

Individual students, in consultation with the professor, will select a paper topic early in the semester, which is likely to require additional reading beyond the syllabus. Grades will be based on those papers, overall preparation, and class participation. All students will have their papers presented at the Workshop's end-of-semester "mini-conference," which will take place the week after classes end. At the mini-conference, students papers will be presented and critiqued by Workshop affiliated faculty and graduate students.

All readings for this seminar are available either through web links (some of which must be accessed through the IU Library's portal) or under the "Resources" tab on Oncourse. It is imperative that you come to class having read *all* the assigned readings for that day, as specified at the end of the preceding class session.

For the first class session, we will start (but might not finish) the readings for Topic 1.

Topic 1. What is "Property"? Concepts and Definitions

Look up some dictionary definitions of "property" (some under "Resources" tab on Oncourse).

William Blackstone, *II Commentaries on the Laws of England* Ch. 1 [1766].

<http://www.lonang.com/exlibris/blackstone/bla-201.htm>

Robert Gordon, "Paradoxical Property," in John Brewer & Susan Staves (eds), *Early Modern Conceptions of Property* 95 (1996).

http://books.google.com/books?id=wV87AG6Pb3UC&pg=PA95&lpg=PA95&dq=robert+gordon+%22paradoxical+property%22&source=bl&ots=Ygy30ida1O&sig=qhR_sliFj3aFbcXxHevbABz5kII&hl=en&ei=Qf_gTrTbM6L40gGwuOCHBw&sa=X&oi=book_result&ct=result&resnum=1&ved=0CCAQ6AEwAA#v=onepage&q=robert%20gordon%20%22paradoxical%20property%22&f=false

Kenneth Vandavelde, "The New Property of the Nineteenth Century: The Development of the Modern Concept of Property," 29 *BUFF. L.REV.* 325 (1980).
http://heinonline.org/HOL/Page?handle=hein.journals/buflr29&div=16&g_sent=1&collection=journals

Pierre-Joseph Proudhon, *What is Property?* (uploaded on Oncourse, under "Resources" tab)

Morris Cohen, "Property and Sovereignty," 13 *CORNELL L.Q.* 8 (1927).
<http://www.openicon.com/retreat/property1.html>

Topic 2: The Sources of Private Property

Nature

John Locke, "Of Property," *Second Treatise of Government*, Ch. 5 [1690]
<http://constitution.org/jl/2ndtr05.txt>

Carol Rose, "Possession as the Origin of Property," 52 *U.Chi. L. Rev.* 73-88 (1985).
http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=2829&context=fss_papers.

The Sovereign

Thomas Hobbes, *Leviathan*, Ch. XXIV. "Of Nutrition and Procreation of a Commonwealth" [1660]
<http://oregonstate.edu/instruct/phl302/texts/hobbes/leviathan-d.html#CHAPTERXXIV>

Jeremy Bentham, *Anarchical Fallacies* (Edinburgh, 1843), article ii; and *Principles of the Civil Code*, Chapters 1 and 8.
http://www.law.georgetown.edu/Faculty/lpw/documents/Bentham_Anarchical_Fallacies.pdf; <http://www.laits.utexas.edu/poltheory/bentham/pcc/pcc.pa01.c01.html>; and <http://www.laits.utexas.edu/poltheory/bentham/pcc/pcc.pa01.c08.html>

Social Contract

Jean Jacques Rousseau, *The Social Contract, or Principles of Political Right* [1762].
Book I. Ch. IX. Real Property. <http://www.bartleby.com/168/109.html>

David Hume, *A Treatise on Human Nature*, Book III, Part II, secs II-IV, pp. 484-516 [1739-40] (1888).

http://books.google.com/books?id=a-rWAAAAMAAJ&pg=PA538&lpg=PA538&dq=%22david+hume%22+neighbours+drain+meadow&source=bl&ots=sWCD8b-82M&sig=nl_Xjhdoqv28XaTIL0JkNpqbAw&hl=en&ei=BV7jToOoJzjggfdiOzuBQ&sa=X&oi=book_result&ct=result&resnum=5&ved=0CDkQ6AEwBA#v=onepage&q&f=false

John Umbeck, "Might Makes Right: A Theory of the Formation and Initial Distribution of Property Rights," 19 *Econ. Inquiry* 38 (1981).

<http://onlinelibrary.wiley.com/doi/10.1111/j.1465-7295.1981.tb00602.x/pdf>, or <https://docs.google.com/viewer?url=http%3A%2F%2Fwww.econ.washington.edu%2Fuser%2Fyoramb%2FMightMakesRights.PDF>

Richard O. Zerbe and C. Leigh Anderson, "Culture and Fairness in the Development of Institutions in the California Gold Rush," 61 *J.Econ. Hist.* 114 (2001).

<http://journals.cambridge.org/action/displayFulltext?type=1&fid=79704&jid=JEH&volumeId=61&issueId=01&aid=79703&bodyId=&membershipNumber=&societyETOCSession=>, or <http://www.jstor.org/stable/2697857>

Social Norms

Robert Ellickson, "Of Coase and Cattle: Dispute Resolution among Neighbors in Shasta County," 38 *Stan. L.Rev.* 623 (1986).

http://digitalcommons.law.yale.edu/fss_papers/466/

Topic 3: Property as a Historical (and Evolving) Institution

Hindu Ordinances of Manu, selected provisions regarding property (uploaded to Oncourse under "Resources" tab)

The Institutes of Justinian, Book II (uploaded to Oncourse under "Resources" tab).

L.T. Hobhouse, "The Historical Evolution of Property, In Fact and In Idea," in *Property: Its Duties and Rights: Historically, Philosophically, and Religiously Regarded* 3 (1913).

<http://www.archive.org/stream/propertyitsdutie00gorerich#page/n9/mode/2up>

Charles Donahue, Jr., "The Future of the Concept of Property Predicted from Its Past," in J. Roland Pennock and John W. Chapman (eds), *Property: NOMOS XXII* 28 (1980).

https://docs.google.com/viewer?url=http%3A%2F%2Fwww.law.harvard.edu%2Ffaculty%2Fcdonahue%2Fwritings%2FNomos22_28f.pdf

Francis S. Philbrick, "Changing Conceptions of Property in Law," 86 U.Penn. L.Rev. 691 (1938).

http://heinonline.org/HOL/Page?handle=hein.journals/pnlr86&div=62&g_sent=1&collection=journals

Cheryl I. Harris, "Whiteness as Property," 106 Harv. L. Rev. 1707 (1993).

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=927850

Charles Reich, "The New Property," 73 Yale L.J. 733 (1964).

<http://www.jstor.org.ezproxy.lib.indiana.edu/stable/pdfplus/794645.pdf>

Topic 4: What Constitutes Property? "Bundle-of-Rights" v. Unitary and Physicalist Conceptions

Anthony Honoré, "Ownership," in A.G. Guest, ed., *Oxford Essays in Jurisprudence* (Oxford 1961)

<http://academic2.american.edu/~dfagel/OwnershipSmaller.pdf>

Edella Schlager and Elinor Ostrom, "Property-rights Regimes and Natural Resources: A Conceptual Analysis," 68 Land Econ. 249 (1992).

<http://academic2.american.edu/~dfagel/OwnershipSmaller.pdf>

Thomas W. Merrill and Henry E. Smith, "What Happened to Property in Law and Economics?" 111 Yale L.J. 357 (2001).

<http://www.sfu.ca/~allen/smith%20property.pdf>

Richard A. Epstein, "Bundle-of-Rights Theory as a Bulwark against Statist Conceptions of Private Property," 8 Econ. J. Watch 223 (2011).

<http://econjwatch.org/articles/bundle-of-rights-theory-as-a-bulwark-against-statist-conceptions-of-private-property>

Topic 5: Property as an Economic Institution

Garrett Hardin, "The Tragedy of the Commons," 162 Science 1243 (1968).

<http://www.sciencemag.org/content/162/3859/1243.full>

Harold Demsetz, "Toward a Theory of Property Rights," 57 Am. Econ.Rev. Pap. & Proc. 347 (1967).

<http://www.busi.mun.ca/apalavirta/b5530/demsetz67.pdf>

Elinor Ostrom, "Coping with Tragedies of the Commons," 2 Annu. Rev. Polit. Sci. 493 (1999).

<http://www.annualreviews.org/doi/pdf/10.1146/annurev.polisci.2.1.493>

Ronald Coase, "The Problem of Social Cost," 3 J.L. & Econ. 1 (1960).
<http://econweb.umd.edu/~givens/Econ456/coase1960.pdf>

Guido Calabresi & A. Douglas Melamed, "Property Rules, Liability Rules, and Inalienability: One View of the Cathedral," 85 Harv. L.Rev. 1089 (1972).
<http://www.wv.uni-magdeburg.de/bizecon/material/calabresi.melamed.1972.pdf>

Terry L. Anderson and P.J. Hill, "The Evolution of Property Rights: A Study of the American West," 18 J.L. & Econ. 163 (1975).
<https://www.amherst.edu/media/view/104763/original/AndersonHillWest.pdf>

Daniel H. Cole and Peter Z. Grossman, "The Meaning of Property Rights: Law vs. Economics?" 78 Land Econ. 317 (2002).
<http://www.jstor.org.ezproxy.lib.indiana.edu/stable/pdfplus/3146892.pdf?acceptTC=true>

Topic 6: The Variety of Property Systems and Issues in Property-Regime Choice

J.W. Harris, "What is Non-Private Property?," in J.W. Harris (ed.), *Property Problems: From Genes to Pension Funds* 175 (London: Kluwer, 1997). (available under "Resources" tab on Oncourse, with permission of the publisher).

Charles Geisler, "Property Pluralism," in Charles Geisler and Gail Daneker (eds), *Property and Values: Alternatives to Public and Private Ownership* 65 (2000) (uploaded to Oncourse under "Resources" tab, with permission of the publisher).

S.V. Ciriacy-Wantrup and Richard C. Bishop, "'Common Property' as a Concept in Natural Resources Policy," 15 Nat. Resources J. 713 (1975).
<http://heinonline.org.ezproxy.lib.indiana.edu/HOL/Print?collection=journals&handle=hein.journals/narj15&id=731>

Robert Ellickson, "Property in Land," 102 Yale L.J. 1315 (1993).
http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1410&context=fss_papers

Daniel H. Cole and Elinor Ostrom, "The Variety of Property Systems and Rights in Natural Resources," in D.H. Cole and E. Ostrom, eds, *Property in Land and Other Resources* (Lincoln Institute 2011) (available under "Resources" tab on Oncourse, with permission of the authors).

Topic 7: Property Rights and Environmental Protection

Terry L. Anderson and Donald J. Leal, "Free Market Environmentalism: Hindsight and Foresight," 8 Cornell J.L. & Pub. Pol'y 111 (1998).
http://heinonline.org/HOL/Page?handle=hein.journals/cjlpp8&div=11&g_sent=1&collection=journals

Terry L. Anderson and Donald J. Leal, "Free Market versus Political Environmentalism," 15 Harv. J.L. & Pub. Pol'y 297 (1992).
http://heinonline.org/HOL/Page?handle=hein.journals/hjlpp15&div=33&g_sent=1&collection=journals

Daniel H. Cole, "Clearing the Air: Four Propositions about Property Rights and Environmental Protection," 10 Duke Env'tl L. & Policy For. 103 (1999).
<https://faculty.law.duke.edu/shell/cite.pl?10+Duke+Env'tl.+L.+&+Pol'y+F.+103>

Joseph L. Sax, "Why We Will Not (Should Not) Sell the Public Lands: Changing Conceptions of Private Property," 1983 Utah L.Rev. 313.
http://heinonline.org/HOL/Page?handle=hein.journals/utahlr1983&div=29&g_sent=1&collection=journals

Topic 8: Theories of Intellectual Property

Justin Hughes, "The Philosophy of Intellectual Property," 77 Geo. L.J. 287 (1988).
<http://www.justinhughes.net/docs/a-ip01.pdf>

Peter S. Menell, "Intellectual Property: General Theories," in B. Bouckaert and G. DeGeest (eds), I Encyclopedia of Law and Economics 129 (1999).
<http://encyclo.findlaw.com/1600book.pdf>

James Boyle, *The Public Domain: Enclosing the Commons of the Mind*, Chs 3 & 8 (Yale 2008).
<http://www.thepublicdomain.org/thepublicdomain1.pdf>

Mark Lemley, *Ignoring Patents*, 2008 Mich. St. L. Rev. 19.
http://www.ftc.gov/bc/workshops/ipmarketplace/apr17/docs/mlemley_ip.pdf

Topic 9: Property-Regime Conflicts: Of Takings and Other Matters

Frank Michelman, "Property, Utility, and Fairness," 80 Harv. L.Rev. 1165 (1967).
<http://www.jstor.org/stable/pdfplus/1339276.pdf?acceptTC=true>

Richard Epstein, "An Outline of Takings," 41 U.Miami L.Rev. 3 (1986).
<http://academic.udayton.edu/Lawecon/Readings/Epstein%20-20An%20outline%20of%20takings.htm>

Joseph L. Sax, "Takings, Private Property, and Public Rights," 81 Yale L.J. 149 (1971).
<http://www.jstor.org/stable/pdfplus/795134.pdf>

Daniel H. Cole, "When Property Regimes Collide: The Takings Problem," *Pollution and Property* (2002), Ch. 8. <http://www.law.fsu.edu/faculty/2003-2004workshops/cole.pdf>