

# The Ideology of Property

*by Marc Goetzmann*

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**Do individuals have absolute rights to the things they have labored on? It would seem to go without saying that the answer is “yes” – and yet, this principle can be called into question. A definition of private property requires us to be in agreement with each other – and therefore to share a set of common values.**

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Reviewed: Pierre Crétois, *La part commune. Critique de la propriété privée*, Paris, Éditions Amsterdam, 2020, 220 p., €16.

*La part commune* (*The Common Part*) is an excellent introduction to what we might call “the ideology of property”. To be more precise, the author tackles at its very roots the idea that property is a fundamental natural right granting its owner absolute and exclusive mastery over an object. By showing that the idea of an *absolute* right of ownership is necessarily contradictory – for how can one decide which right, of which individual, should take precedence over that of another? – he introduces the reader to all the *contractualist* perspectives on property, which require that collective reasons be given in order to grant rights of appropriation to individuals, or, equally to refuse to grant individuals such rights. The book also allows the author to briefly introduce his own vision of property, which he redefines in relation to the question of access; we will here discuss the author’s main argument, which reduces property to the level of “a set of secondary rules” (p. 198).

## The “Myth” of Ownership: Back to Locke

Crétois’ book puts forward a deconstruction of the “myth of ownership”, i.e. the elaborate justifications of an *absolute* right of ownership of individuals over objects, to which one would only be able to apply the most marginal limitations (p. 18). These justifications, as P. Crétois skillfully demonstrates throughout his book, can be broken down into five main ideas (p. 23-24): the idea that private property is a natural right (1), arising out of individual labor (2), thus rewarding individual merit (3), requiring absolute freedom of action (4) and consequently unable to allow any interference (5).

Most of the book thus explores a point of view that we might qualify as “libertarian”, meaning that it considers that justice requires us to respect above all those rights of individuals that guarantee their freedom, thus privileging a form of private property that is “strong” and perceived as legitimate. Some libertarians, such as Robert Nozick, the author of *Anarchy, State, and Utopia*, are thus skeptical about any attempt to redistribute wealth, since they view such attempts as intrinsically oppressive, in particular because they challenge the idea of private property.

P. Crétois offers a subtle restitution of the ideas of Locke, whose *Second Treatise* can justly be viewed as the crucible from which this philosophical school was forged. Crétois reminds us of the two fundamental Lockean arguments, which form the basic building blocks of an “ideology of property”: in this view, it is from our “natural” ownership of *ourselves* that we derive an absolute right of ownership over objects, and it is on the basis of this foundation that we can view labor as that which allows individuals to appropriate the objects of nature, because these individuals transform them and thus extend to them the ownership they have of themselves.

Most of P. Crétois’ argument is aimed at showing that these two ideas are untenable. He adopts traditional lines of criticism that claim that if our laboring on an object endows us with ownership of it, then no “absent” owner and, by extension, no capitalist who has workers labor on their behalf, would be able to keep “their” property. Likewise, it does not seem possible to quantify the way in which a supposed ownership of one’s self would make a given individual the owner of that on which they have labored.

However, the most interesting aspect of P. Crétois’ argument is his claim that using labor and merit as justifications for absolute private property amounts to more than making an unverifiable and contradictory statement. He challenges the idea that

the rights of each owner are absolute, highlighting how illogical an idea this is. A French-speaking readership will thus have the pleasure of seeing P. Crétois lock horns with a philosophical trend that remains relatively little-known in France: so-called “leftwing” libertarians. If, as Hillel Steiner believes, individual rights must necessarily be compossible<sup>1</sup>, the reason for this is in particular because it is necessary, in P. Crétois’ view, to resolve potential conflicts between opposing interests. No conflict may be resolved without reasons, and these reasons must be acceptable to all – this is a fundamental principle of contractualism, summed up by Thomas Scanlon in *What we owe to each other*. Limits are thus placed on the individual right of ownership, and these limits must be acceptable (p. 73) to the members of a given community. P. Crétois is thus right to note – and this is a fundamental idea in his book – that these criteria of acceptability must necessarily be external to the right of ownership, which must therefore find its justification in values other than itself (p. 76).

## Ownership: Relationship and Access

There is therefore a necessarily *common* part in the definition of the rights that each member of a community might have to the ownership of objects. This implies a relational view of property rights, the function of which would then be only to organize the “co-ownership” of objects in a complex and porous environment where individual actions always have external effects on other individuals and on objects. Within such a framework, individual appropriation seems to have only one aim: to develop “individual strategies”<sup>2</sup> (p. 123).

This point most certainly forms a philosophical “crossroads”, from which P. Crétois charts his own course. Indeed, the vast majority of critical or even merely questioning perspectives on property absolutism underline that these rights can only be relational, which forces the holders of these rights to fulfill certain obligations towards other members of their community. These obligations can be on the same level as those that emerge in contractual relationships, or require that individual appropriation accord with collectively-defined criteria. Likewise, it is no surprise that

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<sup>1</sup> See Hillel Steiner, “The structure of a set of compossible rights”, *The Journal of Philosophy*, 1977, vol. 74, no. 12, pp. 767-775.

<sup>2</sup> Pierre Crétois quotes Robert Castel and Claudine Haroche, *Propriété privée, propriété sociale, propriété de soi*, Paris: Fayard, 2001, p. 30.

P. Crétois gives individual appropriation the aim of allowing individuals to act autonomously in the world.

What makes P. Crétois' position unusual is his claim that if it is autonomy that justifies property, then appropriation is absolutely secondary. What needs to be guaranteed, therefore, is the access of individuals to the functionalities connected to the use of objects which, for their part, remain inappropriable (p. 171). P. Crétois thus fundamentally calls into question the very idea of appropriation, which is based on the distinction between objects and persons, or of the *summa divisio* (p. 139), which supposedly allows the latter to appropriate the very substance of the former. Within this framework, property does indeed constitute a "set of secondary rules" (p. 198).

## What of Autonomy?

It is this main conclusion that we feel requires challenging, if only to encourage the author to complete his argument. It also seems to us absolutely possible to "imagine a happy property-less individual" (p. 199), just like there are happy eternal tenants. Such an individual would in fact have access to all the requisite functionalities that objects can provide. From this perspective, the actual possession of objects does not seem particularly essential. This interest in "functionalities" naturally leads P. Crétois to mentioning the capability theory of Amartya Sen or Martha Nussbaum, according to which it is the *substantial* freedom of individuals that must be promoted, since this is what allows them to have access to essential "functionings" or functionalities.

In the same way as capability theory is sometimes accused of promoting a perfectionist vision, dictating to individuals the content of what they should desire in order to be genuinely free, we might ask ourselves whether P. Crétois is not running the risk of completely erasing the autonomy of individuals by insisting on their happiness. Indeed, his perspective seems to imply a defense – one that remains quite implicit in his book – of the role of the welfare state. It is this state which is supposed to carry out the essential task of "administrating access" (p. 180), a task that P. Crétois refers to without going into the details of it. Should the state in question not be responsible for determining to what it is necessary to have access in order to be free? Capability theory is in fact careful to limit itself to "elementary" functionings, such as nutrition, health, a minimal level of education, etc. Indeed, we must not forget that

these theories are first and foremost applied to the question of development in countries undergoing economic transition, such as India. And how can we guarantee the autonomy of individuals without it involving one form or another of individual appropriation, beyond this horizon of substantial freedom that seems to be inarguably vital for each individual?

This question in fact did not escape Martha Nussbaum herself, who does not dismiss a certain exclusive possession of objects as providing a guarantee of individual autonomy, in particular for fear of paternalism and perfectionism. The ownership of objects can thus have at least an instrumental role in the realization of an individual's capabilities<sup>3</sup>. We might at least consider that, if property is not essential, its first substitute, money, might appear to be necessary to guarantee autonomous access to certain resources and to their functionality – which is in fact the main philosophical justification of the principle of a universal income. However, P. Crétois seems to completely reject this solution (p. 173), and we might then wonder how he believes the autonomy of individuals can be ensured, beyond those functionalities that appear as necessary, if neither a universal income nor the ownership of objects – albeit better distributed – are acceptable solutions.

## **Are there reasons to accept private property?**

We wonder in fact whether P. Crétois does not have too systematic a tendency to associate private property with domination and takeovers. Some of the examples that he mentions, such as the right to live in a non-polluted environment where resources are exploited sustainably, are sometimes mainly questions of property: does a tribe not have, if it is awarded certain property rights, more ways of resisting the takeover of the forest it lives in?

We might also regret P. Crétois' lack of consideration for theories that defend the necessity of forms of individual appropriation, which are admittedly conditioned according to the objects appropriated, as a way of defending individual autonomy, or on the basis of a purely utilitarian calculation of efficiency. It is in fact worthy of note that the utilitarian tradition is seldom mentioned in the author's text, especially since it is not incompatible with the contractualism that P. Crétois pledges allegiance to. If

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<sup>3</sup> See Martha Nussbaum, *Creating Capabilities. The Human Development Approach*, Cambridge MA and London: Harvard University Press, 2011, pp. 33-34.

we follow utilitarian defenses of the right to property, various considerations such as labor, merit, efficiency, justice etc., lead to the elaboration of general, complex rules, without however putting forward a detailed account of who deserves what or of whose labor produces the most value. Thomas Scanlon's contractualism would probably follow a similar route<sup>4</sup>. Exclusivity, even if it is limited, is then made conditional on the production of desirable results, like when a pharmaceutical company is granted a limited license to develop a vaccine (p. 86-7). We are indeed here dealing with collectively acceptable reasons for granting property rights to individuals.

Thus, even though there are undeniable problems connected to the rise of inequality, and we can view this as a consequence of the hegemony of a certain idea of private property, does this really allow us to say that any kind of inequality must necessarily lead to domination (p. 129)? With the possible exception of the environmental question, the burden of proof remains with those who hold that private property as an institution is not beneficial, including for non-owners, whereas many people believe that this institution is a necessary condition for socio-economic development. It is possible to reject this argument, but doing so requires more than a summary catchphrase such as "we know very well that one person's enrichment does not necessarily make another's fortune" (p. 36)<sup>5</sup>.

It also seems too hasty to claim that since corporations are sites of domination because they are owned by shareholders, then all property must be dismissed (p. 133). This obscures the fact that the justification of shareholder primacy through ownership is not at all self-evident<sup>6</sup>, and that private property is only really imbued with dominance thanks to a system and to the forms of property that enable it. In fact, this point of view seems perfectly compatible with the interpretation P. Crétois then puts forward of the concept of property as a bundle of rights. Ultimately, we should be highlighting, together with Elinor Ostrom, the way in which the "bundle" reflects a social organization around a system of resources (p. 156), without however sacrificing the idea that individual appropriation is key, in particular as far as the autonomy of individuals is concerned. However, this is not the path that P. Crétois seems to end up taking for the moment – but we do not doubt that this book is only the first step towards a more general theory, which would explicitly defend the welfare state. For it

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<sup>4</sup> See in particular Thomas Scanlon, *What We Owe to Each Other*, Belknap Press, 2000, chap. 5. Jean-Fabien Spitz applies this approach to the question of the ownership of oneself (see "Further Reading").

<sup>5</sup> Jason Brennan, for example, develops an opposing argument in *Why not capitalism?*, New York: Routledge, 2014.

<sup>6</sup> See Axel Gosseries, "La propriété peut-elle justifier la primauté actionnariale ?", in B. Rogé (ed.), *L'entreprise, formes de la propriété et responsabilités sociales*, Paris: Lethielleux, 2012, pp. 439-467.

is on this front that P. Crétois' argument is hard to oppose: no reform of property rights, however far-reaching it may be, could absolve us of the "vital" collective solidarity that we owe each other (healthcare, education, pensions, etc.), and of which the state should be the embodiment.

### Further Reading:

- Brennan, Jason, *Why not Capitalism?*, New York: Routledge, 2014.
- Boccon-Gibod, Thomas and Crétois Pierre (ed.), *État social, propriété publique et biens communs*, Lormont, Le Bord de l'eau, coll. "Les voies du politique", 2015.
- Crétois Pierre, "La propriété repensée par l'accès", *Revue internationale de droit économique*, 2014/3 (t. XXVIII), pp. 319-334.
- Castel, Robert and Haroche, Claudine, *Propriété privée, propriété sociale, propriété de soi*, Paris: Fayard, 2001.
- Martha Nussbaum, *Creating Capabilities. The Human Development Approach*, Cambridge MA and London: Harvard University Press, 2011.
- Ostrom, Elinor, *Governing The Commons: The Evolution of Institutions for Collective Action*, Cambridge: Cambridge University Press, 1990.
- Thomas Scanlon, *What We Owe to Each Other*, Cambridge MA: Belknap Press, 2000.
- Sen, Amartya, *The Idea of Justice*, Cambridge MA: Harvard University Press, 2009.
- Spitz, Jean-Fabien, *La propriété de soi, Essai sur le sens de la liberté individuelle*, Paris: Vrin, 2018.

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