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Ellen Clark
Syracuse University

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The Property Contract

The role of property in social contract theory

Ellen Clark
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Abstract

This paper outlines how the concept of the property contract can be used to theorize how private property has legitimized an unjust hierarchy within a social contract framework. Social contract theory holds that the legitimacy of political authority, as well as the rights and obligations of members of a political community, result from voluntary agreement between free, rational, and equal individuals. Individuals consent to give up some of their natural freedom, rights, and power in exchange for political freedom and security. Contemporary scholars, particularly Carole Pateman and Charles Mills, have pointed out that the social contract is missing important distinctions and information relevant to the philosophical conversation. This paper will follow in the paths of both Pateman and Mills and propose that the conversation about the social contract is still missing a fundamental piece.

This paper proposes the concept of the property contract as a device for theorizing how private property has led to the legitimization of an unjust hierarchy within a social contract framework. The property contract is the notion that our society has already assumed rules and norms about ownership and what can be considered property, which are then codified and legitimized by the social contract. The property contract is, therefore, presupposed by the social contract and intersects with racial and sexual contracts, ultimately illustrating that the conditions under which individuals enter the social contract are not those of freedom or equality. An analysis of the influence of the property contract in the views of various philosophers is completed, followed by a conclusion suggesting some possible alternatives: redistribution of property or the elimination of property entirely.

The concept of the property contract can be used to theorize how private property has legitimized an unjust hierarchy within a social contract framework. The property contract is the notion that our society has already assumed rules and norms about ownership and what can be considered property, which are then codified and legitimized by the social contract. The property contract, therefore, is presupposed by the social contract and intersects with racial and sexual contracts, ultimately illustrating that the conditions under which individuals enter the social contract are not those of freedom or equality. Various philosophers discuss the influence of the property contract in different contexts present in society, and through the analysis of these accounts, a clearer picture of the property contract can be seen. Upon conclusion of this analysis, an argument for the redistribution or elimination of property as viable alternatives is proposed. The property contract is an unspoken understanding between people accepting and imposing private property as a social construct. As 18th century philosopher and political theorist Jean-Jacques Rousseau explained, “The first man who, having enclosed a piece of ground, bethought himself of saying ‘This is mine’, and found people simple enough to believe him, was the real founder of civil society” (Rousseau 1754, 1). As Rousseau argues, the true initiator of civil society was the individual who enclosed a piece of land, had the idea to declare it as his property, and encountered people gullible enough to accept this claim. Rousseau argues that social contracts are in fact governed by the property contract. The property contract is, therefore, similar to the racial and sexual contracts theorized by philosophers Carole Pateman and Charles W. Mills. Pateman argued that social contracts are built on the oppression of women, where men subsequently benefit from this oppression. Pateman’s concept was adapted by Mills, who argued that our societies are built on the idea of white supremacy. The

property contract operates in a similar way; it masquerades as a free and equal social contract and presents inequalities of wealth and ownership as failures of the individual. In fact, however, such inequalities are systemic and result from not being beneficiaries of the unwritten and exclusionary rules that govern how wealth and ownership are distributed.

Most, if not all, Western social contract theorists assume that individuals are free and equal, and they enter into social contracts from that standing. However, this can not be true, since the inequalities of wealth and ownership precede the social contract and are codified by the social contract. Even 17th century political theorist John Locke, the champion of private property, agrees. Locke's theory of property holds that one owns one's body, and that therefore what one mixes their labor with becomes one's property. Before the invention of money people would only be taking what they need, leaving the rest for others, however, he points out that after the invention of money, people could not only own but also accumulate what they mixed their labor with, which accumulates wealth (Locke, 1689, ch. 5). Out of this accumulation of wealth grows inequality, and the government is created to regulate and preserve these relations of inequality, and protect property. Essentially, Locke argues that out of the inequality and unequal relations that stem from wealth, property, and money, the government was created by a social contract to regulate this wealth and property.

Locke believes that society needs government because conflict arises between people due to private property. Other non-western schools of thought share this view. For example, the ancient Indian "Aggañña-Sutta" also known as "The Discourse on What is Primary," points to the role of private property as fundamental to society. The "Aggañña-Sutta" argues that greed and desire for ownership have led to a particular social order, in that case, the caste system. As the Buddha tells the monks in the creation story, when beings became greedy and decided to take more rice than their fair share, they constructed rules of property and a system to regulate it (Collins). The idea of having personal property was the ultimate cause of punishment, which then led to particular social orders and hierarchies. Hence, inequalities of ownership exist prior to society. They aren't just arbitrary, they are a result of greed. The distribution of wealth and property was then formalized in the property contract.

The western ideas of Rousseau and Locke, and an ancient non-western school of thought from the Agganna-Sutta, understand property in terms of private ownership. However, ownership of land such as sovereign title as an act of sovereign imperial founding also constitutes property. The Australian Supreme Court case *Mabo v. Queensland* illustrates this claim, as it implies a property contract foundational to subsequent social contracts. The 1992 case was brought to the High Court of Australia and ultimately recognized native title to the land. The decision rejected the colonial British Crown's assumption of the doctrine of terra nullius—no man's land—as it was applied to the territory. In doing so, the court effectively undermined its own legal authority.

When British settlers arrived in Australia, they claimed the land was uninhabited and therefore would become the property of the Crown. The subjugation of the indigenous peoples of Australia was founded on a property contract. The idea that the land they traditionally lived on for thousands of years not only did not belong to them, but was in fact under the ownership of the Crown exemplifies this. The idea of property, which was foreign to the indigenous communities, was used to justify colonialism and imperialism. The indigenous communities did not participate in the property contract, and were actually excluded from it, which meant they were not considered free and equal to enter into the social contracts imposed upon them. Additionally, this appropriation of land as a sovereign imperial founding is often ignored as a real acquisition of property. As contemporary philosopher Carole Pateman discusses in "Contract and Domination":

Until very recently contemporary political theorists largely managed to ignore [the question of the justification for such stocking and cultivation in inhabited territories], in part because discussions of the legitimacy of the modern state (always taken for granted) have said nothing about the land on which the state is created. (Pateman, Mills 36)

This lack of discussion surrounding legitimacy was finally challenged by *Mabo v. Queensland*. However, it produced the paradoxical implication that the High Court entirely undermined the foundation of its own jurisdiction and legal authority.

All of these examples highlight that unequal pre-political relations of ownership are not created but rather codified and legitimized by the social contract, which is a property contract. As a consequence, one cannot enter as a free and equal individual into a social contract without addressing the inequalities first formalized by the property contract. By ignoring and avoiding the deeper root of inequality, we are complicit in the continuation of the property contract and the harm it causes.

The standard response to the inequalities generated by the Property Contract is a call for distributive justice. Distributive justice is essentially moral guidance for the political processes and structures that affect the distribution of benefits and burdens in societies. Typically, distributive justice will call for redistribution of property to meet certain goals. The works of political theorists John Rawls and Ronald Dworkin reflect ideas of distributive justice in their works. By way of conclusion, I want to suggest a more effective response, which is to reconsider and rethink the idea of private property. Because property is the foundation of injustice, property is the idea that needs to be challenged. Changing our perceptions of private property and ownership are the key to untangling ourselves from the property contract, and finally freeing ourselves from its effects. As Rousseau reasoned against the property contract, "...you are undone if you once forget that the fruits of the earth belong to us all, and the earth itself to nobody" (Rousseau 1754, 1). The property contract has allowed for incredible inequalities and vast amounts of harm. It's time to reconsider the idea of private ownership itself, and rid society of the property contract.

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