

Week One

Lecture 1: The Concept of Property

'Property' is the "sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe" (Blackstone)

'Property' is an "abbreviated reference to a quantum of socially permissible power exercised in respect of a socially valued resource" (Gray)

'Property' "does not really exist, it's mere illusion. It is a vacant concept oddly enough rather like thin air".

'Property' is a legally endorsed concentration of power over things and resources ([Yanner v Eaton \[1999\] HCA 53](#)).

Cultural Property

Some activities, practices and dispositions can enhance the overall value of personhood, also have an exchange value in later life as the cultural capital necessary for employability.

The distinction between 'Property Rights' and 'other rights' is important for three reasons:

1. Access to the resource
2. Value of the right
3. The Legal rules by which the rights are created and enforced

Commonwealth Parliament may as laws for the 'acquisition of property on just terms from any State or persona for any purpose in respect which the Parliament has to make laws". If a right is classified as a 'property right' the government can take that right only if it fairly compensates the right holder.

Common Law: resists self-ownership of the human body. [Bazely v Wesley Monash IVF \[2010\] QSC 118](#) - deposited semen with the Monash IVF facility before his cancerous death. Despite no ownership of 'property' coming from the human body, semen was property as it was being held a bailment.

Contentious Areas

- Digitised property
- Water
- Human Tissue
- Cultural information
- Modern slavery
- Intellectual and intangible property (goodwill, trademarks and copyright).

Lecture 2: Theories of Property

Property rights are never about things, but rather a relationship which one has with a thing. Therefore, it's more accurate to say that one has property in a thing than to declare the thing is one's property. (Gray)

Natural Law - John Locke

'Natural Law' theory of property is based on morale and founded in democracy. Written amidst a period of English expansion into America and the Industrial revolution.

Property rights were 'God given, universal and discoverable by reason'.

Property rights were immutable, existed and could be changed by human intervention.

Property rights were given to mankind by God, in common to be enjoyed.

Individuals could acquire individual property within common area, by mixing labour with land.

Utilitarianism/Positivist - Bentham

"There is no such thing as natural property, it is constructed by the law". Law determines what is considered property as it is "not a material, but rather a metaphysical conception of the mind". Private property promotes individual happiness.

Margaret Davies argued that property isn't about giving individuals control over external things, but rather about individuals and communities the ability to determine how they are formed, how they live together and how they use their resources. She places group utility beyond individual means.