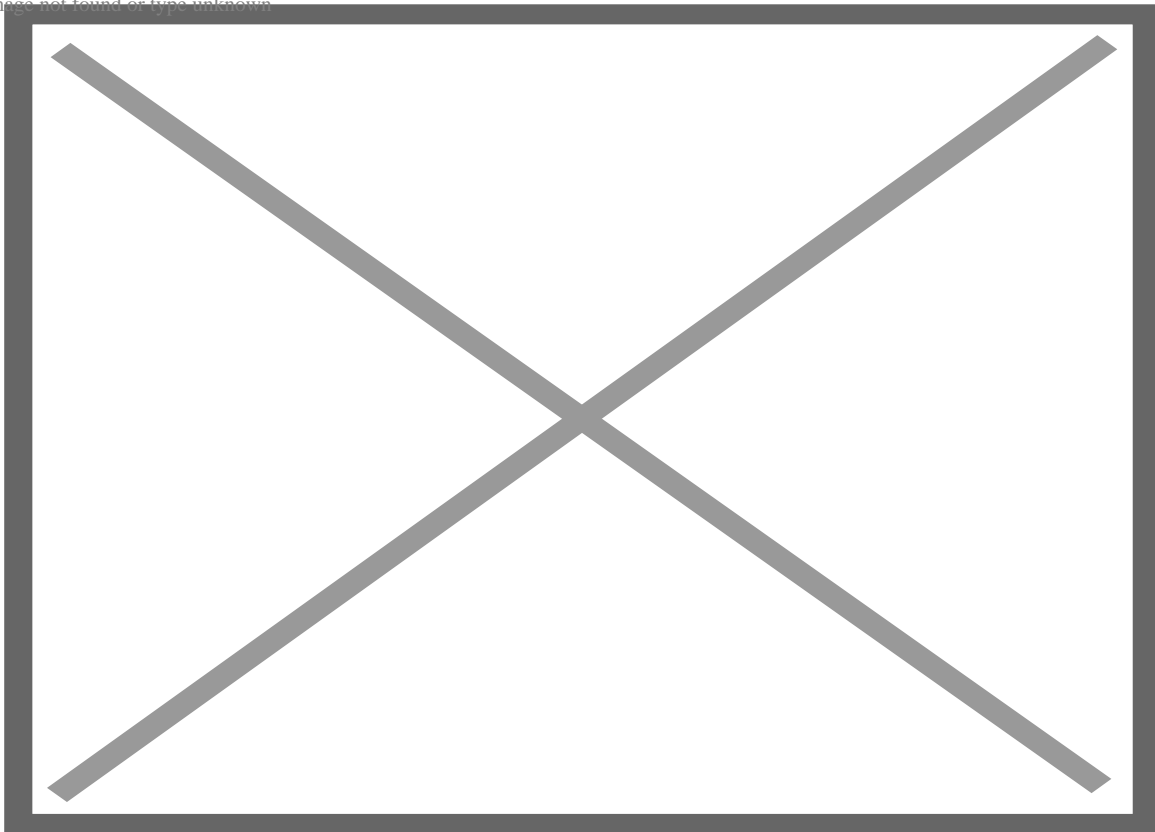


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Property Rights Are Human Rights

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Property rights are human rights, but in order to advance them, we need to anchor them as moral and just.

Throughout the second half of 2014, a national consultation looked at the human rights challenges in Australia, with a particular focus on the role of free speech and association, religious freedom, and property rights. While many people who attended the public forums disagreed with the focus of the consultations, it was the focus on property rights that drew the most criticism. At a forum in Brisbane in November 2014, a representative of Amnesty Australia questioned the inclusion of property rights as part of a human rights consultation at all. The simple answer is Article 17 of the Universal Declaration of Human Rights, which states that 'everyone has the right to own property alone as well as in association with others [and] no one shall be arbitrarily deprived of his property'. But in truth you can't actually understand human rights unless you support the sanctity of property rights. This year is the 800th anniversary of the Magna Carta, the Great Charter which essentially commenced the snowballing effect that has led to the modern idea of human rights.

The Great Charter of 1215 established the clear principle that a person's property could not be seized by the King. The simple proposition provided the foundation for the common law inherited by Australia from England and the (albeit limited) property rights protection in our Constitution. But it was John Locke who cultivated property rights as part of the human rights discussion. In his Second Treatise, Locke made the moral case that:

Every Man has a Property in his own Person ... [t]he Labour of his Body, and the Work of his Hands, we may say, are properly his.

What Locke understood, and what has been largely lost from the human rights discourse, is that property is the moral and just reward of individual activity. Denying property is akin to denying someone the reward for their labours. That argument was easier to make when it was about securing the rights for peasants to keep the food they had grown on the commons, the byproduct of their farming labour. The complexity of a modern market economy does not make it any less just, whether it is a person's physical or intellectual labour. The economic case for property rights has been amply demonstrated throughout history. Societies that have been best able to meet the material needs and aspirations of its population have been built on property rights. But property rights sit against a critical backdrop to all rights-based arguments, which necessitates that it must also be seen to be moral, fair, and just—particularly in a society such as Australia's. Moral rights have been central to the development of intellectual property—particularly copyright— which affords ownership and the right to receive reward for an individual's artistic creation.

In his 2002 essay 'The right to private property', American political philosopher Tibor Machan correctly identifies private property as 'the social precondition of the possibility of a personally guided moral life'. In the absence of property rights individuals are essentially debilitated in their capacity to demonstrate generosity to others. All charity rests on private property. If people do not own anything, then what could they ever give to anyone else in need? But the real justification for property rights is that it is a human right. The contemporary 'progressive' script on property rights is that they are essentially a right to protect existing privilege—demonstrating just how adrift many people are from understanding the very nature and origin of human rights. Arguably property rights are the foundations of all human rights. Indeed, the very basis of natural rights theory is that people own their own bodies and should be free to exercise their faculties to pursue their lives, opportunities and enterprise unless they do harm to others. It is why liberals and conservatives oppose slavery. In 1959, economist, historian and political theorist Dr Murray Rothbard argued that 'property rights, far from being in conflict, are in fact the most basic of all human rights ... and from this right stems his right to the material goods that he has produced'.

It's essentially this principle that justifies paid employment. People own their own bodies and therefore the use of their labour must be compensated for. At the extreme end of the denial of human rights is slavery, but more modestly the denial of payment for someone's labour at a voluntarily established price is a denial of their human rights. Equally, preventing people from selling their labour at a voluntarily established price is also a denial of their human rights.



Yet despite property rights providing the foundations for human rights, the subject has always been controversial in their modern development, particularly through international treaties. Property rights were a clear battleground in the development of the 1948 Universal Declaration of Human Rights. A 1947 analysis of drafts of the Declaration found 'a majority of the drafts refer to the right to property, either in positive language or by prohibiting unlawful expropriation'. But with support from the Soviet Union and socialist countries, some countries—such as Panama—stressed that respect for private property should be limited to 'personal property'. The dispute between countries over property prompted compromises. At one stage Belgium proposed, 'Within the limits of public interest, everyone is entitled to own property alone as well as in association with others.' One of the central objections to the inclusion of property rights was that it reinforced an individualistic approach to human rights. On that point the Australian delegation identified the absurdity of such an objection.

The Australian representative argued that respecting property rights may 'be termed individualistic ... [but] in setting forth the rights of individuals ... it would be difficult to avoid an individualistic approach'. In the end, the West won a temporary victory. Article 17 established a recognition of property rights, which was subsequently undone during the development of the International Covenant on Civil and Political Rights (ICCPR). In fact, property rights are among the few rights included in the UDHR that aren't present in the ICCPR. Since the negotiation of the ICCPR, the general effort has been to prioritise other 'rights', particularly social and economic rights, at the expense of property rights. Instead of reinforcing liberal human rights these new 'rights' have been used to argue against private ownership in favour of public acquisition to impose greater economic equality. In other words, social economic rights have been used to cancel out human rights.

Property rights themselves are no longer seen as just—and as result are no longer considered part of the human rights discourse. But the absence of property rights is seen as an injustice. Property rights must be attainable for all, but no one has a specific right to an individual form of property beyond themselves; that has to be secured through effort. In Australia, there is a real opportunity to reassert the primacy and justice of the human right to property in the one area that it is denied: Aboriginal Australia. Property rights don't just include ownership. They also include the freedom to trade property, alter its use, or improve its value. Plenty of advocates are happy for Aboriginal Australians to have their property rights but then—through excessive regulation—heavily restrict how they can then be exercised. This has prompted significant legal disputes. One such dispute was the notable action taken by Noel Pearson against the former Bligh government's Wild Rivers legislation, which prevented Aborigines from developing their own lands for their economic benefit. The consequence is that the self-determination of Aboriginal communities is undermined. Until all Australians are able to own property and are free to exercise their rights, their full human rights won't be realised.

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