

### **2.3 Property as social relations.**

To begin with, then, we need to overcome the idea that property is a simple person-thing relation that implies an absolute (or even conditional) entitlement:

“We often think of property as some version of entitlement to things: I have a right to this thing or that. In a more sophisticated version of property, of course, we see property as a way of defining our relationships with other people. On such versions, my right to this thing or that isn't about controlling the "thing" so much as it is about my relationship with you, and with everybody else in the world”  
(Rose 1993: 27-28)

#### **2.3.1 Hohfeld's matrix.**

The more nuanced perspective can in great part be attributed to “a pivotal article” (ibid: 42, note 10) by Wesley Newcomb Hohfeld in which he outlined ‘Some Fundamental Legal Conceptions as Applied in Judicial Reasoning’ (1913). However, because the work of Hohfeld stands as a milestone in the liberal and legal positivist traditions, not much - if any - “politically radical” work has been built on his conceptions; indeed there is a general reluctance amongst anti-capitalists to engage with liberal jurisprudence, including structural analyses of property. This can be taken to reflect the conflation shared across the political spectrum and in the public imagination that property *in general* is seen as equal to the very *particular* social relations that exclusive, private property rights give rise to. Or, *private property rights, particular to capitalism*, are understood as *property in general*. Writing on property often does not unpack a given instance of property properly, but for instance merely states

that “property is theft”. That is in itself a false reference, since Proudhon arguably was among the first to seriously analyse and unpack the idea of private property, which he did *not* simply write off as theft (Waldron 1988)<sup>40</sup>.

Hohfeld’s important contribution to jurisprudence was a way of systematising components of legal reasoning. His analysis applies to property as one of the sub-systems of law. Hohfeld “expounded the lowest common denominators of the law by reference to two squares of correlations and opposition” (Harris 1996: 120-121):

Right	Privilege	Power	Immunity
Duty	No-right	Liability	Disability

**Illustration 1: Hohfeld's matrix.**

In this matrix there is *correlation* (vertically) between *right* and *duty*, between *privilege* and *no-right*, between *power* and *liability* and between *immunity* and *disability*; while there is an *opposition* (diagonally) between *right* and *no-right*, between *duty* and *privilege*, between *power* and *disability*, and between *liability* and *immunity*. The top half of the squares refers to the entitlements that characterise jural relations, the bottom half to its

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40 It is beyond the scope of this essay to discuss Proudhon's analytical work further, but Waldron (1988: 323-330) provides a good starting point for an understanding of Proudhon's analysis, which, to put it in very simple terms, for example takes note of the fact that: *If a justification of private property is based on the idea that it is good and essential for a human being to have and to hold private property rights, then all human beings should have and hold such private property rights, unless a society wittingly wants to create inequalities.*

correlated position.<sup>41</sup> On Hohfeld's account of jural relations, each such relation consists of four basic components: (i) the person or group of persons holding an entitlement (X); (ii) the person or group of persons occupying the position correlative to the entitlement (Y); (iii) the form of the relation (i.e. whether it is, say, a right-duty relation or a power-liability relation); (iv) and the content thereof (the specification of the right-duty relation).

A Hohfeldian explication of proprietary entitlements would hence specify the content of such entitlements. That is, it would specify what Y must do or cannot do, and what X may do or can do. With regard to proprietary entitlements, any suitable specification would necessarily refer to the object or resource with regard to which X and Y have to behave in a certain way<sup>42</sup>. In that sense, the relation of primary importance is the relation *between people* (X and Y, you and me), even though this relation will *concern things*. We can begin to understand property relations as social relations between people – all people – with regard to any given thing.

The matrix permits us to understand the simple dominion conception – the vision of one individual having absolute, legitimate control over a thing – as implicating everyone else.

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41 Hohfeld was convinced that “if all more complex legal conceptions were reduced to combinations of these various bi-party relations, legal reasoning would be clarified, fallacious conceptualization would be avoided, and genuine normative choices made apparent” (Harris 1996: 121).

42 Misreadings of Hohfeld have led to the disaggregation thesis (most prominently developed by Grey 1980), in which property as a concept is rendered (legally) useless. Property “disintegrates” and leaves only rights-duty relations between persons, the “owner” becomes invisible as emphasis is placed on different people having different rights with regard to the same resource (cf. the “bundle of rights” conception), thereby obscuring further the projection of the king into the sovereign individual.

Our starting point thus becomes the web of relations between people, and the interrelated nature of their actions which always involve objects, things, resources as either settings or props. Hohfeld's work added that multi-lateral dimension to liberal jurisprudence and thus raised awareness of the complexity of the social relations that are involved in any given instance of property relations<sup>43</sup>.

### **2.3.2 Social relations as starting point.**

In a related context, yet with a different analytical approach, Sol Picciotto takes note of the importance of the starting point in analyses of property: “Property should be thought of *in the first instance* as social” (2003).

In formulating what can be understood as a general understanding of property relations, Irving Hallowell, following the versatile Huntington Cairns (1935) and Hohfeld, emphasises the *triadic* character of the institution of property. In a classic anthropological theory essay from 1955 Hallowell writes: “A

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43 Hohfeld's matrix has served as an inspiration for the influential understanding of property in terms of a “bundle of rights” (Maine 1917; see also Becker 1977; Munzer 1990). Penner (1997) provides a critique of the “bundle of rights” conception), which simply refers to the aggregation of different rights and duties that make up an instance of property relations. That is, the bundle of rights idea highlights the different components that make up property such as the right to use, dispose of, inherit. Different rights of the bundle might at different times be allocated to different persons (or other legal entities). The rights of the bundle can be separated and reassembled depending on circumstances, as we shall see in some detail in Section 2.5. The bundle of rights understanding is derived directly from Hohfeld's matrix, as it refers to the correlations that can be composed from within Hohfeld's matrix or any modification thereof.

owns B against C', where C represents all other individuals" (Hallowell 1974: 239). The dominion conception of property, by contrast, is *dyadic*. A dyadic conception of property would propound that A owns B, without C even entering into the equation. The difference is one of starting point, where the dyadic conception fails to see that the notion of an entitlement logically implicates those whom it is an entitlement *against*.

The triadic understanding as a starting point in analyses of property relations permits a more thorough understanding of property relations in *general*. It also facilitates and enhances an analysis of any given *particular* set of property relations within a specific economic system or culture, such as capitalist democracy.

"If we wish to understand property as an institution in any society our primary concern must be an analysis of the pattern of rights, duties, privileges, powers, etc., which control the behavior of individuals or groups in relation to one another and to the custody, possession, use, enjoyment, disposal, etc., of various classes of objects. In such an undertaking we have to reckon with an exceedingly complex network of structural relations and a wide range of variables, the specific pattern or constellation of which constitutes the structure of property as a social institution in any particular case." (Hallowell 1974: 239)

Here we have the definition of property with which I would like to start. Property relations, on this view, are social relations. These social relations make up and are shaped by a "pattern of rights, duties, privileges, powers, etc., which control the behavior of individuals or groups in relation to one another and to the

custody, possession, use, enjoyment, disposal, etc., of various classes of objects”. The etceteras of the definition might worry the analytic philosopher, but they open up the general concept of property to a wide variety of particular configurations. This open definition should not prove to be controversial. It is reflected in Jeremy Waldron's work where he defines property as “the concept of a system of rules governing access to and control of material resources” (Waldron 1988: 31). It is taken for granted in the elaborate frameworks that Andrew Reeve (1986), and John Christman (1994) present, as well as in discussions of intellectual property rights, such as Hettinger’s “Justifying Intellectual Property Rights” (1989). All start from a perspective of property as social relations between people with regard to things – patterned by legal or customary protocols that guide behaviour.

As already mentioned, Harris’s authoritative treatment of property, however, argues that property protocols have distinctive features without which they might still be protocols guiding people’s behaviour with regard to things, but they would not be *property* protocols. It will be instructive to familiarise ourselves with Harris’s terminology and account at this point.

### **2.3.3 Property and non-property.**

Property, according to Harris, has the dual function of governing the use of things and of allocating “social wealth”, which for Harris refers to the total of those things and resources which are scarce, that is, over which there might be substantial conflict regarding their use. That is, property functions as both a mechanism for distributing *use-privileges* (and their concomitant wealth effects, about which more later), as well as *control-powers* (decision-making authority). If rights of property only