LL4234V/LLS234V/LL6234V  Property Theory

Course Description

Welcome to Property Theory.

Course content

This module explores the way in which the concept of property has figured in political and legal theory.

With respect to political theory, for better or worse the concept of property figures centrally in many theories of the state and of legitimate political authority. For example, in his seventeenth century work the Second Treatise of Government John Locke claimed, roughly, that men leave the state of nature and enter into civil society under a political authority in order to ensure the protection of their property rights. To take another example, GWF Hegel, writing in the 19th century, (again, roughly) argued that the initial recognition of one person by another as a property owner was the foundation of the entire system of the law and the state. Our purpose in this part of the module will be to see what the attractions are of locating the concept of property so centrally in political theory, and weighing the success of different ways of doing so.

The next part of the course will consist of an examination of property and ‘economic’ or ‘distributive’ justice. Economic or Distributive egalitarians, as their name implies, think that everyone should have more or less equal amounts of property. John Rawls, in devising his now famous ‘difference principle’, argued that strict equality can be departed from if any inequalities in holdings result in the ‘worst off’ persons doing better under such an unequal arrangement. What are the reasons behind such views? Are there alternatives that are better? These are the sorts of questions we will consider in this part of the module.

In the third part of the module we shall turn to property and legal theory. The sorts of question we will be exploring are: What sort of right is a property right? What is ownership, and in particular, what powers (such as the power to transfer property) are essential powers that go with having title to property? What is the significance of possession for property rights? Are ‘unpossessable’ legal property rights, like intellectual property or your rights in your bank account, ‘lesser’ or ‘derivative’ forms of property rights? How is property described or misdescribed by Hohfeld’s famous analysis of legal norms into ‘correlative’ and ‘opposite’ ‘jural relations’? Whilst these questions have been discussed in the legal literature since time immemorial, there has been a burst of excellent recent literature on these and relate topics, so this is really cutting edge stuff.

Seminar Format

This is a discussion seminar so students should prepare by doing the advance reading for each seminar. (There will also be further reading but this need not be read in advance, but reading as much in advance as possible is obviously always helpful.) Typically, the advance reading will consist of excerpts from a classic text on property plus a recent academic article or two (depending on their lengths) which gives a sense of the modern discussion. A question sheet will be provided for each
seminar which should be used both as a guide to the reading and a framework for that week’s discussion.

A typical class will proceed as follows – A presentation lasting no longer than half an hour in which the seminar’s readings will be summarised. After that, we shall spend the rest of the seminar in discussion. After the first seminars where I shall give the opening presentation, I shall welcome students who wish to volunteer (alone, or with others) to give the opening presentation on a future week’s topic. No one shall be required to do so, but I do encourage it, and it obviously can contribute to your class participation grade.

Assessment

Assessment will be by way of Class Participation - 25% and an essay of no more than 6000 words - 75%. The essay Due Date is **Mon, 16 November 2015 (5pm)**, which must be submitted via the IVLE. The submission date is not chosen by me and I cannot alter it.

Your essays can be on any subject just so long as it is related to one or more of the course topics. I strongly encourage you to think about possible topics as soon as possible. I will schedule meetings with each of you to fix a topic. Depending on how far along you are in your essays toward the end of the semester I may be in a position to give comments on drafts.

General Resources for the module:


Penner, J. E. (1997) The Idea of Property in Law (Oxford: Clarendon Press); electronic versions of the chapters available from Oxford Scholarship online, which is available through the NUS library e-resources link


Schedule of Classes and Reading – **All readings, both required and further, are to be found in IVLE**

**Week 1 Monday 10th August** – Public Holiday – NO SEMINAR

**Week 2 17th August - Locke’s ‘Of Property’**

Required reading:

John Locke, *Second Treatise of Government*

Read paras. 1 to 51 (i.e. up to the end of Chapter V, ‘Of Property’); also look at paras 123-131 (Chapter IX, ‘Of the Ends of Political Society and Government’).
Week 3 24th August – Property and Necessity

Required readings:


Week 4 31st August – Hume on Property and Justice

Required reading:


Jeremy Waldron, “‘To Bestow Stability upon Possession’ Hume’s Alternative to Locke” in Penner & Smith, Philosophical Foundations of Property Law

Week 5 7th September – Kant on Property

Required reading:

Arthur Ripstein, Force and Freedom: Kant’s Legal and Political Philosophy, chs 2, 4, 6

Immanuel Kant, The Metaphysics of Morals, Excerpts from Part I, The Doctrine of Right

Week 6 14th September – Hegel: Property and Personality

Required reading:

Excerpts from Hegel’s The Philosophy of Right: paras 1, 2, 33, 34-79


RECESS WEEK 21st September

Week 7 28th September – Rawls and Young on Distributive Justice

Required reading:


Week 8 5th October – Nozick and Cohen on Self-Ownership and Distributive Justice

Required reading:


Further reading:

Week 9 12th October – Arendt and Burke on the Role of Property

Required reading:


Week 10 19th October – Hohfeld’s Analysis and the ‘Bundle of Rights’ Conception of Property

Required reading:


WN Hohfeld, ‘Fundamental Legal Conceptions as Applied in Judicial Reasoning’ (2nd Part), (1916-17) 26 Yale L.J. 710

**Week 11 26th October – Possession, Use and Exclusion**

**Required reading:**


**Week 12 2nd November – Title and the Transmissibility of Rights**

It is worthwhile re-reading what Austin says in ‘Possession and the Distractions of Property’ on the alienability of property, and to refresh your memory about what Hohfeld says about alienability of rights in rem.

**Required reading:**

Essert, C ‘The Office of Ownership’ (2013) 63 *U Toronto LJ* 418


**Week 13 9th November NO SEMINAR Finish Essays**

**ESSAYS DUE Monday 16th November, 5pm, to be uploaded on IVLE**