

**PHILOSOPHY,  
HISTORY, AND  
METHODOLOGY OF  
ECONOMICS**

The Elgar Companion to the Economics  
of Property Rights

**Enrico Colombatto (Editor)**

Cheltenham, United Kingdom: Edward Elgar, 2004 (536 pages)

Although property rights have been a topic of philosophical, juridical, and theological debate since antiquity, they have only recently become subject to serious economic analysis. Property has always been one of the thorniest issues in Christian and particularly in Catholic social thought. While the defense of private property in Western liberal philosophy is rooted in John Locke and in later Enlightenment thinkers, Catholic social doctrine is deeply committed to the idea of a *bonum commune*, a common good with respect to which individual property rights are subordinate. Private property must be used in a socially responsible way; it is, in the words of John Paul II, “subordinated to the right to common use,” or “under a social mortgage” (*Laborem exercens*, 1981). True, in recent decades, including the Catechism of 1992, the magisterium of the Church has embraced private property and other principles of free-market thinking more than before (though already Leo XIII had made great strides in this direction). Yet, the issue of property is likely to place Catholics, though not only these, on one side of a divide and Christians of many other denominations, including Calvinists, evangelicals, and Pentecostals, on the other. In an oversimplified formulation: The latter group is typically at ease with the liberal and individualist justification of property rights whereas the first group has traditionally entertained caveats. The crux of the matter continues to be the limitation of individual property rights by the common good.

Economics has, since the 1960s, developed a sizeable research program on property rights. Its findings are certainly of interest to those who want to analyze and understand the theoretical and policy issues at stake. The present collection of papers in Elgar's *Companion* series provides a very useful overview of research on the functions and implications of property rights. Edited by Enrico Colombatto, professor of economics at the University of Turin, in twenty-two chapters, it publishes the work of twenty-eight authors from the United States and from four European countries. Most contributors are economists, many of them working in the field that has established itself under the name "law and economics." Five contributors are lawyers. Historical and theoretical expositions predominate, whereas, analyses of statutes and cases are rare. Authors follow an eclectic array of methodological approaches, including neoclassical, transaction cost, institutionalist, and game-theoretical analysis, with a few Austrians added for good measure. This review can only highlight a small number of the twenty-two individual essays.

Part 1 deals with the foundations and thus the legitimacy of property rights. Leonard P. Liggio and Alejandro A. Chafuen present an ethical case for property rights by tracing its history within a cultural and religious context (chap. 1). Particularly, the Spanish late Scholastics (such as Francisco de Vitoria and Juan de Mariana) were trailblazers by emphasizing that private property ensures peace and justice. The weakness of the larger Catholic tradition, in contrast, is seen to lie in its inadequate understanding of incentives and its tepid defense of a rule of law.

Hans-Hermann Hoppe continues the ethical defense of private property rather than resorting to efficiency alone (chap. 2). Arguing against the Chicago diversions (exemplified by most of the law and economics literature), he develops an aprioristic, praxeological account of original appropriation and of property rights that is teleological in nature. Interestingly, though, he still adduces the Pareto criterion, which is deeply rooted in utilitarian thought, to show that an act of original appropriation always increases social welfare while property seizure does not. Hoppe also argues that externalities caused by one's property upon someone else's do not fall within the liability of the owner: Nobody can be the owner of the value or price of scarce goods, which depend on the subjective valuations of other individuals. While property rights are unconstrained, they end with the property itself, a position that does not provide a good basis for intellectual property rights.

Francesco Parisi shifts the emphasis to property rights as dynamic, path-dependent processes (chap. 3). He sketches a basically Chicago-School-inspired theory that explains various property rights régimes, such as the principle of unity in property, as adaptive responses to economic change. Clearly, Parisi's evolutionist position is antithetical to Hoppe's apriorism. Together with other essays in this volume, it raises questions of its own: If private rights are always an efficient response to a scarcity problem, what if relative scarcity decreases? Does this make private property a less efficient institution? If it is particularly efficient under increasing scarcity, why do takings by

government virtually always occur under extreme relative scarcity, for example of urban land for building highways or supermarkets?

Part 2 of the book discusses property rights within different legal systems. Commendably, the contributions move beyond the somewhat sterile debate about the superiority of common law or civil law regimes in protecting private property. Both authors dealing with comparative law—Stefan Voigt (chap. 7) and Norman Barry (chap. 8)—concede that no clear-cut superiority may be taken for granted. Rather, answers will always depend on the selection of dependent and independent variables, model specification, and measurement procedures—not to mention interpreter bias. Most importantly, neither system has been able to resist pressure toward regulation.

Part 3 provides applications of property rights economics to a wide array of issues such as economic development, genetic engineering, environmental problems, corruption, insider trading and takeovers, and higher education, as well as to patents and other intellectual property rights. Some of these essays deal with the economics of knowledge and the thorny issues of intellectual property rights in genomics and in digital space.

The contributions to this volume are written in the spirit of realism rather than ideology. No claim is made, for example, that the U.S. constitutional system to protect property rights is in any way superior to others. Andrzej Rapaczynski does not believe that any constitution is a suitable device for this purpose (chap. 9). To the extent that it does afford protection, this is rather a function of the rule of law, which the United States shares with other countries, and thus of procedural rules rather than of a material doctrine about the “sanctity” of property.

Quite on the contrary, recent judicial decisions on property rights will upset any illusions about their protection. Barry still piously notes, “only in America, and only recently there, has the law begun to exert itself on behalf of individuals” (195). In *Kelo v. City of New London*, decided in June 2005, the U.S. Supreme Court effectively allowed municipal governments to seize an individual’s home and property and hand it over to influential corporations and individuals who promise to develop the land for commercial purposes and provide more taxes and jobs. On the same day, the Court ruled unanimously, in *Goldwyn-Mayer Studios v. Grokster Ltd.*, that file-sharing companies may be liable for copyright infringement if their products encourage consumers to illegally swap songs and movies. Conservative Catholics particularly are in a quandary here: Quite clearly, they will defend intellectual property rights. Is an individual’s right to own a home, free of government interference, not a “family value” that has a better claim to being part of the common good than the community’s right to shop at a more convenient location, let alone a developer’s right to higher profit or a municipality’s right to more tax revenue? Is the right to a particular home for one’s family not at least as sacred as the right of a singer to the royalties from his performance?

No doubt most advocates of Catholic social thought will be alarmed by *Kelo*, and they will be joined by civil libertarians. This puts them in square opposition to probusiness conservatives; large corporations are, after all, the winners from invoking the

doctrine of eminent domain to justify taking private property. Moreover, in the *Kelo* decision, the Supreme Court explicitly established the condition that a taking must be “in furtherance of a public purpose.” Is a public purpose, then, not a common good?

For reasons of intellectual or, if one wishes, religious integrity, Catholics cannot come down on both sides of the property issue; neither can libertarians or, for that matter, conservatives. Assigning all blame to government, or to activist judges, will hardly do. “Cui bono?”—this is the rule used in Roman as well as in canon law for establishing at least responsibility if not culpability. The ethics and politics of property rights have, after *Kelo*, become more difficult than before. This collection of essays provides a very welcome guide to the maze of facts and arguments in this debate. It does not, nor does it purport to, answer the question of the telos (or purpose) of property or of the proper ethical decisions based on such determination. This will continue to be the province of the philosopher, the theologian, and the interested citizen. It can help philosophers, theologians, all citizens, and not least economists themselves, to better understand the functions of property in a society based on free markets.

—Wolfgang Grassl

*St. Norbert College, DePere, Wisconsin, and  
Mackinac Center for Public Policy, Midland, Michigan*

## Max Weber: An Intellectual Biography

**Fritz Ringer**

Chicago: University of Chicago Press, 2004 (307 pages)

In this intellectual biography a long-time teacher of Max Weber’s thought offers us an advanced introduction to that thinker’s most essential texts. Each chapter covers a different aspect of Weber’s work, such as politics, methodology, the Protestant ethic, bureaucracy, and the sociology of religion. The author, Fritz Ringer, is an intellectual historian, not a social theorist or a philosopher, and he admits forthrightly that this work does not offer critical commentary or try to go beyond Weber. Rather, it is a “Weberian reading of Weber,” an interpretation that attempts to restate what Weber wrote as clearly as possible. This work is a capstone of Ringer’s accomplished career, and an excellent summary of Weber’s most important arguments.

Ringer follows Pierre Bourdieu’s valuable notion of an intellectual field in interpreting Weber’s texts. For Bourdieu, thinkers define themselves in relation to the intellectual orthodoxy of their time. These orthodoxies—influenced by but generally independent of broader social concerns—are grounded in traditional presuppositions, premises that can be questioned during periods of change. Ringer presents Weber as a clarifying thinker, critically examining the background assumptions of his age. For example, Weber’s brand of nationalism was rare among European intellectuals at that time, all of whom were nationalists: Weber’s nationalism was in fact inclusive, that is, not used rhetorically for the purpose of excluding a certain political viewpoint deemed