

HEINONLINE

Citation: 94 Cornell L. Rev. 2008-2009

Content downloaded/printed from
HeinOnline (<http://heinonline.org>)
Tue Aug 4 08:17:25 2009

- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <http://heinonline.org/HOL/License>
- The search text of this PDF is generated from uncorrected OCR text.
- To obtain permission to use this article beyond the scope of your HeinOnline license, please use:

[https://www.copyright.com/ccc/basicSearch.do?
&operation=go&searchType=0
&lastSearch=simple&all=on&titleOrStdNo=0010-8847](https://www.copyright.com/ccc/basicSearch.do?&operation=go&searchType=0&lastSearch=simple&all=on&titleOrStdNo=0010-8847)

A STATEMENT OF PROGRESSIVE PROPERTY

Gregory S. Alexander†
Eduardo M. Peñalver††
Joseph William Singer†††
Laura S. Underkuffler††††

1. Property operates as both an idea and an institution. The common conception of property as protection of individual control over valued resources is both intuitively and legally powerful. Sometimes the expression of this idea focuses on the right to exclude others and sometimes on the free use of what one owns. This intuitively appealing conception of property has been extremely influential in discussions of property rights in the United States. However, internal tensions within this conception and the inevitable impacts of one person's property rights on others make it inadequate as the sole basis for resolving property conflicts or for designing property institutions. For those tasks, we must look to the underlying human values that property serves and the social relationships it shapes and reflects.
2. Property implicates plural and incommensurable values.
 - 2.1. Some of these values promote individual interests, wants, needs, desires, and preferences. Some promote social interests, such as environmental stewardship, civic responsibility, and aggregate wealth. Others govern human interaction to ensure that people relate to each other with respect and dignity.
 - 2.2. These values are not solely a matter of satisfying personal preferences. Values can generate moral demands and obligations that underlie judgments about the interests that the law should recognize as property entitlements.
 - 2.3. Values promoted by property include life and human flourishing, the protection of physical security, the ability to acquire knowledge and make choices, and the freedom to live one's life on one's own terms. They also include wealth, happiness, and other aspects of individual and social well-being.
 - 2.4. The pursuit of these values implicates moral and political conceptions of just social relationships, just distribution, and democracy. It requires virtue, particularly humility, and

† A. Robert Noll Professor of Law, Cornell Law School.

†† Professor, Cornell Law School.

††† Bussey Professor of Law, Harvard Law School.

†††† J. DuPratt White Professor of Law, Cornell Law School.

attentiveness to the effects of claiming and exercising property rights on others, including future generations, and on the natural environment and the non-human world.

- 2.5. The plural values implicated by property are incommensurable. Because they relate to qualitatively distinct aspects of human experience, they cannot be adequately understood or analyzed through a single metric. Reducing such values as health, friendship, human dignity, and environmental integrity to one common currency distorts their intrinsic worth.
3. Choices about property entitlements are unavoidable, and, despite the incommensurability of values, rational choice remains possible through reasoned deliberation. That deliberation should include non-deductive, non-algorithmic reflection. It should be both principled and contextual, and should draw upon critical judgment, tradition, experience, and discernment.
4. Property confers power. It allocates scarce resources that are necessary for human life, development, and dignity. Because of the equal value of each human being, property laws should promote the ability of each person to obtain the material resources necessary for full social and political participation.
5. Property enables and shapes community life. Property law can render relationships within communities either exploitative and humiliating or liberating and ennobling. Property law should establish the framework for a kind of social life appropriate to a free and democratic society.