

[Two cheers for property rights](#) [1]

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Yesterday's blog on copyright raised interesting questions about the very nature of property itself. Many convinced free-marketeers and libertarians seem to believe that 'property rights' are undeniable, permanent and immutable, and endow them with an almost mystical quality. I see the crucial importance of property rights as well: you can't expect people to work hard and build up capital if it can simply be stolen by others, including politicians. Property is one of the foundations of a liberal social order.

But as Milton Friedman (no leftie, he) pointed out in *Capitalism and Freedom*, defining what constitutes property is problematic, and often controversial. Should my ownership of a piece of land, he asks, deny others the right to fly over it in an aircraft? Precisely what rights should the shareholders of a company have? And, indeed, what should be the rules on patents or copyright? Terence Kealey, another robust liberal, argues that there should be no patents (most inventions are hard to replicate and the financial reward tends to come early), but that there should be copyright (since words are almost costless for others to replicate).

Plainly, these things are matters of judgement. They are decided in a social context. It might be a kind of natural evolution, as Hayek suggests, in which particular property rules come to be adopted, almost without thinking, because they work and support the smooth functioning of a society. It may be that the rules evolve through the common law process. (The most wonderful examples here are those regarding property disputes between neighbours, which have left us with rules such as, yes, you can cut down the branches of a neighbour's tree that spreads over your garden, but you have to offer them back the wood!). Sometimes the rights are defined in statute, as with shareholders' rights? thought that can be more hit and miss in terms of getting the balances just right.

Hume argued that it did not much matter what the property rights were, as long as they were known and certain. Indeed, that certainty, like the certainty that you are not going to be expropriated by some political majority, is important. Yet content is surely important too: different property rules could make large differences to the economic and social outcome. With such outcomes in mind, property rights fans can argue for particular arrangements, citing the evidence for their general benefit; but that does not put any such rule beyond dispute. We do need to be robust, though: the 'Red Tory' argument is that all market arrangements are the product of social bargaining, meaning there is no seam between politics and economics. That way lies the increasing politicisation and control of economic life.

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