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Book Note

THE MEANING OF PROPERTY: FREEDOM, COMMUNITY, AND THE LEGAL IMAGINATION, by Jedediah Purdy¹

ALEXANDER SCHMITT

IN HIS LATEST WORK, Jedediah Purdy takes as his project an examination of the place of property in the modern legal imagination. Locating today's theories of property within their origins, Purdy argues for a way of reconciling the relations among the purposes that property is now thought to serve. As Purdy notes, legal thinking about these purposes—whether welfarist, libertarian, or personhood-oriented—is “fractured, but it is not formless.”² By illuminating the relations between them, he presents a view that takes their ideals as aspects of a single master value: human freedom, a plural value that Purdy takes to include negative liberty, the positive capacity to achieve one's capabilities, and the ability to make choices and commitments lucidly.

To this end, Purdy opens his examination with a return to the theories of Adam Smith to argue that the virtues of property as first understood were social rather than economic. According to Purdy, Smith valued ownership (including of one's own labour) for its power to produce relatively respectful and reciprocal relationships. In turn, these relationships fostered personalities that were at once aware of their own interests and the identities and attachments of others—characters suited to a society of mutual benefit built on persuasion and negotiation rather than hierarchy and command. Developed in response to early modern puzzlings over the genesis of social and political order, Smith's view was that property was the core social institution in the creation and legitimation of that order. In this vision, human beings are essentially alike in their situation: “needy but capable, self-interested but sociable enough to band together to solve basic

1. (New Haven: Yale University Press, 2010) 225 pages.

2. *Ibid.* at 4.

problems through collective action, and, especially, able to generate institutions that promote security and prosperity.”³ Foremost among these institutions was property—in Purdy’s words, “the most basic institutional expression of our double character as needy and vulnerable beings who are able to rework the world in a way that makes provision for our limitations and enables us to flourish together.”⁴

In illustration of the rise and influence of this vision, Purdy offers a study of its application in early American transformations of waste law. He shows how an interest in the economically efficient use of resources, a rejection of hierarchical social relations founded on claims to land, and the embrace of a market in land to transform it into a vehicle of opportunity were all inherent in American property jurisprudence at the time. At the same time, however, as Purdy points out in his reexamination of *Johnson v. McIntosh*,⁵ this vision of progress was not without its hazards. Indeed, as he illustrates, it provided the driving force for Britain’s rescue of India from native “despotism” and the expropriation of North America’s inhabited “wilderness.”⁶

Following Smith’s vision through its paradoxes and failures to its core ideal is, however, key to Purdy’s project. As he argues in his examination of the tensions inherent in early American free labour thought and jurisprudence, reconciliation of freedom’s multiple dimensions in a non-coercive economy may not be easily realized, but that does not mean that this project has no value. For Purdy, this ideal can be best understood as a utopian aspiration, one that cannot be expected to be realizable in full but may nonetheless guide our choices towards ever-closer approximations of it.

In the final chapters of the *Meaning of Property*, Purdy explores the ways in which we might make such choices and achieve an economic order that truly values reciprocity, responsibility, and self-realization. Examining propertizing programs like microfinance, Purdy finds that such an order can indeed hold promise, but cautions against too simplistic an optimism. As he finds in examining such issues as climate change, income supports, and intellectual property law, humanity faces choices where allocating claims on resources involve new and

3. *Ibid.* at 43.

4. *Ibid.*

5. 21 U.S. (8 Wheat.) 543 (1823).

6. *Supra* note 1 at 86.

basic decisions about how we will live. Although the questions and problems such choices will generate are in part technical, they are also essentially about what is right, fair, and dignified. It is Purdy's contention that without a compelling and corresponding social vision—a vision that we would do well to resurrect from the foundations the book examines—it is unlikely that we will be able to answer their challenge.

