HOMELESSNESS, RIGHTS, AND THE DELUSIONS OF PROPERTY

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Abstract: Property, the legal relationship between persons in regard to valued resources, is of both analytical and ethical significance to many social issues. Yet homelessness is not often thought of in relation to property. As cities increasingly regulate the behavior of homeless people, such an analysis takes on a heightened urgency. The work of Jeremy Waldron is an important exception, however. He offers a geographically informed analysis that condemns the regulation of homeless people as a denial of fundamental liberal norms. I argue that his argument, though powerful and insightful, is flawed. Whereas it is helpful in making sense of the particular plight of the homeless in relation to dominant property relations, Waldron’s treatment does not explain the ways in which homelessness itself may partly be produced, regulated, and legitimized through property. Put more simply, the predicament of the homeless, for Waldron, is that they are outside property; I suggest that their problem may be that they are utterly entangled within property. Waldron relies on a liberal geography of rights; I offer a more critical reading. [Key words: property, homelessness, law, rights.]

As long as our civilization is essentially one of property, of fences, of exclusiveness, it will be mocked by delusions.

—Ralph Waldo Emerson (Miller, 1953, p. 42)

LAND, n. A part of the Earth’s surface, considered as property. The theory that land is property subject to private ownership and control is the foundation of modern society, and is eminently worthy of the superstructure. Carried to its logical conclusion, it means that some have the right to prevent others from living; for the right to own implies the right exclusively to occupy; and in fact laws of trespass are enacted wherever property in land is recognized. It follows that if the whole area of terra firma is owned by A, B, and C, there will be no place for D, E, F, and G to be born, or, born as trespassers, to exist.


What is the relationship between homelessness and real property? Surprisingly, as Jane Baron (2004a) notes, very few scholars seem to have asked this question. Given that

1Earlier versions of this article were presented as papers at the University of Washington, the Association of American Geographers annual meeting in San Francisco, and the Socio-Legal Studies Association conference at the University of Kent. I would also like to thank participants in my graduate seminar on property at Simon Fraser University, as well as Jeremy Waldron, Geoff De Verteuil, Jane Baron, Don Mitchell, David Hulchanski, and one anonymous reviewer, who kindly commented on the draft.

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homelessness would seem to entail a particular relation to property, both publicly and privately held, such an omission is curious. Homelessness, all too often, is conceived of in other terms. For conservatives, the homeless are people who have made bad choices. For progressives, they are victims of structural forces that drive them into poverty. Rarely, however, are the homeless thought of in relation to property.\(^3\)

It is toward an understanding of this relationship that my article seeks to contribute. I am motivated to do so in order to comprehend and respond to the growing number of legal restrictions placed on the behavior of homeless people in public space. In so doing, I draw from, criticize, and extend the important argument of Jeremy Waldron (1991). Although compelling and powerful, I will note that his analysis only takes him so far: the geographies of property are important to his account, but they are circumscribed in such a way that the full analytical and ethical significance of property to homelessness is obscured from view. What is needed, I conclude, is a reading of property that supplements Waldron’s insightful analysis of the particular predicament of the homeless person in a world of private property with a more critical treatment (like Waldron’s, at once ethical and analytical) of the role of private property in the production and regulation of homelessness. It may be deemed unnecessary to comment on an article written nearly 20 years ago. I do so, however, because it continues to be influential within contemporary scholarship on public space, including among certain critical scholars, such as Don Mitchell (2003).\(^4\) As noted, Jane Baron’s (2004a, 2004b, 2006) recent interventions have prolonged the debate.

Waldron’s argument can be summarized as follows. Homelessness, he argues, “is partly about property and law, and freedom provides the connecting term that makes those categories relevant” (1991, p. 323). How should we think about homelessness and law, he asks, in relation to a value like freedom? His concern is less with traditional expressions of liberal freedom, such as freedom of speech, than with embodied freedoms relating to personal survival and human bodily functions, such as sleeping. Arguing from first principles, he notes that all human liberties must be exercised somewhere, “Everything that is done has to be done somewhere. No one is free to perform an action unless there is somewhere he is free to perform it” (ibid., p. 296). Property rules, for Waldron, are a central device through which such actions in space are regulated. They provide a basis for determining who is allowed to be where. The particular plight of the homeless person, he notes, is that “there is no place governed by a private property rule where he is allowed to be … whenever he chooses” (p. 299). The rules of private property are, for the homeless, “a series of fences that stand between them and somewhere to be, somewhere to act” (p. 302). This means, of course, that the homeless person is forced to live her/his life out in the only space not governed by such rules—the streets, parks, and sidewalks of the city. The development and enforcement of laws that, for example, forbid sleeping in public are unproblematic only when one has a private place of one’s own in which to sleep. Denied access to such spaces, the homeless are “comprehensively unfree” (p. 302)

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\(^3\) For my understanding of property, see Blomley (2004, pp. 1–28).

\(^4\) In embracing Waldron’s arguments, critical scholars may overlook his liberal preconceptions at their peril. As noted below, Waldron’s arguments may, in fact, lend themselves to policies and conceptualizations with which progressives might disagree.
under such a regulatory regime. A partisan for liberty, Waldron condemns such laws as “one of the most callous and tyrannical exercises of power in modern times by a (comparatively) rich and complacent majority against a minority of their less fortunate fellow human beings” (pp. 301–302).

This is powerful stuff. Given the paucity of such critical evaluations, we can see why academic advocates for the homeless have seized on Waldron’s analysis. Geographers, in particular, might be persuaded, because this is an ethically grounded and spatially conscious analysis, written by one of North America’s leading legal scholars. Waldron’s account, written in careful, steely prose, is indeed compelling. As a lawyer, he is able to uncover the exclusionary logic of private property. As a liberal, he can appeal to powerful notions of liberty and autonomy, and condemn state action in ways that are morally and ethically persuasive. As a geographically attuned commentator, he can reveal the punitive logic of a landscape of property upon those excluded from private property and forced to live out their lives in public, as well as noting the perils of the taken-for-granted complementarity between public and private spaces for the public poor.

Jane Baron’s (2004a, 2004b, 2006) analyses of homelessness as a property problem usefully extend Waldron’s account. She argues that analyses of the characteristics and causes of homelessness in the United States have tended to focus on poverty. However, this obscures the particular attributes under which the homeless labor—their lack of property (“all the things they do not own subject them to a complex set of legal disabilities” [2004a, p. 284]). In other words, the status of “no property” is not simply a lack of possessions, but a legal and sociospatial state of being. Echoing Waldron, she characterizes this in part as entailing the exclusion of the homeless from all places governed by private property rules. Denied spaces of their own, the homeless do not have places to perform basic liberties, such as sleeping. Given the scarcity of storage spaces, the homeless are forced to carry their meager possessions with them. But, as she notes, the disabilities go deeper. Given that the U.S. Supreme Court has held that there is no right to housing, “there is no right not to be homeless” (2004b, p. 1022). Identifying the “no property” status of the homeless is useful, she argues, in developing informed responses to the homeless. Accordingly, “ordinances designed to eliminate or curtail behaviors found offensive to those who are not homeless must deal with the options that are, or more accurately, are not available to the homeless” (2004a, p. 287). Moreover, she argues, a “no-property” paradigm may allow us to break out of the individual/structural causal debate that has dogged reform.

Such accounts are useful analyses of the constrained circumstances under which the homeless labor. But they are also ethically charged. Waldron, in particular, offers a stinging indictment of the contemporary social order. He condemns a social mindset where those with homes and jobs seem willing to tolerate mass homelessness, yet refuse to allow the homeless to “act as free agents, looking after their own needs, in public places—the only space available to them” (1991, p. 304). His argument concerning geography, which considers “not only what a person is allowed to do, but where he is allowed to do it,” allows him to see a system of property for what it is, “rules that provide freedom and prosperity for some by imposing restrictions on others” (ibid., pp. 323–324). In a follow-up article he indicted the “shameful and self-righteous denial” (Waldron, 2000, p. 387) that characterizes popular conceptions of poverty and homelessness in the United States.
Yet, despite such stern charges, Waldron does not condemn property:

To say … that property rules limit freedom, is not to say they are eo ipso wrong. It is simply to say that they engage a concern about liberty, and that anyone who values liberty should put himself on alert when questions of property are being discussed. (1991, p. 307, my emphasis)

This is odd: Waldron’s focus is freedom. Although property and its geographies are initially at the center of his analysis, they fade from view. Thus it is the ways in which the freedom of the homeless is compromised by public law, not private power that is his ultimate focus. As also noted, he observes the ways in which the combined individual actions of private owners serve to confine the homeless to public space. However, his anger is targeted at the law that regulates public space, rather than with any legal relations that might force people into such public spaces. He is clearly conscious of the public/private divide, and the ways in which it works to disadvantage the homeless, yet he declines to subject private property to the sustained critique that he directs at state law.5

There is much that is compelling in Waldron’s analysis, which stands as an important counter to prevailing regulatory regimes and norms concerning the public poor. Later publications (Waldron, 2000, 2008) offer useful critiques of the way community standards are invoked by “Zero Tolerators” such as Ellickson (1996) or Teir (1998), pointing out that such definitions of community fail to acknowledge the particular predicament of the homeless. However, for those of us who wish to develop an analysis of the relation between property and homelessness, it is analytically incomplete—we need a broader and more sustained account. But his account is also ethically constrained, I fear. To be clear, I do not wish to belittle the ethical force of his indictment. However, although a refreshingly angry piece, it directs our anger to particular sites—notably, the state—to the exclusion of other forms of oppression and power that are surely as deserving of scrutiny.

This perhaps relates to the particular treatment given to property. The homeless, for scholars such as Waldron and Baron, are placed in a negative relation to private property. Their problem is that they are utterly outside and fenced off from property. Recall that, for Waldron, the rules of private property are, for the homeless, “a series of fences that stand between them and somewhere to be, somewhere to act” (Waldron, 1991, p. 302). This is more fully developed by Baron (2004a, p. 285), who conceives of the homeless as confined to a zone of “no-property”—“a complex legal state in which one is quite literally a shadow, a photographic negative of the complex constellation of qualities and attributes that constitute wealth.” Their world, consequently, is an intrinsically vulnerable and negative one, based on the ever-present logic of exclusion. As nonowners, they tend to experience the duties and liabilities that property imposes, rather than its rights and entitlements.

Waldron and Baron therefore seek to make sense of the particular plight and vulnerability of the homeless by imaginatively placing them, as it were, “outside” property. I agree that placing the homeless “outside” property is helpful in that it identifies the particular liabilities under which the homeless live; indeed, being placed “outside”

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5This reflects, presumably, his self-declared liberalism (but see also Waldron, 1993, and my concluding comments).
property is significant in a broader cultural sense, as others have noted (Krueckeberg, 1998; Blomley, 2004). Yet I think that there are analytical dangers in such a metaphor. Most importantly, we are in danger of overlooking the fact that the plight of the homeless is that they are in many ways thoroughly entangled with property, as well as excluded from its benefits. Rather than only “outside” property, I will argue that they are also, in several important ways, caught up in it. In what follows, I briefly sketch out this argument, suggesting that homelessness itself is partly produced by property. Furthermore, property (both public and private) may also be an important factor when it comes to the regulation of the homeless, and therefore in any informed attempt at remedying the situation. Like Waldron, I also wish to note the geographic dimensions to property. My account, for now, is brief and nonexhaustive, but hopefully suggestive.

PROPERTY AND THE PRODUCTION OF HOMELESSNESS

The homeless person is one without a home (Wright and Rubin, 1991). For David Hulchanski (2005) “[w]hat we call homelessness is not simply a housing problem, but it is always a housing problem” (p. 3, original emphasis). Granted, the condition of homelessness (pace Waldron and Baron) needs to be understood in these terms. However, the causes of homelessness can also be found, partly, in the reworking of property. Property alone does not cause homelessness. But it is a crucial, often overlooked factor.

The property market is a difference machine. Put bluntly, one’s position in relation to the housing market (in particular, whether you rent or own) has a direct influence on one’s cultural, political, and economic assets, and therefore on the wider social landscape. Within North America, rents have risen significantly in most urban areas, as the housing market has inflated in value, while the real income of renters has stagnated or even fallen. Many owners, meanwhile, have seen their assets inflate in value. For instance, the number of “real estate millionaires” in British Columbia (nearly all of them in Greater Vancouver) almost doubled between 2006 and 2007 (from 26,000 to 51,000; Vancouver Sun, January 4, 2007, pp. A1–A3). This has pernicious consequences. One is a widening gap between owners and renters. Thus Canadian homeowners saw their wealth (much of it tax-free) increase from being 29 times that of renters in 1984 to 70 times that of renters in 1999, while renters’ median net worth decreased by 48% during this period (Hulchanski, 2001; see also Krivo and Kaufman, 2004; Loewentheil and Weller, 2005). Property tenure has become a social fault line. An unwittingly ironic recent study (Somerville et al., 2007) suggested that renters in Canadian cities would have had to have been extremely disciplined, savvy investors (investing at least 9% of their gross income) in order to come close to matching the returns that owners made between 1979 and 2006, simply through the payment of their mortgages (and in some urban areas, even this would have been impossible). Thus, the social exclusion that generates homelessness is partly produced through the routine workings of a property market, itself sustained (ideologically and practically) by property law and its delegated forms of sovereignty.

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6One aspect of this that I do not do justice to concerns national differences in both homelessness and property. It is reasonable to suppose, for example, that private property is conceived of in distinctive ways from place to place.
The combined effect of rising rents and declining incomes has also often meant that many renters are increasingly vulnerable to displacement—including facing the threat of homelessness. There is a particular geography to this (Ley, 2000). The increasingly generalized phenomenon of urban gentrification (that targets undervalued pockets of housing) can entail the elimination of the housing of last resort, such as welfare hotels (Slater, 2004). Not surprisingly, recent evictions from rooming houses in inner-city Vancouver, which threaten to accelerate, have hit particularly vulnerable groups. Clearly, the relationship between gentrification and displacement is context-specific and complex, caught up in other dynamics. However, gentrification causes displacement, and displacement can cause homelessness. For example, Atkinson (2000) documents a “social evacuation effect” in gentrifying areas of London between 1981 and 1991; and Newman and Wyly (2006) estimate that between 8,300 and 11,600 households/year were displaced between 1989 and 2002 in New York City, deepening the class polarization of the urban housing market.

Displacement need not directly cause homelessness in order for it to contribute to it. Even if displaced people are not immediately propelled into homelessness, the disruptions that displacement cause (loss of social capital, challenging tradeoffs between affordability, overcrowding, access to jobs and services) can be disruptive, and in combination with other dynamics, create enhanced vulnerability. This is worth noting, as it reminds us that poor people’s relation to property is a good deal more complicated than Waldron and Baron’s inside/outside binary seems to suggest. People can occupy various states of vulnerability in relation to private property, and move in and out of a life on the streets or in shelters. This entails shifts in tenurial status over time—as owner, renter, hotel occupant, guest, couch surfer, and so forth.

Displacement and gentrification may appear to be essentially “economic,” having to do with “markets” and therefore not of interest to legal scholars of property, such as Waldron. However, gentrification and displacement are simultaneously and importantly legal phenomena, having to do with the constitution, remaking, and enforcement of property rights (Blomley, 2004). Gentrification may involve the wholesale remaking of tenurial relations (e.g., as rental properties are converted to condominiums), the mobilization of state-sanctioned property rights (the eviction of tenants and the like), as well as the “enclosure” of the urban commons (Blomley, 2008). The personal experience of eviction entails a cascading array of legal mechanisms, texts, and violence, including eviction notices, writs of possession, arbitration, and bailiffs, all of them sustained by principles of landlord–tenant law as well as wider common law conceptions of property.7

One might also object that such reworkings involve “private” actions, and are not a matter for partisans of liberty, such as Waldron. But, of course, the state is deeply implicated in these private arrangements (Cohen, 1927; Hale, 1943). Urban planning, which plays a crucial role in facilitating, directing, and potentially mitigating gentrification, can also be thought of as deeply concerned with property relations—this despite planning’s self-presentation as a technical project, historically uncoupled from property relations (Krueckeberg, 1995).

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7As an aside, city outreach workers in Vancouver have noted a growing number of homeless people employed in downtown condominium construction (Redeye, Co-op Radio, November 24, 2007).
PROPERTY AND THE MAKING OF ANTIHOMELESS LAW

To focus only on that part of the legal realm that makes the lives of the homeless a misery, while ignoring the role of private law in producing the homeless, seems rather short-sighted for those of us interested in property. However, let us accept, as we must, that it is worth concerning ourselves with the former. One question that I am about to address, is to ask how we should respond to such regulation. But first let me ask why such regulation is passed in the first place.

This is by no means obvious. Laws regulating the behavior of the homeless are frequently unnecessary, ineffective, and contradictory. Waldron appears to regard such regulation as predicated on short-sighted and delusional behavior: the affluent, who have a place of their own to fulfill their essential liberties, appear ignorant of the plight of the homeless, who do not. He seems to think that society has failed to fully understand the spatial workings of property as they apply to the homeless. For those who own, property brings both restrictions and benefits:

So long as everyone enjoys some of the benefits as well as some of the restrictions, that correlativity is bearable. It ceases to be so when there is a class of persons who bear all the restrictions and nothing else. (1991, p. 317)

We fail to recognize, he suggests, the collective consequences of our individual actions as property owners. Waldron here echoes the work of many other critics of property, who have revealed the contradictions and heterogeneity of property and thereby hope to persuade others to adopt better, more inclusive policies and practices (cf. Rose, 1994; Singer, 2000). Once we recognize the constricted geographies of property under which the homeless labor, Waldron implies, we will halt the torture.

Would that it were so. Since Waldron’s article was published, regulatory authorities have become even more willing to embrace what he dubs “one of the most callous and tyrannical exercises of power in modern times” (1991, p. 301). For instance, a survey of 67 U.S. cities reveals a 14% increase between 2001 and 2006 in the number of laws prohibiting sitting or lying in designated public places (National Coalition for the Homeless and National Law Center on Homelessness and Poverty, 2006). A growing number of Canadian cities have also introduced bylaws and policies that regulate panhandling. This is not, as Waldron and Baron describe it, somehow misguided or premised on individual misunderstandings. On the contrary, it is sadly predictable. Nor is it that property owners, as Waldron argues, are somehow indifferent to the homeless. All too often they are highly interested, acting in collective and concerted ways. The imperative to maintain urban

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8This is not to say that laws regulating the homeless can be reduced to the selfishness of self-interested property owners. Even though I have no doubt that property owners can act in small-minded and vengeful ways, we must also acknowledge that in defending their investments and entitlements, they (we) are also conforming to societal norms relating to private property (Singer, 2000). As Waldron notes (1991, p. 318), an ethical matter intentionality is moot; rather, the concern is with the impact on the freedom of the homeless. Moreover, as I have noted elsewhere (Blomley, 2007), such regulation may reflect other imperatives and concerns, including a particular logic of street use and mobility. More generally, however, it is vital to reflect on the ways in which the security and wealth of those of us who are homeowners may be related (both positively and negatively) to the sleeping homeless person outside our gate.
property values in an uncertain, globalizing world partly explains the growing clamor for such regulation (Mitchell, 2003). Put crudely, the goal is to move the homeless from areas of investment and profit to ensure that they do not threaten such investments (Mair, 1986).

There is an important geography to this. The city, as a space, is well suited to the reduction of risks attached to real estate investment. As a market space, it concentrates buyers and sellers. As a regulatory space, the state can engage in planning and the provision of infrastructures, all of which benefit real estate investors (Miron, 2000). This becomes more pressing under current conditions of globalization, where the risks and potential benefits attached to real estate investment have become intensified. City governments vie with one another to project a positive external image to tourists, investors, and potential workers. The presence of the homeless, produced in part through shifting and intensifying forms of investment, becomes increasingly problematic in the present juncture. In particular, it is within the central city that property investment, place-making, and homelessness are simultaneously concentrated. The overlap can prove explosive.

But property is at issue in more direct ways; it is not only defended, but mobilized. Public property is subject to greater regulation, with rules governing access and use. Panhandling laws, for example, are a form of property regulation, regulating who may do what, where and when. Private property owners are often also granted increased powers to expel. Large swathes of public space may also be effectively privatized, handed over to private owners or their agents. The public poor are inevitably targeted in such reworkings.

Take the case of Seattle, an important site for the development of antihomeless law. Urban leaders became increasingly concerned at the decline of downtown Seattle in the 1990s, and like many others became convinced that the material success of urban development depended on their crafting an image of downtown as vibrant, diverse, and safe. The urban homeless constituted a direct challenge to this project, to the extent that they were seen as threatening, disorderly, and “out of place.” A series of civility laws were passed, directly linked to anxieties at Seattle’s decline vis-à-vis other cities (Gibson, 2004).

We can see the geographies of property at play more closely when we consider an issue of concern to Waldron—the regulation of public urination—as it occurs in Seattle. Increasingly, he notes:

in the way we organize common property, we have done all we can to prevent people from taking care of [their] elemental needs themselves, quietly, with dignity, as ordinary human beings. If someone needs to urinate, what he needs above all as a dignified person is the freedom to do so in privacy, and relative independence of the arbitrary will of anyone else. But we have set things up so that either the street person must beg for this opportunity, several times a day, as a favor from people who recoil from him in horror, or, if he wants to act independently, he must break the law and risk arrest. (1991, pp. 320–321)

In this reading, the way “we have set things up” appears simply arbitrary and unthinking. However, a closer reading of the genesis of such restrictions may reveal otherwise. Again, I think this may have a lot to do with the geographies of property (Mitchell and Staeheli, 2006). Timothy Gibson (2004) recounted the story of what he calls the “hygiene
wars” in central Seattle. Advocates launched a campaign to establish a “hygiene center” for the homeless, offering showers, toilets, laundry facilities, and the like. But initial plans to locate such a center ran afoul of the subsequent attempt to create a cultural district in the surrounding area. The relocation of the Seattle Symphony, in particular, became the catalyst for a wave of speculative investment. Under these conditions, the siting of the hygiene center was viewed as inappropriate, threatening a number of high-profile property sales. As the owner of an adjacent building complained, apparently without irony, “We are not raising a stink about the hygiene center, just its location” (Gibson, 2004, p. 271). The ensuing battle was fought both through the courts and in the local planning process. The Puget Sound Business Journal worried about the location of the center “in the heart of an area the city has targeted for retail redevelopment, where business people are poised to make substantial investments…. The hygiene center clearly would be at odds with its surroundings” (Gibson, 2004, p. 326). Ultimately, the city voted to reject the proposal for the facility.

PROPERTY AND REFORM

For Waldron, contemporary forms of urban regulation constitute a form of torture. What, then, are we to do? One option—presumably his preferred one—might be to refrain from passing any such laws. Another option would be to improve the lot of the homeless. “[W]hy does nobody seem to think,” he asks,

that the appropriate response when confronted with the person smelling of urine and feces is to provide public lavatories and public showers?… The generous provision of public lavatories would make an immense difference in this regard—and it would be a difference to freedom and dignity, not just a matter of welfare. (1991, p. 321)

Waldron is not alone in such ameliorative tactics. Progressive lawyers in the United States and Canada have worked hard at challenging antihomeless regulation. Yet this has often proven an uphill battle, as the courts seem generally supportive of such law as long as it meets minimal criteria. Yet even judicial victories are, to be honest, often hard to celebrate. As Wes Daniels (1997, p. 729) noted:

[c]even when criminalization lawsuits are successful, the rights established are negative rights, in that at most they restrict ways in which government can punish homeless people for engaging in certain types of behavior, such as begging or living in public.

As Richard Moon (2002, p. 65) acerbically noted, in the Canadian context, “When poverty activists resort to the Canadian Charter of Rights and Freedoms, things cannot be going very well.” This is not to rule out such attempts, of course. It is, however, to be realistic about their limitations (cf. Hafetz, 2003).

Moreover, one might go so far as to argue that Waldron’s concerns could be also largely met were authorities to designate areas of immunity within public space (corners of parks, for instance, where the poor could sleep, designated begging zones, or spaces of public urination). Allowing zones in which the homeless could fulfill their needs with
impunity would meet his objection that the homeless are “comprehensively unfree.” Yet the homeless would still be, well, homeless.9

But this will not do. If we wish to prevent the “torture” under which the homeless live, halting the punitive regulation that proscribes their lives is a first step. But if the proscribed condition of the homeless can be partly explained by the geographies of property, one solution is to remake those geographies. Such strategies may include more intensive forms of state intervention into private property, such as antispeculation taxes, conversion bans, “displacement-free zones,” and transfers to community ownership (Hartman, 1982; Medoff and Sklar, 1994; Levy et al., 2006; Pindell, 2006). It is interesting to note that Newman and Wyly (2006), in their analysis of gentrification in New York City, noted that rent control and public housing served as crucial buffers to displacement. But why stop there? We can also revisit the argument made by Henry George (1966) that the wealth generated by property be recognized as a social dividend, rather than an untaxed, individual entitlement. In other words, why should I receive the increased value of my home when it was society at large that created that wealth? We might also pursue and extend Waldron’s rights-based argument.10 Peter King (2003; cf. Bengtsson, 1995, 2001), for example, used Waldron to argue for housing as a freedom right on a par with property, based on the situated nature of basic human functioning. We can also insist that the homeless not be regarded as inherently criminal, while insisting that homelessness itself be deemed a crime (Barak and Bohn, 1989), and thus indict a socioeconomic order that is capable of both producing and then punishing poverty.11 While recognizing the dominance of an individualistic view of property, we can also seek out existing alternatives to property (Blomley, 2008) as well as noting the prevalence of a more inclusionary and relational strain within property law (Singer, 1994; Rose, 2000). And with Macpherson (1973, pp. 95–119), we might also challenge Waldron’s reluctance to move beyond a narrowly circumscribed defense of negative liberties, with the recognition that liberty be defined as the absence of humanly imposed impediments that entail not only deliberate coercion of one agent by another, but also denial of access to the means of life and labor sustained by the laws of property and contract.

For now, I can only point to these measures as alternative possibilities. My intent is to signal a rejection of the diminished politics of the “good enough” (e.g., the “generous provision of public lavatories”) in favor of a more expansive politics of hope (Harvey, 2000). I accept that fighting against laws that ban begging or public sleeping may be necessary, but insist that this alone is not sufficient. Nobody should be homeless who

9In a later paper, Waldron (2008) criticizes the creation of such zones of immunity as expressed by Robert Ellickson (1996), who proposed that public space be divided into zones, depending on the level of regulation, on the grounds that such zoning derogates from citizenship, and fosters an illusory concept of community. Yet, despite continuing to recognize the exclusionary logic of property (see also Waldron, 2000), he appears reluctant to advocate for a remaking of the regulatory regime that governs its use.

10That said, to use rights (particularly liberal rights) is to wield a double-edged sword. Although much of the power of Waldron’s analysis lies in its appeal to concepts such as autonomy and freedom, and his insistence that liberal thinkers take the regulation of the homeless on a par with more traditional areas of concern, such as freedom of speech or torture, one may also worry about the ways in which rights can subjectify (McLure, 1997) or even negate freedom (Bakan, 1997; Blomley, 2007).

11See also Berger (1990), who argued that an attention only to the homeless overlooks the related dilemma of “housing indigency.”
does not choose to be homeless. It says something deeply alarming about our times that such a statement sounds radical. One U.S. academic lawyer, in conversation, who noted that property scholarship was especially “hot” today, suggested that any call for the remaking of property would be regarded, in the present context, as faintly lunatic. Perhaps, however, even here property is at work, shaping and policing our expectations and aspirations. In a society saturated by private property we are likely, as Emerson warned, to be “mocked by delusions” (Miller, 1953, p. 42). What I find particularly alarming is the way such delusions constrict our ethical imagination insofar as property is concerned.

And indeed, to conclude on a more conciliatory note, Waldron elsewhere argued for a liberalism that requires that all aspects of the social world be held to account and made acceptable to all individuals. Insisting on the fundamental significance of socioeconomic rights predicated on access to material resources, he insisted that prevailing property arrangements must be called into question, such that “property must answer at the tribunal of need” (1993, p. 20). We cannot respect the idea of individual liberty, he argued, if we neglect “the exclusion of some from the resources of the earth by the property claims of others” (1993, p. 33). He urges us to recognize that we must pay attention to the impact of any regulatory scheme on those most adversely affected (Waldron, 2008). Here, perhaps, is one place to start in the necessary extension of Waldron’s important analysis.

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