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# Home Ownership: What territorial rights theory can tell us about the concept of home

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Home ownership brings many benefits to the individual and their family, and it promotes a variety of social goals. However, in many western countries today buying a home has become unaffordable. One of the reasons why home ownership is increasingly more difficult to achieve is that the concept of home has been reduced to that of 'house', an exchangeable investment the value of which is no different from any other object. The home is in many economies a financial asset, that can be used as a security, that is subject to repossession, and is bought by professional landlords that capitalise on rent and the increased value of their investment. The very practice of mortgaging using the land itself as a security has transformed houses to essentially another financial asset like any other: disposable for securing risky investments, and subject to repossession.

In this short paper I suggest that the transition of the concept of home as a place where the individual develops the self, to a mere 'house', that is a mere object that can be exchanged and the value of which is essentially financial, is facilitated by the association of home ownership with the archetypical property right. The concept of 'home' is a normatively important concept that informs our imaginary. We think of home as the place where we go back to, as opposed to the place we travel to and visit. It is the place where our family is, and where we feel safe. The idea of home has informed much of the discussion on refugees and collective self-determination, and the normative importance of this safe space has been the focus of theories of global justice. However, the private dimension of 'home' although present and central to our private lives, has not received sufficient attention in the debate about property rights. Although the classic theories of property recognise the importance of ownership for the development of the self, this aspect is rarely foundational of rights to private property, which have mainly been advanced as the protection of a space of non-interference.

The concept of non-interference is not the most appropriate to appreciate the complex net of benefits that home-ownership brings. Non-interference is essentially a negative claim against others intruding or interfering with one's protected space of action. But being able to enjoy one's security of residence in one's home, and in fact being able to have a home to rely on, requires a much more robust set of protections that are more akin to those rights following from the value of self-determination and the idea of home in the debate on global justice.



My suggestion in this paper is that to discover once more the concept of home, and place it at the centre of the practice of home ownership, we should look away from the classic theory of property rights. We should instead look at the recent debate on territorial rights for inspiration. Territorial rights theories have focused on the idea of attachment, that indicates precisely the importance of space for the fundamental non-economic interests of the person. Despite their significant differences, the theories of territorial rights have placed at the centre of their analysis the intuition that rights in land are essentially different from ownership, and they are normatively important because they protect some fundamental interest that cannot be meaningfully reduced to the land's economic value, such as self-determination and individuals' faculty to develop and pursue self-directed life-plans.

In the first section, I outline the foundation of property rights in western political theory showing that home ownership is the typical expression of the classic idea of property rights. In section 2, I show how the property right approach to home ownership opens the way to the reduction of the concept of home to its economic value, obscuring its normatively important non-economic values. In the third and final section, I suggest that territorial rights theories may offer a new way of thinking about home ownership as a sort of territorial right, by discussing the concept of attachment and what it tells us about the importance of home ownership.

## 1. Home ownership as a property right

Property rights are at the centre of Western political philosophy, where ownership is associated with the protection of individuals' fundamental interests. Philosophers have discussed the relationship between ownership and freedom (Locke 1988, Nozick 1974, Simmons 1992, Schmidtz, 1994), ownership and political legitimacy (Kant 1991, Rousseau 1968), ownership and social responsibility (Hegel 1967, Marx 1972), and property and personhood (Radin 1982).

Despite the diversity of approaches, the common theme underlying the Western conception of property rights is that ownership empowers individuals and puts them in control of a space of non-interference. The autonomy acquired with private property becomes an essential tool for the pursuit of self-directed lifegoals (Lomasky 1987, Waldon 1988) or human virtues of social importance, such as personal responsibility (Aristoteles 1988), social responsibility and generosity (Aquinas 1988), or economic interest such as productivity and efficiency (Locke 1988, Nozick 1974).



The narrative that private property brings individual and social benefits is reflected in the centrality of home ownership in popular culture. Home ownership has become a political manifesto for modern political institutions, that have supported and incentivised the view that home ownership is the main aspiration of the middle class (Fox 2007; Ronald 2008).

Owning one's home - that is: enjoying of robust rights of property over a house, is indeed highly beneficial for individuals and society at large. Home ownership brings three kinds of benefits: first, having a secure residence supports fundamental non-economic needs that allow the person to develop their life-plans and fundamental values and beliefs. In a remarkable paper, Cara Nine argues that the home is part of our extended mind: those spaces and objects that support our cognitive function to form memories and beliefs. For example, a family will record the height of their children on the wall of a bedroom, or they may use notes on the fridge to help her organise a weekly meal schedule, and they will reflect on their past and future practiced using these tools. Security of residence is essential to the ability to use space safely and privately to support short- and long-term plans. These cognitive devices form the basis of our values and support our choices and practices privately, as well as in society (Nine 2018). The home, like other fundamental spaces and objects in our lives, supports our ability to develop and pursue life-plans that give meaning and purpose to our life, and that form the values that guide our actions in society.

It is not necessary to own a home to enjoy the stability necessary to develop and support those cognitive faculties. Tenants' right to possess their home is a principle protected by human rights, and by most legal systems<sup>1</sup>. However, that of the tenant is a precarious status, as she occupies a place that is not her own, and over which she does not have full control. The tenant's home is owned by someone else, and her interest in the continued enjoyment of her home will have to be balanced with the property right of the landowner. As the house is one of those spaces where - ideally - we enjoy the privacy and security to support our personal development, precariousness in the home results in limitations and challenges to the security needed to develop long term directive ends (Nine 2018) and causes psychological harm (Carr et al. 2018: 12). Owning one's home or enjoying robust rights in it gives the resident independence from the supervision of a landlord, and the ability to control their most important surroundings (Gurney 1990; Saunders 2021). Ultimately, enjoying ownership rights in one's home is conducive to the autonomous development of the agent's values and plans. This intuition is in line

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<sup>1</sup> In practice, however, the legal instruments encouraging the house market have resulted in ever wider protections of the landlord at the expense of the rent paying resident (Carr et al. (eds) 2018).



with the classic narrative about property, as a space of non-interference (Locke 1988; Nozick 1974; Waldron 1988). However, property rights theory focuses on the protection of the owner who resides in the premises. If the tenant is not the owner, or owns the house with the help of a loan from the bank, the interest of the landlord or the creditor in the house will take precedence over the resident's from a property rights perspective. This is also reflected in the legal practice of most western countries: when the resident is unable to pay their debts, the creditors or the landlord can repossess their home.

A second kind of benefit of home ownership is that of bringing economic prosperity. Buying your own home is a way to disenfranchise yourself from the rental market, which is often perceived as a loss of capital (Saunders 2021) and puts tenants in a very precarious condition (Blandy 2018: 29). Also, investing in a home allows individuals to pursue their economic stability by securing their savings in an often stable market, and to save for the future. Financial security contributes to a persons' ability to pursue their directive ends and the prosperity of their families. Once again, the practice of home ownership in western society traces the property right narrative of non-interference, efficiency and prosperity (Locke 1988), but remains in favour of the owner, whether or not they reside in their property.

Finally, home ownership brings a series of social benefits that has led the socio-legal literature to speak of home ownership as 'social capital' (Ronald 2008). Because of their long-term ties to the location of their home, homeowners are less prone to move residence, and so they become stewards of the land and their neighbourhood. This gives them a greater incentive to improve and care for their neighbourhood (DiPasquale and EL Glaser 1999:354). These ties to the local community also mould the residents' behaviour by incentivising them to take care of the local environment or supporting events and programmes for social and urban development (Rohe et al. 2001). The concept of home ownership as a gateway for the realisation of socially important values, such as social responsibility, generosity, and sustainability, mirrors the narrative of property rights and ownership in political theory that points at the importance of property for the development of social goals. However, the focus on improving the beneficial social effects of home ownership has led many legislations to incentivise individuals to buy homes, paving the way for the creation of 'professional landlords.' Professional landlords are individuals or companies with large capitals that acquire multiple homes to capitalise on rent and real property market value. This unintended consequence of the promotion of home ownership as a social goal shows the glaring difference between ownership and occupation, revealing that what matters is not that the house is owned, but rather that residents enjoy robust property like rights on the place that they call home.



## 2. The limits of a property right narrative of home ownership

The recognition of these individual and social benefits of property in land has in modern times led to an aggressive legal and political promotion of home ownership, especially in countries like the UK and USA (Manturuk et al. 2017). The many housing market incentives that were introduced to help people achieve the goal of homeownership has led the way for a change in perception of home ownership: from the legitimate individual aspiration that yields independence and important social goals, to a house, that yields secure long term financial gain.

However, the incentives to simplify home ownership obscured the risk of such important investment, and have problematic implications for residents. Gurney for example raises the concern that the benefits of home ownership must be compared to the risk of losing one's home through repossession actions when the owner cannot repay the mortgage (Gurney 1990). Another important effect of the financial element of home ownership has been the raise in rent price, following the increase of the figure of professional landlords. Investors, or 'professional landlords,' who have large capital availability are incentivised to buy property and rent it out, or capitalise on its value. This is particularly problematic in large cities: as professional landlords with large capitals take advantage of favourable schemes to buy and let, there is less availability of homes. This in turn has the effect of raising the cost and value of homes, making it increasingly attractive to investors, and difficult for those who have less capital to buy their own home (Ronald 2008:51). When the demand for residential space increases with the growth of a city, rent also becomes heftier, leaving tenants in an increasingly more precarious condition (Carr et al. 2018).

These mechanisms are the unfortunate implication of a shift in understanding home as a 'house' - a thing that can be exchanged, and the exchange value of which is no different from any other asset. This shift in perception of home ownership has essentially favoured the creditors and investors over the occupiers. The conception of home as merely a house, a thing to be exchanged, is corroborated by the practice now extremely common, of mortgaging using the home itself as a security for the loan. The home has become itself a disposable object, used for securing risky investments, and subject to repossession.



The focus on the financial benefits of owning land has led to increasing protections of home ownership, and the (presumably!) unintended consequence of obscuring and neglecting the non-economic value that it carries (MacFarlane 1978; Fox 2007).<sup>2</sup> As home ownership is reduced to a financial instrument, it loses its central role as the centre of individuals' non-economic interests in the security of their residence, and in the autonomy to develop and pursue their life-goals. The focus on the property right nature of home ownership allows the financial shift in conceptualising the normative value of home ownership, that prioritises the financial importance of the investment. This is a legitimate way to look at property from the western philosophical tradition, as a tool for non-interference and economic prosperity. However, this view moves the attention away from the reasons why home ownership is especially important.

### 3. Home ownership as a sort of territorial right?

One reason to look at the territorial rights debate for a new way to conceptualise home ownership, is that theorists have converged on the idea that owning land is in some important ways different from owning a thing. Owning property protects the agent from interference, and supports their economic prosperity; owning or controlling space, instead, has been associated by territorial rights theorists more closely to wellbeing, identity, and self-determination.

According to the existing literature, territorial rights can be held by a variety of agents (individuals or groups) and on the basis of a range of justifications. Some theories, inspired by the Kantian theory of property, argue that territorial rights can be acquired based on the correspondence of these titles to a system of just institutions that meets the requirements of human rights, cosmopolitan justice, or legitimate political authority (Stilz 2009; Ypi 2012; Buchanan 2009). On the other spectrum, there is the so called Lockean theory, that argues that individuals may acquire titles on land if their relationship with that particular land is essential to the protection of their fundamental interest in pursuing their

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<sup>2</sup> MacFarlane writes in "The Origin of English Individualism" that the devaluation of the non-financial value of home ownership has deep historical roots. She writes "The expansion of home ownership in Britain was dependent on the availability of credit finance, and this means that the home buyer's ability to enjoy the 'x factor' meanings of home depend on the borrower's financial capability. In addition, the socio-cultural significance of the home as a financial asset has a knock-on effect on the other meanings of home, as a symbol of identity and a status symbol" (1978:23)





directive life-plans (Simmons 2019, Tesón 2015). Collectivist versions of the Lockean theory argue instead that territorial control is essential to protect peoples' collective self-government (Nine 2012), or their national values (Miller, 2012). Other theories appeal to the value of self-determination and argue that peoples can claim a right to control a territory on the basis of the value of collective self-determination (Moore 2015 Kolers 2009). What all these different theories have in common, however, is the recognition that rights in land are normatively important because they protect some fundamental interest that cannot be meaningfully reduced to non-interference, or the land's market value.<sup>3</sup>

Although they appeal to different justifications for grounding territorial rights, territorial rights theories agree that one of the distinguishing elements of territory is that it elicits some sort of attachment from the individuals and groups that rely on it. Attachment is 'the close relationship which some agents have formed with specific resources' (Armstrong 2017:113), and it plays an important role in explaining why some agents may have claims with respect to a specific spaces or resources (Kolers 2009; Nine 2013; Moore 2015). For territorial rights theories attachment can be the ground of rights to land because that space is central to an agent's life-plans (Stilz 2011; Simmons 2019), their self-determination (Moore 2015; Kolers 2009) their individual self-government (Simmons 2019, Tesón 2015), their identity (Miller 2012), or some other normatively significant feature of the agent's wellbeing (Armstrong 2017).

The idea of attachment as a central element of the relation between individuals and space resonates with the intuition that security of residence supports a wide range of fundamental non-economic needs of individuals. Attachment explains how a person can develop their values and plans in accordance with the space around them, and in accordance with the practices that they establish there. This particular relationship between space and people sets the foundation for what the socio-legal literature has called 'social capital', that is the non-economic collective benefits promoted by home ownership. Attachment also traces the idea that space is essential to develop and support cognitive faculties that make the home a feature of individuals' extended minds (Nine 2018). With the concept of attachment, the connection between land ownership and the self becomes central to the very justification of ownership (Armstrong 2017).

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<sup>3</sup> One notable exception is Steiner's theory of territorial rights.



The relation between property and personhood that is central to some conceptions of property in philosophy (Radin 1982, Cooper 2014) is for territorial rights theory not only an important element of ownership in land, but it forms the justificatory basis that grounds the title to controlling or enjoying a particular geographical space. Differently from the concept of non-interference, that ensues negative claims against others encroaching in the agent's practices, the conception of attachment is a positive value that includes rights to the essential tools for developing and pursuing directive plans, to access culture, and to access opportunities for wellbeing. This makes territorial rights theories and their focus on attachment a promising instrument to address the problematic implications of a classic property rights conception of home ownership.

It is interesting that the focus on attachment has come from the debate about territorial rights, and in particular from the discussions about indigenous claims (Reibold 2019, Moore 2015, Armstrong 2017, Kolers 2009). This debate has highlighted the connection between land and the self, through the protection of shared practices and the concept of native home. But can a theory of attachment to large geographical spaces, that focuses on control, sustainability, and enjoyment of the land, help reconceptualise the idea of control and ownership of the home?

One of the challenges of this approach may turn into the most promising element of territorial rights theory for the concept of home. Home ownership is associated with full control over a house or a particular piece of land. Theories of territorial rights instead agree that the justificatory principles of territorial rights seldomly grant full ownership rights in land.<sup>4</sup> Most accounts concede that the various entitlements that make up for what we think of territorial rights must be disentangled: some agents may acquire rights to control a land, but not also rights to exploit it economically, or agents may have rights to use, but not to exclude (Armstrong 2017, Stilz 2011, Moore 2015).

The idea of unbundling the normative incidents that make up for ownership rights in land is not new. Honoré famously argues that ownership is composed of multiple normative incidents, that include for example a right to use the property, a right to exclude others from its enjoyment, and the power to sell it (Honoré 1961).

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<sup>4</sup> With a few exceptions (Simmons 2019, Tesón 2015).



However, the idea that ownership is a bundle of rights has played a very important role in territorial rights theory, since territory is most often essential to the wellbeing and fundamental interests of multiple agents. Reclaiming this intuition in the discourse about ownership, and in particular about home ownership, may help us draw attention to what makes home ownership especially important: that what matters is the protection of residency and of the non-economic but socially important value of stewardship. In this regard, territorial rights theory prompts us to reconsider whether home, like land, may not be an object that can be properly and fully owned. Rather it may be that home, like territory, is so essential to the person and to society at large, that ownership rights in a house should not trump the more fundamental interest in the security residency, and the social capital generated by people's attachment to the place they call home.

Conceiving of home ownership as a property right that protects non-interference does not allow us to meaningfully distinguish owner-occupiers from owners who benefit only economically from their investment in real property. By applying a more detailed conception of ownership, distinguishing the various rights that a person can enjoy in land, and focusing on attachment, we can identify and isolate the entitlements that are worthy of a stronger protection, such as those that protect a person's relationship to the land, and that are crucial to personhood. This may have a variety of possible implications for law and policy. For example, schemes such as buy-to-let in the UK allows an investor to use a property as a security against a hefty mortgage, on the premise that income from rent will cover the monthly expenses. Such financial packages offered by banks essentially make it possible to use a home as a financial asset, and subject it to the risk of repossession, in order to finance a long term investment on the value of the property. This investment is supposed to benefit the landlord when they sell the house, while they repay the mortgage with the rent paid by the tenants. The effect is however that the property is in a precarious state, if the tenants are not able to pay rent, or the landlord decides to move their capital to a different investment. From an attachment perspective, schemes that endanger the interest of tenants in the security of their residence diminish the non-economic value that the 'home' has, and misconstrue the reason why home ownership is a highly cherished and protected practice in liberal theory.



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