

[ACTIVISM](#) [CITIES](#) [GEORGE FLOYD](#)

# Property May Not Be Theft, but It's Not NOT Theft

*As nationwide protests destroy buildings, monuments, and police stations, it's time to get the facts straight.*

By [R.H. Lossin](#)

JULY 28, 2020



Shattered glass of a storefront after a night of protest over the death of African American man George Floyd in Minneapolis. (Johannes Eisele / AFP via Getty Images)

**I**n a [recent essay](#) for *The Nation*, I argued that property destruction needs to be taken seriously as a coherent, intelligent form of political speech. Reframing property destruction as a fully conscious, intelligent form of resistance is important for a number of reasons. It forces us to distinguish

between violence against people (often in the name of property protection) and violence against non-living things. It explicitly acknowledges the role of coercion in political struggle that is obscured by a reductive notion of nonviolence as the gold standard of democratic change. And it invites us to examine something so fundamental to the very terms of our political thought that it often escapes scrutiny. Namely, private property.

The recent attacks on buildings, monuments, and police stations that occurred in the course of protests against state-sanctioned murder were not an unfortunate byproduct of otherwise peaceful, legitimate protests but integral to them. So what does intentional and political destruction of things tell us about property? And what is property, anyway?

Despite our common use of the word, property is not *a* thing, *per se*, but a legally enforceable right to the use and benefit of *some* thing. When we say “get off of my property,” we generally understand the physical lawn or the front porch to be the property that we are protecting. In fact, property is better understood as the legally enforceable right to the exclusive use of this space. Property is my right to tell you to get off of the porch. This is different than mere possession of something. Theft, for example, results in possession but it does not confer rights. The thing that I stole is not my property.

Conversely, use or habitation can occasionally result in property rights to things not purchased on the market, as is the case with squatters’ rights. Nor is property necessarily an absolute, unitary right. It is more accurately described as a “bundle of rights.” Usually, owners are not owners outright but the beneficiaries of certain “sticks” in this bundle. The front porch from which I may legally banish you may, in fact, be owned by a bank or a landlord, but by legal agreement, I retain some of the sticks in the bundle. I can, therefore, call on the state in the form of the police, to enforce my limited right to dominion even if I do not own this

The difference between the porch and right to the porch might seem like a trifling distinction. But property rights are fundamental to the social contract, so when we conceive of property as a thing, rather than a complex bundle of rights and agreements between people and institutions, we obfuscate the importance of property to social organization. In theory, things can be placed in any relation whatsoever to one another, depending on the legal and regulatory structure that is operating in a certain context. Property is that structure. Furthermore, whether that claim is enforced by custom or by law, it is the product of social consensus—of a set of accepted beliefs concerning the rights available to members of a given society. As such, it is one of the primary ways that society conceives of and regulates relationships between its members.

It is therefore telling that when we say “property” what we usually mean is private property: the right not only to the use and benefit of some thing but the concomitant right to exclude others from its use. This apparently benign habit of speech has serious political consequences: When we assume that all property is private property, we exclude the possibility of other forms of property—other types of claims about the social organization of people and things and, by implication, other notions of basic human rights.

If private property is property in general, then alternatives such as common property are assumed to be the absence of property rights. And given that property rights are fundamental to our notion of social order, this imprecision leads us to believe that private property—the right to exclude—is what separates us from a Hobbesian state of nature where life is “solitary, poor, nasty, brutish and short.” Other property schemes, such as common property or universal access to state-owned private property, would certainly be far less brutish than the property regime that

lead to the 2008 housing crisis, but when property comes to mean private property through habit and common usage, these perfectly viable alternatives seem beyond the pale.

This notion that private property is our only guarantee against chaos and tyranny is deeply ingrained. And it's wrong. Common property, for example, is not a lack of property rights but an enforceable claim to not be excluded from the use and benefit of some thing or resource. There's another important elision that is often at work when we think about the possibility (or impossibility) of collective ownership: Capitalist private property and private property generated by one's own labor are in fact two different things that are conflated to the advantage of capitalist private property. Our cultural investment in the notion that private property is necessary to social order disguises the fact that capitalist private property is already collectively produced by the labor of wage workers.

This confusion of terms is cultivated by the owners of capitalist private property, who, by suggesting that they are protecting property generated by one's own labor, are able to enlist the support of people whose limited wealth is in fact generated by hard work and thrift. All this is to say that there are other possible sets of claims that could be made, enforced, and—crucially—justified than the ones we've wearily grown used to. Claims to collective ownership, for example, could be justified by the understanding that capitalist wealth is, in fact, socially produced. Other social relationships—ones that would more accurately reflect individual contributions to social and national wealth—are possible.

Our common misconception of property as stuff—rather than *the rights to stuff*—has a traceable, historical origin. As fully capitalist market economies replaced the limited land rights that characterized medieval European social relations with absolute ownership rights that allowed individuals to buy and sell parcels

of land, the notion of property got muddy. Feudal kings granted nobles the right to use land, but did not extend them the right to dispose of those holdings. Property was thus more clearly a right—a right to collect taxes in the form of grain, for example, produced by peasants who, in turn, had similar if more limited rights to land use but not to disposal. Outright ownership, and therefore the ability to imagine that the land itself was property, was not a practical or philosophical possibility. In the experience of both noble and serfs, access to land and land use had nothing to do with ownership. The advent of the market economy supplanted these limited rights to things with exclusive rights to them—and these absolute rights were put up for sale.

This unlimited ability to freely exchange rights to things gave way to the notion, still very much with us, that property is not only rights to things but individual and absolute rights to things. In other words, my absolute right to exclude you. If private property were just stuff (my bike, your car) rather than rights (a political relation between you and me enforced by the state), this wouldn't be a problem. But what we commonly think of as the mere exchange of goods is, in fact, a set of social relations with a far wider scope than the mere governance of access and distribution.

From this unlimited ability to dispose of rights to things arose not only legal guarantees of individual security in property, but the notion that private possession was the basis of self-government, political stability, economic improvement, and individual happiness and liberty. Notions of ownership were rapidly extended into intangible realms. Freedom and liberty became forms of property. Free persons could not be arbitrarily “dispossessed” of their liberty. Liberty was something that a modern person owned.

Individuals also owned themselves and their labor. “Every man,” wrote John Locke in his *Second Treatise of Government*, “has a property in his own person.... The labor of his body and the work

of his hands, we may say, are properly his.” Locke derived a natural right of property in things from this natural right of an individual’s property in their person: “Whatsoever he hath mixed his labor with, and joined to it something that is his own, and thereby makes it his property.... It hath by this labour something annexed to it that excludes the common right of other men.”

Of course, not everyone owned their labor. Locke quickly followed this claim with the assertion that he had a right to the things produced by his servants. This apparent contradiction is neither a mistake nor the exclusive symptom of a less enlightened time. It is necessary to capitalist private property, which cannot exist without exploitation. But the Lockean myth remains powerful. The notion that property rights derive from the hard work of individuals and the belief that individuals have natural ownership rights in their person and their labor is still the basis of the moral and ethical justification for private property.

A large portion of the major political struggles and conflicts in American history (including labor conflicts and the abolition of slavery) have been organized around the extension of these “natural” rights to ownership of the self and the fruits of its labor. Yet property in things, under a capitalist system, rarely has any direct relationship with labor. If it did, Jeff Bezos would not be enormously wealthy while his employees earn barely livable incomes. Evidence of the incoherence of Locke’s understanding of property is all around us. But it’s still so deep-rooted that we find it difficult to even imagine an alternative.

If we understand private property not as a legally enforceable set of claims to the use of benefit of the fruits of one’s own labor but as a set of claims to the use of benefits of things acquired through expropriation and exploitation, the continuing destruction unleashed by the George Floyd protests looks a lot more rational. Acts of looting and vandalism not only threaten private property by flouting its claims to dominion. They threaten it by mirroring,

on a small scale, the way that it is most often acquired—through forced taking—and thus disclose the Lockean sleight of hand that would lead us to believe in the legitimacy of its acquisition.

The Lockean notion that property organically emerges from mixing our labor with nature describes what political economists call primitive accumulation or previous accumulation. It is the original moment of acquisition upon which wealth is built and then accumulated over time. But this primal moment was never a matter of accumulation as such (hence the “so-called” in Karl Marx’s “so-called primitive accumulation”). Capitalist private property is always initially accumulated through violent acts of expropriation. Depending on the location, various combinations of genocide, forced labor, criminalization, and the production of wage-dependent workers through land seizure is how primitive accumulation actually works.

To threaten property, therefore, is not to threaten mere things; it is to threaten the prerogatives of owning classes’ most deeply held beliefs about themselves as autonomous, self-governing individuals. The visceral reaction to the destruction of real property in the course of protests is not an aversion to violence as much as it is a reaction to the existential implications of such an incursion. Its mere suggestion brings with it the threat of a wholesale disruption of the very basis of our current private-property- and market-centered system of political economy. A police station or a storefront is not property in and of itself, but it’s a synecdoche for property rights; a violation of those physical spaces is a reminder that the right to exclude can be traversed. It is also a reminder that private property itself is violent. Not metaphorically violent, but violently produced and violently enforced with violent consequences.

Take for example, one of the more intractable holdovers from an era of de jure racism. Residential segregation was legally imposed under Jim Crow, but it was also extremely profitable: It limited

consumer mobility according to race, manufactured scarcity, and drove up real estate prices on both sides of the color line. This explains its persistence far better than racism as a mere idea. The right to exclude—here articulated through race—rather than the thing itself is what produces real estate value. And this production of value through exclusion both produces racism by preventing racial mixing in day-to-day life and, importantly, proceeds regardless of self-conscious corrections by well-meaning liberals.

If you ask the average liberal white person whether they would mind having African American neighbors, the answer will be an emphatic “no.” But if you ask a person of any color whether they would support the building of public housing near their neighborhood, the answer is also likely to be “no.” Not necessarily because of the color of the people likely to inhabit it, but because under capitalism, protecting the value of property—value that is produced by exclusion that is often racial—is fundamental to our ability to live well. Real estate, in the words of historian N.D.B. Connolly, “does double duty” by driving up real estate prices and producing “proof” of racial inferiority through the poverty and criminality that real estate value concentrates in African American neighborhoods.

The centrality of private property—the right to exclude—suggests that the notion of inclusivity and calls for white people to recognize their racial privilege, while important, are woefully insufficient. Not only because demands to close the racial wealth gap, for example, do very little for African Americans who subsist on household incomes below the national median, but also because organizing political demands around mere inclusion fails to question what inclusion actually means.

Are we satisfied with simply expanding the current set of enforceable claims to the rights and benefits of things to a more diverse population? Perhaps it is time to put forth a different set of claims—ones that do not rest on an individual’s right to



exclude, that are not justified by a confused and hazy notion of “work ethic” that has done nothing but damage poor African Americans. Instead, let’s consider an expansive claim to the right not to be excluded from the wealth that we collectively produce and the resources that we collectively depend on. We may not need to smash the state—indeed, state intervention in the current property regime seems desirable—but private property deserves all the violence that it has produced.

---

**R.H. Lossin** R.H. Lossin holds a PhD in Communications from Columbia University. She has written for the *New Left Review*, *Boston Review*, *Jacobin*, and *The Brooklyn Rail*.

To submit a correction for our consideration, click [here](#).  
For Reprints and Permissions, click [here](#).

## COMMENTS (16)

## Leave a Comment

---