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***165 BOOK REVIEWS AND NOTICES - Placing Property: A Legal Geography of Property Rights in Land, Palgrave Macmillan, Basingstoke, 2023. xiii+70pp. €32.09 (hardback), Open Access (ebook). ISBN: 9783031319938.**

Amanda Byer,

In her thoughtful new book *Placing Property: A Legal Geography of Property Rights in Land* Amanda Byer invites us to shift our perspective on land so that we see it in terms of landscape or place rather than as a fungible commodity. This provides a more nuanced picture of the complex of interests that people, as a matter of fact, have in the resources we loosely categorise as “land.” In particular, the broad spectrum of these interests becomes apparent, as does the heterogeneity of the entities who hold them (not just private individuals but also families, commercial and public service organisations, communities etc). This raises many interesting avenues for exploration by property lawyers, not least the question of how and why we choose to designate some but not all of such interests as property rights, legally protected against interference by all others. Some not selected for property status may still have some level of protection through other legal avenues (directly by private law personal remedies, perhaps, or indirectly by public regulation). However, that still leaves other legitimate interests in land, viewed as landscape or place, which develop out of customary acceptance or reliance on the benevolence or indifference of others.

It is this last group which interests Byers. Writing in the legal geography tradition, she sees landscape as a “cultural geographical descriptor of place [which] implied a distinct locality that connected community, land and law for centuries and functioned as a rubric for diverse non-proprietary interests in land.” In other words, viewing land through a landscape lens reveals land as a unique product of the history and geography of the particular place, and of the relationships communities in that place “developed in interaction with [their] environs, and the customs generated to maintain those relationships and [their] way of life.” (pp 3-4).

It is noticeable that in these quoted passages Byers uses the past tense. This is because, more controversially, she charts the evolution of the common law as a linear process by which property law has abandoned this landscape view of land in favour of a view of land as commodity, a process culminating in the 1925 property legislation:

“What was erased by the 1925 Act was ... ways of seeing and understanding land defined by features and processes rather than boundaries ... [by this process] property in English land law and the common law system ... diverged from a cluster of place-derived interests to assume its current placeless iteration.”

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One may quibble about the highly simplified sweep of the historical trajectory asserted here, and perhaps also the tendency to treat “property” as synonymous with private ownership, as if other individual, communal and public property rights were of no significance. However, this is a very short book—67 pages— on a very big subject. In any event, there is no denying the broad thrust of the argument, which is that the common law has gradually retreated from “grounded perspectives” on land, where land was “communal, dynamic and characterised by attachment,” in favour of “abstract rights that are individual, exclusive and alienable—the so-called classic indicia or hallmarks of property” (pp 3-4 and 7).

This is the core of the book, and there is nothing either cursory or simplistic in the way the argument is developed. In the central chapters Byers convincingly charts the emergence of each of these “classic indicia” by reference to three property theorists, Locke, Blackstone and Marx. The chapter on “Locke and the Homogenisation of the Landscape” is particularly impressive, underlining the remarkable blindness to landscape in Locke's sustained argument as to the justification for the acquisition of property. As Locke saw it, the “improvement” of land can come only through the entrepreneurial addition of man's labour, incentivised and rewarded by the prize of perpetual exclusive private ownership of it. As Byers notes, for Locke (and subsequent Lockeans) this was amply demonstrated by the colonisation of the Americas, where land “lying waste” in the hands of “the wild Indian” could be transformed by individual labour into highly

productive cultivated land, thereby ensuring the perpetual prosperity of the individual labourer whilst at the same time increasing “the common stock of mankind.” But of course—and this is Byers' essential point—Locke's argument works only if you are willing to treat land which is not reduced to absolute private ownership as a homogenous blank canvas, and the interests of those utilising and living in it as of no account.

The chapters on Blackstone and Marx are equally well deployed in the service of Byers central argument. Blackstone is seen as entrenching the “ideology of exclusion” as the foundation of all property, thereby privileging ownership above all other interests in land, a privilege jealously guarded by Parliament, and Marx is utilised as providing an explanation for the emergence of alienability, and hence dephysicalisation, as a key feature of property. Both chapters are well worth reading.

Byers' analysis in these and the following concluding chapters is made all the more vivid and persuasive by being woven into a narrative of the adverse consequences of this retreat into commodification. She provides telling detail of those in Great Britain, Ireland, the Americas and the Caribbean whose interests in their landscape have been ignored or swept aside by, or were simply invisible to, the individual and commercial corporate private owners who took over their land. For these entrepreneurial colonisers land not yet reduced to private ownership was indeed a blank canvas ripe for exploitation, rather than an inhabited landscape formed and sustained by the customary patterns of usage evolved by the communities who lived there.

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We now live with the legacy of such exploitation in the form of spatial injustice and, as Byers points out, a property system ill-equipped to cope with modern crises of pollution and climate change and the adverse effects of globalisation. This book demands that we are at least aware of what has happened, and that it is still happening now.

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