



SOAS university of London Working Paper Series—School of Law, Gender and Media

Paddy Ireland Against the Property Status Quo: Safeguarding Property for the Great Majority of People Populating the Planet
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Abstract: In his important new book *Property in Contemporary Capitalism*, British legal academic Paddy Ireland examines the nature of property in modern capitalism. Focusing on contemporary property theory, he argues that most analyses fail to reflect the empirical realities of property today and often present distorted, ideologically charged accounts. In particular, he critiques the rise of a neo-Blackstonian ‘new essentialism’—which defines property in terms of things and ownership—as a regressive trend that obstructs rather than enhances understanding. Emerging mainly from analytical jurisprudence and law-and-economics, these new essentialist theories, though differing in tone and style, share key features: they are abstract, lack empirical grounding, and offer incomplete or misleading interpretations of how property functions in contemporary capitalism. They are also politically conservative, frequently (whether intentionally or not) reinforcing the existing property regime by sidelining issues of power, inequality, and exploitation. This matters, Ireland contends, because the current property system is failing—serving neither the majority of the world’s population nor the planet itself—and is in urgent need of reform. He maintains that different property relations and rights structures produce distinct, historically specific economic and social dynamics. Today’s ‘polycrisis’, he argues, is largely a consequence of the expansion and intensification of capitalist logic through legal and policy reforms to property rights—such as financial liberalisation and privatisation—under neoliberalism. How we theorise property fundamentally shapes our understanding of capitalism, our perception of the problems it produces, and our imagination of possible reforms and alternatives.

Key words: property theory; property as things or rights to things; bundle of rights; property as a social relation; property institutions in contemporary capitalism; property-as-capital; neo-Blackstonian ‘new essentialist’ conception of property

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JEL Classification: B15 Historical • Institutional • Evolutionary; K11 Property Law; P14 Property Rights

Acknowledgements:

I would like to thank Brett Crumley, Simon Deakin, Paddy Ireland, David Smith, Yuyun Sun, and Pauline Walters for their helpful comments and suggestions.

Notes:

I am especially grateful to Jacqui Lagrue for inviting me to write a review article for *Contributions to Political Economy*. The result is this working paper. As it was too long to be published in full, part of it was accepted on 9 May 2025 and will be published by Oxford University Press soon.

Reference Details

SOASWPLGM 13

Published 15 May 2025

Cite as : Meng, Gaofeng (2025) Paddy Ireland Against the Property Status Quo: Safeguarding Property for the Great Majority of People Populating the Planet. Issue 4, 1-45. Working Paper 13, ISSN: ISSN 2755-379. London: SOAS School of Law, Gender and Media.

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I. INTRODUCTION

On 21 July 2020, it was reported that Jeff Bezos, the founder of Amazon, increased his personal fortune by \$13bn in just 24 hours. This surge was driven by Amazon's soaring share price, as millions of people, confined to their homes by the coronavirus lockdowns, turned to online shopping for food and entertainment (Neate, 2020). Bezos's wealth, estimated at \$189bn, surpasses the GDPs of nations such as Hungary, Ukraine, and Qatar. While he donated \$100m to a food bank charity to help Americans affected by the pandemic, this sum represents just 0.05% of his fortune. Amazon also allocated \$25m to an 'Amazon Relief Fund' to assist delivery drivers and seasonal workers facing financial hardship (Neate, 2020). In contrast, Derrick Palmer, an Amazon worker at the JFK8 warehouse in Staten Island, New York, voiced the frustration of employees: 'Right now, Amazon workers are very depressed. We feel like it's either stay home and let bills pile up or go to work and possibly get sick' (Bhengu, 2020; see also Smith, 2020).

The Amazon phenomenon exemplifies the trajectory of contemporary capitalism, which is increasingly shifting towards oligarchy—patterns once condemned as incompatible with democracy and subversive of basic social justice. It is within this context that Paddy Ireland's *Property in Contemporary Capitalism* presents a profound intellectual challenge to the core principles of contemporary economic thought and proposes an alternative vision for a world facing crises on multiple fronts.

We live in the 'polycrisis' popularised by Adam Tooze (Tooze, 2022). While there is no single cause or solution, Ireland argues that 'there is plentiful evidence that our property system is failing.' At the core of this polycrisis is the capitalist property system, as 'property institutions are key constitutive elements of socio-economic systems.' The case of Amazon illustrates 'increasing inequality, particularly wealth inequality across generations, classes, genders, and ethnic groups' (Ireland, 2024). Ireland claims that 'the property system of contemporary capitalism bears principal responsibility for this polycrisis... the concentration of property power hinders significant reform.' For Ireland, the various dimensions of today's 'polycrisis' reflect the deeper issues within capitalism as a social order, not just an economic system. Against this backdrop, his latest book contributes to the debate on the nature of property in contemporary capitalism. This review will argue that it challenges Western conceptions of property and that his critique of the new essentialist property theory is both timely and urgently needed. As Ireland explains:

It is because of the demonstrable, multiple failures of contemporary financialised capitalism that we need to challenge the property status quo and the increasingly socially and environmentally destructive logic of process it generates. It is because of this that the way in which we conceptualise property - property 'framing' - is important. We need to think about property, and particularly property-as-capital, less in terms of simple 'things' and thing-ownership and more in terms of rights-bundles and social relations. Only then will we develop a better understanding of how our property system works in empirical reality, and of the links between the riches of the wealthy and the efforts, labour and lack-of-wealth of the great majority. We need, in other words, to stop 'seeing through' property as thing-ownership in the sense of using it as the only eyes through which we see the world, and to start 'seeing through' it in the sense of penetrating it and seeing what lies behind it. It is difficult to change the world for the better unless one first understands it. (Ireland, 2024, p.261).

Drawing on history and anthropology, Ireland's book examines the historical and cultural specificity of modern Western conceptions of property, including both the 'things' that can be owned and the very concepts of 'property' and 'ownership' themselves. It explores the various property theories that have dominated Anglo-American legal thought over the past two centuries: property as thing-ownership, property as a bundle of rights, and property as a social relation, considering the material preconditions for the emergence of each. While critical of thing-ownership conceptions due to their analytical limitations, Ireland does not aim to determine which theory is 'right' but seeks to demonstrate that each theory contributes to understanding the empirical realities of modern property. He critiques highly abstract conceptions that claim to uncover property's alleged transhistorical and transcultural 'essence' and treat all property as essentially the same. Ireland argues that distinctions should be made between property in personal possessions and productive resources (means of production), between tangible and intangible property, and between simple property and property used as capital. Different property conceptions illuminate different facets of property in contemporary capitalism. Crucially, Ireland contends that property-as-capital can only be fully understood through a social relational perspective, as it involves property 'invested' for pecuniary gain, where, in the words of the US Supreme Court, 'profits come from the efforts of others.' In response to neoliberal capitalism and its ideologies, Ireland examines the emergence of 'new essentialism' in property scholarship, which seeks to revive the private ownership paradigm of Blackstonian absolute dominium by incorporating the bundle of rights theory. Some of this work has come from analytical jurisprudence (e.g., James Penner) and law and economics (e.g., Thomas Merrill and Henry Smith). Noting that much of the wealth of the rich is intangible, in the form of rights to future revenues (e.g., shares and bonds), and recognising the growing emphasis on 'investor protection' in policymaking, the book explores the implications of protecting modern property, focusing on 'new constitutionalism' and 'de-risking,' and the effect this has on democracy. Ireland concludes by assessing the value of various property conceptions in understanding modern capitalism.

Ireland's argument is built around five interlinked points. First, he analyses three different conceptions of property, considering the material conditions that give rise to each. Second, he examines property-as-capital in detail. Third, he critiques two schools—analytical jurisprudence and law and economics—that defend the private property status quo. Fourth, he explores two emerging tendencies—new constitutionalism and de-risking—that protect property-as-capital. Finally, he discusses China's current rural land system, the Household Responsibility System (HRS).

II. THREE CONCEPTIONS OF PROPERTY

Ireland begins his book by examining three general conceptions of property that have competed for dominance over the last century: property as thing-ownership, property as a bundle of rights, and property as a social relation.

Thing-ownership: Blackstonian concept of property

'In everyday common sense,' writes Ireland, "'property" is usually understood in terms of things and rights to things – in terms of thing-ownership.' The term 'thing-ownership' can seem awkward, as 'thing' is a very general term. The key here is to understand an item, which could

be corporeal (a material object, either movable or immovable), or incorporeal (something intangible, such as a copyright, easement, or patent). ‘Thing ownership’ refers to the enjoyment of a range of rights over the item. This concept is used in property rights literature, as demonstrated by Thomas C. Grey.

Most people, including most specialists in their unprofessional moments, conceive of property as things that are owned by persons. To own property is to have exclusive control of something—to be able to use it as one wishes, to sell it, give it away, leave it idle, or destroy it. (Grey, 1980).

This common-sense view of property as thing-ownership can be traced back to William Blackstone, the eighteenth-century jurist, who famously stated:

There is nothing which so generally strikes the imagination, and engages the affections of mankind, as the right of property; or that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe ... (Blackstone, (2016 [1766])).

Tony Honoré has described the Blackstonian concept of ownership as ‘full liberal’ ownership: ‘the basic model—a single individual owning, in the full liberal sense, a single material thing’ (Honoré, 1961).

There is controversy surrounding what Blackstonian ‘external things of the world’ actually are. Some argue that external things are ‘physical’ and that Blackstone’s conception of property is ‘physicalist’ (Grey, 1980; Vandeveld, 1980). However, according to Ireland, this interpretation is incorrect:

Blackstone was, therefore, clearly well aware of the existence of intangible property forms with no direct relationship to physical objects. He was also aware that new forms of intangible property without any obvious physical referents were emerging and growing rapidly in importance. Bonds, joint stock company shares, copyrights, and negotiable instruments all figure in the *Commentaries*, though he struggled to fit some of the more modern and emerging intangible forms of property, like joint stock company shares, into his rather old-fashioned framework. (Ireland, 2024, p.16; See also Sokol, 1994).

In *Tonson v Collins* (1761), Blackstone appears to have regarded these as incorporeal, with exchange value, and as part of the ‘external things of the world.’ Similarly, in *Millar v Taylor* (1769), Blackstone again argued for the existence of perpetual common law copyright, as he did in *The Commentaries* (Ireland, 2024). Austin later confirmed that Blackstone’s ‘external things of the world’ extended to intangibles, which made its meaning ‘extremely uncertain’ (Austin, 1873).

Ireland links the rise of Blackstone’s concept of property to the historical context in which Blackstone wrote his major work. The English Enclosure Movement of the eighteenth century was nearly completed with strong parliamentary support. As Tate observed, ‘after 1760, there were about 5,400 enclosure acts and enclosures under general acts, covering more than seven million acres—roughly a fifth of England’s land area’ (Tate, 1967). Between 1760 and 1780 alone, Parliament passed over 770 enclosure acts (Horne, 1990; quoted in Travis, 2000). These acts transformed communal or multi-rights land into exclusive private property. As North argues, ‘It is the polity that defines and enforces property rights’ (North, 1994). It is important to note that these acts were passed without true democratic representation, as full enfranchisement of the English population occurred much later. The first major

enfranchisement in 1867 likely contributed to the fact that, in 1876, the further enclosure of common land was restricted by statute.

Marx emphasised the importance of the right to use communal property: ‘We must never forget that even if the serf was not the owner, but a tribute-paying owner, of the piece of land attached to his house, he was also a co-possessor of the common land’ (Marx, 1967, p. 514, note 2). For Marx, the existence and sheer numbers of such Acts demonstrated that the commons were never the landlords’ private property and thus it needed a massive reconfiguration of rights to transform them into it. He wrote:

The parliamentary form of the robbery is that of Acts for enclosures of Commons, in other words, decrees by which the landlords grant themselves the people’s land as private property, decrees of expropriation of the people. Sir F. M. Eden refutes his own crafty special pleading, in which he tries to represent communal property as the private property of the great landlords who have taken the place of the feudal lords, when he, himself, demands a “general Act of Parliament for the enclosure of Commons” (admitting thereby that a parliamentary coup d’état is necessary for its transformation into private property), and moreover calls on the legislature for the indemnification for the expropriated poor. (Marx, 1967, p.796)

Blackstone was well aware of this troubling origin of private property. As Ireland points out: ‘Blackstone warned against reflecting too deeply into the origins and foundations of property rights’. Blackstone welcomed the fact that ‘very few ... give themselves the trouble to consider the origin and foundation’ of private property rights, ‘not caring to reflect that (accurately and strictly speaking) there is no foundation in nature or in natural law’ for many of them. It would be better, he argued, ‘if the mass of mankind ... obey the laws when made, without scrutinising too nicely into the reason for making them’ (Blackstone, 2016 [1766]). However, as Ireland noted, ‘Blackstone was clearly anxious about private property’s status and legitimacy.’ Compared with the contemporary liberals who justify the enclosures by parliament acts, Blackstone was not so shameless. For example, North and Thomas asserted:

Rising agricultural prices and the consequent more rapid rise in rents had led to renewed efforts to eliminate the vestiges of common ownership of land. England inaugurated an era of enclosures supported by basic statutes providing easier transfer of property and protection of the *peasant*. (North and Thomas, 1973; emphasis added.)

The fact is that parliamentary acts regarding enclosures in the eighteenth century were to protect the *landlord class* rather than the *peasants*. In fact, enclosures were disastrous for many landless families. As Martin Dauntton noted:

Enclosure could spell disaster for landless families who supplemented their income by gathering fuel, grazing a few sheep or a cow, or feeding pigs or geese Enclosure marked the demise of [many] small rural traders and craftsmen, leaving a more polarized society of landless labourers and farmers. (1995, p. 107; cf. Ireland, 2024, p. 42 footnote16).

In defending and legitimising private property, Ireland notes that Blackstone took ‘a “staged” account of the development of property institutions.’ Underpinning Blackstone’s analysis of the rise of private property is an account of history drawn from Enlightenment thinkers like Hume and Smith in which societies pass through various ‘stages’, culminating in ‘commercial society’ (what we now call ‘capitalism’). According to Blackstone, God originally made all things ‘the general property of all’ and, at first, ‘these general notions of property’ were ‘sufficient to answer all the purposes of mankind’. However, as mankind increased in ‘number,

craft and ambition’, new conceptions of property were required and ideas of private property began to emerge, first in relation to ‘houses and home-stalls’ and ‘movables of every kind’, and later in relation to key productive resources such as land. ‘Had not ... a separate property in lands, as well as movables, been vested in some individuals’, human progress would have been impeded. ‘Necessity’, Blackstone concluded, ‘begat property’ (Blackstone, 2016 [1766], Book II, pp. 1– 6).

Blackstone advocated private property so much that he said: ‘so great ... [was] the regard of the law for private property’ that it would ‘not authorise the least violation of it; no, not even for the general good of the whole community’ (2016 [1765– 9], Book I (ed David Lemmings), p. 94). There was ‘nothing’, he explained, ‘which so generally strikes the imagination, and engages the affections of mankind as the right of property’ (Blackstone, 2016 [1766], Book II, p. 1.). Here ‘mankind’ refers above all else to the ‘gentlemen of independent estates and fortune’ who were his main audience and whom he described as ‘the most useful as well as considerable body of men in the nation’. One of the reasons they should read his book, he argued, was because ‘the understanding of a few leading principles, relating to estates and conveyancing, may form some check and guard upon a gentleman’s inferior agents, and preserve him at least from gross and notorious imposition’ (Blackstone, 2016 [1766], Book I, p. 11). As Ireland explains: ‘In Blackstone’s conception, property was private property and described a relationship between a person and a thing, rather than one between people. Property was being relieved of its social relational and directly political dimensions and detached from moral, social and political obligation’ (Ireland, 2024, p. 45).

Blackstone’s definition of property as ‘sole and despotic dominion’ only reflected partial reality. As Carol Rose says, it is ‘a trope, a rhetorical figure describing an extreme or ideal type rather than reality’. Blackstone’s ‘exclusivity axiom’—the idea of property as absolute dominion over ‘things’—remains ‘powerfully suggestive ... [and] still moulds our thinking about property’ (Rose, 1998). For example, Blackstone asserted that property is an ‘absolute right, inherent in every Englishman ... which consists in the free use, enjoyment and disposal of all his acquisitions, without any control or diminution’; he added, ‘save only by the laws of the land.’ Ireland asserts that this re-emerged in the neo-Blackstonian, new essentialist conceptions of property within property scholarship and tried to vie for theoretical supremacy. In Ireland’s view, the thing-ownership conception of property is fundamentally wrong, though it reflects partially the specific social reality. The absolute thing-ownership conception of property may be an abstract ideal expression of property in contemporary capitalism, and it may bear the stamp of history, but it is indubitably part of the specific social reality that it seeks to depict and has an important role to play in helping us to understand the world around us. He argues that it is unhelpful to our understanding of property in contemporary capitalism.

While thing-ownership conceptions of property do much to help us to understand the nature of certain types of property, such as tangible personal property (what Rudden calls ‘things in themselves’), they are conceptually inadequate when it comes to conceptualizing and understanding the nature of property-as-capital. They operate at the level of appearances and do little to help us understand the underlying social relationships involved. (Ireland, 2024, p.10).

Further, it is highly problematic for the attempt to ‘abstract from particular social contexts and from particular, empirically existing property institutions’ like land and the fruits of production ‘in order to construct a transhistorical and transcultural conception of property’.

It divorces property institutions from their specific social attributes. It is, of course, difficult for those of us who are products of contemporary capitalist societies to stop seeing all societies through the prism of private property and thing- ownership. To us, property appears to be a relationship between individual legal persons and things; this seems to be its universal essence. (Ireland, 2024, p. 225).

He continues:

No matter how common-sensical it might seem to us, however, when this conception of property is taken beyond the historical and cultural boundaries of modern capitalism and is applied to significantly different kinds of societies, it risks distorting rather than furthering our understanding of them. It risks naturalising generalised private property and encourages a perception of the different property institutions of other societies as less sophisticated versions of our own, as mere stepping-stones on the (inevitable) path to where we are today. (Ireland, 2024, p. 225).

Ireland's insights on the risk of using thing-ownership to view property phenomena in contemporary capitalism are extremely valuable. We will see that applying thing-ownership conceptions of property to the HRS in China causes many distorted interpretations and puzzles among mainstream social scientists and legal scholars.

Property as 'bundle of rights'

For Ireland, 'the coming into-being and rise' of the bundle of rights conception of property has its 'material pre-conditions and foundations.' They are 'the growing volume and importance of intangible financial and intellectual property and the gradual growth in government regulation.' It is these developments that make the emergence of an alternative to the Blackstonian thing-ownership view of property—an alternative *de-physical*, non-absolute conception of property—possible (cf. Vandeveld, 1980; Graham, 2011, 2021).

For Ireland, the emergence of a 'bundle of rights' conception of property overcame the deficiencies of the Blackstonian concept.

While the thing-ownership conception tends to see property as involving just one person ('the owner') and encourages us to take the 'thingness' of property at face value, the bundle of rights conception encourages us to dig beneath the surface. It highlights the politically and legally constituted nature of property rights, their malleability and contingency, and dependence on public power. By focusing on the rights rather than the 'things' dimensions of property, the bundles of rights conception also highlights its social relational and power dimensions. (Ireland, 2024, pp.10-11).

The origin of the phrase 'bundle of rights' is controversial in property scholarship. Jeanne L. Schroeder (1994) also cited a passage from Justice Benjamin Cardozo's book *The Paradoxes of Legal Science* (1928) as one of the earliest uses of the 'bundle of sticks' metaphor. Robert Ellickson invoked Cardozo's argument that 'The bundle of power and privileges to which we give the name of ownership is not constant through the ages. The faggots must be put together and rebound from time to time' (Cardozo 1928) (quoted in Ellickson, 2011). Morton Horwitz (1992) cited John Lewis's 1888 treatise, where Lewis stated: 'The dullest individual among the people knows and understands that his property in anything is a bundle of rights' (Lewis, 1888).

This was treated by James E. Penner (1996) as ‘the earliest reference to this picture of property’ that he had encountered.

Blackstone himself was suggested as a forerunner of this way of thinking about property (Schorr, 2008), but the phrase ‘bundle-of-rights’ seems to have only begun to appear from the mid-nineteenth century (Banner, 2011). Ireland traced the origin of the phrase ‘bundle of rights’ to 1873, when George Sweet, writing about the vesting of the rights of ownership in land between different persons, argued that ‘proprietaryship is a bundle of rights and duties’ (Sweet, 1873 cf. Ireland, 2024). When the rights of ownership were separated into several persons, this is ‘split ownership’ in Honoré’s terminology. At the same time, the Scottish economist Henry Dunning Macleod also began explicitly to argue that property was a ‘bundle of rights’ with exchange value for ‘many other kinds of incorporeal property’ such as ‘joint stock company shares, various forms of transferable debt, literary property (copyright), patents’, and so on (Macleod, 1889). He identified three forms of property: property ‘in specified physical substance’, property in one’s own labour, and rights or property ‘wholly severed and separated from any specific corpus, or matter, in possession’ (Macleod, 1889). Here Macleod asserted that ‘anything whatever that can be sold or transferred is of one of these three species of property.’ Indeed, in the modern world, ‘the greatest amount of property... which is bought and sold every day to the number of millions, is nothing but abstract rights.’ More than half a century later, Ronald H. Coase (1959, 1960) argued that what are exchanged are property rights and that the operation of the price system requires these rights to be defined (cf. Merrill & Smith 2011). By the 1890s, John Commons was declaring property to be ‘not a single absolute right, but a bundle of rights’ (1893), and Richard Ely agreeing that ‘we must think of private property not as a single right but as a bundle of rights’ (1899, quoted in Klein and Robinson, 2011). A century later, Schlager and Ostrom (1992) drew on the earlier work of John R. Commons ([1924] 1968) to conceptualize property-rights systems as containing bundles of rights rather than a single right in common-pool resources such as fisheries and forestry.

The work of Wesley Newcombe Hohfeld and the Legal Realists provided the main impetus for the rise to dominance of the bundle of rights conception in the United States (Epstein, 2011). As Ireland notes: ‘Although the bundle of rights conception antedates the rise of Progressivism and Hohfeld himself did not deploy the bundle metaphor, his contributions not only helped to establish its mid-twentieth-century dominance but gave it an added, potentially radical, twist’ (Ireland, 2024, p. 32; emphasis added). Hohfeld insisted that ‘all legal interests are “incorporeal”, consisting of all they do, of more or less limited aggregates of abstract legal relations’ (1913, emphasis in original). According to Ireland, Hohfeld dispelled the idea that all legal relations could be reduced to merely ‘rights’ and ‘duties’ and sought to clarify the nature of legal interests. Hohfeld (1913, 1917) broke down ‘rights’ into four groups: Rights, privilege, power, and immunity. ‘On this basis, he developed a complex typology of jural correlatives in which each legal capacity of a right-holder was defined by a corresponding non-capacity among non-rights holders’ (Ireland, 2024, p. 32), i.e., duty, non-right, liability, and disability. Thus, as Cole and Ostrom (2012) noted: ‘Hohfeld’s correlation of right and duty, according to which one cannot be said to possess a “right,” including a “property right,” unless one can identify at least one other person who possesses an enforceable, corresponding duty of noninterference.’ Hohfeld applied this typology to a range of legal relations, including the rights in rem traditionally understood as rights to a ‘thing’, and argued that they were not ‘rights to things, but were, rather, like all rights, rights against persons, any rights over a tangible thing entailing a duty owed by someone else to the rights-holder’ (cf. Ireland, 2024, p. 32). Hohfeld’s influence on the American Legal Realists such as Morris Cohen and Robert Lee Hale is obvious (Cohen, 1927; Hale, 1920, 1923; Fried, 1988). Thus, property is ‘not an object at all, but rather

a legally defined relationship between persons with respect to an object...[It] is only an effect, a construction, of relationships between people' (Davies, 2007, p. 13).

By 1922, drawing on Hohfeld, Arthur Corbin (1922, p. 429) asserted that 'our concept of property has shifted Property has ceased to describe any res, or object of sense, at all and has become merely a bundle of legal relations – rights, powers, relations, privileges, immunities.' The dominance of the 'bundle of rights' concept of property was 'confirmed by the First Restatement of Property, drafted in 1936, describing property rights not as rights to things (in rem) but as legal relations between persons with respect to things' (Ireland, 2024, p. 34; cf. American Law Institute, 1936). As Ireland notes, 'The bundle of rights conception also seemed better able to encompass the fragmentation and splintering of ownership rights amongst different people' (2024, p. 34). In 1961, Honoré analysed ownership, including the full liberal concept of ownership and split ownership. Thus, a 'standard conceptual apparatus' combining Hohfeld's analysis of juridical relations with Honoré's analysis of ownership seemed to have been firmly established (Becker, 1927, p. 197; cf. Ireland, 2024, p. 6). This concept of property is inevitably welcomed by some and rejected by others, driven by their political ideology, arguing it is not really a theory, despite admitting its descriptive and analytical usefulness and accuracy (e.g., Penner, 1996; Merrill and Smith, 2000, 2001; Smith, 2011; 2012; cf. Ireland, 2023).

To the further discomfort of some, the bundle of rights conception of property also highlighted the contingent and malleable nature of property rights: the precise content of the bundles of rights constituting property was politically and legally determined. Even private property in something as tangible as land and buildings can take different forms, depending on the specific content of the laws in different jurisdictions on such things as planning and the rights and duties of landlords and tenants (length of lease periods, capacity of landlords to change rents, to expel tenants unilaterally and so on). (Ireland, 2024, p. 34).

This would mean that property has no fixed transhistorical and transcultural 'essence'. It is a political, social, legal construction. As Hanoch Dagan said: 'the bundle of rights metaphor captures the truism that property is an artifact, a human creation that can be, and has been, modified in accordance with human needs and values' (2003, p. 1532). Jane Baron also noted that the bundle of rights conception of property suggested that 'the state can alter the bundle at will at any time' (Baron, 2010, p. 944).

Thus, 'for most defenders of the property status quo, the bundle of rights conception, with its emphasis on the man-made nature and malleability of property and property rights, is highly problematic' (Ireland, 2023, p. 183; cf. Klein and Robinson, 2011). 'Generally, defenders of the property status quo find the thing-ownership conception of property much more attractive than the bundle of rights conception with its "weak sense of the thingness" of private property' (Ireland, 2024; p.183 ; cf. Heller, 1999). For those who endorse and defend the property status quo, the bundle of rights conception is a kind of threat to expose 'the fact that revenues that accrue to financial property owners ultimately come from "the efforts of others" and "it threatens, in other words, to expose the links between rich and poor, and between wealth and the labour and "efforts of others"' (Ireland, 2024, p.183).

The 'fear', then, is that the bundle-of-rights conception of property has the potential to lay uncomfortably bare not only the socially constructed nature and public dimensions of property, but its social relational and power dimensions. In highlighting the ways in which property rights represent political choices made in an arena of conflict, they threaten to undermine the uncritical

acceptance of the legitimacy of existing private property rights, particularly in relation to productive resources. (Ireland, 2024, pp.183-4).

Therefore, it is not surprising at all that the bundle of rights conception of property was, is, and will be attacked from various camps. Until quite recently, the bundle of rights conception was academically dominant. Ireland argues that there are three advantages of the bundle-of-rights conception: firstly, it highlights the contingency and malleability of property rights – their socially and politically constructed nature; secondly, it denaturalizes (absolute) private property, particularly in productive resources, and highlights the fact that there are lots of different ways of structuring and allocating property rights; lastly, it therefore highlights the range of institutional and political possibility.

Property as social relations

The third conception of property as a social relation, according to Ireland, ‘builds on this, using the work of the legal theorist Wesley Hohfeld, who conceptualises property as a social relation, as a relation between people, rather than, or in addition to, a relation between people and things.’ Its emergence with the bundle of rights conception of property was ‘in large part, attempts to capture conceptually, and to shape understanding of, *the shifting empirical realities* of a changing capitalism’ (Ireland, 2024, p. 5; emphasis added).

The emergence of a concept of property as a social relation is needed. According to Ireland, this is because of the insufficiency of the Hohfeldian conception of the bundle of rights in explaining the wider property phenomena in capitalist society.

The social relational dimension of property rights highlighted by Hohfeld has tended, however, to be deployed at the *individual, micro* level, whereas if we really want fully to grasp the social relational dimensions of property, and particularly of property-as-capital, we need to move beyond this to more *macro* levels. (Ireland, 2024, p. 11; emphasis added).

For Ireland, this move to a macro level implies an extension to groups and classes.

However, Hohfeldian analyses tend to be undertaken at the individual, *micro* level. To fully grasp the social relational dimensions of property in contemporary capitalism, one needs to move to a more *macro* level and to explore the relations between different groups and classes. One needs to ‘understand property as a social system’.... This is particularly true in relation to property-as-capital, property which is ‘invested’ with the intention of generating a financial return. (Ireland, 2024, p. 11).

The best illustration of property as related to social relations is still that of Karl Marx. As Ireland notes: ‘The idea of property as a social relation was not, in fact, new. Marx had argued decades before that capital was a social relation, not a thing, and that “an isolated individual could no more have property in land and soil than he could speak”’ (Marx, 1973 [1857-8]). ‘Since then, the idea of property as a social relation has underpinned many anthropological approaches to property’ (Ireland, 2023, p. 33)

Ireland understands the idea of property as a social relation. Based on Enrico Rossi’s argument that property has a ‘dual nature’ between personal property and capital (cf. Harris, 1996), Ireland reiterates a distinction between private property rights in personal possessions

and in productive resources (the ‘means of production’). He explains: ‘A number of leading thinkers have insisted that a distinction between property in personal possession and the means of production not only can but must be drawn’ (Ireland, 2024, p. 50). John Rawls, for example, maintained the right to hold personal property as one of the ‘basic’ rights needed to create a sense of personal independence and self-respect, but ‘the right to own certain kinds of property (e.g., means of production)’ was ‘not basic’ (Rawls, 1999; see also Dagan, 2020). It is not so controversial with private property in personal possession, but with private property in productive resources (Harris, 1996). This distinction is important in current capitalism because production has become less individual and much more interdependent and socialised (Ireland, 2024; cf. Robé, 2020, 2022). The distinction between property rights in personal possession and productive resources has long been confirmed by the work of historians and anthropologists (e.g., Tylor, 1881; Lowie, 1920; White, 1959; Hann, 2000, 2007).

According to Ireland, the distinction between property rights in personal possessions and productive resources overlaps with the distinction between property-as-capital and property-as-wealth.

It is when they are invested to secure pecuniary gain that things in themselves become capital, that they become property-as-capital. Thus, money, for example, only becomes ‘capital’ when it is ‘invested’ to generate a financial return – as when it is loaned out for interest or used to buy pre-existing revenue rights (like corporate shares), or used to buy material means of production with a view to engaging in profitable productive activity. (Ireland, 2024, p. 64).

Frank Fetter insisted that capital should therefore ‘not be confused with wealth’; not all objects of property, not all items of wealth, are ‘invested’ to generate a monetary return (Fetter, 1937, pp. 187, 189– 90.). Likewise, Bernard Rudden also argues that ‘We can treat things for themselves, or we can treat them as investments’ (Rudden, 1990, p. 86). ‘Every thing may be treated merely as the clothing (investment) worn by a certain amount of wealth ... in most legal systems, things of the same type may be held by some as necessities and by others as investments’ (Lawson and Rudden, 2002, p. 21). Ireland explains,

For Fetter and Rudden, the difference between things in themselves and things as capital (or, in Rudden’s terminology, things as wealth or things as investments) is function. As Rudden explains, in some contexts, things are simply tangible objects which people consume to meet particular needs. In others, however, they are part of a business, resources which have been invested in a process aimed at making a profit. (Ireland, 2024, p. 64).

Property regarded as capital is when it has been ‘invested’ with a view to generating a financial return. In chapter four, Ireland argues that a second key characteristic of property-as-capital is its irredeemably social-relational nature. The best illustration is that provided by Marx. ‘Marx argued that (property-as-) capital, whether money or means of production, did not have the intrinsic ability to generate financial returns. It only acquired this ability where certain social (and class) relations prevailed’ (Ireland, 2024, p. 73). For Marx, the example of Edward Gibbon Wakefield, an entrepreneur and advocate of settler colonialism, best illustrates this point. Wakefield sought to understand why the founder of the abortive colony, Thomas Peel, had not succeeded despite having ‘all the elements of success - a fine climate, plenty of good land, plenty of capital, and enough labourers.’ Although Peel had taken with him ‘a capital of £50,000 and three hundred persons of the labouring class, men, women, and children,’ as soon as the labourers reached the colony, ‘they were tempted by the superabundance of good land to

become land-owners.’ Abandoned in this way, Peel was left ‘without servants,’ and ‘without servants his capital perished’ (Wakefield, 1968, p. 482.; Piterberg & Veracini, 2015).

Marx argued that Wakefield had ‘discovered in the colonies the truth of capitalist production,’ namely that ‘property in money, means of subsistence, machines, and other means of production, does not yet stamp a man as a capitalist if there be wanting the correlative – the wage worker.’ Peel was unable to turn his property into revenue-generating, functioning capital because the labourers, having acquired access to land themselves, had no need or desire to become wage labourers, making it impossible for him to ‘profit from the efforts of others.’ ‘Unhappy Mr. Peel,’ Marx wrote, had ‘provided for everything except the export of English modes of production to Swan River!’ (Marx, 1954 [1867], p. 717; emphasis added). This led him to conclude that ‘capital is not a thing, but a social relation between persons, established by the instrumentality of things’ (Marx, 1954 [1867], p. 28). For Marx, there is no universal truth about property because property or property institutions only exist in specific empirical forms. It is ‘a definite social relation, belonging to a definite historical formation of society...’ (Marx, 1959 [1894], pp. 814– 5).

What is the function of conception of property as a social relation? Ireland explains:

Understanding property institutions requires theorisation of the social totalities of which they are part. If we wish to understand property as an aspect of social inequality and power, particularly at the structural level, we need to explore the relations not only between abstract isolated individuals but between individuals embedded in particular, empirically specific sets of social relations, arrangements and practices; between individuals who are members of particular social groups and classes. When one does this, one sees that property resembles class not merely because it is a historical category, but because it is, in certain important respects, a historical category describing groups of people in relationship over time. Property and class are intertwined. (Ireland, 2024, p. 229).

Marx highlighted the social, relational, and power dimensions of property in describing the difference between the capitalist and the worker, from the sphere of exchange to ‘the hidden abode of production.’ Then, ‘a certain change takes place ... in the physiognomy of our dramatis personae. He who was previously the money-owner now strides out in front as a capitalist; the possessor of labour-power follows as his worker’ (Marx, 1954 [1867], p. 196). ‘The one smirks self-importantly and is intent on business; the other is timid and holds back, like someone who has brought his own hide to market and now has nothing else to expect but a tanning’ (Marx, 1954 [1867], p. 172). Ireland comments:

Marx’s point was, of course, that to properly understand capitalism, you have to look beyond the sphere of exchange where seemingly formally equal, abstract, individual property owners freely exchange equivalent ‘things’, and explore the specific nature of the concrete, often highly unequal, social relations of production lying beneath the surface. (Ireland, 2024, p. 228).

The benefit of seeing property as a social relation is that it helps to understand property-as-capital as a process. This perspective allows for a deeper understanding of ‘the infinitely varied spectrum of human property systems,’ reflecting the equally varied systems of social relations (Greer, 2018, cf. Ireland, 2024). Ireland comments:

Seeing property as a social relation is also analytically indispensable in the context of property-as-capital because of the way that it steers us away from a static understanding of it as a ‘thing’ towards a dynamic understanding of it as a process. This in turn directs

our attention towards the ways in which the property rights structures of a society – particularly those relating to productive activity – play a key role in shaping a society’s economic dynamic. Indeed, it is the dynamic generated by its historically specific property rights structures that distinguishes capitalism from other social forms or modes of production. (Ireland, 2024, p. 232)

Ireland analyses property from surface to core in contemporary capitalism:

There are, then, important senses in which property in contemporary capitalism is simultaneously a thing, a bundle-of-rights, and a social relation. On the surface, property does, indeed, appear to relate to things and thing-ownership; dig down a little and it emerges, particularly in some contexts, as a bundle-of-rights; dig deeper still and its social relational aspects come into focus. (Ireland, 2024, p. 232).

His approach to property has been influenced by Derek Sayer’s book *Marx’s Method* (2021), particularly in terms of understanding both the historical specificity of capitalist social relations and their less-than-transparent nature.

II. PROPERTY AS CAPITAL

For Ireland, intangible financial property, ‘including intangible intellectual property and the ownership of intangible revenue rights like shares and bonds’ (Ireland, 2024, p. 8), constitutes the greater part of the wealth of those at the top of the Rich Lists (Ireland, 2024, p. 8). As researchers such as Thomas Piketty (2014), Gabriel Zucman (2019), and others (e.g., Atkinson, 2018; Frémeaux & Leturcq, 2020; Saez E. & G. Zucman, 2016) have shown, ownership of these forms of property has always been heavily concentrated in the hands of the very wealthy. Furthermore, it has become even more concentrated in recent decades (Ireland, 2024, pp. 87-93; see also Ireland, 2016, pp. 85-86). In response, Ireland dedicates one chapter of his book (Chapter 4) to examine in detail the distribution of wealth—including its gender, race, and class dimensions—and, more specifically, the distribution of what he calls *property-as-capital*.

The case of Amazon mentioned at the beginning of this article reflects the reality of ‘the current distribution of wealth and capital, and its growing concentration in the hands of a small minority’ (Ireland, 2024, p. 8). This was recognised by Adam Smith more than two centuries ago. ‘Wherever there is great property,’ Smith wrote, ‘there is great inequality. For one very few supposes there must be at least five hundred poor...the affluence of the few supposes the indigence of the many’. ‘[S]o...is in reality instituted for the defence of the rich against the poor, or of those who have some property against those who have none at all’ (Smith, 1981[1776], Book V, Chapter 1, part II; quoted in Ireland, 2024, p.100). This is also observed by Morris Cohen (1927, p. 15) that ‘accumulations of great wealth’ are often the product of ‘the labour of the many’. These profits from others reflect the ‘irredeemably social relational nature’ of ‘property-as-capital’ (Ireland, 2024, p. 8). Therefore, in Chapter 4, Ireland analyses a series of phenomena profiting from the effects of others as a result of the ownership of productive resources in modern capitalism.

Both the cases of Amazon and Boohoo mentioned at the beginning of this article reflect the reality of ‘the current distribution of wealth and capital, and its growing concentration in the hands of a small minority’ (Ireland, 2024, p. 8). This was recognised by Adam Smith more than two centuries ago. ‘Wherever there is great property,’ Smith wrote, ‘there is great inequality. For one very rich man supposes there must be at least five hundred poor...the affluence of the few supposes the indigence of the many’. ‘[S]o... is in reality instituted for the defence of the rich against the poor, or of those who have some property against those who have none at all’. ‘[S]o far as it is instituted for the security of property,’ he added, ‘civil government... is in reality instituted for the defence of the rich against the poor, or of those who have some property against those who have none at all’ (Smith, 1981[1776], Book V, Chapter 1, part II; quoted in Ireland, 2024, p. 100). This is also observed by Morris Cohen (1927, p. 15), who noted that ‘accumulations of great wealth’ are often the product of ‘the labour of the many’. These profits from others reflect the ‘irredeemably social relational nature’ of ‘property-as-capital’ (Ireland, 2024, p. 8). Therefore, in Chapter 4, Ireland analyses a series of phenomena profiting from the effects of others as a result of the ownership of productive resources in modern capitalism.

It is necessary to point out here what Ireland means by the term ‘property as capital’. In Chapter 3, Ireland investigates the terms ‘capital’, ‘capitalist’, and ‘capitalism’ (Ireland, 2024, pp. 57-62). For him, historically, the concepts of ‘capital’ and ‘capitalist’ preceded that of capitalism as an economic system. As he writes:

Of the triad capital, capitalist and capitalism, ‘capital’ came first. Derived from the Latin ‘*caput*’, meaning head or principal, ‘*capitalis*’ emerged in the twelfth to thirteenth centuries to refer to ‘the property, not necessarily only money, that a rich person owned’. ... By contrast, the term ‘capitalism’ was, as Howard Brick observes, ‘an etymological latecomer’, appearing for the first time in early nineteenth century France and Germany. At this time, however, capitalism tends to be used to describe making money from money - an activity - rather than an economic system, often with very negative overtones. (Ireland, 2024, pp. 59-60).

‘Capital’ was originally conceptualised as property – usually money – invested to generate a financial or pecuniary return. Thus, ‘property as capital’ is property that is invested by its owners to secure a financial or pecuniary return. As Marx demonstrated with his analyses of the different circuits of capital, financial returns can be generated from investment in many different ways through a range of processes, such as loans/debt and the taking of interest (M-M1); ‘buying commodities which are then resold for more money – “buying cheap and selling dear” – to create the circuit M-C-M1’ (Ireland, 2024, p. 62; see also Marx, 1954 [1867], pp. 145-53), or through the use of money to purchase means of production as industrial capital (capital – M-C-P-C1-M1) (Marx, 1956 [1893], pp. 25-123), and so on. Jonathan Levy argues, ‘capital is best understood as a particular kind of economic process. Capital is property capitalised – a legal asset assigned a pecuniary value in expectation of its capacity to yield a likely future pecuniary income... Capital is always in process’ (2017, p. 494). Ireland agrees with Levy, noting that ‘implicit in these ideas about circuits is a conception which distinguishes property-as-capital (active/dynamic) from property-as-wealth (static)’ (Ireland, 2024, p. 63).

For Ireland, however, property-as-capital has a second key characteristic, and it is this feature that reveals the fundamentally social relational nature of some forms of property. The social relational nature of financial property (of revenue rights) was aptly – and somewhat ironically – captured by the American Supreme Court in a case called *Securities & Exchange Commission v. Howey*, decided in 1946 and still valid law today. In *Howey*, the court had to determine

whether a particular financial instrument amounted to an ‘investment’ for the purposes of Federal Securities law. The court was thus compelled to define the nature of ‘investment’. It held that it was ‘an investment of money in a common enterprise with profits to come solely from the efforts of others’ (quoted in Ireland, 2024, p. 8). In Ireland’s view, this is very revealing, for it foregrounds the fundamentally social relational nature of property as capital. Furthermore, it highlights, amongst other things, the links between the wealth of the wealthy and the labour of the not-wealthy (Ireland, 2024, p. 8]).

Ireland uses the Howey definition to briefly explore the different ways in which, in contemporary capitalism, it is possible to invest money to generate a financial return from the efforts of others. One can buy shares in companies to receive dividends (generated by wage labour); one can lend money in return for interest payments; one can buy many different forms of debt – government, corporate, household, mortgage, student loan, and so on – as the social relations involved are many and varied. One can buy residential property to generate a steady stream of rental income; one can acquire or purchase intellectual property (IP) rights to receive royalties, licence fees, and so on (Ireland, 2024, pp. 79-81, 200, 241). The unifying feature of these different types of property as capital is that the financial returns that accrue come from the efforts of others: either from the direct exploitation of wage (or unfree) labour in production, or from the many and varied processes whereby people give up part of the product of their labour to others – through interest payments on debt, rent, or licence fees (Ireland, 2024, pp. 85-88, 98-99).

III. TWO SCHOOLS OF DEFENDING THE PROPERTY STATUS QUO

After analysing three conceptions of property, Ireland critiques the work of scholars within the analytical jurisprudential tradition (such as James Penner) (Chapter 5) and law-and-economics (such as Thomas Merrill and Henry Smith) (Chapter 6). The former have been primarily motivated by conceptual concerns and the desire to re-establish property as a distinctive legal category. The latter, on the other hand, has been much more politically motivated—driven by anti-collectivism and a desire to protect the property status quo (Ireland, 2024, p. 133). As Ireland states:

The primary goal of much of this work is to offer a defence of the property status quo and of private property, irrespective of context or of the resources involved. This is the case with one of the most influential new essentialist theories to have emerged in recent decades, the so-called ‘information cost’ theory of property, developed in a stream of articles by Thomas Merrill and Henry Smith. (Ireland, 2024, p. 133). (Ireland, 2024, p. 133).

Both of these contemporary theories represent the ‘new essentialist’ revival of the thing-ownership-centred conception of property, which seeks to re-establish the private property paradigm of Blackstonian absolute dominium (Lehavi, 2013, pp. 46-9; Wyman, 2017), by attacking the bundle-of-rights theory (see, e.g., Penner, 1995, 2011; Smith, 2011). This approach is highly regressive, hampering rather than facilitating our understanding of complex modern property phenomena. It is highly abstract and politically conservative in nature, corresponding with the rise of neoliberal capitalism and its accompanying ideologies. In the introduction to the book, Ireland identifies two main features of these theories: one is ‘their

highly abstract nature; one of the common features of these theories is their highly abstract nature and lack of interest in the empirical realities of property and the way in which the property system actually operates' (Ireland, 2024, p. 8), and another is 'their conservatism' (Ireland, 2024, p. 9). Ireland develops this point further. Despite their different motivations, new essentialist theories of property share a number of common features, which make it harder for us to gain a proper understanding of property in general and property as it exists in contemporary capitalism, and they act as barriers to the re-imagining of property needed to address the economic, political, social, and environmental crises we are currently engulfed in. He identifies four common features in these theories.

Despite their varied nature, they share certain common features. Firstly, they conceptualise property, like Harris, in terms of thing-ownership and exclusion. Secondly, they tend to engage in high level abstraction. Thirdly, in keeping with the renewed interest in conceptual analysis in private law in general (the so-called New Private Law movement), they tend to show more interest in legal doctrine than they do in the empirical realities of property as it operates in the real world. Finally, they tend in various ways and to varying degrees to naturalise and legitimate the existing property status quo. (Ireland, 2024, p. 121).

In Ireland's view, new essentialist theories of property suppress the social relational dimensions of property (and particularly of property as capital) by asserting that property needs to be understood in terms of things and thing-ownership—in other words, in terms of relations between people and things, rather than relations between people. These features are also the weaknesses of the new essentialist theories of property. Ireland identifies five weaknesses of the new essentialism. Firstly, these new essentialist theories operate at a very high level of abstraction and show little interest in the empirical realities of property and its power dynamics. For example, Penner writes: 'There are high-level abstractions about property which we cannot plausibly do without if we are to understand property rights and property law doctrine' (Penner, 2020, p. 278). 'Much of this work suggests that property does indeed have a universal, transhistorical and transcultural "core" or "essence" centred on things and exclusion' (Ireland, 2024, pp. 105-6). For instance, drawing on Irving Hallowell's suggestion that there are 'some basic categorical similarities in human culture the world over', one of which is property, despite the 'immense variability' in the specific cultural forms of different human societies (Hallowell; see also Wissler, 1923), James Harris writes: 'all societies have property institutions of one kind or another'; property is 'a ubiquitous human institution' (Harris, 1996, pp. vii, 8). Harris further suggests that property and property institutions perform the dual transhistorical and transcultural functions of controlling the use of things and allocating wealth (Harris, 1996, p. 180). Others have adopted a similarly functional approach. For example, Thomas Merrill argues that 'all human societies' must have 'strategies for determining how resources will be used', and that property—by which he means private property—is one such strategy (Merrill, 2012, p. 2062; see also Waldron, p. 34; Lametti, 2023, p. 334).

They rarely distinguish in a meaningful way between property in personal possessions and property in productive resources or the fruits of production, or between tangible property and intangible property (Ireland, 2024, p. 8). Furthermore, corporations, the economically dominant owners of so many key productive resources, are conspicuous by their absence in their work (Ireland, 2024, pp.). In purporting to abstract from the empirical realities of property at any given time and place, these theories claim to uncover universal truths about property that transcend time and place. In fact, property and property institutions only exist in specific empirical forms. They are always part of 'the exceedingly complex networks of structural relations' (Lacey, 2006, p. 947; quoted in Ireland, 2024, p. 4). Thus, to properly understand

property at any given time and place, we cannot abstract it from the wider sets of social relations and socio-economic-political institutions and practices of which it is always part. As Nicky Lacey states, the illustration of legal practices requires ‘locating the analysis [of doctrine] within some general account of history and the social role of the institutions and power relations’ (2006, p. 948).

Secondly, despite the new essentialists’ claims to the universality of property, these theories are rooted in the specifically private property institutions of Western societies and tend to naturalise and universalise generalised private property and a highly individualistic account of people and human nature. These theories tend to universalise and naturalise private property in all contexts. Ireland notes: ‘In failing to get to grips with the historical conditions of the existence of this concept of property, Penner tends to naturalise and universalise it and its material foundation’ (Ireland, 2024, p. 129). As Ireland stated earlier, they do not recognise what has been called the dual nature of property, making no distinction between property in personal possessions and property in (or related to) productive resources. ‘They purport to identify universal truths about property, abstracting not only from time and place but from specific resources. Thus, little or no distinction is made between tangible and intangible property, or between personal possessions and productive resources’ (Ireland, 2024, p. 8). The work of anthropologists and historians shows that different property regimes for personal possessions and productive resources have been a common feature of the property institutions of societies throughout history and across cultures (Ireland, 2024, pp. 52-53). Indeed, even liberal philosophers like John Rawls made such a distinction (Ireland, 2024, pp. 49-50). Rawls argued that private property rights in personal possessions were ‘basic’ and worthy of protection for reasons of personal autonomy, independence, and respect. But he also argued that this was not the case with what he called ‘means of production’ (Rawls, 1999[1971], pp. 53-54). In a similar vein, Hanoeh Dargan argued that ‘private property authority attached to...commercial property rights—notably to ownership of means of production—must be carefully circumscribed’ (2020, p. 8). It is also correct for Radin to distinguish personal property from property that is fungible and commodifiable (Radin, 1982, 1988), and for Rossi to draw a distinction between private property rights in personal possessions and in productive resources (the means of production), between personal property and capital (Rossi, 2020). Thus, these theories make it harder for us to imagine not only significantly different sets of property institutions but significantly different social formations, modes of production, and human beings.

Thirdly, even in terms of capturing the realities of property in modern capitalism, these theories fall seriously short. Although they are derived from the property institutions of modern capitalism, they are underpinned by a superficial, largely imaginary, deeply ideological, and misleading account of these institutions and how they actually work. Much like the general law of contract found in traditional legal texts, they project a liberal image of a social order based on individual autonomy, free will, opportunity, and voluntary exchange. Thus, the real world of inequality, major power imbalances, severely constrained choice, and exploitative social relations is screened out, hidden behind the abstractions. For example, Penner not only excludes consideration of the distributional dimensions of property from his analysis but also considers it uninteresting, asking: ‘Is anyone not bored by the project of justifying or decrying inequalities of property ownership?’ (Penner, p. 6). For Penner, ‘the only real issues of distributive justice involved in the law of property revolve around the determination of what can be owned,’ and thus Penner ‘makes a case for an absolutist conception of property understood as an analytical and hence apolitical truth’ (Rotherham, 1998, pp. 120, 121). Margaret Davies argues that Penner seems to ‘lack... consciousness that there is a political and

cultural tradition informing his argument and, in particular, its underlying assumptions' (1998, p. 578). However, the underlying narrative 'reflects capitalism's self-image rather than its empirical realities' (Ireland, 2024, p. 129).

Fourthly, within these theories, the focus is very much on tangible property (with land still figuring prominently). Ireland argues that while ownership of tangible productive resources remains critically important, in many ways, the key to wealth and power in contemporary capitalism now lies in the ownership of intangible property (Ireland, 2024, p. 178). Ireland writes:

Their theory is not concerned with corporations: despite the vast amounts of productive property they own, corporations barely figure in their analyses. Their theory seeks, rather, to provide an account of property in general centring on thing-ownership and exclusion, and to explain why property takes this essential form and why this is a good thing. (2024, p. 166).

For example, Merrill tends to select his starting points—a family farm—to support his claim that property has a basic architecture (2012, p. 2071). As Ezra Rosser observes, ‘Merrill’s stylised family farm is just that: a family farm, not a gigantic agribusiness defined by its corporate form’ (2015, p. 421). As Ireland says:

Multi-national corporations, financial and non-financial, barely figure in their work...Indeed, just as contractual theorists tend to use new firms or small partnerships that bear little relation to today’s large, economically dominant corporations as analytical starting points to support their arguments, so information theorists, when they bother to delve into property in productive forces, tend to select their starting points very carefully. (Ireland, 2024, pp. 177-8).

In the ownership of financial property (such as bundles of revenue rights, like shares and debt) and intangible intellectual property (which is central to the wealth and power of corporations), thing-ownership conceptions of property are unable to adequately grasp these key modern property forms at anything other than a superficial level. They skate over the peculiar nature of these intangibles; their ‘thingness’ is taken uncritically for granted (Ireland, 2024, p. 178).

IV. TWO NEW DEVELOPMENTS IN SAFEGARUING PROPERTY-AS-CAPITAL

With the concentration of wealth ownership, particularly of intangible financial property, the power of elites has increased in contemporary capitalism. Thus, *the growing power of these groups* necessitates the protection of these forms of *intangible financial property*, which involves safeguarding and maintaining future revenue streams or financial returns (Ireland, 2024, p. 9). It is not sufficient to protect tangible assets from theft or expropriation: what matters from the perspective of wealth owners is the use of political power to ensure that the revenue streams that provide value to these intangibles are sustained over time. The wealthy own numerous claims on the future efforts or labour of others; they hold many titles to future revenues. However, the future is inherently uncertain, and the value of their wealth is, therefore, speculative, as it is based on expectations of future returns. In Chapter 7, Ireland argues that *the growing power of these groups has manifested in the ruthless prioritisation of investor protection, particularly the protection of financial asset owners, over other policy goals, and in the equally ruthless imposition of constraints on democracy* (Ireland, 2024, p. 7). Against this backdrop, Ireland explores the policy prioritisation of investor protection, focusing particularly on two phenomena: the New Constitutionalism (NC) and de-risking new property.

The New Constitutionalism

The New Constitutionalism is a concept developed by the political economist Stephen Gill (1995), and later expanded by legal scholars such as David Schneiderman (2000a, 2000b, 2001, 2008, 2014) and others. It refers to the ways in which states have offered investors protection from the threat of democracy—or more specifically, from the risk that democratically elected governments might enact and implement policies that jeopardise future income streams (i.e., their ability to profit from the efforts of others in the future). As Ireland writes:

Moreover, from their perspective, it is not enough simply to prevent the expropriation by states of tangible productive resources through nationalisations. It is also necessary to deter, and if possible, prevent, policy changes – to tax regimes, labour standards, environmental protection regulations and the like – that might negatively impact on the pecuniary returns accruing to and value of their capital, tangible and intangible. (Ireland, 2024, p. 205).

The owners of financial property and their institutional representatives also assert that property rights are ‘special,’ distinct from other rights and deserving of special (and often constitutional) protection. The emergence of ‘international investment law’ and investor-state dispute settlement (ISDS) treaties exemplifies the rise of this new constitutionalism. The origin of international investment law can be traced back to the imperial and colonial eras, where it served the ‘oppressive protection of commercial interests’ (Miles, 2013, p. 2; see also Sornarajah, 2015). After the end of direct rule following decolonization, both international investment law and ISDS began to proliferate, with treaties being ‘invented in the 1960s as a substitute for colonial rule’ by officials of the former colonial powers and the World Bank (Van Harten, 2020, p. 2). From the 1990s, these treaties began to multiply rapidly, and the international investment law regime ‘started to secure foreign investments in legally sophisticated ways we associate with the new constitutionalism’ (Schneiderman, 2014, p. 172). Its rationale is that ‘the more a country offers protection to foreign investors and improves its “investment climate,” the more it will benefit from the investments that generate growth’ (Ireland, 2024, p. 206). The supporting evidence for this rationale, however, has been questioned (Van Harten, 2020, p. 3).

They have achieved this by entering into over 2,000 bilateral investment treaties (BITs), which grant investors the right to sue states for implementing policies (such as those on labour, health, or environmental standards) that damage the value of their investments—specifically, their ability to generate future returns. As a result, these treaties confer extraordinary powers and protections upon the owners of capital, acting as a major constraint on states and democracy (Van Harten, 2020, pp. 1–4). Thus, ‘they grant investors rights against states not only in cases involving outright takings of tangible property, but also in cases where states have implemented policies that have (or might have) the effect of reducing the income-generating potential (and therefore the value) of their capital’ (Ireland, 2024, p. 207). This amounts to an attempt to create a global system of economic governance that operates beyond the reach of nation-states and democracy, providing constitutional or quasi-constitutional protection to the financial property and revenue rights of investors (Slobodian, 2018, p. 54). For critics like Gus Van Harten, this is ‘simply a neoliberal project’ that ‘draws on, or seeks to co-opt, constitutionalist traditions,’ and questions why states should be bound by these treaties if they can renegotiate or abrogate them—‘so why tell people that their governments are bound constitutionally when, in fact, they are not?’ (Van Harten, 2010, pp. 901–2). As Ireland notes:

From this perspective, growing inequality is, in many ways, a measure of the project's success – a reflection of the ability of very wealthy property owners, and especially financial property owners, to secure an ever larger proportion of the social product. The success of neoliberal ideas derives not so much from their intellectual force or truth but from the growing economic and political power of the very wealthy, with their ability to fund think-tanks and research institutes, to influence and control the media and politicians, and to shape understandings of the world. (Ireland, 2024, pp. 209-210).

Ireland's analysis is crucially important. Indeed, it is eye-opening in the sense that it reveals hidden mechanisms at work that are fundamentally immoral and anti-democratic. In Ireland's view, the new constitutionalism is essentially a form of greater protection for the wealthy elites of the Global North, and is not beneficial for democracy, let alone for the majority of populations.

De-Risking new property

The National Capitalism (NC) model is one aspect of the wider phenomenon of *de-risking*, a term that 'refers to the processes whereby the state facilitates private investment and the creation of new property-as-capital—new "asset classes", in the language of finance (usually in the form of revenue rights)—by reducing the risks attached to them, in particular the risk that the financial returns investors expect to receive might not materialise' (Ireland, 2021, p. 211). The state, in effect, takes steps to ensure that revenue streams acceptable to investors will be forthcoming. De-risking is a feature of public-private partnerships (PPPs) and so-called 'blended finance', and it is being urged upon states by international agencies as a means of funding infrastructural improvements and the green transition. The OECD concludes that 'public resources alone cannot deliver the required investments in climate, health, education, infrastructure and ... housing' (OECD, 2020) and that private finance must be mobilised. It is clear that PPPs and de-risking will be central to the new Labour government's so-called wealth creation strategy. In a recent speech, the Chancellor, Rachel Reeves, stressed the role of an 'active' state in underwriting the security of investments made by business and in providing a platform of safety. She said: 'Stability is the crucial foundation on which all our ambitions will be built. The essential precondition for business to invest with confidence and for families to plan for the future.... In this age of insecurity, growth requires stability but not stability alone. It requires active government' (Reeves, 2024). She added that private-sector investment 'is the lifeblood of a successful economy. We need to unlock private-sector investment' (quoted in Islam and Newlands, 2024).

Public-private partnerships (PPPs) have become a global phenomenon in 'the financing of both the UN's Sustainable Development Goals (SDGs) and the low-carbon transition' (Ireland, 2024, p. 216). In the words of Jim Yong Kim, then President of the World Bank Group: '... we have to start by asking routinely whether private capital, rather than government funding or donor aid, can finance a project. If the conditions are not right for private investment, we need to work with our partners to de-risk projects, sectors, and entire countries' (IFC, 2017, pp. 12–13). This means that low- and middle-income countries must 'join the global supply of "SDG securities"', which benefits financial providers such as institutional investors, asset managers and corporate executives in this new 'development as de-risking' paradigm (Gabor, 2021, p. 453). Accordingly, these countries are expected to reform laws and regulations, and to improve economic practices, often in cooperation with international organisations like the World Bank. This is conceived as the only way to help countries at the scale that these times require (IFC, 2017, pp. 12–13; emphasis added). Gabor concludes that the old Washington Consensus has

been replaced by a new, equally neoliberal ‘Wall Street Consensus’, in which de-risking has become a central feature of state policy (Gabor, 2021).

In recent decades, the state has played a key role not only in creating, through privatisation, more outlets for investment—in other words, facilitating the creation of new private property and revenue rights—but also in protecting that property by guaranteeing minimum rates of return. These developments support the claim by some that we are witnessing a return to more feudal forms of politically constituted property, characteristic of the pre-capitalist era (Robert Brenner, 2020; Riley and Brenner, 2022; Durand, 2024; Varoufakis, 2023; cf. Ireland, 2024, pp. 82–83, 190–91, note 20), and the rise of rentier capitalism (Brett Christophers, 2020, and others). As Ireland writes:

Acting as lobbyists for capital, the neoliberals set about trying to build a national and international order in which property rights were secure from nation states and democracy. The threats to property that the neoliberals so feared, and that contemporary neoliberals still fear, may have receded, but they are always there, lurking in the shadows, particularly when economic times are tough. (Ireland, 2024, p. 221).

According to Ireland, neoliberals fear the true democracy, in particular economic democracy.

V. CONVERSATION BETWEEN THE WEST AND THE EAST

Contemporary Western conceptions of property ‘in different ways, tend to naturalise not only specifically private property, including private property in productive resources, but capitalism itself’ (Ireland, 2024, p. 3). Ireland explicitly highlights the dangers of this trend. As he puts it:

In doing this, it not only risks distorting our understanding of property institutions significantly different from our own, creating a sense of false similarity, but risks narrowing the perceived range of institutional possibility, a serious shortcoming at a time when there is plentiful evidence that our property system is failing. (Ireland, 2024, p. 3; emphasis added).

Ireland’s critique of contemporary property theory is helpful for understanding the criticisms of China’s Household Responsibility System (HRS). Before analysing the relevance of Ireland’s scholarship to the HRS, it is necessary to grasp the full picture of the evolution of property rights and their political origins in contemporary China.

The Household Responsibility System

There have been three major and radical changes in arable land ownership in rural China since the founding of the Chinese Communist Party (CCP) in 1921. First, the land-to-the-tiller movement led to a shift from the feudal landlord system to peasant ownership within the framework of private property (early 1920s to early 1950s); second, collectivisation and the establishment of the commune system resulted in a transition from peasant individual property to collective full public ownership (mid-1950s to late 1970s); and third, de-collectivisation and the establishment of the Household Responsibility System (HRS) transformed collective full ownership into collective split ownership (early 1980s to the present) (Meng, 2018, 2019). The commune system under Mao’s regime caused over a quarter-century of economic stagnation, decline, and social turbulence. Two disastrous consequences followed: the Great Leap Forward Movement, which led to famine and starvation (Lin, 1990), and the Cultural Revolution, which

caused ten years of chaos and destruction (Lin, 1990). In contrast, the HRS promoted spectacular economic growth and a large-scale reduction of poverty over four decades (Meng, 2024).

Various Criticisms or misunderstanding on the HRS

The property rights structure of the HRS, due to its nature of collective rural land ownership, has been criticized as “ill-defined” and “unclear” (Fewsmith, 2008; World Bank, 1990, p. 149). Whenever he visited “a village, a rural enterprise, or a mosque,” Peter Ho tells us that he would begin by asking “a simple question: Who owns the land?” However, he didn’t receive simple answers: “the same plot of land” was apparently “owned by as many different persons and legal entities as the question was put to...” (Ho, 2005, p. 2; emphasis added). Seeking an answer to the same question, Zhu and Jiang, however, drew the rather different conclusion that under the HRS, “no one in the community is a real owner of land” (Zhu & Jiang, 1993, p. 447; emphasis added). Which is it: everyone or no one? Other scholars have asserted that the great issue in the HRS stems from insecurity. For example, Geoffrey M. Hodgson and Kainan Huang argue that “use rights are sometimes curtailed through expropriations or compulsory purchase with little compensation. The greater problems lie with the security of some property rights, rather than with their vagueness” (2013, p. 611; emphasis added).

When analysing the Household Responsibility System (HRS), the work of Harold Demsetz (1967) and the Blackstonian concept of property are often cited (see, e.g., Ho, 1998; Oi, 1999). As Ireland observes, Demsetz is a representative of law-and-economics scholarship (Ireland, 2024, p. 145). Cole and Ostrom note that ‘Demsetz... purported to describe an evolutionary move from common-property to private-individual property. His understanding of the common-property regime he was describing was both anthropologically and theoretically flawed’ (2012, p. 37, note 1). The concept of property that these scholars were deploying, in Ireland’s view, ‘is a conception of property frequently presented as ‘natural’, historically omnipresent (if only embryonically), not circumscribed by time or place, and, therefore, capable of being used as a basis for analysing the property institutions of all societies’ (Ireland, 2021, p. 225).

As Ireland notes, this conception of property as thing-ownership distorts our understanding of the Household Responsibility System (HRS), which is neither purely public nor purely private ownership. Rather, it is a form of collective ownership combined with individual use rights. It does not resemble the type of institutional arrangements described by Demsetz, wherein ‘the alternatives are private and collective ownership’ or ‘simply, capitalism and socialism’ (Demsetz, 2002, p. S658). As Demsetz observed, ‘The transformation from socialism and communism to capitalist-style economies that has been underway in Eastern Europe, Russia, and China during the last quarter-century has brought private ownership of resources to a previously unattained level of importance in the world’ (Demsetz, 2002, p. S653). Private property in conjunction with the free market is thereby equated with capitalism, and public property and central planning with socialism. The HRS does not fit neatly into either of these categories, and its property rights structure remains ambiguous. Demsetz’s view that institutional arrangements which guide resource allocation have generally favoured private ownership echoes Blackstone’s assertion: ‘Necessity,’ Blackstone concluded, ‘begat property’ (Blackstone, 2016 [1765–69], Book II, p. 6).

The HRS emerged from community-level initiatives in the late 1970s, before being adopted by county- and provincial-level governments and eventually embedded in national legislation, owing to its impressive social and economic outcomes during the early 1980s (Meng, 2018, 2019). The local roots of the HRS recall the observation of Ostrom and Basurto (2011, p. 322)

that ‘we must understand the process of rule change at a community level’, alongside more formal legal institutions. The HRS exemplifies the polycentric processes of rule formation that Ostrom characterised as ‘rich mixtures of “private-like” and “public-like” institutions, defying classification into a sterile dichotomy’ of public versus private (1990, p. 14). It is not the ‘half-way house’ described by Nolan (1993); on the contrary, it performs quite well. As Ireland notes:

There is no reason why the bundles of rights that make up ‘ownership’ of particular resources could not be spread between individuals and collective entities, as in the Chinese household responsibility system (HRS), the peasant- led, bottom-up development that did so much to increase agricultural productivity and to lay the foundations for China’s economic rise. (Ireland, 2024, p. 260).

Using Antony M. Honoré’s work on ownership, particularly his analysis of split ownership, we can see that the eleven standard incidents of the full liberal concept of ownership have been divided into three parcels and allocated to three different entities: households, the collective, and the state (Meng, 2016). Ireland endorses the view that the Chinese land system represents a genuine alternative to the full liberal concept of ownership, which—following the tradition of the ‘bundle of rights’ theory—can be analysed using Honoré’s framework rather than Harold Demsetz’s (1967) model of property rights (Ireland and Meng, 2018). Individual households have the right to manage their land and to benefit from its use, but they do not possess the right of alienation; the land reverts to the collective after a certain period of time. The individual right of alienation was regarded by Demsetz (1967) as a core property right, and arguably the most important of all. By contrast, Ostrom observed that many common-pool resource regimes operated without the right of individual alienation and that, indeed, its absence was often crucial to sustaining collective resources over time (Ostrom and Hess, 2017, p. 17; Deakin and Meng, 2022).

Indeed, the introduction of the Household Responsibility System (HRS) (1979/1983) contributed to increased output growth and agricultural productivity through the more efficient use of inputs (Lin, 1989, 1992; McMillan et al., 1989; Wen, 1989). This property rights arrangement also supported economic growth in rural areas and other sectors of the economy (Bramall, 2004; Mead, 2003; Yao, 1999; Zhang and Donaldson, 2013). Moreover, it played a significant role in reducing rural poverty (Dollar, 2007; Ravallion, 2009; Whyte, 1986). The HRS was the starting point for China’s economic take-off, which has, on the whole, maintained a high rate of growth (Hodgson and Huang, 2013). Many analysts have predicted that, under normal circumstances, China will maintain a growth rate of around 7.0 percent until 2040 (Chow and Li, 2002; Fogel, 2010; Song, Storesletten, and Zilibotti, 2011).

North’s puzzle about the HRS

North observes both the turbulent history of modern China and the nation’s achievements, beginning with the institutionalisation of the Household Responsibility System (HRS). North recognised that the HRS, China’s system of rural land ownership, did not conform to the model of individualised private property rights that he identified as key to the rise of the West. He was, however, willing to acknowledge the challenge it posed to his own theories. North argued that China ‘has no clearly specified property rights and it has a judicial system that is essentially arbitrary’ (North, 2004), a feature of its development that he described as ‘puzzling’ (North, 2005). He recognised that ‘China had succeeded where other countries had failed’ by avoiding ‘slavishly imitating Western institutions’, despite the absence of fundamental political change, such as the overthrow of the CCP regime.

It should be emphasized that the institutions that have emerged in the Western World, such as property rights and judicial systems, do not have to be faithfully copied in developing countries. The key is the incentive structure that is created, not the slavish imitation of western institutions. Starting with the household responsibility system, the Chinese developed an incentive structure which managed to produce rapid economic development without any of the standard recipes of the West (North, 2005, p. 159).

At the same time, North believed that Chinese institutions could be expected to converge with those of the West over time (North, 2005).

However, down the road the Chinese must embed the incentive system in the political/economic structure if they are to continue their rapid development and that will probably require institutions that come much closer to having the adaptively efficient features of western societies (North, 2005b, p. 159).

The implication of this approach is that the legal-institutional model of Western economies represents the ‘end-point’ of economic development (Faundez, 2016, p. 373). This is clearly a type of ‘the end of history’ concept that Ireland has criticised in his book. Indeed, as Ireland notes: ‘There are similarities between these contemporary consequentialist arguments in favour of private property and those found in Blackstone’ (Ireland, 2024, p. 54). This kind of economically determinist argument underpins much law and economics scholarship, found in the idea that ‘there is no alternative’ to a social order based predominantly on private property and markets, which represents ‘the end of history’ (see, e.g., Fukuyama, 1992; Hansmann and Kraakman, 2001).

It is in this context that Douglass C. North applied his theory to other cases, including China, and his puzzles can be understood (Deakin and Meng, 2021). North believed that only private ownership is clear and secure, and only pure private ownership can promote economic growth (North and Thomas, 1973). Chinese land ownership has not been pure private ownership, either in a historical context or when compared to other forms of ownership currently existing in Western societies. It is neither pure public ownership, like that of the communal system under Mao’s regime, nor is it similar to that of the former Soviet Union or Eastern European countries (criticised by János Kornai, 1992). North and others have attempted to reconceptualise Chinese reality to fit into this theory, and such attempts impose formalised assumptions that distort the relationship between reality and theory (Kay, 1997). As Elinor Ostrom (2010, p. 642) noted, they ‘try to fit the world into simple models and to criticise institutional arrangements that do not fit’.

The property rights structure of the HRS and its economic consequence—spectacular economic growth—puzzled North who is not alone in the mainstream of social scientists and legal scholars. Facing this puzzle, some writers have attempted to modify their beliefs and assumptions. For example, Jean C. Oi (1999, pp. 194-195) stated that...

Those who maintain that individual private property rights provide the best basis for growth may ultimately be proved right ... The point is that privatization does not have a monopoly on the capacity to generate growth ... The usual description of the type of property rights deemed necessary for effective growth need not have a fixed meaning.

Even Douglass North has modified his basic assumptions by stressing the importance of cultural heritage (2003, p. 10, note 3). Others continue to argue that the collective ownership under the HRS in China can only produce short-term gains, which will ultimately harm long-term performance. Such authors also predict the collapse of the Chinese economy unless full private property rights are imposed by the government (Chang, 2001, 2011, 2016; Pei, 2006; Shirk, 2007; Verdery, 1998; Wang and Hu, 1999).

Acemoglu, Johnson and Robinson (AJR) 's theory of China's collapse

Among the scholars predicting China's collapse, it is worthwhile to examine the work of Daron Acemoglu, Simon Johnson, and James A. Robinson (AJR), who were awarded the 2024 Nobel Prize. Acemoglu and Robinson's hugely influential *Why Nations Fail* (2012) argued that if China did not reform its political institutions, 'the authoritarian "extractive" institutions like the ones that drive growth in China today are bound to run out of steam, and sustainable growth will prove impossible without the inclusive institutions that first evolved in the West, meaning private property and competition rights and the institutions of an open, pluralistic political system with competition for political office, a widespread electorate, and openness to new political leaders – the role of politics in prosperity – a point that Europeans and Americans ignore at their peril' (Hind, 2012). This assertion has been widely criticised. For example, Duncan Green wrote in his review of the book in 2012:

Growth under extractive political institutions, as in China, will not bring sustained growth and is likely to run out of steam,' is a hell of a throwaway line, especially when you don't say whether that might be in one year or a hundred. Nor do they buy into the optimistic liberal account that holds that China's growth will create pressure for political reform – A & R think it will hit a growth ceiling before that reform happens, with unforeseeable, but chaotic consequences. (quoted in Green, 2024).

For Acemoglu and Robinson, China poses a challenge to their theory. As Green notes:

The book's biggest problem is the authors' love affair with the American Dream (though not American Reality). In their account, successful institutions bear a remarkable resemblance to America's constitution, separation of powers, etc. That means that the China question hovers over the book throughout, and their fairly perfunctory attempt to answer it is deeply unconvincing. China is portrayed as on the wrong side of history, pursuing 'authoritarian growth', while trying to defy an inexorable push towards matching economic inclusion with the political equivalent. (quoted in Green, 2024).

This has also been noted by Bill Gates:

The authors have a problem with Modern China because the transition from Mao Zedong to Deng Xiaoping didn't involve a change to make political institutions more inclusive. Yet, China, by most measures, has been a miracle of sustained economic growth. I think almost everyone agrees that China needs to change its politics to be more inclusive. But there are hundreds of millions of Chinese whose lifestyle has been radically improved in recent years, who would probably disagree that their growth was "extractive." I am far more optimistic than the authors

that continued gradual change, without instability, will continue to move China in the right direction. (Gates, 2013; on the reply, see Acemoglu and Robinson, 2013b).

Neither China's economy nor its political system has collapsed, as some scholars predicted (see Goldstone, 1995; Chang, 2001; 2011, 2016; Antoni and Onge, 2013). On the contrary, rhetoric such as the West's 'Chinese collapse' theory (McGregor, 2018; Brüning, 2023) has proven to be inaccurate. China has sustained its astonishing growth. Acemoglu was well aware of this growth: 'Between 1980 and 2019, China's average annual GDP growth rate was over 8% – faster than any Western economy – and in the 2000s, its economic trajectory exceeded mere catch-up growth (using Western technologies)' (Acemoglu, 2022).

China's forty years of spectacular economic growth has not yet persuaded Acemoglu, described as an 'astute China observer,' to rethink the orthodoxy of institutions and development (Acemoglu, 2022). It is difficult, perhaps impossible, for Americans to imagine that the USA may lose its hegemony (Jacques, 2012), and for many scholars, the real issue appears to be how to sustain it. As Jostein Hauge (2023) commented:

This year's Nobel prize in economics is no exception. Perhaps this is why it feels like every year, the prize goes to someone who asks, "how does a change in variable X affect variable Y", rather than asking difficult questions about colonialism, imperialism or capitalism – and daring to question the supremacy of western institutions.

Acemoglu and Johnson (2023) not only hold the 'Chinese collapse' theory but also call for decoupling from China:

First, US firms should be discouraged from placing critical manufacturing supply-chain links in countries like China. ... But we also must avoid any new reliance on China for the processing of critical minerals or other key "green" inputs. Fortunately, there are plenty of other countries that can reliably supply these, including Canada, Mexico, India, and Vietnam. (Acemoglu and Johnson, 2023).

In fact, history is rife with examples of countries that grew rapidly without having inclusive institutions in place as a precondition for growth. East Asian states such as Singapore, South Korea, and Taiwan are good examples. Most recently, so too is China. No matter that Acemoglu claims that China's economy is 'rotting from the head' (Acemoglu, 2022), he and Johnson later asserted that 'It may not be a pariah state yet, but its growing economic might threatens global stability and U.S. interests.' (Acemoglu and Johnson, 2023). When the world cannot address pressing problems, such as climate change, public health, and poverty, they are not talking about how China and the United States can collaborate in the face of a world of change and turmoil, which will determine the future of mankind. Instead, they are considering how to sustain the hegemony of the USA. Their theory of institutions and economic growth is highly ideological and geopolitically driven. They describe China as a 'top-down autocracy' and the USA as a 'liberal market economy' (Acemoglu, 2022).

American workers need to see the benefits. ... Yes, given lower Chinese labor costs, Ricardo's law holds that China should specialize in the production of labour-intensive goods and export

them to the US. But one still must ask when that comparative advantage comes, who gains from it, and what such trade arrangements imply for the future. The answer, in each case, involves institutions. Who has secure property rights and protections before the law, and whose human rights can or cannot be trampled? China may look different, at first, because its export model has lifted hundreds of millions out of poverty and produced a massive middle class. But China owes its “comparative advantage” in manufacturing to repressive institutions. ...Rather than ultimately benefiting everyone, Chinese policies came at the expense of American workers, who lost their jobs rapidly in the face of an uncontrolled surge of Chinese imports into the US market, especially after China’s accession to the World Trade Organization in 2001. (Acemoglu and Johnson, 2023).

For them, the trade relationship between China and the USA is not win–win but adversarial. In their perspective, the rise of China poses a threat to US interests. ‘If expanding trade puts more money into the hands of religious extremists or authoritarian revanchists, global stability and U.S. interests will suffer. Just as President Franklin D. Roosevelt put it in 1936, “autocracy in world affairs endangers peace”’ (Acemoglu and Johnson, 2023). The problem with their work is not limited to their hostility towards China’s political system and its economic rise, but lies more fundamentally in their belief in the “end of history”. Ireland notes the deep injustice inherent in this kind of thinking.

One of the dangers of historical determinisms of this sort is that the belief that history (or ‘efficiency’) is on your side can be, and has been, used to justify changes which involve political repression, forced dispossessions and rights reallocations on the grounds that, even if they seem directly and immediately to benefit a few to the detriment of the many, they do so in the service of the longer term social good. (Ireland, 2024, p. 55).

The dark side of the belief in the ‘end of history’ as being aligned with a particular nation or economic system is evident both in domestic policies and in the consequences of colonisation and imperialism. During the period of primitive or original accumulation in England, the separation of the labouring classes from the means of production enabled a steady growth in commodity production and market exchange. This process was driven by enclosures, which increased workers’ dependence on the market. The market, in turn, became an imperative for survival. The coercive force of the market was reinforced by the coercive power of the state, particularly through parliamentary enclosure acts (Marx, 1954 [1867], pp. 667–724). Orthodox economists have presented this transformation as the result of consensual contractual exchanges between private property owners, secured and guaranteed by a supposedly neutral state. From this perspective, the enclosure and privatisation of previously communally owned land are to be welcomed (North and Thomas, 1973). Such orthodox accounts downplay—or deny entirely—the dark side of the capitalist mode of production, particularly the role of power and exploitation.

The establishment of private property rights has been conceived by many influential scholars as one of the key prerequisites for modernity and development (North and Thomas, 1973). These ideas formed the basis of the so-called ‘Washington Consensus’—a set of policy prescriptions promoted by the World Bank, the International Monetary Fund, and the US Treasury from the 1990s onwards. In 1996, the World Bank summarised the conventional wisdom on the role of property rights and economic growth as follows:

Property rights are at the heart of the incentive structure of market economies. They determine who bears risk and who gains or loses from transactions. In so doing they spur worthwhile investment, encourage careful monitoring and supervision, promote work effort, and create a constituency for enforceable contract. In short, fully specified property rights reward effort and good judgment, thereby assisting economic growth and wealth creation. (World Bank, 1996, pp. 48-9).

All of them ignored what Marx called the ‘primitive’ or ‘original’ accumulation of capital, in which ‘slavery and direct physical coercion played a key role in surplus extraction and the assessing of wealth’ (Ireland, 2024, p. 188). After slavery was abolished in Britain, many former slave owners invested the compensation they received from the government in financial property, particularly railway shares (Ireland, 2018, pp. 379–401). This legacy is also used to explain why some nations are rich and others poor. For example, by examining the various political and economic systems introduced by European colonisers, Acemoglu, Johnson and Robinson (AJR) have sought to demonstrate a relationship between institutions and prosperity (see, e.g. Acemoglu, Johnson and Robinson, 2001). In the words of William H. McNeill, author of *The Rise of the West: A History of the Human Community*, this may be seen as a ‘form of intellectual imperialism’ (McNeill, 1990, p. 2). As Arvind Subramanian (2024) recently wrote, their ‘idea that institutions matter is at least as old as Douglas North, if not Adam Smith; their insight that colonisation shaped the evolution of institutions is neither novel nor historically textured, nor even accurate’.

Ironically, the outcomes of those countries that adopted the policies of the ‘Washington Consensus’ (on which, see Williamson, 2004) have been disappointing: stagnation and decline (Easterly, 2001), and the failures of neoliberal policies during this period are well documented (Ostry, Loungani and Furceri, 2016). However, this does not apply to China. ‘The evidence from China suggests that enterprise restructuring, concentrating on improving the allocation of property rights and incentives, can yield large benefits even without privatisation’ (Megginson and Netter, 2001, p. 338). Nevertheless, neoliberal economists continue to maintain that privatisation is the ‘end of history’. As Megginson and Netter repeat: ‘There is limited empirical evidence, especially from China, that suggests that non-privatising reform measures, such as price deregulation, market liberalisation, and increased use of incentives, can improve the efficiency of SOEs’; but, they add, ‘it also seems likely that these reforms would be even more effective if coupled with privatisation’ (Megginson and Netter, 2001, p. 380).

Ireland’s criticism of historical determinism is highly relevant to the work of Acemoglu, Johnson, and Robinson (AJR), who argue that settler colonialism fostered development through ‘inclusive’ institutions, thereby justifying the continued exploitation and exclusion of indigenous populations (see, e.g. Acemoglu, Johnson and Robinson, 2001). As Meagher (2024) observes, they ‘have also helped to rehabilitate settler colonialism in contemporary development thinking’. Furthermore, AJR’s thesis ‘ignores colonialism’s systematic exploitation and wealth transfer’ and ‘sanitise[s] colonial history through economic theory’ (Chandrasekhar, 2024). Their work, Meagher (2024) argues, ‘provided a perfect distraction from the embarrassing neoliberal policy failures of the time’. In presenting their theory, AJR overlook ‘the devastation of indigenous societies by colonising powers’ (Fanon, 2004 [1961]).

Further, AJR’s model of inclusive institutions involves problematic exclusions of important countries and populations. For example, African countries are treated as sites of extractive colonialism, ignoring the significant number of African settler economies, including South Africa and Kenya (Austen, 2008). In the case of South Africa, settlers introduced the idea of

inclusive institutions and secure property rights, allowing a settler minority—less than 20% of the population—to seize 87% of the land through violence and forced removals. Against this backdrop, black South Africans were displaced in their own land. Hence Sol Plaatje’s famous remark: ‘Awaking on Friday morning, June 20, 1913, the South African native found himself, not actually a slave, but a pariah in the land of his birth’ (quoted in Meagher, 2024). Widespread land dispossession also occurred in Kenya and among indigenous populations in Australia, Argentina, Canada and the United States. These countries, often held up as the most ‘inclusive’ settler societies, share a history of mass extermination and economic and social marginalisation (Mamdani, 2015). Even in settler colonies where inclusive institutions were eventually established, they were preceded by years of violence—often verging on the genocide of native populations (Khan, 2012; French, 2021). Yet in AJR’s work, mathematical modelling and a paradoxical focus on the deaths of white colonial actors obscure the bloody and devastating realities of settler colonialism (Meagher, 2024). To their critics, the developmental success of settler colonialism lies not in the presence of inclusive institutions or secure property rights, but in the subjugation, dispossession, and extermination of indigenous populations.

After receiving the award, Acemoglu said that normative questions of colonialism didn’t concern them: ‘Rather than asking whether colonialism is good or bad, we note that different colonial strategies have led to different institutional patterns that have persisted over time’ (quoted in Smialek, 2024). In fact, they argue that colonisation was beneficial for the rise of Europe and credit the early development of democratic institutions in these countries to the prosperity and class dynamics driven by the exploitation of Africans (Acemoglu, Johnson & Robinson, 2005). The work of AJR ‘legitimises the supremacy of Western institutions and, at worst, processes of imperialism and colonialism’ (Hauge, 2024). AJR’s theory can be traced back to Locke’s theory of improvement, which justified not only enclosure at home but also the appropriation of land by colonial settlers abroad, without the consent of indigenous peoples who very often defined their relationship to land quite differently. Unused or unimproved common land was seen as ‘waste’, and those who removed it from the commons and took it into private ownership to improve it were understood to have given something to humanity, not taken something away. Understandably, this justification of enclosure and colonial appropriation greatly appealed both to landowners and colonial settlers (Ireland, 2024, 78; see Locke, (1963) [1690], paras 25–51).

Ellickson’s distorted understanding of the HRS: so-called ‘complex’ and ‘wasteful’

Ireland criticises ‘new essentialist’ theories of property as thing-ownership because they not only project ‘misleading and ideological accounts of the nature of modern property and of how capitalism and our property system works’ (Ireland, 2024, p. 3; emphasis added), but also risk distorting the property institutions and practices of other societies, thereby narrowing the scope of institutional choices when such models are applied to societies significantly different from the West.

When Ellickson encounters property institutions such as *Dian* and the HRS in China, which are significantly different from those in the West, he distorts rather than furthers our understanding of China by viewing them through the prism of private property and thing-ownership—i.e. ‘fee simple’ in Anglo-American law, in which ‘an owner’ is said to ‘have perpetual land rights’ (Ellickson, 2012, p. 281, note 1). However, the HRS is significantly different from American property systems. He regards the HRS as a less sophisticated version of the Western property system—one that is, in fact, rooted in and derived from the historically

and culturally specific property institutions of modern capitalism. Ireland explains: ‘As a result, it tends, in different ways, to naturalise not only specifically private property, including private property in productive resources, but capitalism’ (Ireland, 2024, p.3). The inequality of ownership is at the heart of our current polycrisis. Ireland suggests that ‘the growing concentration of property ownership in the hands of a small number of extremely powerful individuals and corporate enterprises stands in the way of attempts at significant reform’ (2004, p.3).

Ellickson calls the HRS complex, and the title of his essay is ‘The Cost of Complex Land Titles: Two Examples from China’ (Ellickson, 2012, p. 281). He asserts:

As long as China continues to confer *complex* time-limited land rights, its lack of an independent judiciary will be particularly worrisome. When law makes private land rights perpetual, informal social norms soon bolster these entitlements. One of the many advantages of a *simple* system of perpetual private land rights is its lesser dependence on the existence of effective courts. (Ellickson, 2012, p. 302).

Smith implies that the Western private property regime, ‘by facilitating alienability and market exchange, has shown, by being around for a long time without much changing, its functional efficiency and superiority’ (Ireland, 2024, p. 177; see also Barron, 2010, pp. 960–961). His view of property echoes Smith’s theory of the ‘simplification and standardisation’ of property (Smith, 2012, p. 1709; see also Merrill and Smith, 2000). However:

For Merrill and Smith, one of the key advantages of ‘the formalism of the exclusion strategy and modesty in the governance strategy’ is that it ‘makes Property in Contemporary Capitalism property more *alienable*’....In other words, it facilitates market exchanges among strangers. Easy alienability is one of the driving forces of their theory. ... As Smith says, ‘the need for far- flung and sometimes socially distant persons to respect property rights calls for simplification and standardization’. (Ireland, 2024, pp. 175-6).

Merrill and Smith advocate a tendency toward simplification and standardisation, which makes property readily exchangeable in a free market. Ireland’s criticism applies well here. Ellickson views the HRS through the prism of private (individual or group) ownership of single resources; in doing so, it tends ‘to be cleansed of the wider social and economic attributes they (and the societies of which they are part) have in empirical reality’ (Ireland, 2024, p. 116). For Ellickson, as for Merrill and Smith, the ‘property system’ is based on private property and markets. Implicit in their claim is that this system promotes not only efficiency but also stability, ‘autonomy’, and ‘fairness’. As Ireland analyses:

a regime based on clear, well-defined private property rights, they argue, it does so, firstly, by creating incentives for owners, particularly of productive resources, to use those resources as productively as possible. The owner has the right to exclude the world and therefore, the argument runs, ‘assumes the role of gatekeeper and manager of the asset’. This gives them ‘a powerful incentive to invest in and develop the asset, because [they] will capture the benefit of these actions as the residual claimant’... For Merrill and Smith, exclusion thus explains ‘the dynamic efficiency of [private] property’ in promoting investment and innovation. Not only that, by facilitating transferability and interactions in the form of market exchanges, it also, they argue, facilitates ‘the allocational efficiency that comes from the free exchange of rights’... (Ireland, 2024, p. 176).

Ellickson argues for the outright privatisation of China's land, based on the claim that private property leads to 'improvement'. He contends that 'making the land titles of poor farmers more secure and alienable would free up the nation's workforce and increase prosperity in the hinterland by stimulating land improvements and enhancing agricultural productivity' (Ellickson, 2012). However, Elinor Ostrom pointed out:

To explain the world of interactions and outcomes occurring at multiple levels, we also have to be willing to deal with complexity instead of rejecting it. ...When the world we are trying to explain and improve, however, is not well described by a simple model, we must continue to improve our frameworks and theories so as to be able to understand complexity and not simply reject it. (Ostrom, 2010, p, 665).

Ireland also criticises the simplification and standardisation inherent in information costs theory.

The benefits of reducing information costs through this clear and simple signalling and minimisation of complexity explains why our property system is the way it is and makes it easier to justify. It explains the limitation on property forms (the *numerus clausus* principle) and the centrality to property and the property system of the right to exclude. (Ireland, 2024, p. 167)

Ireland also notes:

By contrast, the new anthropology of property recognises the *relativity* and *complexity* of property institutions and challenges the 'simple oppositions of individual versus collective property, usufruct versus ownership, modern versus postmodern, nature versus culture, even subject versus object'...The attempts to locate all societies and all types of property on a private– communal property spectrum are rejected as 'inadequate, if not meaningless'... and care is taken not to impose standard liberal understandings of property on the '*complex* lived practices of other societies'. (Ireland, 2012, p, 118; emphasis added).

Ireland asserts that the Western property system has failed, and the danger of using this system as a standard to understand others is a mistake. Clearly, the property system that has emerged works very well for the top 1%, fairly well for others (the top 20%), but it works increasingly less well for the majority and is a disaster for many of those at the bottom of the wealth pyramid (Ireland, 2024, p.177). Deng Xiaoping had a much clearer understanding of the issue of inequality under capitalism. He said in 1984:

Capitalism can only enrich less than 10 per cent of the Chinese population; it can never enrich the remaining 90 per cent. But if we adhere to socialism and apply the principle of distribution to each according to his work, there will not be excessive disparities in wealth. Consequently, no polarization will occur as our productive forces become developed over the next 20 to 30 years. (Deng, 1984).

Ireland's analysis of the 'stage' theory of property development is also useful in examining Ellickson's view of China's HRS. Common to various 'stage' theories of history—from Blackstone to the current 'new essentialists'—is the idea that the history of property systems

passes through successive phases in which communal property is gradually displaced by private property, from ancient to modern times. Thus, the ‘emergence of private property and capitalism’ is seen as ‘not only progressive but more or less inevitable’ (Ireland, 2024, p. 185). He writes: ‘In these “staged” (or stadial) versions of history, private property is commonly seen as both the driving force and endpoint of evolution and as a hallmark of civilisation, its emergence marking the transition from an inferior/lower to a superior/higher culture’ (Ireland, 2024, p. 185). This is extremely dangerous because ‘it is not a short step to the belief that property institutions that are significantly different from our own private property-based institutions are, in fact, somehow simply less developed—pre-cursors of our own’ (Ireland, 2024, p. 117).

In criticising Harris, Ireland writes: ‘Harris’s approach is much less analytically helpful when one is seeking to understand societies markedly different—less individualistic and less market-based—from our own’ (Ireland, 2024, p.115). Ireland thinks this sort of view of property development forecloses the variety of institutional arrangements that have emerged to guide resource allocation by human being and ‘tends to generate an over-simplified view of the possibilities available to us’ (Ireland, 2024, p.115).

Ireland considers the HRS a welcome antidote to ‘the over-simplified view of the possibilities available to us’ offered by the new essentialists’ view of property systems.

The HRS shows how thinking in terms of ‘property’ and ‘ownership’ and ‘sole and despotic dominion’ by individual persons (private or public) can narrow perceptions of the range of institutional possibility by unhelpfully encouraging dichotomised thinking in which individually/privately-owned property is juxtaposed with communally/publicly/state-owned property and free markets with state planning. The range of possibility is much wider and more varied than many appreciate. Freed, even if only in part, from the seeming inexorable force of ‘the market’ and the imperatives of capitalist accumulation, the scope for people to make their own history could be greatly expanded.

Further, Ireland argues that this also underpins the assertion of ‘the end of history’ in the development of property. As he explains:

Underpinning Blackstone’s analysis of the rise of private property is an account of history drawn from enlightenment thinkers like Hume and Smith in which societies pass through various ‘stages’, culminating in ‘commercial society’ (what we now call ‘capitalism’). Part of this account of history (which clearly influenced Marx, though he seems to have abandoned it later in life) is a ‘staged’ account of the development of property institutions. (Ireland, 2024, p. 54).

He notes the assumption that the Western property system is inherently superior to others and considers the information-cost theories of property.

There are important senses, therefore, in which information cost theories of property echo the economically determinist, efficiency-based arguments of contractual theories

of the corporation. Just as the latter argue that the triumph of the Anglo-American, shareholder-oriented model of the corporation/corporate governance is the product of contract-based market selection, so information theory implies that our private property regime, by facilitating alienability and market exchange, has shown, by being around for a long time without much changing, its functional efficiency and superiority. (Ireland, 2024, p. 176).

With the urbanisation and industrialisation of China, more and more peasants have been separated from the means of production and subsistence. ‘Purely economic’ compulsions increasingly become the basis upon which some profit from the efforts of others. The Household Responsibility System (HRS) provides a buffer against total dependence on wage labour in cities. It does not confer private property rights in productive resources, as championed by neoliberals. Nevertheless, the HRS brings economic benefits and represents one of the more successful models of resource management. As Ireland explains:

Merrill and Smith do not consider the considerable historical and anthropological evidence suggesting that people are able to internalise much more complicated and overlapping entitlements which are not based on exclusive and exclusionary private property rights, particularly in important productive resources. Nor do they explore contemporary examples of successful resource management based on neither exclusionary private property nor exclusionary public or state property – hybrid forms where Honoré’s incidents of ownership are split between individuals and collective bodies: the Household Responsibility System, which is widely credited with generating the dramatic increases in agricultural productivity in 1980s and 90s China, is an example here. (Ireland, 2024, p. 173).

As Ireland notes, Coase was criticised by Merrill and Smith for political reasons, as they feared the bundle of rights conception of property. However, Coase embraced it: ‘they are critical of all who advocate the adoption of a bundle of rights conception of property, including, among others, Ronald Coase’ (Ireland, 2024).

VI. CONCLUSIONS

Ireland’s book is a masterpiece – yet also a deeply disturbing assessment and wake-up call. A consistent line of argument throughout the book is that the Western property system, which lies at the heart of polyocracies, is failing and in urgent need of radical reform. Like other social scientists, Ireland believes that it is also his task ‘to speak the truth’ rather than ‘to make people feel good’, because only truth can move people (quoted in Ireland, 2024). The main strength of this book lies in the author’s analytical and intellectual honesty and courage. Many contemporary property theories tend to legitimise and justify the private property status quo. For Ireland, if we want to change the world for the better, we must first understand it. He has signposted ‘some of the paths that need to be explored if we are to develop a fuller and more rounded picture both of the nature of property in contemporary capitalism and of the way our property system works.’ The book is helpful in providing an understanding of the nature of property – in particular, property-as-capital – ‘provocative’ stuff, and the way people think about how the property system ‘works’ (or does not ‘work’) in contemporary society. It will

inevitably provoke hostile responses from a range of ideological sources. It is an extremely important and inspiring work.

Ireland's property scholarship not only helps us understand why, despite being deeply rooted, the Western property system has serious failings and is in urgent need of fundamental reform, but also shows how China's Household Responsibility System (HRS) and its success can offer a genuine alternative to the fully liberal concept of ownership. Different sets of property relations and rights structures—particularly those concerning productive resources—generate distinct, historically specific economic and social dynamics in different historical and cultural contexts. This insight can enrich the conversation between West and East. The Western property system is in need of radical reform because the economic and moral logic of contemporary capitalism, based on private property and the free market, no longer 'works either for the planet or for the great majority of the people populating it' (Ireland). His analysis of the HRS helps to clarify puzzles and address criticisms raised by mainstream social scientists and legal scholars.

Ireland argues that the main source of the current polycrisis in contemporary capitalism has been overlooked or ignored.

Only very occasionally is the finger pointed at the socioeconomic system, its property rights structures and class relations, or in rapacious corporations and financiers and the uber-wealthy. Both elite and popular understandings of the causes of our woes tend to downplay or deny altogether the problems arising out of capitalism itself. (Ireland, 2024, p. 261)

For Ireland, to really understand property, it is necessary to draw on work from a range of disciplines—anything that casts light on the nature of property in contemporary capitalism: law, history, anthropology, political economy, and finance. This book is a readable mix of these disciplines, and it tackles the central question of why the status quo of property rights lies at the heart of the contemporary polycrisis. It provides a compelling and thought-provoking analysis of the nature of property, offering an answer that is brilliant in its simplicity yet profound, lucid, and convincing. It addresses a phenomenon that has puzzled mainstream economists and policy analysts, and it proposes a desired trajectory for change and the role of law in that process. Without doubt, Ireland's book will stimulate further research on the nature of property across various disciplines and lead to a better conceptualisation of property systems for the majority of the planet's population. This enthralling, engagingly written book will be read not only by specialists but also by general readers, who will appreciate how gracefully the author wears his erudition.

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