



Editorial

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Property as Oligarchic Power, Competition Law, and the Future of Democracy

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In a newly released book the Dutch journalist Mark Lievisse Adriaanse writes on the state of democracy in the Netherlands. His book describes how democracy is taken apart and offers pathways to renew it.¹ In this very timely book the author deals with accumulations of property by some and the power that come with that. In that sense, Lievisse Adriaanse is not just describing the political situation in the Netherlands; his work can certainly be extrapolated to other western democracies.

In his book he makes mention of the origins of American anti-trust law. Referring to Senator John Sherman stating that “If we will not endure a King as a political power we should not endure a King over the production, transportation, and sale of the necessaries of life. If we would not submit to an emperor we should not submit to an autocrat of trade with power to prevent competition and to fix the price of any commodity” leading to the first anti-trust laws in 1910.² The origins of anti-trust law are therefore closely connected to property and the power that comes with that. When too much property is concentrated in the same hand, the power that comes with that becomes so strong it undermines the democratic process and should therefore be broken through state interference.

However, Lievisse Adriaanse describes how under pressure from the Chicago school of economics from the 1970s onwards anti-trust discourse changed to consumer protection. As long as companies kept prices low for consumers, vast

1 Mark Lievige Adriaanse, *Wat iedereen aan gaat. Hoe democratie wordt afgebroken en hoe we haar vernieuwen* (De Bezige Bij, 2025), p. 78–84. (*What concerns everyone. How democracy is deconstructed and how we renew it*).

2 Tim Wu, *The Curse of Bigness: Antitrust in the New Gilded Age* (Columbia, Global Reports, 2018), Robert Bork, *The Antitrust Paradox* (Basic Books, 1978), Hubert Buch-Hansen and Angela Wigger, *The Politics of European Competition Regulation: A Critical Political Economy Perspective* (Routledge, 2011).

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accumulation of power was to be allowed; missing the point how in the current climate oligarchic power, for example of the large tech companies, has come about.

In the European Union this original idea of anti-trust law to protect democracy never got traction. As a market building exercise the European Union has always focused on the economic dominance of companies and not their oligarchic position in terms of power. At the same time examples are plenty of how large holders of property rights have managed to wield the economic and political power that comes with that; with Lievisse Adriaanse offering the example of banks during the great financial crisis of 2008.

In my reading this brings light on a whole new question; property rules are often studied as facilitative rules that form the property constitution and therefore an essential part of the economic constitution of a market.³ State intervention on the market to protect consumers is well accepted and also increasingly dealt with in property law. For example in relation to property security rights.⁴ However, the regulatory aspects of property law relating to some of the more negative externalities the accumulation of property right in one hand brings, is perhaps understudied. The work of Thomas Piketty or Katharina Pistor in her new book on the transformation of capitalism deal mostly with taxation as a means to control property, or provide only abstract ideas to re-code property, but not with the larger question of how we should prevent people or companies from holding too many property rights.⁵

Philosopher Ingrid Robeyns offers a very interesting approach to this. In her book on 'limitarianism' she argues that at some point enough property rights are enough when someone accrues wealth above a certain, yet to be determined limit.⁶ Also here, not many property lawyers have responded and include these aspects in their work.

Of course, a very large part of property law is transactional law and is about the day to day relations between private parties on the market. This issue offers three wonderful examples of such work; dealing with value as property in relation to the digital euro, time-sharing from an Albanian perspective, and possession and control in the Collateral Directive from an English perspective. These works deserve a

3 See Gunter Teubner, 'Exogenous self-binding: How social subsystems externalise their foundational paradoxes in the process of constitutionalisation', in Alberto Febbrajo and Giancarlo Corsi (Eds.), *Sociology of Constitutions a Paradoxical Perspective* (Routledge, 2016), p. 30 *et seq.*

4 See, e.g., Miriam Anderson and Esther Arroyo Amayuelas (Eds.), *The Mortgage Credit Directive under Review* (Europalaw Publishing, 2025).

5 See Thomas Piketty, *Capital and Ideology* (Belknap Press, 2020), Katharina Pistor, *The code of Capital. How the Law Creates Wealth and Inequality* (Princeton University Press, 2019), Katharina Pistor, *The Law of Capitalism and How to Transform It* (Yale University Press, 2025).

6 Ingrid Robeyns, *Limitarianism. The case against extreme wealth* (Penguin Books Ltd., 2024).

platform in their own right and we are therefore very happy to publish these contributions.

At the same time, providing a context like I try to address above only strengthens this research and embeds it in a wide and rich scholarship of property law, calling on all of us to reflect on the field of law we are so passionate about and trying to imagine not only what it currently looks like, but also what role it could play in the decades to come. For that we perhaps have to work much more closely together with political economists, political scientists, sociologists, geographers and philosophers. There is much that these disciplines can learn from property law, perhaps even more than we can learn from them.