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Bats, Dangerous Creatures & Domain Over Land

Bob Katter has recently called for landowners to have 'control over his (sic) backyard'.

> "So if he decides to remove a deadly animal, like this bat up here, or a snake, it's his backyard, not the crown's.

In Mr Katter's view:

> "As a race of people we have moved away from (the idea of) 'this backyard belongs to us'."

What I take his meaning to be is that the state has too much regulatory power over activities undertaken upon freehold land. That is, he is seeking a more libertarian approach in terms of elevating private property above state intervention. In other words that a person's home is their castle.

I have written before on the gradual 'unbundling' of interests in land - a freehold title (most land in cities and towns across Australia, except the ACT) does not include minerals, water or geothermal resources.

In terms of other natural resources on private land, many jurisdictions have regulations about vegetation protection so that felling of trees whose girth is above a certain circumference may be unlawful in certain circumstances. (See eg here.) Wildlife protection laws further circumscribe activity that can be undertaken on the basis that wildlife belongs to the State. In fact according to Mr Katter, boiling a billy on your own land is against the law and this kind of 'petty regulation' is what he seeks to overturn.

In addition to what actually constitutes the land itself, there are other types of regulation over the way in which the land is used. Perhaps the most familiar area of restriction on use of private land lies with building regulations and town planning constraints on land usage. Town planning laws might engender opposition in terms of their capacity to constrain opening up of land for development, or to protect sites deemed to have heritage value. In Cairns, where I live, this can be illustrated by the recent demolition of the Rex Theatre, ostensibly a protected site, and the Council's recent proposal to protect Cairns' hillslopes. Both issues attracted a lot of local attention on both sides: those in favour of conservation, and those against.

So what is the justification for state interference with usage of private land? Does Bob Katter have a point? Should freehold land be subject to the will of the owner and accountable to no other regulation?

ABOUT ME

Kate Galloway

I lecture in land law at James Cook University and I write and think about the nature of property and its representations in the law; about issues affecting women; about justice generally; and about legal education.

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While there are many ways to approach this issue, one may lie within the harm principle that forms part of a liberal approach to the law. Espoused by John Stewart Mill, an English philosopher, this principle amounts to the boundary of libertarian thought. It holds that 'the state or any other social body has no right to coerce or restrict the individual unless the individual causes harm to others.'

This principle is readily acceptable, I think, to both libertarians and those who believe in an active role for the state in regulating people's business and lives. The biggest dilemma lies, however, in working out what is the nature of a harm.

For example: some believe that the hillslopes of Cairns define the city and should be left undeveloped. On this basis, development of this land would constitute a harm to society through the loss of amenity from such development. Others however, see that development of the hillslopes represents damage to private enterprise: that there is no value in public amenity, but that the local economy will benefit from the opening up of this land for residential development. Mr Katter and indeed many other people believe that bats are dangerous and landowners should have the authority to cull them to protect humans while others see bats' value as part of the local ecology. In each case, each 'side' of this argument may subscribe to the harm principle as a legitimate validation of government interference, but each will disagree with the basis of deciding what is harm...

Liberalism, or libertarianism, does not in my view provide an answer to the conflicts inherent in the public/private divide implicit in contemporary land law because it just shifts the argument to working out what is the harm to be prevented. That is to say, working out where that 'harm' lies in terms of a balance between public and private interests will continue to be in conflict so long as we elevate the private and exclusive aspects of land ownership and control over a more holistic approach to our understanding of land.

Perhaps consideration outside of the individualist paradigm of private and exclusive ownership might give some clues to a re-thinking of the nature of private land ownership, and state regulation. It might free us from the rigidity of dominion, allowing us to think about a more connected existence with both our environment and our neighbours.

Posted by Kate Galloway at 08:27

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