

# Conference on Law & Morality

## *William & Mary School of Law*

## Property Law

Emily L. Sherwin

*Cornell Law School*

**B.A., Lake Forest College; J.D., Boston University School of Law**

Professor Sherwin's research and teaching interests are in property, remedies, trusts and estates, feminist jurisprudence, and legal history. She has co-authored (with Larry Alexander), the book, *The Rule of Rules: Morality and the Dilemmas of Law* (Duke University Press 2001). She has also contributed numerous book chapters, articles, and professional papers to legal publications, such as the recent "Reparations and Unjust Enrichment" (2004).

### Three Reasons Why Even Good Property Rights Cause Moral Anxiety

Entirely apart from the substantive justification for existing private property rights, there are several reasons why property is, unavoidably, a morally uncomfortable subject. First, legal property rights are and must be the products of determinate legal rules. As such, they inevitably will diverge in some of their applications from the moral principles that support them. Second, property rights suffer, more than other legal rights, from problems of transition.<sup>1</sup> Most or all justifications for private property envisage secure rights on which people can and will rely. As a result, there may be genuine moral value in the preservation of rights that were not morally justifiable at their point of origin. Finally, property rights expose fundamental conflicts among the different conceptions of justice - distributive, corrective, and retributive justice - that guide our system of law. It follows that even if private property rights are in fact morally justified, they are likely to generate moral unease.