

The Legal Order of the Queue

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This paper examines the interaction of property, space and time within the social phenomenon which we know as the queue – the physical line-up in expectation of service. As a regulatory mechanism the queue performs many of the same functions as the concept of property: it is required only because there are limits (real or imagined) on the availability of certain desired resources. Moreover, those who stand in line tend to adopt, whether consciously or not, many of the perceptions and strategies associated with proprietary entitlement. This paper therefore explores the proprietary implications or connotations of the behavioural protocol of lining up and argues that the queue constitutes a significant manifestation of ownership evidenced in everyday sociality.

One day over thirty years ago a brash young academic stood in a taxi queue in Central London with a couple of his colleagues, one of whom was an eminent professor and practitioner of international law. As they waited, the young man remarked to his companions that there was more legal order in a queue than in the whole of international law. The elderly professor bristled with indignation and vigorously protested the contrary. It now falls to me, as a sadder, wiser (and possibly less brash) human being, to make good at least part of the claim which I advanced on that occasion so long ago.

1 *The parameters of this study*

Queueing behaviour is an extraordinary and – so far as legal scholars are concerned – little analysed social practice. Queues are interesting not least because ‘they manifest much of the complexity of real life in a

¹ PhD 1976, LLD 1991 (Cambridge), DCL 1994 (Oxford), FBA 1999; Professor of Law and Dean of Trinity College, University of Cambridge.

limited, concentrated experience' (Brady 2002: 158).² In what follows, I want to focus on the simplest example of the queue – the physical queue for service such as might be found in one's local post office, bank, supermarket or cinema. On a larger scale, the object of scrutiny includes the mass queue of persons waiting for tickets for some sporting spectacle or seeking admission to some exhibition or entertainment. I propose to leave aside the more complex issues which surround, say, the allocation of replacement body parts or the provision of public housing units or even the traffic of digital information. I shall likewise pass over other non-physical queueing mechanisms such as the remote telephonic queueing which so intensifies the frustration of commercial transactions for the modern consumer (Unzicker 1999: 327). That said, it matters not for the purpose of this paper whether the resource that is made available to queuers at the point of service is or is not exhaustive by nature. In other words, it is irrelevant whether the desired resource for which the queuers stand in line is available in sufficient supply to satisfy the needs of all within the queue. The possibility in some cases that the resource may run out does not alter the fundamental dynamic of the queue, but merely enhances for the queuer the significance of his or her place within the line. Exhaustion of supply simply entails that the unsuccessful queuer's investment of time has been wholly lost.

The parameters of our exercise thus close around the most straightforward form of queue – the process of waiting in line for the provision of a service which may (or sometimes may not) eventuate. Our task is to explore the moral and social geography of the queue in an attempt to determine whether the queue evinces an internal order that replicates or mimics any of the more readily recognised features of municipal legal phenomena. In particular, we shall be concerned to examine the *proprietary* implications or connotations of the social protocol of lining up. Do our experiences of the queue tell us anything about the software of the mind (and, especially, about the way in which we conceptualise proprietary relationships)? Does the queue throw any light on the deep origins of property? What does the queue tell us about the social value of time and the allocative measures which are used to distribute that value? Can the institution of the queue inform us about the relationship between public and private? If there was ever a social practice which commingled public and private, it is, of course, the queue: the queue is an assertion of private territorial control played out in a very public context.

2 *The aetiology of the queue*

Most of us spend a non-trivial portion of our lives waiting in a linear physical formation for the delivery of certain goods and services.³ The queue is a direct response to a mismatch of supply and demand – in this

² Not least for this reason Clarity, the international association promoting plain legal language, recently used the practice of queueing as a focus for a special master class devoted to the task of drafting a Queues Bill for the 'governance of queues in public places' (see 'Legislative drafting' (2006) 55 *Clarity* (May) 4). I am grateful to Professor Peter Butt of the University of Sydney, a past President of Clarity, for drawing this exercise to my attention.

³ All of us, according to one eminent analyst of the queue, 'throw away the small-change time – five minutes here, a quarter hour there – that accumulates in any ordinary day' (Schwartz 1974: 842 (quoting Jean Bradford 1971)). Various estimates have been made of the time spent queueing. One much quoted

case a mismatch between the number of clients seeking a particular service and the ability of the service-provider instantly to satisfy that need. Since it is deemed uneconomical for the service-provider to maintain a sufficient corps of servers on constant stand-by to deal immediately with a fluctuating (and possibly unpredictable) demand, the queue affords an important means of regulating the sequence in which access may be had to the desired service. In effect, the queue places a 'buffer' between the rate at which clients seeking service arrive and the rate at which service can be delivered (Rafaeli et al 2002: 126). No less obviously, the queue also operates to minimise the costs incurred in delivering the service in question. The service-provider externalises part of the cost of delivery by imposing on the client the disbenefit of *waiting* for service. The client is caused, in the process, to forfeit the opportunity cost of the time spent waiting in the queue, whilst the service-provider can both trim back its work force and simultaneously avert any threat of idle or unproductive time for those employee-servers whom it retains.

The phenomenon of the queue is therefore intimately associated with the social organisation of time and, as Barry Schwartz so aptly reminded us, 'the distribution of waiting time coincides with the distribution of power' (Schwartz 1975: 5, 44). Power, said Schwartz, entails 'the capacity to provide scarce services which people must wait to receive' and to be kept waiting is 'to be the subject of an assertion that one's own time (and, therefore, one's social worth) is less valuable than the time and worth of the one who imposes the wait' (Schwartz 1974: 856-857). The institution of the queue is indeed more than a matter of abstract ordering – it is a 'social occasion' (Milgram et al 1986: 683), with all the relativities of ascendancy and suppliancy which such an occasion connotes. Waiting is all about the asymmetrical allocation of power between superordinates and subordinates.

But while asymmetries of power may explain why waiting occurs, the inner dynamic of the queue is itself the product of an extraordinary exercise in psychological control. The queue is, effectively, a mechanism of social regulation in which a randomly assembled group of strangers is caused to act, quite counter-intuitively, in a particular way. Previously unrelated strangers are somehow persuaded to subscribe collectively to a normative code which they then police themselves. This particular emanation of Gilles Deleuze's 'society of control' acquires, of course, a new significance as modern capitalism becomes increasingly directed, not towards the production of tangible goods, but towards 'metaproduction' in the form of the supply of *services* (Deleuze 1995: 180-181). It could perhaps be said that the waiting line merely responds and conforms to a control superimposed by some external body (ie the service-provider, who could, after all, resort to the ultimate sanction of closing down the source of supply). But the orderliness of the queue is not uniformly explicable on this basis: waiting lines evolve and function even in the absence of an external enforcer. In cultures which practise queue-formation, the requirement to wait for service in order of arrival is a species of self-discipline which flourishes spontaneously. The pattern of structured waiting overseen by the queue is an

statistic was produced during the 1980s by a consulting firm, Priority Management Pittsburgh, to the effect that average Americans spend five years of their lives waiting in lines and six months sitting at traffic lights (compared, incidentally, with four years doing housework) (Berner 1994: 46). Even if the time spent in queues has been more heavily curtailed in recent years by the prevalence of online retail transactions, the statistic retains a certain force.

almost unique kind of self-regulation in which the potentially anomic force of the crowd is converted by tacit agreement into a deferment of individual gratification in the interests of some higher social order or objective.

The enduring mystery of the queue relates to the origins of this convergence of behavioural forms. The queue is more than merely an instance of externally observable custom or predictable regularity. As H L A Hart would have said, the queue evinces, in however fragile a fashion, an 'internal aspect' in which the members of the waiting line exhibit a 'critical reflective attitude to certain patterns of behaviour as a common standard.' This attitude reveals itself in 'criticism ... demands for conformity, and in acknowledgements that such criticism and demands are justified, all of which find their characteristic expression in the normative terminology of "ought", "must", and "should", "right" and "wrong".' Violation of the norms of the queue 'is not merely a basis for a prediction that a hostile reaction will follow but a *reason* for hostility' (Hart 1961: 56, 88). In the view of Neil MacCormick, the queue 'belongs to a form of normative order that exists because there is an overlapping, largely shared, common understanding of the right way to behave' (MacCormick 1998: 308-309).

It is the internalised order of the queue – the self-realisation of its normative structure – which provides the focus of much of the remainder of this paper. But what are the mutually interpreted rules of queueing behaviour? To what extent, in particular, are the norms of the queue *territorial* or *proprietary* in nature? Does the queue, indeed, contain a distant echo of some proprietary 'big bang' so that the beginnings of property are still perceptible in the way we behave in the various waiting lines we encounter in our everyday lives?

3 *Distributive justice and social democracy*

The waiting line may well reflect unattractive disparities of power in human relations, but for all its demerits the phenomenon of the queue can rightly be said to promote certain valuable social ends. At its core the queue incorporates a fundamental principle of 'ordinality' (Hall 1959: 201) – a rule of 'first come, first served' (FCFS) or, as it is alternatively known, 'first in, first out' (FIFO) (Lee 1966: 18).⁴ Although this principle presents an obvious impediment to immediate goal satisfaction, the distribution of service according to order of arrival is widely viewed as an important restraint upon an otherwise anarchic struggle for personal advantage (Wiseman 1979: 318-319). In this sense the queue already carries an echo of a proprietary function. Like the institution of property, the queue exists only because there is a limited supply of a desired good: for example, the dispiriting line-up at the airport check-in is made necessary only by an insufficiency of counters and appropriate staff. The waiting line has, accordingly, been described as a 'fairness management

⁴ 'The most widely accepted queue discipline is FCFS (first-come, first-served). This is how people naturally queue up in most countries, so serving customers by any other discipline means breaking the norm' (Hall 1991: 417). This is not to say that the FCFS rule necessarily provides the most efficient way of reducing delay. In some situations average waiting time is reduced even further by the operation of a queue discipline known as SST ('shortest service time'). Under the SST rule preferential service is given to those persons whose service needs can be processed most quickly, even if this entails a relegated priority for others who arrived in the line earlier (Hall 1991: 316, 418).

facility' (Raz et al 2004b: 2). The FCFS rule represents a 'fair attempt to control inequity in the distribution of a scarce resource' (Meyer 1994: 820). The FCFS rule has, moreover, the enormous virtue of 'ethical simplicity' (Brady 2002: 161). It gives transparent force to an elementary concept of social or procedural justice (Larson 1987: 895; Groth and Gilliland 2001: 77; Rafaeli et al 2002: 128), thereby ensuring some element of fairness or fair play in the provision of service as between rival and highly appetitive claimants (Moran 2005: 305).

Fairness is, indeed, the key characteristic of the queueing protocol. The FCFS rule ensures 'a direct correspondence between inputs (time spent waiting) and outcomes (preferential service)' (Mann 1969: 346), a result which 'resonates affinity' with a capitalist (if not Marxian) criterion of justice (Schwartz 1975: 199). In many contexts the queue replicates the allocative mechanism that would likely have been agreed by all relevant parties behind a Rawlsian 'veil of ignorance' (Rawls 1973: 136-142). Moreover, by eliminating preemptive strikes for selfishly desired objectives, the FCFS rule effectively inhibits conflict⁵ and, in the eyes of some observers, 'offers a peculiarly public performance of governmentality, or what Foucault called the ethical government of the self' (Corbridge 2004: 192). Thus, for Stanley Milgram and his collaborators, the queue could indeed be described as 'a classic illustration of how individuals create social order, on the basis of a rudimentary principle of equity, in a situation that could otherwise degenerate into chaos' (Milgram et al 1986: 683).⁶

(1) *The equalitarian character of the queue*

One of the reasons why the FCFS rule is perceived as providing a socially just co-ordination of service and demand lies in the profoundly equalitarian character of the queue (Hall 1959: 201; Corbridge 2004: 184). Waiting in line is one of the great levellers of humankind.⁷ The queue is no respecter of persons. In the citizenship of the queue no rank is relevant other than the rank order of one's position as determined by the coldly neutral datum of sequential arrival in the line. Within the queue, roles and relationships become 'demystified and objectified' (Ratcliff 2006: 6). Differences of background, class, reputation, education or socio-

⁵ 'The very persistence of the queuing rule is ... itself proof of a persisting and general inclination toward what it prohibits' (Schwartz 1975: 95).

⁶ 'The only thing that restrains sheer competition from taking over and causing the line to degenerate into a mere crowd fighting for advantage is the abstract principle "first-come-first-served"' (Brady 2002: 164).

⁷ The latent and insidiously transformative role of the queue should never be underestimated. There is evidence that the commonly shared war-time experience of queueing for rationed supplies helped to break down pre-war patterns of deference to one's superior within a socially stratified system. Moreover, in the post-war era of the late 1940s and early 1950s Winston Churchill proceeded to vilify the 'Queueutopia' to which he alleged Britain would be subjected by electoral endorsement of left-wing government. In Churchill's rhetoric, 'socialism meant queueing', a practice which had, quite obviously, become endemic amidst the inefficiencies of the command economies to be found in the newly emergent communist countries of the Eastern bloc (Moran 2005: 286-289).

economic status count for nothing.⁸ The queue is one of the ultimate manifestations of the democratic impulse – in some jurisdictions almost the *only* evidence of democracy at work (Wiseman 1979: 323). The queue facilitates an ‘organization of waiting on an egalitarian principle’ (Milgram et al 1986: 683).⁹ As the anthropologist Edward T Hall pointed out, in those cultures which observe the discipline of the queue, it is ‘regarded as a democratic virtue for people to be served without reference to the rank they hold in their occupational group. The rich and poor alike are accorded equal opportunity to buy and be waited upon in the order of arrival’ (Hall 1959: 201). There is also some reason to believe that the FCFS rule is an expression of a more general value structure historically associated with certain sections of Western society (Schwartz 1975: 108). Respect for the impersonal ordinality of the queue may likewise correlate with a modern diminution of kinship bonds, a social process which has allowed individuals to be ‘recognised as persons of potentially equal worth, with equal rights that need to be respected by all other persons, regardless of their social connections’ (Corbridge 2004: 187).

(2) *Exceptions to the egalitarian principle*

Whatever the strength of these hypotheses, any emphasis upon the egalitarian aspect of the queue must be tempered by at least two caveats. *First*, the priority rule exemplified in the queue can itself be subject to certain conventionally accepted instances of variation or honorific exception.¹⁰ In some contexts, sub-rules of ‘pre-emptive priority’ may allow precedence to be accorded to persons who are deemed to be vulnerable, disadvantaged or especially deserving of priority (eg the elderly, the disabled or those burdened with young children) (Schwartz 1975: 97-98, 100, 107; Czwartosz 1988: 6; Waldron 1993: 215). *Second*, the institution of the queue may often be circumvented by the truly privileged classes who can afford to adopt alternative stratagems for securing desired services (Mann 1969: 353; Schwartz 1974: 849; Schwartz 1975: 21-24). The more affluent traveller, by going business or first class, avoids the travails of the line-up at the economy check-in. Once again, the power dimension of the queueing phenomenon comes to the fore. Waiting is ‘something that poorer people do’ (Corbridge 2004: 184). Or, as was once graphically pointed out, ‘[w]hatever your origins or standing in the wider world, to be waiting at a bus stop at Dalston Junction is to have joined the ranks of the underdog’ (Wright 1991: 124).

⁸ It is famously recounted, for example, that Bob Dylan was not allowed to jump the queue when entering Israel in 1993. An immigration officer stated that there was ‘no favoritism with us. He should stand in line like everyone else’ (see Ratcliff 2006: 11).

⁹ See similarly Mann 1969: 352-353; Schwartz 1975: 108.

¹⁰ The FCFS rule cannot, however, ‘survive a large number of particularist exceptions’ (Wiseman 1979: 322).

4 *The basic principles of the queue*

So far we have described the queue as being anchored in a fundamental principle of ordinality: prior arrival confers superiority in the rank order of the queue. However, priority of arrival is only a necessary, and not in itself a sufficient, precondition of access to the service which the queue seeks. Deeply embedded in the phenomenology of the queue is the notion that the priority gained on arrival must be sustained by the active maintenance of one's 'place' within the queue. To abandon one's position in the queue – to 'renege' (in the technical jargon of the queue-watcher) – is to forfeit the priority secured by first arrival. It is this combination of ideas – physical entry into the queue coupled with the continuance of a self-validating presence within the queue – which offers further clues to the social and philosophical dynamic of waiting in line. We shall have to subject both of these component elements to further examination, but the feature which unites them is, of course, the dimension of *time*. Time not only is significant in determining the sequence of arrivals, but has a further and inevitable relevance in measuring the commitment of the queuer to the discipline of the queue.

5 *Time and the normative code of the queue*

Queueing behaviour cannot be understood without a heightened awareness of the importance of the element of time. The process of queueing involves a more complex network of relationships than might at first be envisaged. Relevant participants include, of course, the server who performs the front-line task of supplying a desired service for the person at the head of the queue (selling a ticket, answering an inquiry, handing out a food parcel etc). There is, obviously, the individual queuer. Then again there is the collectivity of persons who constitute the remainder of the queue. Other dramatis personae include the queuer's friends, family or associates (who may want to come and join him) and also complete strangers (who may become unconsented intruders in the line). For all of these people time has a value, since time is 'a generalized resource whose distribution affects life chances with regard to the attainment of other, more specific kinds of rewards' (Schwartz 1974: 868). Like all other assets, time provides a gateway to ever more highly desired forms of preference satisfaction. The productive employment of time generates money, which in turn purchases goods (whether tangible or intangible), which again promote the enjoyment of opportunities (whether commercial or recreational) and which – in a pattern of almost infinite regression – provide a platform for yet further exploitation of the business of being human.¹¹

But time is valuable not merely because it is the *sine qua non* of access to productive achievement and personal fulfilment. Unlike many other resources it is finite and non-fungible. It cannot be stored or saved up for deferred consumption or purchased in exchange for some other valuable asset. Its progress is irreversible: the remorseless ticking of the clock marks the disappearance of something which can never be

¹¹ Property conceptualisation, if applied to the commodity of time, conforms to 'a kind of chaos theory which steadily reveals pictures of ever intensifying complexity receding infinitely into the distance' (Gray 1991: 304).

regained. 'For many, time is not just a scarce resource; it is *the* scarce resource' (Leclerc et al 1995: 110). Ironically time has become even more scarce because the expanded opportunities of modern life have imposed greater stresses on its inelastic supply. In an increasingly frenetic society, we have become 'time-poor' and therefore more time-conscious (Moran 2005: 304). And the phobia associated with a loss or deprivation of time is reinforced by some residual folk memory of a religious era – perhaps most closely linked with the Protestant tradition – which emphasised the 'moral preciousness of time' (Schwartz 1975: 154-155). The Protestant work ethic and the belief that each must ultimately account to God for the use of time combined to generate an enduring detestation of idleness. On this view time belonged to God alone (Tawney 1938: 55),¹² with the consequence that only productive uses of time were worthy in His eyes. In Max Weber's illuminating account, waste of time became 'the first and in principle the deadliest of sins' (Weber 1958: 157).

Thus it is that, in the context of the queue, a number of people have potentially conflicting interests in the commodity of time. And the queue is, at root, a device for allocating that valuable commodity between the various players involved. In regulating access to productive time, the mechanism of the queue uniquely distributes the disbenefits of delay between these players. And as every queue-watcher confirms, the process of waiting is 'painful' (Schwartz 1975: 167): it is almost always a thoroughly negative experience (Larson 1987: 897). Waiting time is dead time. As William James once described,¹³ unoccupied or idle time weighs much more heavily than fruitfully employed time – a perception richly confirmed in the literature on queueing (Maister 1985; Watt 1991: 323; Hui and Tse 1996: 82). Waiting in line is 'a form of imprisonment ... One is being punished not for an offense of one's own, but for the inefficiencies of those who impose the wait' (Morrow 1984: 65). The queue has an even more insidious aspect. It is a location of entrapment where participants are lured into escalating commitment: the greater the sunk cost of invested time, the more difficult it is to abandon the line (Arkes and Blumer 1985: 137-138; Czwartosz 1988: 10; Meyer 1994: 821; Zhou and Soman 2003: 517-518).

The social cost of waiting has both an external and an internal dimension. Not only does the enforced delay compel the queuer to renounce other, more constructive or profitable, applications of his or her own time;¹⁴ it also represents a hidden cost to society as a whole in the form of lost productive labour. The process of waiting imposes, moreover, a demoralisation cost of some significance. In many contexts the queue

¹² In the words of the Psalmist, '[m]y times are in thy hand' (Ps 31:15).

¹³ '*Tædium, ennui, Langweile, boredom*, are words for which, probably, every language known to man has its equivalent. It comes about whenever, from the relative emptiness of content of a tract of time, we grow attentive to the passage of time itself, – expecting, and being ready for, a new impression to succeed; when it fails to come, we get an empty time instead of it, and such experiences, ceaselessly renewed, make us most formidably aware of the extent of the mere time itself' (James 1952: 410).

¹⁴ '[V]alue foregone through idleness is an extrinsic disadvantage' (Schwartz 1974: 867). For a classic exploration of the opportunity cost of time, see Becker 1976: 89.

becomes a potent symbol of unhappiness and social unrest.¹⁵ Waiting accentuates an implicit inferiority and 'subserves the distribution of power that it presupposes' (Schwartz 1974: 856-857). The compulsory immobility of the queuer induces exaggerated, but no less palpable, feelings of powerlessness, boredom, stress, frustration, anxious watchfulness and even, on occasion, uncontrolled rage (Osuna 1985: 82-83; Meyer 1994: 820; Hui and Tse 1996: 82; Rafaeli et al 2002: 126-127; Zhou and Soman 2003: 518).¹⁶ The queuer often lapses into a state of mindlessness or automaticity (Bargh and Chartrand 1999: 462). Try though the service-provider may,¹⁷ these negative perceptions and responses are unlikely to be assuaged by attempts to distract the attention of queuers from the nature of their plight.¹⁸ To wait in line is to endure 'an interval of non-being, the black space between events and the outcome of desires' (Morrow 1984: 65). The personal cost of being caught in this limbo is intensified both by the sense of degradation inherent in waiting (Schwartz 1975: 173) and by an enhanced awareness that 'time, a fraction of one's life, is being stolen away, irrecoverably lost' (Morrow 1984: 65). For some, the imposition of delay even comprises a ritual insult¹⁹ – a process of deprivation rendered all the more offensive because it involves 'the deferral of gratification by an authority who is at once its source and censor' (Schwartz 1975: 174).

¹⁵ One of the most iconic political images of the modern British era comprised a photograph, under the striking headline 'LABOUR ISN'T WORKING', of a long line of people stretching away into the distance, all supposedly queueing to reach the 'Unemployment Office' (Moran 2005: 292-293). It was this message which so powerfully struck a chord with the British electorate in May 1979 and swept the Conservative Party under Margaret Thatcher into almost twelve years of unrivalled power.

¹⁶ Some commentators describe the way in which the process of waiting chills other-regarding behaviour. The sunk cost of time generates a 'striking increase in the degree of negative reciprocity' experienced by those who wait (Oxoby and Bischal 2005: 22).

¹⁷ Strategies employed for the purpose of distracting queuers include the use of television or a news board (Zhou and Soman 2003: 518) and even side shows of cats and dogs (Larson 1987: 897). See also Katz et al 1991: 44. Music may affect perceptions of duration, although, intriguingly, people exposed to 'positively valenced (major key) music' experience time passing more slowly than those exposed to 'negatively valenced (atonal) music' (Kellaris and Kent 1992: 365, 375, reporting that the playing of large, appealing major key themes to persons on 'musical hold' may be counter-productive). Diversionary ploys may be more subtle. Part of the folklore of queueing is the well-known account of how the affective response of persons queueing for elevators was markedly improved by the installation on the landings beside elevator doors of large mirrors in which those waiting could view and preen themselves at leisure (Hall 1991: 415). It also must be the case that much of the dead time entailed in queueing is channelled, in the modern age, into the use of mobile telephones.

¹⁸ When bad weather caused a mass cancellation of outgoing flights from Heathrow Airport in December 2006, it was reported that for the resulting queues of frustrated travellers the misery was merely deepened by the arrival of a troupe of street entertainers organised by the British Airports Authority (*Daily Mail*, 23 December 2006, 4-5 ('No, you clowns, we want to fly!')).

¹⁹ '[T]o render oneself motionless for the sake of another has always been one of the most humiliatingly radical forms of subordination' (Schwartz 1975: 171).

6 *Proprietary connotations of the queue*

There seems to be widespread agreement amongst queue-watchers that a waiting line, although comprising only a random and temporary collocation of strangers, constitutes a 'miniature social system' (Mann 1970: 390) or an 'embryonic social system with a set of norms for controlling conflict' (Mann 1969: 349).²⁰ The queue constitutes a form of collective behaviour (McPhail and Wohlstein 1986: 447). It embodies a co-ordinated pattern of relationships, the conduct of individuals within the queue being governed (as we shall see later) by a shared set of beliefs relating not least to the importance of distributive justice between queuers (Milgram et al 1986: 683). In these respects the roles played out in the queue 'are drawn from and are molded by the institutional system of the larger society' (Mann 1969: 350). So far there is little to suggest any significant link between the spatio-temporal phenomenon of the queue – the physical line-up for service – and any conceptualism of ownership. It may be true, in some general sense, that queuing behaviour and proprietary behaviour both represent a response to disjunctions of supply and demand. But the queue ultimately provides a means of *facilitating* general access to particular services, whereas property is conventionally conceived as a means of *precluding* general access to particular resources. On closer analysis, however, the device of the queue discloses certain distinctly proprietary connotations or characteristics.

(1) *Priority of arrival*

In attaching consequence to the order of arrival, the underlying norm of queuing behaviour draws upon one of the most primitive canons of property jurisprudence – the idea that 'first in time is first in right' (Epstein 1986: 669). This ancient mantra has long served as a beacon illuminating the path toward a resolution of human conflicts.²¹ In the words of Lawrence Berger, people 'follow it as an unwritten law in their social interaction' (Berger 1985: 350), a proposition which can be verified, even at an early stage in human development, in any children's playground or school yard and, somewhat later, in any supermarket car park. Moreover, the rationale of first occupancy as the origin of preferential claims taps into some of the classic justificatory theories of property (Rose 1985: 73). Temporal priority as a ground of right has a venerable philosophical provenance and may well draw additional strength from labour-based theories which found proprietary entitlement on the investment of personal effort (here the effort of the queuer in taking trouble to initiate or enter or remain in the queue).

The attribution of advantage on the footing of first arrival or first possession is at least as old as Roman law (Buckland 1963: 205-28; Pennock 1980: 176) and plays upon primal impulses and perceptions that lie

²⁰ For endorsement of this perception of the queue as embodying a social system, see Schmitt et al 1992: 806; Rafaeli 2002: 125.

²¹ 'The rule of first occupancy tends to reduce areas of dispute, since ordinarily there is only one first occupant' (Cohen 1954: 386).

deeply buried in the subconscious reaches of the human psyche.²² In the view of many commentators, the rule of first possession remains ‘the dominant method of initially establishing property rights’ (Lueck 1995: 393).²³ Even today sophisticated legal systems resort to relatively crude rules of thumb in the desperate attempt to provide a superficially principled scheme for the allocation of valued assets. Thus the lawyer brought up in the Anglo-American tradition still intones that ‘where the equities are equal, the first in time prevails.’²⁴ In contexts which are otherwise morally neutral,²⁵ the factor of time (ie the publicly observable fact of first arrival) is commonly regarded, *faute de mieux*, as having a specially significant role in dictating distributional outcomes.²⁶ In such cases the fragile discriminant of relative timing offers a plausibly objective ground of distinction between competing (and otherwise inseparable) claims and, in the case of the queue for service, has the further advantage that sequence of arrival is a highly visible phenomenon.²⁷ The immediate dividend is the avoidance of anomie and – precisely for this reason – temporal order begins, more subtly, to generate its own moral merit and to become a tool of social and economic governance.²⁸

(2) *Persistence of presence*

Mere prior arrival is not, of course, enough to determine the relative strength of claims within a queue. The normative code of the queue requires that each member should continue to stand in line for such period of time as is needed to reach the service point at the head of the queue. Central to the practice of queueing is the idea that the claim to service is foregone unless the queuer maintains a physical or territorial presence

²² Anthropological research indicates that a principle of first possession was recognised by many primitive peoples (Schmidt 1937: 192; Nippold 1954: 83).

²³ See also Epstein 1979: 1222.

²⁴ The ‘first in time’ principle reflects a willingness to fall back, for want of any better solution, upon Bracton’s primitive formula of seven centuries ago that ‘everyone who is in possession, though he has no right, has a greater right [than] one who is out of possession and has no right’ (*Bracton on the Laws and Customs of England* (trans S E Thorne, Harvard UP, 1977), Vol III, p 134). See, more recently, *Mabo v Queensland (No 2)* (1992) 175 CLR 1 at 210 per Toohey J (‘as between mere possessors prior possession is a better right’).

²⁵ Of course, where the context is *not* morally neutral, order of arrival has no inherent attraction as a ground of entitlement. ‘Basing rights on arrival time only would seem morally arbitrary if the relevant test was a theory of merits or deserts’ (Wonnell 1989: 852). The acts which constitute first possession ‘are in themselves normatively silent’ (Alexander 1986: 227-228).

²⁶ The first possession rule represents ‘an ingenious, if intuitive, recognition that time provides the best one dimensional ruler’ for mapping external facts into a decision rule on entitlements (Epstein 1986: 670). Compare, however, Haddock 1986: 775.

²⁷ As Carol Rose said, the ‘first in time, first in right’ principle works well in ‘a community where everyone knows all about everyone else’s transactions’ (Rose 1987: 586)

²⁸ So often, for those concerned with the allocation of economic advantage or reward, it seems ‘more important that the applicable rule ... be settled than that it be settled right’ (*Burnet v Coronado Oil & Gas Co*, 285 US 393 at 406, 76 L Ed 815 at 823 (1932) per Justice Brandeis). See also Epstein 1979: 1240-1242.

within the line.²⁹ To validate the priority obtained by reason of early arrival, the queuer must spend time in the queue 'not only to demonstrate to latecomers that he occupies a given position, but also to demonstrate that his right to priority is confirmed by an unquestionable willingness to undergo further suffering to get the commodity' (Mann 1969: 344). In this way the subculture of the queue derives one of its most important elements from a Western perception of time, where 'great emphasis is placed on priority by time serving' (Mann 1970: 390).³⁰ The investment of time and suffering tends to generate enormous respect for claims of priority within a society that endorses the correlation of effort and reward and in which the equilibration of personal discomfort and personal gain is widely regarded as a foundational principle of distributive justice (Homans 1961: 75; Schwartz 1975: 93-94).

In a context where few objective factors separate the claims of competitors for a desired good, the normative order of the queue thus falls back on a primitive criterion of voluntarily undertaken exposure to the pain or disamenity of standing in line. One of the virtues which the queue rewards is patience – a term whose semantic roots are precisely those of passion or suffering (Schwartz 1975: 183). And there is a certain social equity in the idea that queuers are bound together in a reciprocity of disadvantage,³¹ their respective claims being distinguished only by the length of time for which that disadvantage has been endured. Hence the bizarre ordeal undertaken by those who queue for hours or even camp for days in the open air in the expectation of purchasing tickets for the Cup Final or the latest piece of electronic gadgetry or even (as in recent instances in England) cheap housing released by the Ministry of Defence as surplus to requirements. Here – as in the manner of some Japanese game show – a willingness to suffer otherwise purposeless hardship is viewed as a potent surrogate for a Lockean investment of labour.

7 *Property in a queue*

It is of the essence of the queue that each queuer controls a small portion of physical terrain which symbolises his or her rank within the line, the precise locus of that control gradually shifting as the queue shuffles its way forward towards its destination. The queuer holds, in effect, a kind of mobile property in

²⁹ In some contexts, of course, there is an increasing trend towards the bureaucratisation of time (as indeed of title). Certain service-providers seek to minimise the discomfort of the queue by issuing numbered tickets which release the queuer from the necessity of maintaining an active presence in the line-up, current priority being indicated by an overhead display (Moran 2005: 297). 'Ownership' of one's ordinal rank is preserved in a manner similar to the way in which automated systems for the recordation of land ownership nowadays render largely or wholly irrelevant the classic common law requirement that title be defended by a continuity of possession of territory (Gray and Gray 2005: 6.1, 6.25-6.26).

³⁰ It is not without interest that, in certain non-Western societies where time is less highly valued, the queue functions much less effectively or – in some cases – not at all (Hall 1959: 23-41; Lee 1984: 36; Ratcliff 2006: 7).

³¹ 'Suppose one has to stand in line at the post office, with a crowd of other people, waiting to get his mail. There are delay and discomfort to be borne; but these he will take with composure because he sees that they are part of the necessary conditions of the situation, which all must submit to alike' (Cooley 1964: 281-282).

land,³² a portable space which is uniquely and recognisably 'his' or 'hers' and is defensible against all comers (Sommer 1959: 247-248). It is at this point that we begin to discern the deeper proprietary significance of the queueing phenomenon. The queuer undoubtedly lays claim to a crudely defined three-dimensional space as his or her 'place' in the queue.³³ But the proprietary quality of the claim rests on rather more than the assertion of rights over a physical territory. Queueing behaviour is all about the ownership, management and conservation of the commodity of *time*. Time constitutes a latent, but all-important, fourth dimension in the parcelling up of rights in a queue – in a manner instantly recognisable by any land lawyer. For time has always been an essential component of the common law explanation of real ownership.

(1) *The common law doctrine of estates*

In the venerable (and still current) tradition of the common law, rights in respect of land are analysed through the intermediacy of some abstract 'estate' in the land (Gray and Gray 2005: 1.121-1.135). The entitlement of an 'owner' relates not to the tangible thing (land), but rather to an intangible right (or 'estate') in that land. The 'owner' owns not the land itself, but some form of 'estate' in the land; and the various 'estates' in land were (and still are) defined by a coefficient of time. 'Estates' in land are, in other words, graded by reference to the span of time for which they are specified to endure. In the celebrated argument put forward in *Walsingham's Case* (1573),³⁴ an estate in the land is simply 'a time in the land, or land for a time, and there are diversities of estates, which are no more than diversities of time.' Thus, for example, the fee simple estate is 'a time in the land without end', whereas the holder of a life estate in land 'has no time in it longer than for his own life' and so on. Even the slightly more modern invention of the leasehold estate involves a conferment of ownership for a strictly demarcated period of time. At the heart of the doctrine of estates in land therefore lies the idea that one can, in effect, have property in time.³⁵

Nor, incidentally, was the common law any stranger to the queue, a conceptual mechanism which lent itself easily to the creation of elaborate forms of gift. The flexibility afforded by the rich taxonomy of estates allowed interests in land to be ordered sequentially. For centuries the process of family endowment amongst

³² Mobile estates in land are not unknown – as in the case of foreshore (Gray and Gray 2005: 1.22).

³³ Some estimates identify a 19 to 20 inch space as the modal queueing space in a physical line-up (Ratcliff 2006: 13), although there is evidence that, at times of threat to the integrity of the line-up, there is a 'visible bunching together, or shrinkage, in the physical length of the queue, literally a closing of the ranks' (Mann 1969: 347). W H Auden's classic calculation of the extent of personal space was, of course, somewhat more expansive: 'Some thirty inches from my nose, The frontier of my Person goes ...' (Auden 1976: 519). Auden's estimate of preferred interpersonal distance is borne out, at least in Anglo-American culture, by various studies. For example, in his discussion of 'proxemic zones', Edward Hall defined the 'far phase' of 'personal distance' (as distinct from intimate, social or public distance) as comprising a span of two and a half to four feet (Hall 1966: 113-114).

³⁴ (1573) 2 Plowd 547 at 555, 75 ER 805 at 816-817.

³⁵ The doctrine of estates enables proprietary rights in land to be 'projected upon the plane of time' (Pollock and Maitland 1968: 10).

a wealthy social élite was heavily dependent on the construction and maintenance of complex chains of successive entitlement to dynastic wealth (Bonfield 1983; Pottage 1998: 172-174). The paterfamilias, or settlor, presided at least figuratively over a scheme under which access to a desired good (ie beneficial enjoyment of core family assets) was transmitted along a line of designated recipients in an orderly, constrained and predetermined manner. The entitlement or 'estate' of each beneficiary was carefully defined by a component of time.³⁶ Each took in turn, usually being excluded from immediate possession only by the prior entitlement of those ahead in the queue.³⁷

(2) *The 'estate' of the queuer*

In very much the same way, the modern phenomenon of the queue – the physical line-up for service – is all about a power-related ordering of property in time. In common with conventional rights of real property, the queuer's entitlement comprises a commixture of the physical and the abstract – an empirically observable zone of personal control measured against a coefficient of time. By making the client wait for a desired service, the service-provider has, of course, converted the queuer's time to its (ie the service-provider's) use. But, as against all persons *other than* those ahead in the line, the queuer can assert a different kind of property in time. Whereas most of the common law estates in land were diminished by the passage of time, the entitlement which the queuer values and defends – let us, for the moment, simply call it the queuer's 'mobile estate' in land – is far from a wasting asset. It draws its primary strength precisely from the *effluxion* of time. The service-provider may have assumed immediate possession of the queuer's time, but the queuer holds, as it were, a reversionary interest which gathers significance with every moment spent standing in line. Although the queuer plainly suffers a loss of *productive* time by having to wait, the queuer can claim, in turn, that his or her place in the line symbolises a property in *spent* time – an investment which has escalating value as the queuers progress towards the service point.³⁸ Indeed, the steadily increasing likelihood of eventual access to service represents the only compensation which the queuer will ever receive for the imposed disbenefit of having to queue. While the service-provider has plainly made a pre-emptive raid upon

³⁶ A life estate conferred upon X (eg the settlor's son) could be followed by a further limited gift in tail for Y (X's eldest son), with some ultimate remainder for an absolutely entitled beneficiary, Z, or some provision for resettlement (whereupon the entire process could be replicated for future generations). Elaborate strategies were invented to ensure that the queue never became too lengthy (the rule against excessive accumulation). Rules prohibiting 'waste' ensured that no currently entitled beneficiary could use his or her temporary position at the head of the queue to devastate the settled estate to the prejudice of those further back in the line.

³⁷ Sometimes a beneficiary might also be excluded from possession by an additional requirement that he or she should satisfy some specific condition or contingency (such as marrying or attaining a certain age). Again legal principles were formulated to avoid situations where people might take too long to join the queue (rules against excessively remote vesting of interests).

³⁸ It is this perception of value in spent time which causes a profound sense of grievance when, for example in a supermarket, a new service point is opened up and later arrivals in an existing queue rush to the head of the new queue. This inversion of queueing protocol (ie the apparent shift from FIFO to LIFO, last-in, first-out) commonly generates feelings that a social injustice has occurred (Saaty 1967: 210; Larson 1987: 896; Zhou and Soman 2005: 4-5).

the commodity of time, the queuer – in the cascade-effect of this pyramidal ordering of time – has acquired a time-related and time-generated ‘estate’ which can be asserted against the rest of the world except those ahead in the queue. Not by accident does recent queue scholarship confirm that a significant component of the queuer’s experience of standing in line involves the making of ‘downward comparisons’ with persons behind in the queue (Zhou and Soman 2003: 518-519).

(3) *Semantic interdependencies*

At this point it also becomes evident that fundamental features of the social practice of queueing are bound up in an ancient nexus of interpenetrating semantic links. It is appropriate to recall that the radical meaning of the term ‘estate’ is drawn from the Latin *stare* (to stand). Embedded in the etymology of ‘estate’ is the very notion of ‘standing’ – the physical process of bipedal non-mobile self-support. In an older use of the term, the word ‘estate’ connoted a relative standing or ‘status’ – the condition or position in which one stood relative to others within a socially stratified community. References to one’s ‘estate’ reverberated with an in-built sense of ranking or ordering. We have only to revisit the well known, if somewhat dated, lines of the hymn composed by Mrs Cecil Frances Alexander (1818-1895): ‘The rich man in his castle, the poor man at his gate, God made them, high and lowly, and ordered their estate.’ So, as the queuer stands in line, maintaining his or her position, each is asserting a species of ‘estate’ – a relative status – which is inherently linked with, and is calibrated by, the commodity of time. Each queuer’s *status* or *estate* constitutes a bundle of entitlement in an amalgam of time and place – an entitlement which is opposable not only against those further back in the queue, but also against all others who have not yet joined the line.

(4) *Property as control over access*

The foregoing analysis of queueing relationships sits quite comfortably with leading perceptions of property as consisting primarily in *control over access* to valued goods and desired benefits.³⁹ Although it should not surprise anyone accustomed to the relativity of title at common law, the queue itself reveals a hierarchy of property claims. By asserting superiority in the power-relationship which underlies the queue, the service-provider clearly arrogates to itself an ultimate or overarching control over access to the valuable commodity of productive time. But, in return for foregone access to useful time, the queuer can also claim a certain property in time – in the form of spent time – access to whose value he or she can control and defend as against all later arrivals. It is, indeed, this profoundly proprietary perception of the queuer’s claim which accounts for, and gives colour to, the behavioural patterns which comprise the empirically observable emanations of queueing conduct. Whilst the social cohesion of the queue may be a product of collective rationality – a prudential or learned response to a particular mismatch of supply and demand – it is the instinctive, even if seldom articulated, proprietary characterisation of the queuer’s rights which triggers a

³⁹ *Yanner v Eaton* (1999) 201 CLR 351 at [18] per Gleeson CJ, Gaudron, Kirby and Hayne JJ (High Court of Australia). See also Gray 1991: 299.

range of reactions to the classic problems of the queue. This subliminal understanding – that those who stand in line have a kind of elementary or symbolic ‘estate’ within the queue – engenders a mindset which, at some subconscious level, taps deep into our biosocial or evolutionary proprietary drives and motivations.

(5) *‘Estate’ methodology and queueing culture*

Nor is it inappropriate to hazard that there may be a more than merely semantic link between ‘estate’ ownership and the practice of standing in line. There is some evidence of a cultural or socio-legal affinity between the ultimately Anglo-Saxon conceptualism of estate ownership and the social discipline of the queue. The practice of queueing tends to be most strongly prevalent in jurisdictions which have always been familiar with the legal apparatus of ‘estates’ in land, that is, with the sequential arrangement of various grades of time-bounded ownership. It has been wickedly observed that ‘[a]n Englishman, even if he is alone, forms an orderly queue of one.’⁴⁰ Writing in 1944, George Orwell likewise noted the willingness of the English to stand in line (Orwell 1968: 2), a process of social self-regulation which has been traced through into more recent times by professional scholars of the queue (Saaty 1967: 209; Moran 2005: 283). Although there is also now a suggestion that the social code of the queue is beginning to break down amidst the incivility of an increasingly yobbish subculture in Britain (Stewart-David 2002), there remains some ground for hypothesising that the characteristically English discipline of the queue may owe something to a subliminal absorption of ‘estate’ methodology within a wider popular consciousness.⁴¹ It may just be that, over many centuries, the orderly sequencing of entitlement inherent in the doctrine of estates percolated more generally into a public mindset which responds positively to a norm of queue formation. In some deep sense each citizen knew his or her place in the grand scheme of things.

The possibility of such a cultural association is supported by the negative correlation that seems to exist between queue discipline and those non-common law based legal systems which have no knowledge of any doctrine of estates. It has long been recognised, for example, that respect for the queue is an English rather than a Latin phenomenon (Hall 1959: 157, 201-202; Lee 1966: 19, 115; Schwartz 1975: 108; Milgram et al 1986: 683; Corbridge 2004: 183-184).⁴² In recent years student visitors to England from continental Europe

⁴⁰ Mikes 1946: 44 (‘Queueing is the national passion of an otherwise dispassionate race. The English are very shy about it, and deny that they adore it’).

⁴¹ The process may have been reinforced by the literary manipulation of successive entitlement to land in works such as Jane Austen’s *Pride and Prejudice* and *Sense and Sensibility*. See eg Treitel 1984: 557-567; Redmond 1989: 46; Little 2006.

⁴² As Edward T Hall pointed out, order is ‘used differently in different cultures’, even to the extent that whereas word order is ‘a basic part of our grammatical system’ and has a critical importance in the structure of an English sentence, the same is not true of languages like Latin (Hall 1959: 156). It has also been suggested that there ‘seems to be a relationship between language area and present-day mental software regarding power distance’ (Hofstede 1997: 42). Countries whose linguistic roots are within the Romance family (eg France, Italy and Spain) score much higher on a ‘power distance’ scale than countries whose linguistic roots are Germanic (eg England). Larger ‘power distance’ connotes a cultural acceptance of inequality, privilege, patronage and the idea that ‘might prevails over right.’

have been targeted with lessons in the art of queueing.⁴³ One intriguing study of queueing in Hong Kong's Disneyland has also pointed to the strong resistance to queueing culture exhibited by mainland Chinese visitors to the park as compared with the greater degree of queue conformity evident amongst Hong Kong Chinese themselves (Fountain 2005: 1). Nor is it without significance that the 15 million inhabitants of Beijing are currently being indoctrinated, through the medium of mobile phone text messages, in the practice of queueing. In preparation for the 2008 Olympic Games the Chinese Communist Party has designated the eleventh day of each month as 'Queueing Day'.⁴⁴ Under the banner 'To queue is civilised, to be polite is glorious', volunteer wardens attend at bus stops in a concerted attempt to instigate a general acceptance of queueing protocol.⁴⁵ In Calcutta, as Cornell economics professor Kaushik Basu has noted, the drive towards instilling a similar queue discipline began some years ago, once again taking the form of volunteers with loudspeakers 'urging anarchic gatherings of men and women at bus stops to stand in line' (Basu 2004).

8 *Proprietary behaviour within the queue*

Against this background it is fascinating to observe the ways in which queuers instinctively resort to well known proprietary strategies in their manipulations of, and responses to, the queue-form. Participants in a queue may never have heard of the legal constructs by reference to which lawyers are prone to analyse their behaviour, but – whether consciously or not – they certainly put into practice many of the perceptions and devices associated with proprietary advantage or entitlement. This section of the paper pinpoints some of the evidence for this conclusion by examining three (sometimes overlapping) emanations of queueing behaviour. In what follows there is inevitably some resonance of the 'law ways' uncovered in primitive social systems by Karl Llewellyn and Adamson Hoebel (Llewellyn and Hoebel 1941).

(1) *Reserving places*

Persistence of physical presence is an important component of the discipline of the queue. In the orthodox theory of the queue the person who abandons his or her place in the line *prima facie* forfeits any claim to priority (Brady 2002: 161). The man who steps out of the tiresomely lengthy queue at the post office is taken irreversibly to have 'reneged' or renounced his ranking in the ordinality of entitlement. Such 'property' as he previously held in relation to the queue has now simply evaporated; and even if a couple of minutes later he

⁴³ 'Foreign students given "queueing" lessons' (BBC News 5 August 2002, <http://news.bbc.co.uk/1/hi/england/2169460.stm>) (accessed 28 March 2007). Under the code name *Operation Columbus*, police in Devon and Cornwall began a campaign in 2002 aimed at inculcating respect for English customs, using posters which proclaimed: 'Be polite, join the queue'.

⁴⁴ The eleventh day of the month was selected precisely because the figure '11' was thought to resemble two people standing in line.

⁴⁵ 'Wait for it: queueing joins the Olympics' (*Times*, Monday 12 February 2007, p 33); 'Form A Line, Please!' (<http://english.cri.cn/3100/2007/02/11/1261@195043.htm>).

regrets his act of abandonment, he will be expected, under the normal convention, to rejoin the queue at its rearmost point. One's position in the queue is, uniquely, a *worked* space; and to fail to work the space is to forego the benefits associated with that space.

Yet it is notorious amongst queue-watchers that the queue, particularly in its larger-scale or marathon manifestations, is an evolutive social mechanism. The queue is a social system which breeds collaborative or mutually supportive sub-systems based on acts of local co-operation or 'local conspiracy' that ease the discomfort of waiting, thereby reducing the overall stress of queue discipline (Brady 2002: 162). In effect, the experience of waiting over long stretches of time is often rendered more bearable by the emergence of certain customary modifications of queueing norms. One such renegotiation of queueing rules is the practice of allowing 'time-outs' or relaxations of the requirement of constant physical presence within the line. These collectively agreed variations can take various forms, most involving some kind of proxy or token representation in the line.⁴⁶

In one of the classic studies of queueing behaviour, it was observed that those waiting in line for several days for tickets to the AFL 'World Series' in Melbourne during the 1960s commonly adopted strategies to minimise the inefficiency and *ennui* of the long collective wait (Mann 1969: 345; Mann 1970: 392).⁴⁷ Particularly towards the front of the queue it was standard practice for groups of queuers to organise a 'shift' system in which one or two members of the group physically guarded the group's position until relieved by someone else as custodian of the group's place in the line. In this way the majority of the group were enabled to leave the queue for substantial periods to search out facilities for eating, sleep or entertainment.⁴⁸ A similar strategy, generally found further back amongst queuers who had come to the line alone, involved the preservation of rank order during temporary absences by the placing of some token item of personal property as a position marker. A brief time-out could be covered by using a rucksack, a labelled box, a coat, a newspaper, a folded chair or a sleeping bag to 'stake a claim' to the individual's position in the line.⁴⁹ Both the 'shift' system and the 'position marker' protocol were, of course, subject to self-limiting regulation by the

⁴⁶ The Clarity-sponsored attempt to draft a Queues Bill proposed clauses which, in varying formulae, tended to permit temporary absences from the waiting line where, for example, a queuer left for a short period of time and returned when they said they would; the person waiting immediately behind them agreed to hold their place; and the reason for absence was for purposes associated with eating, drinking or meeting physical needs ('Legislative drafting' (2006) 55 *Clarity* (May) 7).

⁴⁷ '[T]he principle of distributive justice is elaborated to encompass the need for leaves of absence in marathon queues. In recognition of the fact that continuous residence in the line imposes great hardship, members come to an agreement on the minimum inputs of time necessary to validate occupancy of a position' (Mann 1969: 346).

⁴⁸ A variant on this strategy is to be found in the post-war practice in Britain of queueing for rationed supplies, with mothers causing their children to stand in line before daylight and later assuming the children's position nearer the head of the queue (Moran 2005: 285).

⁴⁹ 'The object stands for the person and his place, symbolism reminiscent of burial customs of the ancient Egyptians.' At some points in the wait, two thirds of the places in the line were held by objects rather than people (Mann 1969: 345-346).

queue as a whole: social tolerance extended only to relatively short leaves of absence (Mann 1970: 394). In Leon Mann's Collingwood queue of 1966, for example, it was reported that irate latecomers to the line, who noticed that many of the people supposedly ahead of them had not made an appearance for most of the day, spontaneously seized their position markers and burnt them (Mann 1969: 346). But, where it did not constitute a collectively condemned violation of the basal principle of serving time, the strategy of representative presence (whether established by a human associate or by some inanimate object) was effective to ameliorate the hardship of delay within the parameters of a locally intuited or implicitly bargained compromise of the conventional rules of the queue.

The salient point, for present purposes, is that the strategy of proxy or symbolic retention of one's place within the line replicates a timeless legal formula for the preservation of proprietary advantage. At least in its more substantial emanations, the modern queue merely re-enacts a normative device which has animated legal doctrine for more than two millennia and has become a globally recognised feature of all mature proprietary analysis. For example Roman law, which never quite distinguished possession from ownership,⁵⁰ accepted that the acquisition of possession involved both physical and cerebral elements – *corpus* and *animus* (Buckland and McNair 1952: 70; Buckland 1963: 199; Nicholas 1962: 112). In the case of land, a *corpus possessionis* could be established by the assumption of an effective physical presence or even by more remote forms of control (as where possession was acquired *oculis et affectu*, ie by sight and intent in circumstances where the relevant land boundaries had been indicated to one who was in a position to make immediate entry) (Thomas 1976: 143-144). *Animus possidendi*, the necessary adjunct of *corpus*, was evidenced by any unambiguous sign of intention to exercise presence or control.

More pertinently it became clear in Roman law that the requirements for the *retention* of possession were less strict than those underlying its original acquisition. Accordingly, possession was presumed to persist even in the absence of continuing physical or territorial control, so long as the claimant could point to an underlying *animus* – a form of retained possession known as possession *animo solo*. Thus, in a much cited instance, summer and winter pastures remained in one's possession, even though used only seasonally, provided that there was no intention to give up possession (Buckland 1963: 202). Likewise possession could be maintained in one's absence by the continuing presence of a proxy in the shape of a slave or son or hirer who happened to be in practical control of the land in question (Thomas 1976: 145-146). In effect, classical Roman law oversaw the displacement of crudely physical identifications of human territorial presence by a vastly more subtle and sensitive understanding of the control relationships which may emerge between people and defined geographical spaces.

Many modern legal systems have built explicitly upon these Roman foundations in predicating the circumstances in which a personal presence can be deemed to continue notwithstanding actual physical absence. For instance, much of the residential tenancy legislation found throughout the common law world

⁵⁰ 'Roman possession is indeed very closely akin to ownership, and is always thought of in close connexion with it' (Buckland and McNair 1952: 72). Later continental jurists came to the same conclusion: '[p]ossession is the objective realisation of ownership' (von Jhering 1869: 179). See also Tay 1977: 90-91.

has long made statutory security of tenure depend upon continued occupancy by the tenant.⁵¹ Nevertheless it is well established that retention of this 'status of irremovability' does not require that tenants be 'compelled to spend twenty-four hours in all weathers under [their] own roof for three hundred and sixty-five days in the year.'⁵² The tenant remains protected so long as he or she can demonstrate some physical evidence of continuing possession (a *factum* or *corpus possessionis*) coupled with an *animus possidendi* or *animus revertendi* (intention to return).⁵³ The required *corpus possessionis* need not involve any personal presence by the tenant, but merely 'some visible state of affairs in which the animus possidendi finds expression.'⁵⁴ The element of *corpus* can thus be provided vicariously⁵⁵ by the presence of some caretaker or representative (eg a spouse,⁵⁶ partner,⁵⁷ child⁵⁸ or other relative⁵⁹) whose function it is to preserve the premises for the absent tenant's return.⁶⁰ Symbolic occupancy may likewise be maintained through the presence of the furniture or other personal belongings of a temporarily absent tenant.⁶¹ In such cases

⁵¹ See, in relation to England and Wales, Rent Act 1977, s 2(1)(a) ('statutory tenancy' in the private rented sector); Housing Act 1985, s 81 ('secure tenancy' in the public rented sector).

⁵² *Brown v Brash and Ambrose* [1948] 2 KB 247 at 254 per Asquith LJ.

⁵³ *Brown v Brash and Ambrose* [1948] 2 KB 247 at 254-255; *Hallwood Estates Ltd v Flack* (1950) 155 Estates Gazette 408. See also *Roland House Gardens Ltd v Cravitz* (1975) 29 P & CR 432 at 436; *Hoggett v Hoggett* (1980) 39 P & CR 121 at 127-128; *Al-Sabrya (Jersey) Ltd v Willis* [1983] CA Bound Transcript 445; *Robert Thackray's Estates Ltd v Kaye* (1989) 21 HLR 160 at 166.

⁵⁴ *Brown v Brash and Ambrose* [1948] 2 KB 247 at 255. Similar issues and similar solutions have been disclosed in the context of continuity of occupation for the purpose of 'overriding interest' protection pursuant to the Land Registration Acts of 1925 and 2002 (see eg *Kling v Keston Properties Ltd* (1983) 49 P & CR 212 at 218-219 (continued occupation through symbolic presence of parked car); *Chhokar v Chhokar* [1984] FLR 313 at 317 (vicarious presence in form of furniture). See Gray and Gray 2005: 12.183-12.188.

⁵⁵ *Brown v Brash and Ambrose* [1948] 2 KB 247 at 254-255; *Roland House Gardens Ltd v Cravitz* (1975) 29 P & CR 432 at 435; *Foley v Galvin* [1932] IR 339 at 362-366; *McCabe v McGonigle* [1956] IR 162 at 167-168; *Fridberg v Doyle and Ryan* [1981] ILRM 370 at 371.

⁵⁶ See *Skinner v Geary* [1931] 2 KB 546 at 562, where Scrutton LJ gave his famous example of the 'sea captain who may be away for months but who intends to return, and whose wife and family occupy the house during his absence.'

⁵⁷ *Thompson v Ward* [1953] 2 QB 153 at 164-165; *Colin Smith Music Ltd v Ridge* [1975] 1 WLR 463 at 466G.

⁵⁸ *Roland House Gardens Ltd v Cravitz* (1975) 29 P & CR 432 at 438-439; *Atyeo v Fardoe* (1979) 37 P & CR 494 at 498.

⁵⁹ *Hammersmith and Fulham LBC v Clarke* (2000) 33 HLR 881 at 885-887.

⁶⁰ Compare *Skinner v Geary* [1931] 2 KB 546 at 569-570 (where the persons installed in actual occupation 'were not there to preserve the house as a residence' for the tenant).

⁶¹ *Brown v Brash and Ambrose* [1948] 2 KB 247 at 255; *Bevington v Crawford* (1974) 232 Estates Gazette 191; *Gofor Investments Ltd v Roberts* (1975) 29 P & CR 366 at 372; *Roland House Gardens Ltd v Cravitz* (1975) 29 P & CR 432 at 438, 440; *Atyeo v Fardoe* (1979) 37 P & CR 494 at 497; *Hoggett v Hoggett* (1980) 39 P & CR 121 at 128; *Brickfield Properties Ltd v Hughes* (1987) 20 HLR 108 at 113-115; *Notting Hill Housing Trust v Etona* [1989] CLY 1912; *Hammersmith and Fulham LBC v Clarke* (2000) 33 HLR 881 at 885-887.

continuity of residence is presumed on behalf of the tenant, provided that the tenant can demonstrate that he or she at all times had a credible and realistic intention to return to the premises within a reasonable time.⁶² If, by contrast, the absent tenant has no more than a 'mere hope or chance of returning'⁶³ or only a 'future and indeterminate intention'⁶⁴ to do so, statutory protection must inevitably fall away.⁶⁵

Against this background it can be seen that, in its elaboration of a similarly sophisticated protocol of valid time-outs, modern queueing behaviour merely plays out – in some subliminal mimic – the ancient drama of *corpus* and *animus* as its instinctive response to the problem of delay and the need to minimise the discomfort of the waiting line. This translation of ancient legal liturgy into modern social practice becomes a recurrent feature of our analysis of the phenomenon of the queue.

(2) *Trading places*

A different range of proprietary ploys comes to the fore with the question whether (and if so, to what extent) a queuer's position in a physical waiting line can be made the subject of a dealing or disposition to others.⁶⁶ Kaushik Basu has made the point that, by its very nature, the institution of the queue provides a distinct alternative to the price-based mechanisms of the marketplace (Basu 2004).⁶⁷ The regulation of supply orchestrated by the queue differs significantly from the classic means by which the market eliminates excessive competition for desired goods (ie by raising their price to a level of rough equivalence between supply and demand). As noted earlier, however, the queue for service generates an accretion of value in spent time; and the commodity of spent time may well have widely divergent values for different people. The queue therefore affords an opportunity for various kinds of transaction with the place or position which symbolises the queuer's accrued entitlement within the waiting line. In so far as facility for commerce (ie the potential for alienation) is commonly viewed as an essential indicium of a property right (Gray and Gray 2005: 2.54), these manipulations of the valuable asset encapsulated within the queuer's ordinal ranking inevitably have a proprietary resonance. Each of the dealings open to the queuer bears a recognisable trace of standard proprietary forms.

⁶² There must be a 'real hope of return coupled with the practical possibility of its fulfilment within a reasonable time' (*Tickner v Hearn* [1960] 1 WLR 1406 at 1410). See also *Dixon v Tommis* [1952] 1 All ER 725 at 726H, 727D.

⁶³ *Radford v Bonham* (Unreported, Court of Appeal, Unbound Transcript 939, 6 July 1983).

⁶⁴ *Al-Sabrya (Jersey) Ltd v Willis* [1983] CA Bound Transcript 445.

⁶⁵ A fortiori where the tenant clearly has no intention or wish to return into residence (see *Metropolitan Properties Co Ltd v Cronan* (1982) 44 P & CR 1 at 7-8; *Heath Estates Ltd v Burchell* (1979) 251 Estates Gazette 1173 at 1174; *R v London Borough of Croydon, ex p Toth* (1987) 20 HLR 576 at 582-583).

⁶⁶ No trading of position is, of course, possible in a telephone queue.

⁶⁷ '[P]eople sense a kind of fairness about queues that they don't see in exclusively economic solutions ... Lines may not be efficient, but they are reasonably fair' (Brady 2002: 164).

(a) *Gift*

The most straightforward proprietary dealing in which the queuer may engage is the transaction of gift. The normative code of the queue views as entirely legitimate the simple act of voluntary transfer of one's place to another (ie to a donee). Provided that the transaction accords the donee, in the strictest terms, no privileges (actual or potential) beyond those already enjoyed by the donor, the singular act of gift operates by way of direct substitution and involves no negative externalities for other members of the queue. The donor releases his or her place to the donee and immediately abandons the queue and any personal claim to priority or – which is virtually the same thing – goes to rejoin the queue either at its rearmost point or at some point previously occupied by the donee.

Much more problematic is the possibility that an existing queuer may attempt to use his or her place in the queue as an object of largesse to be divided amongst or shared with a number of friends or associates. This distributive version of the act of gift clearly entails negative consequences for members of the queue behind, the introduction of newcomers into the line inevitably detracting from the priority already earned by those who have invested time standing in line. The effect of such a manoeuvre is precisely similar to that of the historic process of 'subinfeudation' – the creation of new and additional steps in the feudal hierarchy of tenurial holding (Simpson 1986: 22) – and there is, accordingly, a significant question whether an individual's queue-rank is capable of amoeba-like bifurcation or multiplication for the benefit of others. In terms of an alternative (and somewhat later) form of juristic analysis, the relevant issue is whether a queuer can be allowed to declare a trust of his or her 'property' in the queue in favour of another or others. An affirmative answer would effectively ensure that each queuer's 'property' in the line-up carries some potentiality for sharing or joint holding or joint tenancy.

Curiously there appears to be some support, within the normative code of the queue, for the idea that under certain heavily controlled conditions existing queuers may 'keep a place' for, and eventually import, another person into the line to stand alongside them (Mann 1969: 349; Schmitt et al 1992: 806; Brady 2002: 159).⁶⁸ Although this custom of place keeping is commonly a cause of friction – precisely because it *does* involve negative externalities – the privilege is sometimes tolerated, especially where it is invoked in favour of a spouse or a particularly close associate of the queuer. Relativities of time, place and culture may be important in this context. For example, Kaushik Basu reports suggestions from a queue in a Road Transport Office in India that a would-be queuer is automatically entitled to attach himself or herself to the queue position already enjoyed by a spouse (Basu 2004). Such deviations from the essentially egalitarian tradition of the queue-form are, however, of questionable legitimacy in many modern cultures and tend, moreover, to degenerate into that most cardinal of sins against the normative order of the queue – the act of queue-jumping.

⁶⁸ See also 'Legislative drafting' (2006) 55 *Clarity* (May) 7.

(b) Sale

Another form of dealing with the ‘property’ held by the queuer involves the sale (ie the profitable transfer) of his or her place within the queue. Since the ranking of individuals in the queue cannot normally reflect the differential opportunity cost of their time, there is every incentive for Pareto-improving trades (Oberholzer-Gee 2006: 428) and, as a former Chief Justice of Ireland once observed, there is nothing unlawful in the sale of one’s position in a waiting line.⁶⁹

Even though it marks the ultimate commodification of time, profitable commerce in the asset of queue position is a phenomenon experienced right around the globe. Many people are prepared to pay in order to reduce or eliminate waiting times. Such deals can occur indirectly, as for example where Hong Kong property speculators reportedly pay a daily queueing fee in the region of HK \$1,000 to individuals who, on their behalf, wait in line for the chance to purchase apartments in a new development.⁷⁰ Likewise Leon Mann’s study of Melbourne’s mass queues of football fans in the 1960s revealed a substantial proportion of professional queuers who waited in line for tickets that were destined for immediate onward transfer (Mann 1969: 343; Mann 1970: 390). Some queuers – usually students – operated in groups and were hired to obtain tickets for large corporations and their business clients. Smaller-scale operators – free-lance ‘scalpers’ – characteristically made ten-fold gains on one-off resales to the highest bidder.

Direct ‘on the spot’ transfers of the queuer’s physical position within the line are more rare, but certainly not unknown: Leon Mann reported the practice of trading places within physical line-ups for smash hits on Broadway during the 1950s. And there are much more recent indications that ‘placeholders’ are routinely employed on Washington’s Capitol Hill, on a remarkably profitable basis, to remain in line for hours (or sometimes days) for general-public seats at scheduled committee hearings, only to be replaced at the last moment by those client-lobbyists who wish to influence legislative initiatives (Montopoli 2004). Nor, incidentally, has the digital age caused such practices of private arbitrage to fall into desuetude. Places on various electronic waiting lists (eg for season tickets or the supply of new software) are now frequently available for purchase on websites which specialise in such trades (Arrington 2006).

By contrast, the conventional discipline of the queue is much more aggressively opposed to any attempt by an existing queuer to charge a fee for allowing a complete stranger to ‘cut into’ the queue immediately ahead of him. Such market transactions, since they inflict the clearest prejudice upon the interests of those waiting behind in the line, are undertaken – if at all – only with some sense of embarrassment, shame or guilt on the

⁶⁹ *Maher v Minister for Agriculture and Rural Development* [2001] 2 IR 139 at 186 per Keane CJ (Supreme Court of Ireland).

⁷⁰ See *Choi Man Wai v HKSAR* [2001] 4 HKCU 1; *HKSAR v Lam Chin Cheung, Raymond* [2001] 666 HKCU 1.

part of the profiteer (Oberholzer-Gee 2006: 427).⁷¹ To sell priority within the queue in this way is, effectively, to facilitate the anti-social practice of queue-jumping. For these reasons, the unconsented importation of a stranger into the line is generally regarded as tolerable only where it constitutes an extraordinary or one-time favour extended to someone who presents a case of unusual need or emergency (Oberholzer-Gee 2006: 438). In circumstances other than those involving special cause, the internal discipline of the queue seems instinctively to categorise the introduction of a stranger into the line in much the same terms used by both common law and equity to stigmatise the life tenant who, in relation to the settled estate, committed waste to the detriment of his remaindermen. And, again as with the common law of realty, the historic drift in the social dynamic of queueing behaviour is away from the practice of ‘subinfeudation’ – the interpolation of new and additional rank-orders within the queue – towards a much more modern concept of straightforward ‘substitution’ as the socially approved mode of acquiring entitlements to advantage or priority. The Statute *Quia Emptores* 1290, which terminated the practice of subinfeudation as a permitted form of alienation, thus finds a contemporary resonance in the normative code of the queue. In effect, today’s queuer enjoys a ‘property’ in the waiting line which is alienable but not generally shareable, disposable but not ultimately survivable.

(3) *Taking places*

Proprietary perceptions of queueing behaviour acquire a further dimension when attention is focused on the response of queue members to various attempts made by strangers to by-pass the collectively endorsed protocol of the waiting line. Concern for the integrity of queueing mechanisms is nowadays a pervasive feature of much of our social and legal administration. For example, enormous care is taken to preserve queue-forms in the such areas as immigration control⁷² and the allocation of public housing.⁷³ The social taboo concerning queue violation has even infiltrated the dusty tomes of the law reports. In the words of one Canadian Federal Court judge, ‘queue jumping, or the granting of special advantage to some, over others, is not acceptable.’⁷⁴ Subversion of one of the the most elementary precepts of queue discipline connotes the clearest threat to both private and public conceptions of justice.

The shadow of John Rawls hangs heavily, of course, over any discussion of justice – that ‘first virtue of social institutions’ – and for Rawls it was an intrinsic requirement of an individual’s humanity that he or she should

⁷¹ Quite frequently, as reported in one study, the individual who allows an interloper to cut into the queue in return for an offer of money reward subsequently turns down the fee (Oberholzer-Gee 2006: 432-437).

⁷² See eg *Surinakova v Minister for Immigration, Local Government and Ethnic Affairs* (1991) 26 ALD 203 (Federal Court of Australia); *HKSAR v Li Yik-Ming* [2001] 585 HKCU 1 (High Court of Hong Kong SAR).

⁷³ See eg *Uitenhage Local Transitional Council v Zenza* 1997 (8) BCLR 1115 (SE) (High Court of South Africa); *R v London Borough of Islington, ex p Reilly* (1998) 31 HLR 651 (English High Court).

⁷⁴ *Liu v Canada (Minister of Citizenship and Immigration)* (2000) 182 FTR 251 at [22] per Reed J (‘Canadians are also concerned that immigration requirements, indeed all legal rules, be applied as equally as possible to all applicants’).

be treated in a manner which fosters positive self-regard (Rawls 1973: 3, 178-179). But concerns for individual dignity are merely a personalised emanation of a more public, more general quest for the achievement of a just society. Public and private interact continuously. Respect for personhood is a vital component of moral community – and no less so where that moral community is, in microcosmic form, the physical queue for service. The queue is ‘a psychological as well as a social structure’ (Schwartz 1978: 9). It follows that notions of justice and fairness have been extensively canvassed in the literature of queue scholarship. The issue of fairness in the queue is very important to people in the waiting line – ‘perhaps even more important than the duration of the wait’ (Raz et al 2004a: 2; Raz et al 2004c: 130).⁷⁵ It is therefore widely acknowledged that social justice is ‘an important determinant’ of the waiting experience (Zhou and Soman 2005: 2)⁷⁶ and indeed, in the view of one commentator, ‘fear of social injustice can often dominate queue waiting times’ (Larson 1987: 896). It should cause no surprise that a large element of this concern with justice should fasten upon ‘impolite arrivals’ in the line (Li 1996: 508), ie illicit attempts to disrupt the conventional discipline of the queue.

(a) *Indirect violations*

The most fundamental violation of the normative code of the queue comprises the attempt to undermine the basal principle of ‘first come, first served’ (the FCFS rule). Violation may take a number of forms, some more subtle than others.⁷⁷ Thus, for example, a queuer who enters a supermarket express checkout queue with more than the permitted number of items is engaging in an act of queue-jumping just as surely as the person who butts his way into a more general queue. A similarly oblique subversion of queueing norms occurs where a client bribes the service-provider in order to secure a superior place in the queue, such malpractice effectively ensuring that the client’s queue position is determined not by the FCFS principle, but by the client’s capacity to pay and the service-provider’s susceptibility to venal conduct (Kleinrock 1967: 304). Even the activity known as ‘pre-scalping’ represents an undoubted, if less immediately obvious, breach of the

⁷⁵ Even the structure of the queue itself may influence perceptions of fairness. Those waiting in a multiple queue structure commonly report that they have experienced significantly lower fairness levels than participants in a single queue structure (Larson 1987: 899; Rafaeli et al 2002: 133-134; Zhou and Soman 2005: 4). Compare, however, Rothkopf and Rech 1987: 908.

⁷⁶ Zhou and Soman 2005 identify the FCFS (or FIFO) principle as embodying a form of ‘first-order justice’ in the queue. This ‘first-order justice’ is then supplemented by a principle of ‘second-order justice’ under which people expect that everyone in the queue should spend approximately equal amounts of time waiting for service. Zhou and Soman argue that the FCFS norm is the more powerful determinant of perceptions of justice in the queue and that ‘second-order justice’ matters only when ‘first-order justice’ is not in issue. In other words, relative duration of wait becomes relevant only where the FCFS principle is not being violated.

⁷⁷ Stuart Corbridge raises the difficult question of the *precise area* within which the FCFS code of the queue becomes applicable. He proffers the instance of rail commuters sprinting down the platform upon arrival at Cambridge station in a race for the taxi queue, only to restore the civility and morality of the queueing protocol within the ‘highly visible space of ten or twenty yards that lies between the station entrance and the line of taxis’ (Corbridge 2004: 185). Visions of Post’s fox are never very far removed from this kind of discussion (*Pierson v Post* (1805) 3 Caines 175, 2 Am Dec 264).

FCFS rule. Pre-scalping is a form of private enterprise in the ticket-sale context where, usually by prior arrangement, a queuer purchases more tickets than he needs for the purpose of retailing them at a premium to persons further back down the line. If pre-scalping is allowed to succeed, it severely 'disrupts the order of things': the organised sequence of queue has been displaced by 'the image of a busy marketplace' (Brady 2002: 163). And, as observed earlier in this paper, one of the primary objectives of the institution of the queue is the elimination of market criteria in the allocation of scarce goods.

(b) *Direct violations*

As Neil Brady has indicated, the last-mentioned strategy – 'pre-scalping' – is merely 'a variation on the simple theme of cutting in line' (Brady 2002: 160), and it is the less sophisticated practice of unconsented physical entry within the waiting line which engages much of the attention of professional queue-watchers.⁷⁸ In all those social contexts where the discipline of the queue has taken root, queue-jumping is commonly viewed as 'bad and evil' (Ratcliff 2006: 10-11) except in extraordinary circumstances of need or emergency. Conventional wisdom dictates that the mischief of queue-jumping is two-fold, these two aspects relating respectively to the *private* and *public* impacts of the conduct in question.

First, the act of queue-jumping imposes an immediate cost or disbenefit upon all individuals in a queue who stand behind the point of intrusion. Their waiting time is inevitably (albeit sometimes only marginally) increased and there may also be a danger that the desired good at the service point will become exhausted just before they arrive at the head of the queue (Milgram et al 1986: 683). In terms of a more clearly proprietary analysis, the victims of the intrusion have suffered a *taking* of their *property* – property in the form of spent time. The value of their investment – the sunk cost of time – has been diluted by the invasion of the interloper. An ancillary feature of this deprivation is the diminution of self-respect occasioned by the intrusion.⁷⁹ By his obvious indifference to the stored value of the queuers' investment of time, the interloper has imposed an additional demoralisation cost – a uniquely personal deficit – upon those who suffer the impact of his arrival in the line. This disregard for personal dignity – even if involving no actual physical contact – is precisely the kind of wrong encapsulated within the common law notion of assault.⁸⁰ The act of

⁷⁸ In some locations the queue is reinforced by the installation of environmental constraints or 'ecological supports' (Milgram et al 1986: 683). These mechanisms for protecting the integrity of the waiting line commonly take the form of barriers, ropes and turnstiles (Schwartz 1975: 99; Hall 1991: 425-426) or other 'queueing furniture' (Moran 2005: 301).

⁷⁹ Studies report, for example, that unconsented intrusion by a stranger evokes a stronger order of reaction than an unexpected interruption of service by the service-provider itself (eg by temporary closure of a service point). The 'intentional lack of concern demonstrated by a fellow customer' seems to strike a deeper blow because it connotes a disrespect for 'more essential human concerns, such as equality, fairness, and justice as well as concerns about territoriality ... and personal space ... values that are more closely linked to the human condition' (Schmitt, Dubé and Leclerc 1992: 806)

⁸⁰ From a very early stage the common law afforded extensive protection to sophisticated human sensitivities. The solicitude for the psyche demonstrated in the recognition of the wrong of assault remains 'the only instance in English jurisprudence of a mere offensive sensation unaccompanied by any untoward

encroachment is, moreover, an act of forcible dispossession – an offence against a peculiarly individual sense of territoriality (Lyman and Scott 1967: 236) and, for this reason, severely at odds with the centuries-old common law distaste for arbitrary seizure (Gray 1996: 252-254). Breach of the FCFS principle connotes the violation of a right akin to ‘quiet enjoyment’ (in the ancient English phrase) or ‘peaceful enjoyment’ of possessions (in more modern European usage). Some commentators refer to this bundle of essentially private consequences in terms of an ‘individual costs’ analysis of queue-jumping (see eg Schmitt et al 1992: 806).

Second, the non-consensual infiltration of the queue-jumper inflicts a rather different, and much more public, form of injury upon the social microcosm of the queue. The interloper’s invasion is stigmatised not only because of its negative impact on individual queuers, but also because it connotes a contempt for the entire normative order of the queue (Schwartz 1975: 94; Milgram et al 1986: 683). The indignation aroused by the encroachment derives, in part, from ‘the perceived disrespect the intruder has shown the system of social rules under which all members of the moral community are expected to live’ (Miller 2001: 535). A significant disruption of a particular social order has occurred.⁸¹ Waiting lines ‘are a public matter and therefore demand ethical behavior’ (Saaty 1967: 210). The act of invasion betokens a moment of systemic rejection and renunciation – a purely self-interested betrayal of the collective cultural values embodied in the institution of the waiting line.⁸² The social distaste generated by the interloper’s disregard for these values has been described by some commentators in terms of ‘moral outrage’ (Schmitt et al 1992: 806); and the inevitable response to this disrespect (and the ‘unjust’ consequences with which it is associated) is an emotion of moralistic anger directed against the wrongdoer (Miller 2001).

(c) *Sanctions for usurpation*

Queue-watchers have suggested that on entering the miniature social system of the waiting line, queuers ‘assume roles that may entail obligations if the system is under threat’ and are therefore ‘motivated by concerns that transcend individual cost considerations’ (Schmitt et al 1992: 806). The collective response to queue violation by forced entry is, then, plainly one of general social disapproval. The expression of this disapproval ranges all the way from polite reminders of the existence of the queue, through hostile stares and gestures to vociferous jeering and outright acts of physical violence aimed at ejecting the trespasser

psychosomatic symptoms, let alone external trauma, giving a cause of action for damages’ (Fleming 1967: 3).

⁸¹ Charles H Cooley’s description of the naïve queuer’s reaction to the interloper is indicative: ‘Then he will certainly be angry. The delay threatened is only a matter of a few seconds; but here is a question of justice, a case for indignation, a chance for anger to come forth with the sanction of thought’ (Cooley 1964: 282). It is noteworthy that children are less likely to encounter hostility or protest when cutting into adult lines (Ratcliff 2006: 12).

⁸² Gillian Fuller of the University of New South Wales makes the point that in Australia (as in many other nations) ‘queues have a decided moral dimension, where “to jump the queue” is indexical with impoverished moral values and antisocial civil disobedience’ (Fuller 2005: 4).

from the line (Mann 1969: 347; Mann 1970: 392; Milgram et al 1986: 683).⁸³ Social norms relating to the structure of the waiting line have been breached in a way that calls for some form of sanction and it is clear that, where the stakes are highest (as, for example, in a queue for a limited supply of petrol or Cup Final tickets), the sanction will tend towards the more severe end of the scale (Wiseman 1979: 319-320). In his study of Melbourne football fans Leon Mann recounted that five individuals were hospitalised after four different brawls broke out over queue-jumping in the ticket lines (Mann 1969: 347; Mann 1970: 392).

Yet one of the more fascinating findings of queueing research is the relative infrequency of direct physical action directed towards the expulsion of an interloper from the line (Mann 1969: 347). This degree of passivity is sometimes explicable on practical grounds. Queuers in the line ahead of the point of intrusion are less likely to object, partly because they suffer no individual cost but also in part because of a purely perceptual circumstance. They generally have their backs to the locus of the disruption and are therefore less likely to notice it (Milgram et al 1986: 683). It may also be difficult on occasion to discriminate between an illicit intrusion and some more innocent act of returning to a reserved place after a 'time-out' or even to share a place made available by a friend (Mann 1970: 349; Milgram et al 1986: 683). Violent resistance to an interloper may jeopardise one's place in the very waiting line which is the subject of defence. Furthermore, the linear structure of the queue tends to inhibit purposeful communication and centralised co-ordination of response. The waiting line often lacks any history of shared experience or group cohesion, with the result that, however affronted by the transgression of queue order, those in the line may simply be reluctant to make a scene or provoke a potentially embarrassing confrontation. There sometimes appears, therefore, to be a deep ambiguity in the response to acts of trespass within the line and, in this context, two aspects of the queue's reaction to violators have a particular significance for the property lawyer.

First, the classic studies of queueing behaviour indicate that the primary responsibility for responding to an act of intrusion is seen as resting with those in the close vicinity of the trespass and, in particular, with the person standing right behind the point of forced entry. As Leon Mann reported, the immediate victim of the violation is 'expected to take the initiative in ejecting the queue jumper' (Mann 1969: 348). Under the social code of the queue, this individual is regarded as owing a kind of fiduciary duty to the remainder of the waiting line to defend the integrity of the queueing system (Schmitt et al 1992: 806).⁸⁴ He or she is usually best positioned to determine whether the arrival of the stranger marks merely a legitimate return to the line after a time-out or constitutes instead an unjustifiable infraction of the internal moral order of the queue. And there is surprisingly strong support for placing the burden of resistance to improper intrusion on the shoulders of the immediate victim precisely because (it is surmised) this person, 'either through his passive looks or careless surveillance ... must have given some encouragement to the queue jumper' (Mann 1969: 348). In other words this individual has been 'careless in guarding his territory' (Mann 1970: 392) – a judgement which is

⁸³ 'Force ... underlies all allocative systems ... [A]ll private ownership rights are ultimately founded on the ability to forcefully exclude potential competitors' (Umbeck 1981: 39, 57).

⁸⁴ '[T]hose closest to the disruptive event are felt to have a special obligation to deal with it. There may be reluctance on the part of people further back in the line to do someone else's duty' (Milgram et al 1986: 688).

strongly reminiscent of one of the classic rationales for the recognition of adverse possession in the law of realty.

In one of the oldest, and initially most perplexing, emanations of the property concept, acquisition of title by adverse possession is founded on some notion of ownership by successful taking. An adversely acquired title to land clearly resembles ‘title by theft or robbery’ (Ballantine 1918: 135), but almost all systems of law have ultimately conceded that, even if the intruder’s entry upon land is ‘possession as of wrong’,⁸⁵ uncontested long possession confers a good title upon the trespasser.⁸⁶ Statutes of limitation, said Dean Ames, ‘regard not the merit of the possessor, but the demerit of the one out of possession’ (Ames 1913: 197). Oliver Wendell Holmes’ robust support for adverse possession likewise pointed to the former owner’s ‘neglect’ in allowing ‘the gradual dissociation between himself and what he claims, and the gradual association of it with another’ (Holmes 1897: 477). The law of adverse possession thus gives effect to a pragmatic expectation of vigilance – that an owner will rise with rugged fortitude to defend his or her territory against unlawful intruders.⁸⁷ Statutes of limitation have traditionally penalised ‘those who go to sleep upon their claims’⁸⁸ and at least in the English context have rewarded, at the expense of the sluggard, the purposeful intervener who, however wrongfully, takes the initiative in exploiting available opportunities. Exactly the same ideology seems to have penetrated the world of the physical queue for service. As always, the queuer’s position in the waiting line is a worked space and failure to *work* the space, not least by defending it against all comers, may lead to disadvantageous consequences that mimic the traditional legal response to displacements of a more general proprietary order.

The attention of property lawyers is also drawn instinctively to a *second* feature of the queue’s ambivalent reaction to violators of the FCFS principle. There is evidence that the queue is a powerfully adaptive social institution, equipped with a significant capacity to absorb disturbances of the normative order of the waiting line. For this reason the queue often forbears to react aggressively against wrongful intrusion, preferring instead to co-opt within the line the very trespasser whose actions pose a danger to its survival. As Stanley Milgram and his research team concluded, ‘once an intruder is part of the line, she or he has an investment in its continued existence’ (Milgram et al 1986: 683). Others have emphasised that the greatest threat to the order of the queue is the appearance of *disorder*. Prolonged or violent confrontations with isolated trespassers detract from the illusion that the queue has a stable and orderly structure, engendering instead a

⁸⁵ *Buckinghamshire CC v Moran* [1990] Ch 623 at 644D per Nourse LJ; *Sze To Chun Keung v Kung Kwok Wai David* [1997] 1 WLR 1232 at 1235H per Lord Hoffmann. See also *Alexander v Polk* (1861) 39 Miss 737 at 755 per Harris J (adverse possession ‘commenced in wrong ... and is maintained against right’).

⁸⁶ See also *Re Nisbet and Potts’ Contract* [1905] 1 Ch 391 at 402 per Farwell J.

⁸⁷ See *Purbrick v Hackney LBC* [2004] 1 P & CR 553 at [25] per Neuberger J.

⁸⁸ *R B Policies at Lloyd’s v Butler* [1950] 1 KB 76 at 81 per Streatfeild J. See also *Ellis v Lambeth LBC* (1999) 32 HLR 596 at 601, where the principal demerit of the paper owner’s case was that, even with clear knowledge of widespread squatting in its council housing, ‘over many years the local authority never troubled to take legal proceedings.’

perception that the queue is fragile and non-cohesive. At this point there is a ‘danger of complete disintegration’ of the waiting line (Mann 1970: 392). Over-ready resort to violent ejection of an interloper ‘seems to represent a kind of public acknowledgment that the queue is no longer organized and under control’, an implicit concession which may well encourage an epidemic of queue-jumping (Mann 1969: 349). The waiting line therefore exhibits, quite commonly, a preparedness to ‘ignore, adjust to, and tolerate’ disturbances rather than risk the ‘escalation of a localized incident into a general fracas’ (Milgram et al 1986: 683). As Barry Schwartz once wrote, ‘the chaotic dissolution of the queue can be forestalled not only by the default of deviance but also by its contingent toleration’ (Schwartz 1975: 96).

The prudential, self-serving logic which underlies the preservation of the integrity of the queue mirrors exactly the systematic deception practised by the more general notion of property. The trappings of property as an institution are fiercely defended lest anyone perceive that the *imperium* of property has no clothes. On a daily basis we all participate in a mutual conspiracy of property talk, allowing ourselves to believe the shared pretence that proprietary analysis betokens a stable, ordered structure of entitlements to the goods of life (Gray 1991: 252, 305). We tolerate the mumbo-jumbo of property not least because the crude linguistic shorthand of our proprietary allusions promotes a certain low-level communicative efficiency. Rarely does anyone break rank in this exercise of juristic solidarity, although the High Court of Australia came close some years ago in suggesting that ‘it may be ... that “the ultimate fact about property is that it does not really exist: it is mere illusion”.’⁸⁹ For the most part, however, we rally together to preserve the systemic integrity of property as a normative order and, historically, one of the principal ways in which this order has been maintained lies in the conscious condonation of certain isolated misappropriations of entitlement. Thus for example seisin, even when based on wrongful possession, was always accorded a certain protection by the common law ‘in the interests of peace.’⁹⁰ From the earliest days of the common law, there was always a large social interest in ‘the quieting of possession.’⁹¹ Although – perhaps *because* – it allows the maturing of wrongs into rights, the law of adverse possession has served to promote the overall stability and integrity of the regime of property (Gray and Gray 2005: 6.30-6.38).

In a variety of contexts – whether the arena of international law or a modern municipal legal order or even the humble microcosm of the queue – property is an organic phenomenon. It has a certain self-defining quality. It comprises, is founded upon, and is ultimately no more than, socially constituted fact (Gray and Gray 1998: 18-27). It is for this reason that statutes of limitations regularise what are usually relatively minor deviations from existing property allocations. By incorporating a principle of efficient trespass, the law ensures that land titles conform to lived boundaries. In so doing, the law marks a controlled trade-off between moral right and social reality – an absorption of wrongdoing within the mainstream of proprietary entitlement – which, in the

⁸⁹ *Yanner v Eaton* (1999) 201 CLR 351 at [17] per Gleeson CJ, Gaudron, Kirby and Hayne JJ.

⁹⁰ *Minister of State for the Army v Dalziel* (1944) 68 CLR 261 at 276 per Latham CJ.

⁹¹ See *A'Court v Cross* (1825) 3 Bing 329 at 332-333, 130 ER 540 at 541 per Best CJ.

long perspective of legal history, has reinforced rather than weakened the institution of property.⁹² It seems that the social mores of the queue involve a degree of elasticity which serves essentially similar purposes.

9 Conclusion

The practice of queueing for service provides an intriguing subject for the property theorist. Here, in a context clearly distanced from any formal application of proprietary language or doctrine, we have a rare opportunity to witness the genesis of a legal institution. Modern astronomers are able to gaze across space and observe in real time the birth of a star many aeons ago. In much the same way, by analysing the conventions of queueing behaviour, today's property theorists can catch a fleeting glimpse of the creation of proprietary order. Out there in the parallel universe of everyday sociality we find a behavioural form which mirrors back to us some of the mechanisms by which human beings have striven to reduce or control the potential anomie of competitive existence.

As Neil Brady has said, the queue discloses 'the quintessential ethical conflict in economics and society: the pursuit of self-interest in a context of general fairness' (Brady 2002: 157). Central to the management of this fundamental tension between self-advancement and common civility is some deep, largely inarticulate, awareness of property, or, more accurately, an awareness of 'propriety' (Alexander 1997: 1-2). If our investigation of the phenomenon of the queue has highlighted one thing, it is that queueing behaviour bears the imprint of elementary property forms. Embedded in the mores of the queue are rudimentary perceptions of ownership, self-ownership and personhood. In the queue are found the coded traces of proprietary order and, perhaps more importantly, some clue as to the origins of that order. It is true that the substantive content of the property notion has always proved tantalisingly elusive. But it may just be, as evidenced in the queue, that the element of 'boundary' which is implicit in the conceptualism of ownership performs a minimal, but still meaningful, role in curtailing the human impulse towards purely predatory behaviour (Gray 2007).

In the context of the queue the idea of 'boundary' has both a *public* and a *private* dimension. At the public level, the queue sets in place a moral geography which demarcates the waiting line as the exclusive channel of access to a desired service. Those outside the queue are clearly beyond the bounds of the distributional system comprised in the queue and, in the normative order of the waiting line, have no pre-emptive right to accelerated service. To a greater or lesser degree, the collectivity of the queue mediates relationships between the personnel waiting in line and upholds the immunity of the group from invasion by strangers. At the private level, the queue recognises the spatio-temporal ownership represented by each place in the line and operates a normative convention that there may be no unconsented advancement of position within the queue. Under this convention each queuer is entitled to defend against opportunistic attack the personal

⁹² It goes almost without saying that, in just the same way that Torrens registration of land titles has diminished (or even destroyed) the role of the adverse possession principle in some modern legal systems, so too the traditional functioning of queue order has been transformed in many contexts by the bureaucratisation of queueing (as in the numbered ticket system employed nowadays by many service providers).

space which was assumed on arrival and which symbolises both the queuer's ordinal ranking and the stored value of his or her commitment to the queue.

But why should the 'silent language' of the queue (Hall 1959: 15) endorse these essentially proprietary responses? The answer seems to lie in an implicit compromise of self-interest – a social compact aimed at maximising personal advantage whilst limiting inter-personal conflict and averting general anomie. As Joseph Singer has often emphasised, property is 'socially constructed' (Singer 1993: 241). Thus, for John Wiseman, the queue rests on a 'perceived congruence between individual and collective rationality.' In Wiseman's analysis, the queue has 'an undeniable collective rationality (when compared with the alternative chaos)' in circumstances where a sufficient number of persons see the queue 'as being a rational alternative for themselves as individuals' (Wiseman 1979: 319).

The trigger for queue formation requires, of course, a critical mass of persons who are prepared to commit themselves to its distinctive normative order. Nearly four decades ago Leon Mann described the relative 'drawing power' of 'stimulus queues' at bus stops or library issue desks, noting the critical number of queuers required in different contexts to induce strangers to conform to the discipline of the waiting line (Mann 1970: 397-398). In much the same way, the emergence of a more general normative regime of property requires the participation of sufficient numbers of people who are willing to be complicit in a regulatory system which suppresses the private predatory instinct in favour of a new collective order. The normativity of property is the consequence of a social contract which, as one queue-watcher has said, gives effect to a 'more-or-less shared disposition to impose rationality' on a situation which could easily disintegrate into unspeakable anarchy (Brady 2002: 161). Under this *quid pro quo*, the opportunity for unrestrained self-aggrandisement is surrendered in exchange for access to mutually enjoyed advantages of freedom and security in one's economic affairs. Yet again, C B Macpherson's famous tension between access and exclusion as polar features of the property phenomenon finds another form of resolution (Macpherson 1975: 119-120). But voluntary commitment to the overall normative structure – whether of the queue or of property in general (it perhaps no longer matters) – does not completely displace the primal, biosocial instinct to defend personal advantage and exclude others from it. The impulse of uncurtailed self-interest is allowed to resurface as a legitimate, socially endorsed resistance to any encroachment upon the 'estate' which has been assigned within the allocative order of the collectively agreed regime. Violation of that order (whether by queue-jumping or by theft) marks a serious breach of the social contract and leads to significant expressions of social disapprobation.

Just as intriguing as the question 'why?' is the question 'how?' Precisely *how* do we become complicit in a normative regime which restrains self-interest for the sake of general order? By what means do we internalise the relevant normative code? How, for instance, are we persuaded to participate in the self-discipline of the waiting line? All of which touches, of course, upon the issue whether property entitlements derive from social convention or whether our conventional arrangements are dependent upon the pre-existence of property. Which came first: property or contract? Which is logically prior? This remains one of the timeless, and most intractable, conundrums of legal theory. Many would argue that, without property,

there would be little or nothing to contract about. Yet, it might equally be said that, without a collective entry into some form of social contract, property itself would have little or no meaning.

Queue scholarship appears, at least initially, to provide some support for the surmise that 'property' perceptions within the queue are a learned response rather than an expression of some instinctual or immanent sense of proprietary entitlement. Deferment of gratification is an important part of the socialisation of the infant, a process of waiting which some psychologists associate explicitly with such matters as feeding protocols and elementary toilet training. The taking of turns and the instilling of respect for serial or rank order likewise play a significant role in early childhood experience (Schwartz 1975: 173-174). Children, it is said, 'learn a "script" for queue participation', an evolving drama in which the individual child comes to understand that much of life involves a gradual progression from a position of relative insignificance (at the back of the queue) to somewhat more prominent roles (further up the queue) and then, finally, to the climax of the drama (arrival at the head of the queue and the resolution of the entire experience) (Ratcliff 2006: 20). Again, much of the educational world of the child involves endless standing in line at school. On this basis it may be possible to argue that a number of environmental factors have helped to install a 'software of the mind' which is predisposed to an acceptance of queue discipline (Hofstede 1997: 4-5).

On the other hand, it could be said that many of the examples recited above relate, not to the assimilation of any proprietary understanding of waiting processes, but to basic requirements of institutional or systemic organisation. Thus the linear formations found in the school yard might be thought to constitute merely an involuntary regime of 'queueing under authority' (MacCormick 1998: 307) and, precisely because directed towards organisational rather than distributive outcomes, not to represent true instances of normative awareness of the phenomenon of ownership. Of course, this does not in itself mean that proprietary perceptions are *not* the product of childhood acculturation (Trasler 1982: 35-43). But to insist that all proprietary impulses derive from processes of socialisation may be to ignore the powerful pull of personhood theory in the formation of proprietary understanding. It may also underplay a significant body of evidence that proprietary motivations are pre-social and instinctive (Gray 1994: 157-158) or, at least, are the product of a biosocial conditioning which has been in progress over millions of years. It is not without significance that some queue-watchers draw an explicit parallel between queueing and hunting. The slow, determined, appetitive quest of those who wait in line is similar to the patient process undertaken by the hunter who stalks and gradually runs down his prey. Indeed, in some languages the idea of queueing is expressed in terms equally applicable to the drama of the hunt: the ultimate objective of the queuer is to 'track down' or 'bag' the prize (Czwartosz 1988: 8-9). The mental software of the queuer may yet contain elements which are not so much learned as *inherited*.

Enough, perhaps, of whether we actually learn to queue. What, instead, can the queue teach us? It teaches us, first, that proprietary impulses are fundamental and that they can pervade all reaches of human existence. There is no moral community on earth without some concept of property: property is too closely

intertwined with the creation and preservation of social order.⁹³ Embedded in the mores of the physical queue for service are plenty of coded messages about ‘property’ and ‘ownership’, evidenced most strongly in the various ways in which the waiting line allocates and defends the special form of spatio-temporal property held by each of its members. But, as a microcosmic replica of a property regime, the queue also demonstrates that the notion of property is much more flexible and adaptive than one might imagine. The survival of the collective order requires the presence of a high degree of solidarity and cohesion and, in Leon Mann’s famous description of the queue, these qualities are assured by ‘establishing informal rules which are kept sufficiently general to allow individual members to adjust to the normative pattern’ (Mann 1969: 351; Mann 1970: 393). Property, in short, is organic, interactive, socially defined, normatively resilient and extremely relative.

A second lesson to be drawn from the queue is more profound. The overwhelming perception formed by its close observers reflects a clear sense of the collaborative and mutually supportive nature of the group of persons caught up in the waiting line. Neil Brady has concluded that ‘[p]robably the single most important feature of lines is their reliance on trust and cooperation’ (Brady 2002: 162). The queue – particularly in its larger-scale versions – is a self-help community, united both in its movement towards a common goal and in a shared commitment to making the environment of the waiting line (and, thereby, the process of waiting) more tolerable. Queuers are not, in the magnificent phrase of Eugene Kamenka and Alice Tay, ‘isolated and isolable windowless monads’ (Kamenka and Tay 1975: 133). Instead, they relate to each other; they forge alliances; they respect, and adjust to, the needs of other queue members; and they honour debts of loyalty. The proprietary subtext of the waiting line is counter-balanced by mutuality and reciprocity. In the interdependency of the queue, rights are inseparable from responsibilities. Entitlement and obligation stand together, hand in hand, in the waiting line – a perspective on property relationships which is increasingly embraced, on a more general plane, by modern property scholars (Singer 2000; Underkuffler 2003; van der Walt 2005; Alexander 2006).

A third, and final, thought generated by the phenomenon of the queue relates to the elusive content of the concept which we label ‘property’. The discipline of the queue finds its origin, at least in part, in an apprehended need to protect a particular kind of personal space from predation by strangers. In performing this task, the normative code of the queue upholds and reinforces an especially intense perception of the individual’s ‘personhood’. The demoralisation cost which the normative order seeks to avert is, in large measure, the injury inflicted upon the psyche of the queuer by disrespectful encroachments upon a special zone of autonomy (together with the erosion of priority that such invasion connotes). As we saw earlier, the waiting line is ‘a psychological as well as a social structure’; and there is also a deep sense in which the law of property itself is effectively a field of applied psychology. The normative structure of the queue silently underscores the point that the ultimate property relates to *human dignity* – the reinforcement of a life-

⁹³ Certain religious communities abandon all sense of personal property, but usually retain a strong sense of communal ownership enforceable against strangers to the community.

enhancing *self-propriety*.⁹⁴ Nor should this proposition seem remarkable. Etymologically, the term ‘property’ is linked, in a powerful network of nuances, with such words as ‘proper’, ‘appropriate’, and ‘propriety’. And the ideological conflation of property, personhood and self-regard is entirely comprehensible, given that the Latin root *proprius* (or the French and medieval English *propre*) served as the primary identifier of a relationship to the self.⁹⁵ The semantic reality is that ‘property’ comprises the condition of being ‘proper’ to a particular person; and nothing could be more ‘proper’ to oneself than one’s *self*.

It was, of course, John Rawls who so strongly argued that ‘the most important primary good is that of self-respect’ (Rawls 1973: 440). It is here that we find ourselves at the confluence of a number of themes which have animated property theory, both ancient and modern. In the view of John Locke, ‘every Man has a *Property* in his own *Person*.’ Accordingly Locke was quite prepared to regard the concept of ‘property’ as inclusive of an individual’s ‘life, liberty and estate’ – a species of inalienable and self-constituting control over one’s destiny (Locke 1967: 305 (§27), 368 (§123)). As Laura Underkuffler has so eloquently reminded us (Underkuffler 1990: 138), the Lockean formula encompasses a perception of property as ‘moral space’ – a term which assumes a certain aptness in the normative geography of the queue. During the late 20th century the Lockean theme was recast in C B Macpherson’s assertion that the idea of property is gradually broadening to include a ‘right to a kind of society or set of power relations which will enable the individual to live a fully human life’ (Macpherson 1975: 120). This insistence that property is intricately connected with human self-realisation provides our final link with the world of the queue. The ‘fully human life’ to which Macpherson referred has, of course, a clear temporal dimension: we are all tenants of an unknown, but finite, term of years. The jurisprudence of self-propriety – just as the jurisprudence of the queue – contains a significant and salutary recognition of the conceptual reality of property in time.

⁹⁴ This is, amongst other factors, the source of the rapidly evolving English law of privacy.

⁹⁵ Thus, for example, the poor could be described as not ‘hauyng ony thyng proper’; and a very early 15th century reference describes someone as having been slain ‘with his own propre swerd’ (*Oxford English Dictionary* (Clarendon 1933), Vol VIII, p 1469 (‘Proper’, I, 1)).

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