

One of the pillars of conservative thought used to be protection of property rights. But now it seems to have lost its pride of place. The word “property” doesn’t even appear in the 2024 Republican platform. And I can’t remember Trump ever speaking about property rights.

The Court hears cases involving property rights from time to time. For example, it struck down a California law that required landowners to give union organizers access to farmworkers. But the Court was careful to leave intact more common access mandates such as government inspections. Another ruling made it easier for landowners to bring challenges in federal courts, and some other rulings have also been favorable to land developers. These were all incremental holdings. True, they supported property rights: But compare them to the bold steps today’s conservative Justices have made in areas they really care about- giving presidents broad immunity from criminal laws, knocking out gun control laws, supporting religious schools, and protecting religious groups from civil rights laws. There’s no similar sense that the Justices are marching to battle for property rights.

Forty years ago, there seemed to be a serious risk of environmental laws being struck down as unconstitutional takings of private property. That may happen on occasion, but no one on the Supreme Court seems to be interested in leading a crusade to transform takings law. Seven years ago, the Court held that Wisconsin could bar some landowners from developing part of their land near a protected river. The Court was closely divided on a technical issue, but it is notable that none of the dissenters argued that the law was unconstitutional. And none of them picked up the argument by property law advocates that a key pro-government precedent, the *Penn Central* case, should be overruled.

It’s harder to know how conservative voters feel about property rights these days, but there are indications that they’ve also deemphasized the issue. Conservatives seem comfortable with local efforts to keep farmers from using their property for solar panels or wind turbines. They also seem OK with forcing business owners to allow people with guns on their land. Again, I’m not saying that belief in property rights has vanished altogether, but it’s not part of the MAGA agenda either.

If I’m right about the trend, I’m not sure how to account for it. As the Republican party has refashioned itself as a working-class party, property rights may seem less relevant to its base. MAGA magnates like Musk and Thiel have no reason to care about the rights of landowners, which are not relevant to their own immense wealth.

Some liberals have now come to oppose a lot of traditional land use regulation, which they believe stands in the way of more housing and green infrastructure. Ironically, this has

happened at a time when property rights seem to have become somewhat passé on the Right.