

Property Rights, Lockean

John Locke proposes his theory of property rights in *The Second Treatise of Government* (1690). The theory is rooted in laws of nature that Locke identifies, which permit individuals to appropriate, and exercise control rights over, things in the world, like land and other material resources. In other words, Locke's theory is a justificatory account about the legitimacy of private property rights. Locke's natural law justification is distinct from other accounts circulating in the 17th and early 18th centuries. For example, Thomas Hobbes argued that rules protecting private property must be the design of the political authority. Alternatively, somewhat later, David Hume argued that property rules are evolved pre-legal conventions that acquire legitimacy by the mutual acknowledgment of a people.

Locke's account has sometimes figured into contemporary political theory as a basis for libertarianism. However, establishing a basis for control rights over things is different than establishing the strength of those rights. Therefore, Lockean theories of property rights have two parts. The first part grounds the legitimacy of original appropriation and exclusion. The second part conditions the legitimacy of original appropriation and exclusion. Contemporary libertarianism is separated into right and left varieties based on the strength of the conditioning factors. Right-libertarians adhere to a relatively permissive conditioning factor: the appropriator must merely refrain from violating anyone's right of self-ownership. Left-libertarians impose more restrictive conditioning factors, usually with the aim of preserving equality.

According to Locke, Divine Providence has been equally generous to human beings, providing natural goods in creation for our common use. But, he writes, "there must of necessity be a means to *appropriate* them some way or other before they can be of any use." This is what generates the puzzle about legitimacy. If the natural bounty has been given to us in common, how can any individual legitimately claim ownership and control rights over it? How does a resource, like an area of land, change from one day something that Brody can use to meet his needs to the next day something that Dorothy is permitted to exclude Brody from using, even to the point of using coercive force to exclude him? How can it be legitimate to change from a system of common use, where everyone is equal, to one that leads to the "disproportionate and unequal Possession of the Earth"?

Locke's answer, and the first part of his theory grounding the legitimacy of original appropriation, is labor. He is proposing a unilateral account since it does not depend on the imprimatur of a political authority or the consent or acknowledgment of a community. Instead it depends simply upon Dorothy's decision to "mix" her labor with the land, say, by sowing it. This is because, first, it is evident by the light of nature that individuals, subject to God's prior claim to everything as its Creator, are self-owners. Individuals also, therefore, own their labor. To mix that labor with unowned things in the world distinctively connects those items to the individual laborer. One's labor infuses them with the same rights one has with respect to one's body, including the rights to control, use and exclude others from it. It is as if by some moral power they

have become an extension of the self. Among everyone who exists and who might have used these items, no one else has a relationship as normatively close and significant, and that difference solves the problem of who enjoys all the relevant control rights.

The account up to this point is incomplete as a justificatory account. For consider Brody. Why should any of this satisfy him? After all, Dorothy's claim still dispossesses him of something he presumably valued highly. Does he have a legitimate complaint? The second part of Locke's account argues that those whose freedom of action is now limited by private property rights have no such complaint because permissible appropriation is restricted by the condition, or proviso, that enough and as good be left available for them. When this proviso is met, no one is harmed by the appropriations of others.

Such is roughly the view of the right-libertarian theorist Robert Nozick. Private property rights are not legitimate if they worsen, relative to some baseline, the position of those who are no longer at liberty to use the resource. Some critics allege that this is too permissive because, in our example above, it allows Dorothy, the first possessor, to capture all the excess value associated with the resource above Brody's baseline indifference point. Since natural resources initially belong to everyone to use equally, perhaps any changes to the institution of property should still preserve the equal value of everyone's initial share. Left-libertarian Hillel Steiner argues that this can be achieved by redistributing the excess value from people who have "over-appropriated" natural resources to the rest of us through a global fund.

David Schmidtz has argued that some ways of interpreting Locke's proviso treat appropriation, for no good reason, as a zero-sum game. It may appear logically necessary that appropriating a resource from a common pool will leave fewer resources for others, but that is false. In fact, in many cases, appropriating a resource from the common pool will mean that the resource is preserved rather than destroyed. In other words, private property can prevent what Garrett Hardin calls a "tragedy of the commons." Specifically, Hardin argued that common pool resources, when there is no way to prevent others from accessing and using them, have a tendency to succumb to a tragedy of overuse. So Schmidtz argues that the control rights that are protected by the institution of private property are justified – justified to everyone – because they prevent a negative-sum game. We must appropriate resources from the common pool if we want to leave those who will come after us with enough and as good.

Schmidtz also argues that it is much easier to satisfy Locke's proviso under a private property regime. Privately owned resources tend to be allocated to their highest valued uses and generate higher and higher levels of wealth. Appropriation from the common pool leaves fewer things in it to appropriate, but appropriation also makes more accessible more things that improve people's lives. For example, the first settlers in the New World appropriated vast pieces of unowned land, leaving none for us to appropriate. They might be considered over-appropriators relative to us, given our decidedly modest holdings in land. Even so, we are certainly much, much better off than they were and we have no interest in trading places with them.

Even if this is the best interpretation of the proviso, Locke's account justifying property rules may yet remain incomplete. This is because while we might be doing very well, not everyone is. Imagine that Brody has not merely "under-appropriated" relative to Dorothy; imagine that he is suffering in poverty. In those circumstances what reason does he have to adhere to Dorothy's claims to her goods? A set of property rules enforced as coercive barriers may leave Dorothy secure in her possessions, but is the coercion of these rules enforcing her claims justified? To Brody? It is plausible to think not if the enforcement of property rules will be such as to require him to starve to death.

Locke, therefore, argues that everyone has a legitimate entitlement "to so much out of another's plenty, as will keep him from extreme want, where he has no means to subsist otherwise." For Locke, this was another deliverance of natural reason. A benevolent Deity would not provide such bounty, as well as the means to sustain and cultivate it by authorizing us to alter rights of access to it, but countenance the extreme want that could foreseeably arise within a private property regime. Some moderate libertarians endorse a sufficiency standard that requires minimally decent prospects for everyone's lives. This seems to be a recognition that systems of property rights enforcement can be illegitimately coercive when the rules that make them up are interpreted in such a way that, from the perspective of some, there is no point for them to observe those rules.

Debates about the global distribution of capital in the 21st century feature a range of diverse views. Some aim to maximize individual property rights, others, to meet basic minimal standards of welfare, and still others, to establish standards of material equality. Locke originated much of the ideological impetus behind Western liberal constitutions, but his legacy also continues in the development of contemporary property law and political theories of wealth creation and distribution.

– Kyle Swan and Jacob Vargas

See also Commons, The; Economic Growth; Equality; Libertarianism; Nozick, Robert (1938-2002); Nozick's Theory of Justice; Property and Property Rights; Redistribution of Wealth; Rights, Theories of; Tragedy of the Commons; Wealth Creation

Further Readings

Locke, John (1980 [1690]). *Second Treatise of Government* (C. B. Macpherson, Ed.). Indianapolis, IN: Hackett Publishing Co., Inc.

Nozick, Robert (1974). *Anarchy, State, and Utopia*. New York, NY: Basic Books.

Schmidtz, David (1994). The institution of property. *Social Philosophy and Policy*, 11, 42-62.

Steiner, Hillel (1994). *An Essay on Rights*. Cambridge, MA: Blackwell Publishers.