

Theories of Property: What Do We Own?

(For class use, Mason Gaffney, adapted from Robert Scrofani)

"Though the earth ... is common to all men, yet every man has a property in his own person; this nobody has a right to but himself. ... Whatever he removes out of the state of nature and mixes with his labor he joins to it something that is his own, thereby making it his property. ... and by his labor has annexed something to it that now excludes the common right of other men ... **AT LEAST WHEN THERE IS ENOUGH AND AS GOOD LEFT IN COMMON FOR OTHERS**" (John Locke, *Essay on Civil Government*).

The part in caps, above, is called "The Lockeian Proviso." Locke did not tell us what to do where there is NOT "enough and as good left in common for others"—and of course, that is the real problem. Locke left it for us. What is your opinion?

Clueless? Below are some rival theories of distribution, hence of property, to get you started.

Dead certain, and not confused? Then maybe you just don't understand how hard it is to defend your theory against the others. Give it a try.

1. **The Functional Theory:** "The product belongs to the producer."

Posers:

- a. How to divide shares of a joint product? (Economists worked out the theory of marginal productivity to answer this poser.)
- b. How about land, which was never produced by man?
- c. What forms of capital: labor, or saving? Who is the "producer" of capital to whom the product rightly belongs?

2. **The Egalitarian Theory:** "Equal shares for all."

In philosophy, this is most often applied to land. In wartime, with rationing, it has been applied to key commodities like food and fuel, but not to land or housing.

3. **The Power Theory,** or *Lex fortioris*: "Let him take who has the power, and let him keep who can."

See John Wayne in *Red River* for this theory in the raw. The rationale, if anyone bothers, is that survival of the most predatory and acquisitive, "red in tooth and claw," is good for the future of the race.

Posers:

- a. Are the palace machinations of courtiers, bribing land office agents, and lobbying Congress, values with survival value for the human race?
- b. Is there any basis here for inciting survival activities like labor and saving? Is acquisitiveness the same as creativity, thrift, and productivity?

4. **The Priority Theory:** "First Come, First Served."

Alternatively, "First in Time, First in Right." "First" often applies to "use," not just occupation, fencing, or claim. This is how water claims are decided in most of the seventeen western states, for example.

Posers:

- a. Must we give it all back to the Indians? If so, which Indians? Must the Normans give it all back to the Saxons, and the Saxons to the Celts, etc.? How much Indian blood makes an "Indian"? How shall ancestry be proven?
- b. Should blacks be penalized because their ancestors were held in bondage while the public domain was being privatized, for whites only? Should Americans of oriental ancestry be penalized today because their ancestors were prevented, by force or law, from owning land? Should Americans of Hispanic ancestry be penalized today because their ancestors could not speak English, or did not understand Anglo law, or lacked political influence in Sacramento and Washington? Should any American today be penalized because his ancestor was a missionary or a soldier, overseas serving his church or country, perhaps being killed, while the ancestors of others stayed at home and acquired public land for themselves?
- c. Is it good economics to reward premature use of land, water, or minerals, to lay claim to its future value?

5. **The Purchase Theory:** "Purchasers are innocent of previous wrongs; bygones are bygones; purchase launders all titles."

Posers:

- a. If "fences" are guilty of conniving at crime in commodities, how are purchasers of stolen land "innocent?"
- b. If "bygones are bygones," need we honor any claim to property? Where is the fairness and symmetry in this theory?

c. California's Proposition 13 amendment applies a higher tax to the newer, or more "innocent," buyers of land, than to old owners. (Hence it is called the "Welcome, Stranger!" law.) Can we square these apparently contradictory notions of "innocence?"

6. **The Discovery Theory:** "Whoever finds something, it is his. 'Finders keepers, losers weepers,' as children say."

Rationale: discovery takes work and risks capital, therefore it is a form of production.

Posers:

a. Some things are cheap and easy to find, others are hard and expensive. Should any difference be acknowledged?

b. If God or nature hadn't put it there, it never could have been discovered. Should the finder take all the credit?

c. For everything that is found, there is that much less for others to find in the future. That is a form of depletion, a social cost.

d. Corporations bid hundreds of millions of dollars, when they must, to buy exploration rights on "mineral-prone" land. Does that indicate the presence of a value in addition to what is added by the cost of exploration?

e. Wealthy firms and individuals have acquired minerals in nations abroad by bribing local tyrants, and/or by getting help from U.S. armed forces. Where is the "justice?"

7. **The Tradition Theory:** "When we were born, certain people owned things, and others didn't. The way things were is how they should remain."

Posers:

a. The world is inhabited by succeeding generations. Do older people always have superior rights over younger people? Things never remain as they were. Do the newborn have any rights but what they inherit individually? Is inheritance valid?

8. **The Self-validating Theory:** "Property is an end in itself, its own voucher, needing no rationale." Also called "the Sanctity of Property" concept.

a. "Sanctity" is a theological concept. Is it appropriate to apply it to property law?

b. Not much "rationale" here: either you buy this or you don't. Do you?

9. **The Merit Theory:** "Persons of Property are Responsible and Superior. In the Interest of All they should Rule, using the Discretionary Income from Property to Hold and Exercise Power."

Posers:

- a. How are the landless protected when persons of property allege that their own peculiar interest is the interest of all? ("What's good for General Motors is good for the country.")
- b. What is the evidence that property owners are more meritorious?
- c. As aliens buy up our land, does the citizen as such have any rights? (About two-thirds of downtown L.A. is owned by aliens, for example. American corporations, in turn, own large chunks of other nations. Who's in charge here, the World Trade Organization?)

10. **The Biblical Theory:** "The Earth is the Lord's, and the fullness thereof." "The land shall not be sold forever, for the land is mine, and ye are strangers and sojourners with me." (Leviticus, Chapter 25.) This is the "Mosaic Law." Jesus said, "Think not that I am come to destroy the law and the prophets; I come not to destroy, but to fulfill."

Posers:

- a. Who represents the Lord on Earth?
- b. Who owns property that is not land?
- c. What is "Caesar's," that it should be rendered unto him?

11. **The Stewardship Theory:** "Owners are trustees who hold property for the benefit of all."

Posers:

- a. How, specifically, are the owners to behave so as to benefit all?
- b. What, specifically, is to make them do so, if they wish to act otherwise?

12. **The Communist Theory:** "The state owns all the means of production, (maybe in trust for the people, but the track record is not so good)."

Posers:

- a. How may state personnel be held to account?
- b. How draw the line between "means of production," and individual property? Consider that a residence also produces direct services (imputed income) to its owner-occupants. It is a "means of production," producing shelter from the weather above, and a

place to live, stand, sit, sleep, eat, clean up, enjoy commodities, and generally survive and "pursue happiness" in life.

13. **The Birthright Theory:** "All men are created equal, endowed by their Creator with certain unalienable rights."

Posers:

- a. Is one of those rights a pro rata share in the property of the nation? Or the land of the nation?
- b. If yes, how should those rights be expressed and implemented?
- c. If no, what specific rights are unalienable, or is this fine talk about "life, liberty, and the pursuit of happiness" just hot air? Can you have any life, and "pursue happiness" as well, without any right to a piece of the earth?

14. **The Life Cycle Theory:** "Property is a store of value that people accumulate for their old age. It spares the young from caring for the elderly. It is a welfare system."

Posers:

- a. Does this apply to young people with large inherited wealth? To middle-aged multimillionaires?
- b. Is it socially desirable to segregate the young from the old?
- c. Who cares for elderly folks without any property?

15. **The Saving Theory:** "Property is a store of value to reward saving. Without property, no one would save, and there would be no capital."

Posers:

- a. Does this apply to land, which is not created by saving?
- b. People without property may save to buy property, but there is evidence that people *with* property save less when their land rises in value. (This is called "the wealth effect.") There is evidence that the worst spendthrifts are heirs and heiresses who never learned the discipline of having to save and conserve.

16. **The Financing Theory:** Land must be given away to the beneficiaries so they can borrow money on it, the better to use and improve it.

Posers:

- a. How to select the lucky beneficiaries? What compensation is there to those who are left out?
- b. Is it socially efficient to allocate capital according to collateral security? How about marginal productivity?
- c. Do we not observe that people are able to borrow to build on leased land, e.g., on the Irvine Co. lands in Orange County, or Indian lands in Palm Springs?
- d. Do we not observe that people who acquire land free, like current crop of Russian "kleptocrats," either waste the money or send it abroad?

17. **The Efficient Use Theory:** Secure possession (tenure) of land is necessary to make some individual responsible for its wise, economical use, motivated by self-interest. It doesn't matter who owns it, so long as someone does: then let the market take over, for the benefit of all. To avoid disputes over who gets it, validate and legitimize all existing possessions, however they originated, and however precarious they are now.

Posers:

- a. Where are justice and equal rights in this theory? If it doesn't matter who is chosen to own it, let's start by giving it all to me—would that be all right?

Is it right, or is it just arbitrary, to wipe out the rights of the landless of today, and all newborn generations? Does this theory evade the issue of who should own property? Worse, does it sneak in a tacit premise that the current possessors should be the ones chosen to own it? Why is this better than evicting all the current possessors and replacing them with others chosen at random, or by lottery?

The existing ownership of land goes back to political power exercised in the fairly recent past. The market responds to purchasing power, and when you give away property, you determine who has the purchasing power, as well as who has the collateral security to borrow money. Is it consistent to validate a political distribution of land, while rationalizing it as a market-based system?

- b. What should be done about new forms of property, which are constantly being formed? Examples are pollution rights: should they be based on histories of pollution, as is now seriously proposed? Does this create a motive to pollute now, to establish future rights to pollute? More generally, seeking to acquire future tenures that will yield rents ("rent-seeking") is recognized by economists as a distortion of motivations that warps human activity and investment in uneconomical ways.

- c. What should be done about possessory interests or concessions that involve public subsidies, e.g., contracts to get cheap irrigation water from public projects? Should the public

subsidy be guaranteed forever, so the current contractor can sell it? (I'm not making this up—it is very seriously proposed.)

- d. Should any resources be left with open public access?
- e. Considering the record of extreme concentration and poor utilization of land in most Latin American nations, is the evidence persuasive that unchecked privatization in fact has led and will lead to the highest and best use of land?
- f. Is it possible, through some modification of this idea, for the nation to gain the advantages of private tenure, and motivation, without giving up the equal rights of all?

18. **The Need Theory:** "Just take what you need, and leave the rest."

This "rough-and-ready" frontier theory is vague, but can be made to harmonize with some of the above theories. "What you need" is no more than you can use yourself, so the land and other wealth you take will be well used, as in number 17. No one else will need to rent from you, so incomes will be based on your work and improvements—i.e., they will be functional, as in number 1. It is egalitarian, since you "leave the rest" for others. It corresponds with standard courteous behavior at a picnic or a party, and has deep roots in social folkways.

19. **Other Theories:** Can you name and/or articulate more theories not covered above?

Questions for Discussion

There are dozens of questions in the text above. Pick any one and give your answer, including of course the *reasons* for your answer.