

Property and the State

A Summary of the Academic Discussion on Ownership and
Property Rights, and its Implications on the State 1985-2005.

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1 Property

In political philosophy few concepts are as voluminously debated as property (or: ownership) and the state. As we will see, these concepts are fundamental for how we choose to see individuals and society, and which values we aim to achieve. Some claim the existence of property is dependent on the existence of a certain kind of state and its legal apparatus (Fried, 2004:72), or that it requires that society is structured in a specific way (cf. Pendlebury et al, 2001), e.g. a capitalist society. To some, the existence of the state is fundamentally dependent on the existence of property, as a pre-political existence emerging from the very nature of man (Rothbard, 1998:29-34), to tax and rule. To others, there exists a mutually constituting relationship between property and the state, where neither is possible without the other, and where both are defined and shaped through that relationship as well as history or tradition (Firmin-Sellers, 1995:868).

Some consider property an existence restricting or blocking the egalitarian ideals for society (Medema, 1995:1388; Schwartz, 1992), while others see the state only as an organization of violence through which parasitic individuals can force rightfully acquired property from its real owners (Kelley, 1991; Raico, 1991). Some see the state emerging from the inequalities created by property, while some tend to see the state created in the state of nature as a tool for protection of property by its holders (cf. Masarskii, 1992). Yet others see property as a construction of the state through which the working people is effectively coerced (see Brenkert, 1985).

The discussion on property and the state is thus at best diverse. In the relationship between the state and the existence of property the problems discussed or the reasons for disagreement are generally found in at least one of the following areas: the definition of property, the origins of property, the reasons for along with the value of property, and the different kinds of property identified. These four components of the property/state discussion form the starting points for the discussion in this paper, where each dimension is discussed along with its implications for the state, current or future, from the main perspectives in the scholarly discourse on property.

1.1 Initial Comments

Before we see to the arguments in the property debate, it should be noted that very few authors tend to discuss *both* the nature or characteristics of property *and* its implication for, or basis in, the state. A study of this relationship thus has two separate but key parts which need to be bridged: on the one hand there is the

property debate, which usually seeks philosophical solutions to the cruxes of problems considering only or mainly property; on the other, there is the question of the legitimacy of the state in a society sanctioning a form of property. The former seldom mentions the influence of the characteristics of property on the powers of the state, while the latter often is rooted in a specified property concept (and thus never thoroughly analyzes the property concept).

In the very limited number of studies discussing both property and the state (usually mainly as an organization in society engaged in taxation of property) it is obvious that property is the more fundamental concept, and thus has greater impact on society than the state. Whether this is true is not of importance here, but it is true that the state is generally considered to be the dependent, rather than independent, variable in such analyses (cf. Cohen, 1995; Fried, 2004; Hoppe, 2004; Narveson, 1988). For this reason the theories of property form a basis for analysis in this paper.

1.2 Property in Essence

The core of property is partly how it is defined and partly its purpose, of which both are frequently debated. The definition of property and property rights is important because it sets the “ground rules” for the formulation of a complete political theory. It is, as we have seen, by most scholars considered one of the foundations of political reasoning in general and the political theory put forward.

The structure of *utopia* thus depends on the structure of property and therefore the purpose of securing property (and how) is and must be included in the definition. A political theory with overall egalitarian aims necessarily has to include egalitarian beliefs in its property definition. The utopian ideal of a political theory is thus reflected in the property definition in order to make the ideal theoretically verifiable. Also, the philosophical origins of property are often such as to make the overall preferred values of the author intelligible. Here is perhaps a core explanation of the problems in discussing property, be it the origin, purpose or definition: property is a moral question as much as philosophical (Mack, 1990:519; Narveson, 1998:7; cf. Hoppe, 2004; Lomasky, 1987).

Brenkert (1998:50) defines ownership of property as a “purely instrumental relation” between an individual and material objects (cf. Mack, 1999:98; Masarskii, 1992). To own something is here “to have the rights to sell, use, control, manage or even destroy what one owns” (Brenkert 1998:50; cf. Jedenheim-Edling, 2003:31-51). There is no reason why one would have to “ask for permission from that which is owned to handle it [...], although one may be limited by others or society in one’s uses of one’s property” (Brenkert 1998:50). It follows that property means the exclusive control of something material to which others have no justified claims.

Another way of expressing this is to say that the owner has, with respect to a material object, the “primary functional control” (Christman, 1994:125-146), which is the “right to use, possess, manage, modify, alienate, and destroy”

(Medema, 1995:1388) it according to will. In addition, ownership includes the right to use the entity in trade, including income generated. Using this definition of property with no justified exceptions it is rather clear that taxation and the powers of the state are subject to the chosen property theory.

1.3 Interpretations of Property

Despite a somewhat consensual discourse on the definition of ownership or property, there is prominent disagreement on what the *origin* of property is and how property should be *interpreted*. These dimensions of property are of course, as we have seen, essential for the stressed goals for society in the full political theory advocated, and thus of both moral and political importance.

1.3.1 The Libertarian Position: Private Property Radicalism

The most radically exclusive interpretation of property is the libertarian position. Here property in things is a “natural right” (Mack, 1990:519; Otsuka, 1998:66-67; Rothbard, 1998:21-24) derived from the philosophical position of self-ownership (Nordin, 1988:85-95; O’Keeffe, 1992:1-2; Shaffer, 2002; cf. Taylor, 2004). Since each individual is the owner of self and his/her body, the actions taken to produce something (i.e. one’s labor) and the fruits of these actions are the properties of the individual (cf. Shapiro, 1991; Verhaegh, 2004).

With such “full liberal property” rights come no obligations whatsoever that are not explicitly stated in contracts between rightful owners of property (Cohen, 1998:93). It is thus a position where rights are only negative (Narveson, 1998:10): the property right is primarily a right to exclude others from what is mine. As Narveson (1998:7) puts it, private property according to the libertarian idea is a moral position where the rightful owner “has a veto over anyone else’s use of it.” There are also utilitarian or efficiency-based arguments for the libertarian interpretation of property rights (Pipes, 2000:63; cf. Hoppe, 2004:8), but they are not “what is most important” (Machan, 2001; cf. Waldron, 2004).

From this exclusive definition of property rights follows that only individuals can have rights to property. It is thus impossible for organizations, collectives or communities to own property, and such things as “public property” are considered contradictions in terms. Natural resources are according to this position unowned until someone claims it through using it in production of values (Fuerle, 2003; Hoppe, 2004:2-3). The libertarian position thus resembles the Lockean proviso for acquiring property, which states that unowned natural resources need to be mixed with the labor of individuals in order to become property. It can thus be stated about the external world that “*none of it* [originally] belongs to *anyone, individually or collectively*” (Narveson, 1998:10).

The libertarian theory of property is thus in its entirety a private property theory (Howard, 2003:170-174). The only existing limitations to the utilization of

libertarian property rights are the property rights of others (cf. Narveson, 1988:64), who have an equal right to their rightfully acquired property (see above). Consequently, no government (or individual) actions limiting property rights can be considered legitimate. In the extreme case the state (or government) is considered illegitimate since its very existence means restricting property rights, at least to some degree (cf. Hoppe, 2004; Rothbard, 1998). Other libertarians have a less radical approach, claiming the state's only (legitimate) duties are to uphold and secure private property rights.

1.3.2 Equality First: Egalitarian Property Theory

The libertarian position on property is subjected to massive critique from a number of directions and for a number of reasons. A frequently suggested inconsistency in the radical private property theory concentrates on the philosophical derivation of private property rights from self-ownership, claiming self-ownership cannot support (unlimited) private property (Kernohan, 1989; Peirce, 2001; Schwartz, 1992; cf. Moulin & Roemer, 1989).

Cohen (1998:65-66) shows inadequacies in libertarian reasoning, and claims self-ownership supports an egalitarian property theory rather than private property (cf. Cohen, 1995). Private property can be justified or even preferred, but only in special cases where the individual needs rights to perform a specific action without interference (Cohen, 1998:61). But such rights include at most the right to *use* certain property in certain ways in order to achieve a goal. It is thus not a private property right in the libertarian sense. Fuerle (2003) similarly discusses a right to the use of property rather than to the material object itself.

In a way, Cohen's property theory is partly libertarian (in its advocacy of self-ownership) but partly egalitarian (in a Rawlsian sense). Each self-owner has an initial right to each piece of property, effectively limiting excessive claims to private property. As Gordon (1998) puts it, Cohen has an "assumption of an equal initial division of the earth's surface."

Such a political theory favors state regulation of property as well as contractual agreements between individuals and individual action. But it should also protect the self-ownership of individuals and thus strive for maximizing their "personal autonomy." Christman (1994) finds that autonomy is only preserved through granting "control rights" of property, limited to a quantity sufficient for "autonomous living." He concludes that "individuals have a right to exercise their talents freely, but not to retain a profit from the use of those talents" (Christman, 1994, quoted in Medema, 1995:1388). Christman's definition of self-ownership is thus much narrower than the libertarian ditto. An egalitarian perspective requires the state to even out some or all "natural" inequalities: "It is 'unfair' that, owing to genetic 'luck' and other circumstances that people do not 'deserve,' some are in a position to do vastly better than others" (Gordon, 1998).

Shleifer (1998:137) argues the state should be progressive in the marketplace also, claiming there is "no [real] difference between state and private provision of goods and services" with "perfect contracting and regulation." But he seeks a

balance between individual and state action, arguing there are situations where “the ‘dynamic vitality’ of capitalism” should be used through restricted private ownership as a means in order to reach “social goals” of society (Shleifer, 1998:147-148).

Fried (2004:82), along with Shleifer, argues for an effective rather than excessive state. She stresses that all interventions in society alter the incentives for specific actions and therefore “distort” individuals’ choices. The problem here is thus to decide, on a joint level, which distortions are acceptable in terms of personal autonomy. The equal right to self and autonomy makes the state an important actor, since it is responsible for redistribution of resources as well as making decisions for society as a whole.

Some, like Pateman (1988) and Ingram (1994), take it one step further and claims the value of creating a “free and democratic social and political order” overshadows the value of self-ownership. Says Pateman (2002:20): “I argue that the idea of property in the person must be relinquished if a more free and democratic social and political order is to be created.”

1.3.3 The Impact of Society: Common and Collective Property

Another problem with the libertarian private property is the hypothesis of the world as originally unowned. According to Fried (2004) the world should rather be considered owned by “society” than unowned. The reason for this is that claiming unowned material objects as private property means in effect the exclusion of the rest of the population from the use of that very object (Ryan, 1987:77-88). Where one individual benefits the rest of society loses.

Brenkert (1998:52) states that property should not include only the interests of the owners. It is as important to include “the interests and rights of those who are significantly affected,” be it through exclusion or e.g. price changes, in the definition of property. The state has here an important role in restricting the effects of property, private, collective or common.

The same critique is aimed at production, where the value created is ultimately set through market mechanisms. Any profits made are entirely dependent on the market (or: society) and there is no reason why the producer should gain the right to profits generated by the interactions of individuals in the marketplace. Just as the object for sale is the product of the individual’s labor the profit or added value is the product of society. Fried’s (2004) reasoning resembles Christman’s (see section 1.3.2) in that the value created from individual action is a product of the individual’s milieu and thus should belong to society rather than the individual. Taxation of profits is thus a just means to redistribute the added value to the individuals (society) whose choices and actions have created it.

Another reason for criticizing the libertarian identification of state of nature is that private property initially must have arisen through common property. Claims Rose (1994:37): “a property *regime*, generally, taken as an entire system, has the same structure as common property.” Thus, the existence of private property depends on a society-wide respect for such property through not taking part in

anti-property action, such as theft, on a broad scale. Again, this approach shows how the value of private property is created only through the cooperation of society collectively.

This is the main point of the American Georgist scholars, who claim that the increasing value of land is seldom the effect of the land owners' actions. Instead, it is society-wide structural changes such as urbanization that makes some land areas increase artificially (Wasserman, 2003:30). Such added value cannot be the rightful property of passive land owners, but should be redistributed to society as a whole through taxation via the state (Andelson, 2003; cf. Kyriazi, 2004).

An alternative to the Western concept of private land property is described by Firmin-Sellers (1995), who shows how tribal customs in Akyem Abuakwa in Ghana regulate collectively owned but privately managed property in land. She discusses the problems of enforcement with land property divided among individual owners, without a single point of control. The African customary land tenure, based on a traditional, coercive tribal hierarchy, may provide an effective solution.

These arguments all call for the existence of public property, either as a part of private property (through its market value or generated profit) or as a contrasting or regulating institution. Public property could be a solution to market failures, so that services which will not be produced or delivered privately can be made available to society (Rose, 1994:109). Such publicly owned and managed property is controlled through the state, which means it is as efficient and well-organized as any private counterpart.

1.3.4 Challenging Ideas: Critique of Property

In previous sections different views on property have been discussed, but no matter their differences they hold something in common: they all agree on the existence and value of property (be it private, collective, or common/public). But there are also arguments raised aiming for the complete abolishment of property, as well as a position claiming the subjection of property rights to other values. The former is obviously a critique aimed at property as a concept, while the latter is a philosophical standpoint *de facto* undermining the concept of property *rights* since each case is judged according to circumstances.

Coase (1988) has a society-centered utilitarian approach to property in arguing for "harm avoidance" as the guiding principle in property rights disputes. He does not claim property should be abolished, since it serves a purpose in e.g. wealth creation. However, in cases when property rights are violated it does not matter who is "right" or "wrong." What is important is which alternative solution maximizes total societal wealth, which in the long run must be the "most just" (cf. Demsetz, 1988). Coase encourages the disputing parties to avoid the more serious harm, since each and every solution to a property rights violation will cause a "harm" (or rather: restriction) for the losing party:

“We are dealing with a problem of a reciprocal nature. To avoid the harm to B would be to inflict harm on A. The real question that has to be decided is, Should A be allowed to harm B or should B be allowed to harm A? The problem is to avoid the more serious harm.” (Coase, 1988:96)

The realist or functional identification of property is similar to Coase’s view, and discusses the concept of property as dependent on its implications for non-owners. Property is identified as a number of legal titles granted the owners. Therefore, it is argued, should “[t]he scope of each entitlement [be] defined by correlative legal duties placed on all others” (Fried, 2004:72). The fundamental standpoint in this approach to handling property is that resources are scarce; thus, by “enlarging any one party’s formal powers [through property rights], we necessarily diminish necessarily everyone else’s” (Fried, 2004:73).

It is easy to realize what such a definition of property as described above demands from a governmental organization or state. It will need to have extensive resources at its disposal for keeping track of citizens’ formal powers and weighing alternatives in order to find the “lesser harm.”

An alternative approach would be to advocate the abolishment of all property exceeding that which is in one’s possession (Gröndahl, 1988:71-76). Such an approach would minimize the problems discussed in Coase (1988), Demsetz (1988) and Fried (2004) since it would radically lessen the possibility for contradictory property claims or property violations. This is, in a sense, to say that one’s private property is a result of one’s current desires (cf. Bowles, 1985:208) and position.

Such a definition of property (the common term used for this kind of property is “possession”) would minimize the need for a state to supervise and enforce property rights. Thus, some claim the state can and even should be abolished when this structure of property in society is fully established (Gröndahl, 1988). The implications for the state with this radical weakening of property rights is thus the same as the radical private property philosophy described in section 1.3.1. In our analysis of the relationship between property and the state we have thus come full circle.

1.4 Scholarly Discourse Appraisal

The philosophical discussion on the dimensions of the concept of property may seem hopeless and never-ending. Part of the reason for this is probably based in the nature of these discussions: roughly all are normative discussions based on the individual author’s values and perception. It is however not a scattered discussion with individual arguments striving in different directions with no reciprocal base or relation. The discussion is rather a web of closely related arguments, where each aims to provide a solution to the multitude of problems in common for each property rights theory.

The above summary of the scholarly discussion may seem as an uncritical synopsis of the debate, but it is not so. Each argument in favor of a certain position has two dimensions or aims; they all attempt to provide the philosophical community with arguments in a certain direction *while eliminating opposed views*. It is in the nature of argumentation and debate that each conveyed argument *both* strengthens one's position and undermines the positions of others.

It is therefore not possible to discuss the philosophical discourse in full without stressing the main points of disagreement and the major issues disputed. As we have seen, the property question consists mainly of four components of which all are objects of disagreement: interpretations of the definition of property; the origins (unowned or jointly owned resources); the reasons for and value of property (to the owner and society); and the different kinds of property identified (private, collective, community/public). It is an interesting and ongoing discussion, since at least the days of Plato and Aristotle to our time.

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It focuses on early human history, following the disintegration of the primitive community and the emergence of a class society based on private property. Engels looks into the origin and essence of the state, and concludes it is bound to wither away leaving a classless society. Engels: "Along with [the classes] the state will inevitably fall. Society, which will reorganise production on the basis of a free and equal association of the producers, will put the whole machinery of state where it will then belong: into the museum of antiquity, by the side of the spinning-wheel and the bronze axe."