



PRIVATE OWNERSHIP VERSUS COMMON OWNERSHIP: THE PROBLEMS OF LOCKE'S PROVISO

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INTRODUCTION

"Whether we consider natural Reason, [...] Or Revelation, [...] 'tis very clear, that God, as King David says, Psal. CXV.xvj. has given the Earth to the Children of Men, given it to Mankind in common. But this being supposed, it seems to some a very great difficulty, how any one should ever come to have a Property in any thing."¹

How could a condition of common ownership of land and its fruits evolve into a state where private or individual property rights are sovereign? Could this be done without the violation of the rights of those people who wished to retain common ownership, without invoking an arbitrary dividing line between legitimate property acquisition and theft, and without the institution of a judiciary which perpetuates the inherited and often accumulated injustices of the past?

The dilemma posed by any prospective answer to this question is that a "believer" in private property rights will almost invariably trivialise the value to "common-holders" of their rights, minimize the disadvantages experienced by the property-less, and elevate the virtues of freeholders. Conversely, an advocate of common ownership may do much the same in reverse, for example by attributing a multitude of virtues to the absence of private ownership, such as the supposition that a state of common ownership removes major incentives to violence, egotism and the pernicious effects of competition.²

Despite the difficulty of satisfactorily addressing the issue, or perhaps because of it, the attempt to justify private property rights in the face of accusations of original injustice in acquisition, of inequality of opportunity as well as of outcome, is a matter which takes centre stage of public debate on a frequent basis. Private property rights are neither held in universal regard, nor are they regarded as invulnerable to qualification.³

Problems may occur between cultures which are so different as to be effectively alien, on the subject of "ownership".⁴ Liberal democratic societies have been influenced by John Locke's political philosophical writings, particularly in relation to private property rights and the limitation of the power of the state. Any conclusion which finds that the "enough and as good" proviso is an essential component of a coherent theory of private property could therefore provide a relevant addition to the process of establishing a free-market liberal democratic order in Central and Eastern Europe, for instance. In order to examine the question, and the issues which it raises, this essay will first set out Locke's theory of property and the "proviso", before considering the question of present land distribution. It is then worth

asking whether this proviso is necessary or even useful to Locke's theory of property.

PART I: LOCKE'S THEORY OF PRIVATE PROPERTY AND THE "PROVISO"

What is described as "the enough and as good" proviso, was introduced by Locke in his *Second Treatise of Government*.⁵ It derives from Locke's argument in favour of the legitimacy of private property, which is summarised as follows. First, the original condition of the world was one of human equality and common-ownership, which could be categorised as "stateless communism". Second, such a condition was a just one. Third, that the appropriation of something for private consumption is legitimate, if the purpose is to satisfy a necessity, e.g. to avoid starvation. This is dependent on the notion of "self-ownership". Fourth, that additional appropriations may be carried out, legitimated by the action of "mixing one's labour". Fifth, that it is unreasonable for someone to appropriate more than is necessary, and therefore reasonable people won't appropriate to excess.

Locke concludes that, provided there is enough for anyone who hasn't made any appropriations yet, and provided also that the unclaimed portion includes "as good" land, private property can be legitimated.

What is remarkable about this proviso, apart from its obvious optimism about the unreasonableness of seizing property to excess, is how far it accommodates some of the criticisms of a purely property rights based polity. John Rawls's "difference principle"⁶ which accepts economic inequality, provided that there is enough to improve the worst off in society, is arguably consistent with the Lockian proviso, because both reject the notion that an individual, or a group of people, could justly acquire all the land and claim a legitimate title of ownership. Both the difference principle and the proviso could be used to legitimate limits on private appropriation, whether it be land, or the shares in a publicly quoted company, or the number of broadcasting frequencies.

Robert Nozick's Entitlement Theory of Justice replaces the Lockian proviso by a principle of justice in acquisition which has been expressed in the following way:

"An individual A acquires at time t a full property right in an object O which has not been the property of any individual if and only if:

- (i) A mixes his labour with O at time t; and
- (ii) as a result of O becoming A's private property, no one else is made any worse than he or she would have been, O having been left unappropriated by anyone and had everyone in consequence been free to use O without appropriating it."⁷

This amended principle is intended to avoid arguments about the last piece of commonly held land.⁸ Nozick argues that if the proviso is strictly adhered to, it may lead to the complete unravelling of property rights in a situation where all the land has been appropriated. For instance if the appropriation of land by Y is not just, because Z is deprived, then by extension X's property right must also be invalid, because by seizing his or her plot of land, there was not enough for both Y and Z. Therefore one could go back to the original acquisition of a plot of land by an individual A, who set off this chain of acquisition which culminates in Z being dispossessed.

With Nozick's principle, one can avoid this trap by focusing on the phrase "no one else is made worse off". If Z has no intention of using land, perhaps because Z wants to live in a flat and work in an office, then there is no reason why Z should be worse off because Y has appropriated the last piece of arable land within 1,000 miles of Z's place of residence. In fact, if we consider "well-being", the extra food production which Y may derive from the private use of land (or else why appropriate it in the first place?), or the variety of goods produced, may far outweigh any theoretical improvement in Z's well-being if he or she had taken up farming. Perhaps Z has no wish to mix labour with the soil for long hours and unpredictable returns.

PART II: THE PRESENT-DAY DISTRIBUTION OF LAND

The present day distribution of land appears to make Locke's proviso redundant. There are no new unsettled land-masses to colonise on planet Earth, and the cost of settling elsewhere on a planet adapted to this planet's climate, gravity, atmosphere etc., is at best incalculable at this time; it may even be impossible. Either the view that there are

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no further plots of land to acquire is wrong, or the proviso is mistaken, or private property rights are no longer defensible, at least with regards to land.

Science fiction solutions aside (like underwater colonies or permanent colonies in outer space) the main opportunity appears to be Antarctica. Locke's proviso is not invalidated by the quality of the land (large mineral deposits must count as compensation for the low temperatures). The obstruction is interference by the State or a cartel of states — the United Nations Organisation — which prohibits any private acquisition of land in Antarctica, as well as outer space.

This limit on private appropriation applies within most if not all countries. In the United Kingdom, vast areas are "owned" by the State, at a national or local level. If this land were available to be given or sold to private users, then it would be hard to argue that the proviso was invalid. In countries where private property rights are limited, such as the People's Republic of China, it would be hard to argue that the next act of private appropriation of land by an individual violates the proviso.

Therefore, if there is a significant violator of Locke's proviso, it is the State itself, since there is unlikely to be a single landowner whose estates are larger than those under the control of the government. The view that the private distribution of land prevents one or several persons from acquiring land is therefore flawed, if one considers that in theory at least, land controlled by the state could either be transferred to additional private owners or made available to common use. In the case of parks this is often the case, but on Ministry of Defence firing ranges common ownership has no worthwhile meaning. The transfer of State controlled land to genuine common-ownership or to private ownership is therefore one possible rescue for Locke's proviso. However, this may be only temporary: once all the land has been sold, or the population has grown, a new crisis emerges.

The whole basis for challenging the proviso has been the question of land. Yet to argue that wealth, happiness, or liberty can be measured in access to common-land or by the private ownership of land is a strange one in the late twentieth century. For instance, Mr Rupert Murdoch is the owner of television companies, newspapers and a film studio in the United States of America. He no doubt enjoys the use of several residences around the world. Yet in no significant way can it be said that his ownership of land reflects the value of his property. One of Mr Murdoch's major sources of income is Sky television. Yet Mr Murdoch does not even own the Astra satellite which transmits his company's television channels.

When measuring the wealth of countries the same problem arises. For the enough and as good proviso to be absolutely necessary, it would have to be true that the USSR in 1990 was either sixty or twenty five times wealthier than Japan, depending on whether land mass or population density was being used as a measure. Assuming that the Japanese were neither freer nor healthier than Russians, assuming that collective ownership is no worse than corporate or private ownership, it still appears that the Gross National Product of Japan was over 70% that of the USSR, even using an official exchange rate which over-valued the rouble. But Japan's population was about 40% of that of the USSR's.⁹ So the amount of property and its value in Japan was not hindered by the USSR's possession of Siberia, the Kuril Islands and the island of Sakhalin.

The reason for thinking of property as land is the consequence of an agrarian or feudal perception of property. Under a feudal regime, the acreage of arable land available determines the size of the population and crops determine wealth. There is a fixed quantity of land on this planet so this apparently means there is a fixed quantity of wealth too.

Yet the value of a piece of property is not constant. It isn't tied to the quantity of labour, but it isn't fixed as the sum of its raw materials either. Hong Kong's value relative to the rest of China in 1842 was not the same as it is in 1995. The difference isn't just tons of steel and concrete, nor is it population size either. To discuss property rights in the absence of an understanding of "wealth" and the economic meaning of "value" (not necessarily expressed in monetary terms) seems to miss the point. The purpose of private property rights is to accumulate the necessary means for survival and comfort. Only in a condition where this pursuit is both possible and realistic can autonomy, whether at the level of a family, or the individual, begin to have any meaning. The implications of this chain of reasoning are to suggest that the claims of economic theories have a place in the discussions of political philosophers and that the "enough and

as good as" proviso has no relevance if property is thought of in terms other than the ownership of land and of raw materials.

The most extreme advocates of property rights are not worried about land distribution. David Friedman, a libertarian who describes himself as a "Goldwater anarchist", dismisses land as a significant source of inequality:

"This leaves open the question of how one acquires ownership of things that are not created or that are not entirely created, such as land and mineral resources. There is disagreement among libertarians on this question. Fortunately, the answer has little effect on the character of a libertarian society, at least in this country [the USA]. Only about 3 percent of all income in America is rental income."¹⁰

CONCLUSION

The "enough and as good" proviso is an attempt to justify private property rights from an *a priori* state of nature. Locke is particularly interested in finding arguments which legitimate the transition from a common-ownership or non-ownership situation into a private-ownership situation. The proviso is also useful if it justifies the inheritance of wealth. But it does so by conceding that inherited wealth would be unjustifiable if there were no unclaimed property which the non-inheritors could take. Locke is therefore giving some thought to the argument of "equality of opportunity". In November 1994, the Republican party in the United States of America won a series of elections for the legislative branch of government. They did so on a platform which challenged the Rawlsian welfare vision of liberalism. Instead, the Republican leadership offers a vision of "conservatism" which seems closer to Nozick's Minimum State than any mainstream political platform seen this century.¹¹ Locke's proviso does not fit in with this conservative view, yet it cannot be doubted that this vision owes a considerable intellectual debt to John Locke.

The contrast between American "liberalism" and "conservatism" is primarily over the role of the state in correcting inequality of opportunity. Locke's proviso was an attempt to provide a *reasonable* safety mechanism, but it was not intended to expose the primacy of property rights to a fundamental challenge by the "affirmative action" and "distributive justice" of modern liberals. American conservatives may argue that the proviso is irrelevant in an age where property is not measured in acreage. The dichotomy between left and right in the contemporary United States of America is a reflection of the different interpretations, "welfarist" or "capitalist", which can be attributed to John Locke's work.

NOTES AND REFERENCES

1. John Locke, "The Second Treatise of Government" [1690], in *Two Treatises of Government*, Peter Laslett (ed.), Cambridge University Press, 1970; Chapter V "Of Property", para. 25.
2. Herbert Read writes in *Anarchy and Order: Essays in Politics*, Faber and Faber, London, circa 1954, p. 121:
"The only pacifist peoples are certain so-called savage tribes living under a system of communal land tenure in a land of plenty: communities where the accumulation of capital and the power it gives has no purpose and therefore does not exist, and where there is no possibility of one man exploiting the labour of another."
Unfortunately, no whereabouts are given for these communities of Rousseauite "noble savages".
Daniel Guérin quotes Pierre-Joseph Proudhon in a section entitled "Anarchism is not Utopian", in *Anarchism: From Theory to Practice* (translated by Mary Klopper), Monthly Review Press, New York and London, 1970, p. 41:
"The Napoleonic code is as useless to the new society as the Platonic Republic: within a few years the absolute law of [private] property will have everywhere been replaced by the relative and mobile law of industrial cooperation [...]"
3. Jacques Riboud, "Publisher's Foreword", in *Le libéralisme? De Karl Marx à Milton Friedman* (proceedings of the Mont Pélerin Society), published by Revue Politique et Parlementaire, Paris, France, 1977; p. xiii.
4. There is, for example, the case of the Manhattan Island purchase by Dutch settlers from native Americans who are said to have had no conception of private property. Unfortunately, a subsequent attempt to expel settlers could be explained by a simple disregard for white settlers' property rights. This would be possible if the native Americans had no concept of the *rule of law*, although a misunderstanding or deception on the part of the settlers is plausible.
5. There is confusion over the title, and evidence that Locke was unhappy with typographical errors and erratic editing: see footnote p. 266, *Two Treatises of Government*.
6. John Rawls, *A Theory of Justice*, Harvard University Press, Cambridge, Massachusetts, 1971, p. 4.
7. David Conway, *Nozick's Entitlement Theory of Justice: Three Critics Answered*, Philosophical Notes No. 15, Libertarian Alliance, London, 1990, p. 1.
8. Robert Nozick, *Anarchy, State and Utopia*, Basic Books, New York, 1974, pp. 174-182.
9. Figures calculated from *The World Almanac and Book of Facts*, 1992, Pharos Books, New York, 1991.
10. David Friedman, *The Machinery of Freedom: A Guide to Radical Capitalism*, Arlington House, New Rochelle, NY, 1973, p. xv.
11. Jonathan Friedland, "The Right Stuff", *Guardian* (tabloid supplement), London and Manchester, 31 January 1995, pp. 2-3.