

LABOR THEORY OF PROPERTY: HOMESTEADING AND THE LOSS OF SUBJECTIVE VALUE

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IN HIS *THE ETHICS OF LIBERTY*, Murray Rothbard (1998) attempts to do what Hume (1739, 469) has claimed the impossible, a sentiment with which the current author tends to agree. He attempts to derive an *ought* from an *is*. Starting from first principles, Rothbard works towards the logical conclusion of natural rights and a free society. The worthiness of the attempt and the extent to which it was successful can both be disputed, but it is rare for such an extended work to be completely free from error. In this instance, the error is one of omission. Property rights and their emergence are more complex than a simple model of homesteading will allow. The idea that mixing one's labor with a natural resource is the only way in which to legally or morally claim a right of ownership is a model that relies on production over consumption and denies the subjectivity of value.

In developing his theory of property rights and their formation, Rothbard (1998, 63) argues,

Suppose... Mr. Green legally owns a certain acreage of land, of which the northwest portion has never been transformed from its natural state by Green or by anyone else. Libertarian theory will morally validate his claim for the rest of the land... But libertarian theory must invalidate his claim to ownership of the northwest portion.

The use of this example is intended to illustrate Rothbard's¹ argument that the only way in which property becomes owned is if one homesteads it.

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Rothbard (1998, 65) continues on to note the “hand of man will in some way be evident” in land that has been properly committed to ownership by an individual.

In making such claims, it appears the philosopher Rothbard has forgotten the economist Rothbard. In this theory of the origin of ownership, Rothbard slips into the use of a labor theory of value, forgetting entirely the economist’s subjective value. Suppose that an owner of a parcel of land enjoys communing with nature. If said individual truly enjoys surrounding himself in nature, then he is not apt to change the nature that surrounds him. Suppose that this individual makes the trek to hillside every afternoon in order to look out over his field of untouched natural beauty.

Under Rothbard’s concept of ownership, this individual is likely to return one afternoon to find a cabin being built in the middle of his once pristine field. Under the “libertarian theory” the individual has no claim to the land that he has been enjoying each evening because he chose to value the natural state over that of more advanced production. Rothbard appears to value production over consumption and has imputed his own valuation into the theory of ownership.²

This reasoning leads to confusion over the scope of what is owned and what is not. By Rothbard’s (1998: 47–48³) own admission, even if one walks the boundary of a continent, “their claim would still be no more than to the boundary *itself*, and not to any of the land within it...” Imagine, then, a tree within a yard. The tree has never been touched by man, though the yard around it is kept neatly trimmed. If it is possible for someone to reach that tree without disturbing or trespassing on the yard surrounding it, then he is allowed to claim that tree for himself, whether the owner of the yard enjoys the sight of the tree or not. The yard owner did not mix labor with the tree, and the newcomer laid claim to it. The only way to rightfully claim the tree, under the Rothbardian theory, is to enter it into the production stream in some fashion. The simple consumer has no claim.

The argument as presented here may not necessarily call into question the idea of that property goes to the first user. Rather, it calls into question

¹As well as Locke’s (1960) argument.

²It is worth noting that the intention of this author is not to deny the importance of private property and ownership. Nor is this an attempt to challenge Rothbard’s initial starting point of self-ownership. Rather, the intention is to argue with respect to the apparent favoring of production over consumption in Rothbard’s particular theory as applied to external resources.

³Found in footnote 2, which spans those two pages.

the concept that the first user must put the resource into a productive capacity in order to claim it. The individual who consumes an apple from the tree has removed that apple from the common pool of resources and made it his alone. He has done so by the act of consuming it. The individual who enjoys the pristine beauty of his natural meadow is also consuming. A meadow is not like an apple, though. A meadow cannot be physically moved, especially not and still retain the appeal of its naturalness that the individual enjoys. This immovability leads to a situation of spillover. The individual can enjoy the beauty of the meadow, but so can any other individual who happens to see it from a nearby hilltop. In this way, the original consumer is sharing the consumption by not building a wall around the meadow to prevent others from enjoying it. He may be doing so for selfish reasons, such as not wishing to destroy the natural feel that he is enjoying. He is sharing the consumption in much same way than individual who owns a painting is sharing consumption when the painting is hung upon the wall. It would not be claimed that the painting in this case is unowned, however, simply because the owner chooses to allow others to view it⁴. The man who is consuming the meadow is allowing others the opportunity to enjoy part of the consumption. They may consume on the same terms as the individual. He has, however, removed the meadow from the sphere of production by others, whereby others build a house while the individual is away.

Hoppe (2010) makes a stronger case for homesteading by relaxing the pure transformative assumption that Rothbard puts forth. Hoppe argues that property forms through either transforming the resource or engaging in “embordering”⁵. Yet this argument still entails a productive capacity of land, whereby the actual productive use is what creates the property right, rather than the productive use acting as a signal of property ownership. Consider the Humean example, as explored by Kinsella (2011), of allowing cattle to graze upon the land. Once the cattle are grazing, a property right has been established. The allowance of the grazing is enough to secure rights through the alteration of the land. The action of grazing cattle is favored over the action of consumption, though both are actions which use the resource of land.

⁴The man with the painting has the option to remove it from public viewing, as the individual with the meadow has the option walling in the meadow or putting it into production at a later date.

⁵See also Kinsella 2007 and Kinsella 2009.

What is needed is a theory of property right formation that takes into account pure consumption alongside production.⁶ Requiring the land to be put into production in order to claim it may create the incentives to engage the land into uses which are non-optimal in a world of subjective value. If the highest valued user wishes merely to consume, then the economic inefficiencies will accrue as the land use moves further away from that outcome. Whether or not an *ought* can be derived from an *is*, the attempt to do so should not forget the lessons of economics. Value is subjective, and people will interact with their property in ways that subjective value directs them. To deny this reality is to forget a key fact of human action. There is no accounting for tastes. *De gustibus non est disputandum*.

References

- Hoppe, Hans-Herman (2010). *A Theory of Socialism and Capitalism*, Auburn: Ludwig von Mises Institute.
- Hume, David (1739). *A Treatise of Human Nature*. London: John Noon.
- Kinsella, Stephan (2007, Aug. 15). “Thoughts on the Latecomer and Homesteading Ideas; or, why the very idea of ‘ownership’ implies that only libertarian principles are justifiable,” *Mises Blog*, retrieved from <http://blog.mises.org/6992>.
- (2009, Aug. 21). “What Libertarianism Is,” *Mises Daily*, retrieved from <http://mises.org/daily/3660>.
- (2011, April 9). “Hume on Intellectual Property and the Problematic ‘Labor’ Metaphor,” *Mises Blog*, retrieved from <http://blog.mises.org/16426>.

⁶Consider a concept such as “personal space.” Different cultures have different ranges for what is considered personal space, but within specific cultures there is an area around an individual that is respected by those around him. This space is inviolate, so long as we assume away externality issues. The individual has done nothing to change the space around him in any noticeable way, other than to stand near to it and exist. However, the social convention gives a respect to that area around him as one that is “owned” by him, at least temporarily as long as he exists in the center of said space. He has neither embordered this space nor put it into productive capacity, and yet the convention is one of recognition of not violating this space rather than crowding. While this example is not a perfect map to one of property rights in land, it is indicative of the idea that social norms and conventions may play a large role in the determination of rights than a production theory of ownership acknowledges.

Locke, John (1960). *An Essay Concerning the True Origin, Extent, and End of Civil Government*, in *Two Treatises of Government*, edited by P. Laslett. Cambridge: Cambridge University Press.

Rothbard, Murray (1998). *The Ethics of Liberty*. New York: New York University Press.