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PRIVATE PROPERTY AND ENVIRONMENTAL ETHICS: SOME NEW DIRECTIONS

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Abstract: This article argues that teachers of environmental ethics must more aggressively entertain questions of private property in their work and in their teaching. To make this case, it first introduces the three primary positions on property: occupation arguments, labor theory of value arguments, and efficiency arguments. It then contextualizes these arguments in light of the contemporary U.S. wise-use movement, in an attempt to make sense of the concerns that motivate wise-use activists, and also to demonstrate how intrinsic value arguments miss the mark. Finally, it offers some suggestions about further directions for environmental ethics, reasoning that there is a good deal of headway to be gained for environmental ethics by accepting that nature can be owned as property, but nevertheless engaging the idea of private property critically.

Keywords: property, Hobbes, Locke, Coase, wise-use, occupation theory, labor theory of value, efficiency theory, environmental ethics.

> In the beginning, all the World was *America*.
>
> —John Locke, *Treatises*, book II, § 49

It is a curious fact about environmental ethics that it has for so long dealt with matters of intrinsic and instrumental value, with anthropocentrism and wilderness, but has so infrequently taken up questions of private property. This is troubling. The question of property is addressed with fervor in the environmental economics and environmental policy literature. There are scores of texts addressing methodologies for the valuation of environmental properties apart from any intrinsic value. Property is also taken up in the more mainstream political philosophy canon: questions of self-ownership and distributive justice dominate the literature. Where environmental ethicists *have* attended to the question of property, they have largely done so in an attempt to demonstrate its relationship to the tragedy of the commons or to future generations.[1]

[1] I certainly cannot claim to know the entire history of articles written on this matter. In a sense, therefore, my claim may not be entirely fair. However, this does appear to be a trend in environmental ethics; and such observations about trends in the discipline—and dissatisfaction with the narrowness of the current debate—are no doubt of concern to readers of this journal.

Indeed, a cursory review of the environmental ethics literature reveals that the dominant figures have only the slightest interest in the philosophy of property.[2] Leopoldians are concerned with matters of holism, animal welfarists are concerned with matters of harm and life, ecofeminists are concerned with issues related to the exploitation of nature and women, and deep ecologists are concerned with matters of deep, spiritual connection to the earth. It is as if most prominent theorists have carved out the terms of their battles and are defending their turf among themselves: deep ecologists versus social ecologists, land ethicists versus biocentric individualists, animal welfarists versus ecological holists.[3]

This strict property line is partly understandable, of course, since so many environmental ethicists charge that anthropocentric, instrumental reason lies at the heart of the contemporary environmental problem. It is only natural that they would hope to counter the instrumentalist mainstream by providing alternative ways of thinking about environmental value. But so many of these approaches depend upon the presupposition that noninstrumentalist ethics is a worthwhile endeavor, and that it is only a matter of determining what the right principles and arguments are. It is my purpose in this article to argue that there is no reason why property questions should not also be addressed in environmental ethics classes, and that there are in fact very many reasons why they should. I argue here that environmental ethics classes must engage seriously the three dominant positions of private property if they hope to reach a broader audience. There are philosophical merits to such property discussions, to be sure. The problem that I seek to identify is instead practical and pedagogical. Put plainly, environmental ethics, as a project relevant to nonphilosophers and to students of the environment, can benefit from crossing this line. I intend in this article to suggest that teachers of environmental ethics should retool their syllabi to include discussion of this important topic, which may include deviating significantly from existing anthologies.

My strategy is to argue by way of pointing out real-world political debates that take as their starting point background assumptions common to many students. I approach this matter by first conducting a short survey of the property literature in philosophy. I address occupation arguments, labor theory of value arguments, and efficiency arguments. I

[2] There are some central texts that do address these issues. See, for instance, Munzer 1990; Wenz 1988; Carter 1989; Becker 1977; and others mentioned in my list of references below.

[3] I include myself among the guilty. Much of my writing has been on moral considerability, or moral status, and I have only recently begun devoting serious energy to questions of property. In part, this is because so much of the environmental discourse is dominated by metaethical questions related to the nature of value. One who teaches and works in environmental ethics must make the effort to engage the established debate before diverging too terribly from the flow of thinking. This article is an attempt to redirect some of the environmental ethics discussion to cover issues of property.

then contextualize these arguments in light of the contemporary U.S. "wise-use" movement, in an attempt to make sense of the concerns that motivate wise-use activists, and also to demonstrate how intrinsic value arguments miss the mark.[4] Finally, I conclude that there is a good deal of headway to be gained for environmental ethics classes by addressing the question of whether nature can be owned as property, but nevertheless engaging the idea of private property critically. The article is intended to address metaphilosophical concerns to the community of applied ethics professors and is primarily oriented to outline some directions for course development. Further, it suggests alternative avenues for scholarly and pedagogical development that may interest neophytes unfamiliar with the general environmental ethics literature.

The Legs of the Theodolite: Staking the Territory[5]

Theories of property come in three rough kinds, and from there break into separate categories based on the nuances of their approach. For reasons of space, I will cover only the three rough kinds here and leave the more nuanced discussion to separate articles. Because these three arguments have been rehearsed many times, I do not attempt any critical assessment of them here but employ them solely for the purpose of leading into a discussion of the property rights movement. The first two sorts of property rights stories are genealogical, in that they seek justification of ownership by telling explanatory stories of acquisition, while the third position is justificatory, in that it seeks to justify ownership by virtue of what is the best thing to do.[6] Also, these theories do not attempt to distinguish between common, private, and collective property systems, though this too is an important distinction (Hohfeld 1919).

[4] At this point, an activist-savvy critic might be inclined to protest that the wise-use movement is yesterday's news, that the heyday of wise-use activism peaked in the mid- to late 1990s. She would be half right about this. In recent years, wise-use activism has simply been subsumed into the political center. Its tenets are alive and well throughout the current U.S. political establishment. This property rights legislation, as well as the reasoning that underwrites it, poses the single greatest challenge to any teacher of environmental ethics.

[5] A theodolite is a surveying instrument used for measuring horizontal and vertical angles. Theodolites are commonly found on roadside construction sites and land survey sites. The *Oxford English Dictionary* explains that no clear origin for the term "theodolite" can be pinpointed, and so instead attributes the word to the creator of the instrument, L. Digges. Apparently there is no etymological connection to the Greek term "theos," though it would be easy to dupe an incautious etymologist into believing that theodolites are instruments of the gods. They are not.

[6] Jeremy Waldron carves up property stories slightly differently from the way I do here. He attributes occupancy theories to Locke—and they are, unquestionably, also a part of Locke's position—efficiency theories to Hume, and rights theories to Rousseau and Kant. I have chosen a slightly less formal and less established convention because these are three concerns that I isolate in the rhetoric of the wise-use campaign; and thus, these are the three conventions that I think appropriate to this article. See Waldron 2004.

Rather, in this section I emphasize the way in which property rights can be said to be generated and justified.

Occupation Theory

The first and simplest approach to understanding the nature of the property right is the occupation theory, most commonly thought to be represented by figures such as Hobbes, but represented to some extent also by Rousseau.[7] According to this position, what one owns is determined by what one can defend, what one can rightly be said to have occupied at the very beginning of a long chain of ownership. One can acquire property rights in two ways according to this theory: either by generation or by conquest. So long as someone can defend herself from marauders, the story goes, the rights remain her own. Of course, the better a person is at convincing others that she maintains *control* over her property, the more likely she is to maintain her right to this property over the longer term and for larger tracts of property.

On this view, therefore, property rights are an outcome of human civilization, though their genesis emerges in the absence of civilization. According to the occupation theory, property is first acquired by an individual in the form of objects of immediate possession, and it is then later secured by a sovereign, who enforces contracts at the end of a gun. "Covenants, without the sword, are mere words," says Hobbes, and he means literally by this that simple arrangements between neighbors to abide by agreements cannot be satisfactory for establishing the property relations between those neighbors (Hobbes 1994, chap. XVII). The reasoning for this is characteristically Hobbesian: it is in the mutual interest of all parties to secure property rights, and to do so by force, since it is sometimes in the individual self-interest of each to act against the mutual interest. Establishing property rights by right of occupation ensures *peace*, because it provides a simple and ostensibly fair method for determining who owns what. It is just a matter of establishing the fact about who got where first. (This approach to property rights is reflected in current property law. The Colorado Doctrine, for instance, establishes water and mineral "prior appropriation" rights according to a principle of "first in time, first in right," for presumably just such a reason [Schlager 2004].) Further, securing these rights at the end of a gun provides *security*, because agreements reliant upon the altruistic well-wishing of self-interested neighbors are mere words.

According to Hobbes, in such a civilization our property is our persona. It is our outward appearance, our public face. We "personate" inanimate things—inhabit them, if you will—donning them like cloaks.

[7] I mean here that Rousseau expressed great dissatisfaction with the occupation theory, not that he *held* an occupation theory of property. There is considerable confusion about the nature of property under Rousseau, and his position is widely thought to be ambiguous but central to his writings. See, for instance, Teichgraeber 1981 and Putterman 1999.

Damage to our property, then, is damage, or harm, to our selves. And so the property right is secured by way of two primary and attractive principles: it appears to be *fair*, since the true and rightful owner is he who has been queuing the longest; and it is affixed to the individual by way of the expansion of an individual's person, such that damage to the property is *harm* to the individual.

Labor Theory of Value

A far more accepted and central position in the property rights literature is the Lockean position.[8] The Lockean position is commonly identified as the origin of the labor theory of value and is attributed to a wide range of libertarians and Marxists—most notably, to Marx himself (Cohen 1995). It is characterized by the genealogical claim that one acquires property when one mixes one's labor with some object or set of objects in the natural world (Becker 1976, 654). So, for instance, if I hammer a bundle of logs and boards together and fashion a table, I can rightly call this table my own. I can do so because I have transformed an otherwise worthless pile of logs and boards into something of value, by using my own hard work and sweat. Once I have established that I am the owner of the table, I can then do with it as I wish. I can use it, I can sell it, or I can burn it. Prior to my ownership of the table, the bundle of logs and boards was just wood, belonging to nobody. It is my intervention, my creation, my *labor*, that gives the table its value and gives me the right to call the table my own.

The Lockean position, therefore, begins from the supposition that individuals hold a natural right to their own body (Christman 1986; Wheeler 1980). They own themselves. "Every Man has a *Property* in his own *Person*," claims Locke, creating already a somewhat skewed but nevertheless intuitively appealing picture of one's relationship to one's own body (Locke 1967, § 27). This right can be thought of as either God-given or natural. In all senses, however, it is prepolitical. Insofar as one has a right to one's own body, one also has a right to what one produces—the "*Labour* of his Body, and the *Work* of his Hands, we may say, are properly his" (Locke 1967, § 27). So, for instance, we might also say that since our own labor was generated from our own bodies, we also have a right to the objects that were generated from our bodies. At base here is a conception of the individual as free to act, free to do with his body as he wishes. I particularly like Laurence Becker's characterization of the Lockean position, if only for its apt midstream question mark: "The root idea is here understood in terms of a derivation from prior

[8] Some important articles referring to the labor theory of value specifically as it relates to the environmental discourse include, but are not limited to, Shrader-Frechette 1993; Wolf 1995; and Sagoff 1988.

property rights. Since one's body is one's property, and its produce (labor) is one's property, it follows (?) that the labor's product is also one's property'' (Becker 1976, 654).

Locke, of course, didn't think that mixing one's labor with nature would give a person rights to *everything*. His theory of value was limited in at least two ways. It was limited in sufficiency and in spoilage (Schochet 2000, 368). This is at least one area on which the Lockean theory of value has frequently been criticized; and in being criticized, has been amended to be more palatable. Locke's qualification that there ''be enough and as good left in common for others'' (Locke 1967, § 27) is sometimes referred to as the Lockean proviso, and it can provide an invaluable source of discussion for the teacher of environmental ethics. Robert Nozick explains Locke's proviso that there ''be enough and as good left in common for others'' as intended to ensure that the situation of others is not worsened by the acquisition of property (Nozick 1974, 175). Nozick's discussion of the proviso is illuminating. He seeks to defend the right to property by addressing the seeming paradox that, given the proviso, one could not ever rightfully hold property in anything, because there is a sense in which all property, where held by anyone, worsens the position of others. Nozick reasons that this proviso dissolves into an absurdity if taken to prohibit anything more than the most complete monopoly. Therefore, he concludes, Locke could not have meant it this way. By contrast, Alan Gibbard argues that Locke is not nearly as hard a libertarian as Nozick and others frequently make him out to be. Gibbard claims instead that, in appealing to this principle, Locke does not hold the position that ''a person can be denied the right to use a thing only with his consent'' (Gibbard 1976, 77).

The Lockean position, unlike the Hobbesian position, begins from the supposition that rights to property can and do exist in the state of nature, and that the state does not so much play a role in the *establishment* of property as in the protection of property. It is therefore a ''natural rights'' theory of property. One of the primary aims of civil society, under this picture, is to *protect* the rightfully owned property of individual citizens. In doing so, the state has two primary aims: to protect the rights of the citizen, but—and this is important—to do so in a way that is also in the interest of the common good. Upon failing to do so, the state would then be found to have violated its justified claims over the property of individuals.

Notice a critical distinction here between Locke's position and Hobbes's position. Under Hobbes, harm is done to the individual because the individual's holdings are, effectively, a part of the individual. The individual subsumes objects into her core self and makes them a part of her *person*. Under the Lockean picture, harm is done to the individual because the individual's holdings are established not via acquisition but by creation; by extending a part of oneself *out* into the real world. Harm

in this case relates to the freedom and liberty of the individual. There are thus two senses of harm here running at odds with one another. On the Hobbesian picture, curtailment of the use of property harms an individual because it is damage to her person; whereas on the Lockean picture, curtailment of the use of property harms an individual because it constrains her actions, it keeps her from being free, from creating value.

Efficiency Theory

Yet a third justification for private property comes out of the environmental economics camp. In 1960 Ronald Coase, perhaps one of the more cited figures attached to this line of thinking, wrote his foundational article, "The Problem of Social Cost," detailing this efficiency-oriented approach to property justification (Coase 1960). In this article, Coase argues that one of the primary reasons we might want to assign property rights to individuals is to overcome the inefficiencies related to poor coordination between two or more individual economic actors. He invokes the famous example of a steam engine that sheds sparks as it travels, setting aflame crops on nearby farmland, to suggest that the best way to overcome inefficiencies in transaction and external social costs is to assign property rights. This leg of argumentation is distinct from the other two legs of the theodolite, for here the justification does not depend on a claim to the natural right of the individual to hold on to the property; rather, it depends on a claim to the overall welfare of society.

Coase's argument runs thus. Coase begins from the supposition that in some cases there are external social costs from production—as might be the case, for instance, with a railroad conductor who accidentally sheds sparks and burns crops as a byproduct of doing business. Coase then considers cases of Pigouvian taxes for remedying such a problem, which are the classic and most direct approach to internalizing externalities. Pigouvian taxes seek to internalize costs by taxing according to unit cost and elevating the cost of each unit so as better to reflect the "true" costs of production. In this case, a tax would be levied against the conductor for every trip he took, thereby increasing the cost to him of taking a trip and forcing him to make wiser decisions about when it is important for him to travel. Placing a per unit tax on an externality-generating good resets the calculus that individual buyers employ when making decisions to purchase, forcing them to make slightly different decisions more in tune with the costs of consumption of an individual unit. This appears to be the most natural solution to such a problem: simply to charge more per unit, thereby readjusting the demand curve to accord better with the externalities.

Unfortunately, Pigouvian taxes are a blunt instrument. For starters, the assumption with such taxes is that a given external cost is being overlooked, and that a government or panel of experts can discern what this cost to the public is. To add insult, however, Pigouvian taxes create

further inefficiencies by treating the demand curve as static according to a set demand, generating indifference to the harm by the harmed party, producing significant dead weight loss, and creating enormous "transaction costs," which are the costs associated with negotiating and agreeing upon a price to compensate for harms.

Coase observes that many market inefficiencies, but specifically transaction costs, are not internal to the governance of competitive organizations, because transaction costs are internalized in the determination of the price, prior to the establishment of a supply-demand curve. They are instead just the "costs of doing business." All transaction costs are therefore subsumed under the jurisdiction of the management. In the face of this observation, Coase also observes that one of the big reasons that so many market inefficiencies like transaction costs develop in the first place is because of political clashes, coordination costs, and information asymmetries. This apparently is not the case when property owners suffer harms caused by other property owners—or, more to the point, when property owners experience inefficiencies internal to their business figurations—since the property owner generally seeks compensation for damages to his property. To remedy this situation, Coase recommends that property rights be assigned to all public goods. Under the Coasian justification for property rights, government is to act as a "super firm" with special qualifications.

According to this picture, actors are self-interested profit maximizers with little conceivable interest in carrying out the demands of altruistic ethical doctrines.[9] This is an important position for teachers of environmental ethics to acknowledge and to criticize, because it underwrites much of environmental economics and informs many positions taken by professional environmental policy analysts. Garrett Hardin, for instance, subscribes to a similar picture of the individual in his classic article "The Tragedy of the Commons" (Hardin 1968). He is disenchanted with positions in environmental ethics that request of their readers that the reader act according to moral precepts. He claims that such moral theories place actors in a moral bind, in which they are asked to act according to conscience but are driven by their preferences to act in their own self-interest.

Taking Freedom, Not Value

In this section, I present some of the positions held by advocates of the "land rights" or "wise-use" movement, with the intention of making sense of their positions on property. The aim is not to discuss the terminology embedded in the platform of the wise-use movement. Indeed,

[9] To call all nonegoistic ethical doctrines "altruisitic" adopts the false concretism of Ayn Rand, who does just this. But this market fundamentalism also runs through much of the Coasian line of thinking, though Coase may be more of a psychological than an ethical egoist.

the rhetoric can sometimes be misleading, and it is often so pervasive as to make the arguments of the wise-use movement virtually impenetrable; or at least inseparable from the rhetoric. It may be for this reason, in part, that the arguments of the wise-use movement are not entertained seriously by professional environmental ethicists. However, there are important motivations for the wise-use movement that teachers of environmental ethics would benefit from understanding well, even if just for pedagogical reasons. (Joe Kansas and Suzy Student may not themselves have a fully reflective and developed sense of their political leanings, for instance, but their sense of freedom, narrowly and negatively understood, may resonate with the positions of the land rights movement.) Instead, the intent here is to isolate some of the arguments that are prominent in the literature of the wise-use movement for the purpose of providing other avenues for the environmentalist to think more seriously about these problems as they plague environmental ethics.

For those unfamiliar with the historic underpinnings of the wise-use movement, it may help to start by explaining its relatively humble beginnings. Gifford Pinchot, the first head of the United States Forest Service, is said to have declared in the early 1900s that forest policies should be developed for the "wise use" of America's forests and minerals. On its face, this seems reasonable enough. There appears to be an enormous (but limited) amount of land and an enormous (but limited) number of trees; using them judiciously seems, well, wise. At the same time, however, John Muir, the widely regarded "Wilderness Prophet" and founder of the Sierra Club, argued that wilderness areas should be preserved for their own sake, that they should be left largely untouched. Thus began a historic showdown, pitting conservationists and preservationists against one another.

In the mid-1970s, a covey of right-wing advocates and representatives of ranching, mining, and logging interests sought to reduce federal authority over land management (Lowry 2003, 329). These advocates christened themselves the "Sagebrush Rebels," and a revolution in anti-environmentalism was born. Proponents of this position donned Pinchot's mantle, manipulating his position to claim that the environment, if it is to be saved for anything, should be preserved *only* so that it may be wisely used. No longer was "wise use" the humble mantra of nature-loving utilitarians and pragmatists, it became the battering ram of the right-wing noninterventionist. The Sagebrush Rebellion, with its charged populism, eventually gave birth to James Watt, Anne Gorsuch, and, in the end, the Reagan administration. Soon after Ronald Reagan was elected president of the United States, he is reported to have sent word to a convention of such rebels renewing his "pledge to work toward a 'sagebrush solution,'" adding that his "administration will work to ensure that states have an equitable share of public lands and their natural resources" (Nelson 1995, 177). Over the twelve years that Reagan and

Bush were in office, the United States Department of the Interior proceeded to rollback environmental restrictions on business, to open wilderness areas to mining and drilling, to battle against Superfund legislation, and to cut funding for enforcement by the Environmental Protection Agency (EPA).

The Sagebrush Rebels found their Poobah in the fiery personage of Ron Arnold, formerly of the Institute for the Defense of Free Enterprise. Arnold has connections to the Reverend Sun Myung Moon's American Freedom Coalition, and also to a grand establishment of public choice economics. In the late 1980s, Ron Arnold and Alan Gottlieb convened many of their supporters and launched People for the USA!, a super-organization that was to coordinate the actions of spin-off organizations like People for the West! At this meeting, People for the USA! composed a list of their top twenty-five goals (Gottlieb 1989). Some of these goals included developing the Arctic National Wildlife Refuge, protecting "inholders" (or people holding property rights, like grazing rights, on federal lands), cutting the Tongass forest, preserving the 1872 Mining Act, and, outrageously, preventing global warming by removing old growth. Platform plank #4 states: "All remaining old-growth forests on public lands shall be immediately cut down and replaced with baby trees" (Mendocino Environmental Center 1999). Read that again. This was the proposed solution to global warming: immediately to cut down all old-growth trees and replace them with baby trees.

One of their campaigns included an effort to get environmental regulations listed as a constitutional "taking." To do so, they appealed to language in the Fifth Amendment of the U.S. Constitution that proclaims, "No person shall be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation."[10] This phrase is commonly referred to as the "takings clause" because it mandates that the government compensate citizens for any necessary government taking of property. Its existence inspires so-called takings legislation, though when uttered in environmental circles, the phrase "takings legislation" generally refers to regulatory actions, not to actions of seizure under eminent domain. Support for takings legislation grew in 1992 with *Lucas v. South Carolina Coastal Council*, a case in which David H. Lucas, a property owner and U.S. citizen, had purchased two properties for $975,000 on the South Carolina coast with the intention of developing them but was later restricted from constructing any permanent structure on the properties.[11] Hardly the archetypal case of poor man versus evil bureaucrat, the Lucas decision was still enough to give the property rights movement steam

[10] United States Constitution, Amendment V.

[11] For an illuminating overview of takings cases relevant to takings battle, see O'Leary 2003.

throughout the 1990s. For more than twenty years, the Sagebrush Rebels raised money, grew their fan base, and developed an intricate platform from which to defend their position.

Curiously, the outspoken reactionaries who had stirred up a firestorm for more than two decades in the American West suddenly and inexplicably closed up shop at the beginning of the twenty-first century. Only four days after the U.S. Supreme Court determined that George W. Bush was to be the forty-third president of the United States, People for the USA! and its many spin-off organizations announced that the takings battle was no longer relevant. They set January 20, 2001, as their date for disbanding—Inauguration Day (Walters 2000). This correlation went largely unnoticed by the mainstream environmental movement, though its political significance is clear. Property rights had found a seat and a friend in the new Republican administration.

Since the inauguration of George W. Bush, the property rights "movement" has been largely silent, but its advocacy within the upper echelons of government has grown immensely. Gale Norton, protégé of James Watt, stood at the helm of the Department of the Interior from the beginning of the Bush administration until the middle of Bush's second term. Her successor, Dirk Kempthorne, holds the record for the longest period as sitting secretary of the interior to go without listing any species as endangered. Christine Todd Whitman, former governor of New Jersey, whose campaign slogan was "New Jersey: Open for Business," was appointed to the head the EPA. Like many cabinet members from Bush's first term, she eventually left for personal reasons, though her legacy lives on. The Bush administration has passed legislation enabling extensive utilization of public lands for energy, logging, mining, and ranching interests.

Organizations that emphasize such positions on property rights include, among others, the Property and Environment Research Center, the Center for the Defense of Free Enterprise (CDFE), and the American Land Rights Association.[12] They continue staunchly to defend property rights. Since the heyday of the wise-use movement—and not long after September 11, 2001—Ron Arnold has both sunk back into the CDFE and taken to rebranding environmental activists as ecoterrorists. When charges of ecoterrorism enter the picture, concerns of freedom and property rear their ugly heads in yet another way relevant to environmental ethics; one that, alas, is too complex to address in this article. It is

[12] Many anti-environmental groups are engaged in justifying public policies by arguing that environmental regulations are curtailments of property rights. The Property and Environment Resource Center (PERC) is one of the most notorious. Out of this group has come the book *Enviro-Capitalists: Doing Good While Doing Well*, which preys on the notion that environmental regulation runs contrary to jobs. Also, Terry Anderson's *Property Rights: Cooperation, Conflict, and Law* contains a set of essays on property rights and prosperity. Anderson is an economist and the executive director of PERC.

thus of incredible importance that serious environmental ethicists begin addressing the philosophical issues raised by these movements.

The question for any serious teacher of environmental ethics should be, Why are wise-use advocates so fervent? What motivates them to hold such strong positions? And what, if anything, makes these positions "anti-environmental," as claimed by many environmental activists?

If it is not clear by now, one issue lies at the root of the acrimony among wise-use advocates: property. Their central concerns relate less to the question of whether nature is or is not worth preserving than to whether and to what extent outside parties can make claims, place constraints, and force action on individual property holders. More important, supporting these claims to property are universal principles that motivate the wise-use activist to defend property. These are reflected in the theories that we discussed above.

First, to a discussion of the terminology, which will reveal, I believe, how the wise-use argument has been framed.

At the beginning of the battle, wise-use proponent Ron Arnold famously claimed that there was a "wolf skulking in the garden." This wolf, he claimed, is the environmental movement (and, by extension, anyone seriously concerned with environmental ethics). "Wolf in these varieties of sheep's clothing is rapacious, not simply protecting nature, but also annihilating the livelihoods of dwellers in the middle landscape" (Arnold 1996, 18). This is venomous language for a populist movement with such purportedly good intentions; but more important, it is language that infects the environmental ethics classroom. One common way of responding to the arguments from the wise-use movement is to battle kind with kind, to respond with equally psychologistic, intentionalistic, and ad hominem claims about what the wise-users want. This is clearly counter-productive and not in accordance with the aims of academia or, if I may, a critically inclined environmental ethics course. The other approach is to engage and analyze the arguments of the wise-use proponent, which I shall attempt here.

Arnold and many in his activist encampment tend to refer to environmental regulations as landgrabs, occupations, and takeovers.[13] The imagery is curiously Hobbesian, implying that a beastly and menacing government, even a Leviathanesque sea monster, reaches its tentacles into the life of the individual and takes from him what he rightly owns. Where

[13] Take, for instance, the campaign to keep the Klamath Basin open for logging. One Web site for this campaign is "stobfedlandgrab.org". The mission statement of the Web site proclaims that "the Federal government now owns 46% of all land in the west. They own 87% of Nevada alone. They are taking this land unconstitutionally." The words "Freedom, freedom, freedom" are scrawled across the screen. One can only conclude from such claims that at least one primary concern of the wise-user is freedom. As I mentioned earlier in this article, my aim is not to poke fun at these positions but rather to understand what motivates them theoretically.

Hobbes might have seen this as a good thing, ensuring the security of every individual within his state, the wise-user sees this clearly as a bad thing, quite apart from what is fair and what will keep him from harm. What's really curious about this position is that it depends on, all at once, (a) the Hobbesian notion of fairness and security, (b) the idea that property owners hold rights in the Lockean sense, and (c) that it is economically inefficient for government to intervene with the development of property. More perplexingly, it relies on the last-mentioned perspective to conclude that market-driven institutions are less prone to the failures and harms expressed in the first two forms of property ownership than are bureaucratic institutions. This market fundamentalism pervades almost all of the wise-use doctrine, and wise-users go to great rhetorical lengths to defend this fundamentalism.

To add rhetorical force to his argument, Arnold caricatures his "enemies." He identifies what he calls "three distinctive axes of influence" in the environmental movement: establishment interventionists, ecosocialists, and deep ecologists. We would do well to look past his rhetoric to get at what he takes to be the founding suppositions of these "axes." For instance, he claims that establishment interventionists act "to hamper property rights and markets to centralize control of many transactions for the benefit of environmentalists and their funders in the foundation community" (Arnold 1996, 17). Ecosocialists, by contrast, are hardly so self-interested. Instead, they simply seek to "dislodge the market system with public ownership of all resources and production, commanded by environmentalists in an ecological welfare state" (17). And finally, the deep ecologists, he claims, act "to reduce or eliminate industrial civilization and human population in varying degrees," tending "to emphasize that nature's way is best" (18).

What you'll notice about these claims by Arnold is that they have little to do with the environment at all. So-called establishment interventionists aren't interested, according to Arnold, in protecting natural resources or identifying intrinsic and inherent value. They're not even interested in just institutions. Instead, they're interested in hampering property rights, in centralizing control of transactions. For what reason? To benefit further environmentalists and their funders. To Arnold, environmentalism—and by extension, environmental ethics—is an enormous power play. It is about power and freedom, and about the curtailment of power and freedom.

One must be extremely cynical to buy this line of argument. Nevertheless, Arnold and his wise-users are not alone. In public choice theory, this position is sometimes supported by the "capture theory of regulation." Capture theory purports to explain regulations and the development of regulations in terms of special interest groups. It claims that, through political manipulation, special interests can "capture" the regulatory machinery and bend it to do its bidding. This is opposed to

other self-interested or "rational choice" theories of regulation, like those that propose that regulations are imposed in the general public interest (the public interest theory of regulation) or that there is a market for regulatory change much akin to the market for goods, such that those with a greater stake in a regulation will expend greater resources to shape those regulations (the economic theory of regulation).[14]

The astute professor of environmental ethics might be inclined to reject such suggestions out of hand. Indeed, such suggestions eviscerate any rational or scientific ground on which an environmental platform might be laid. But it is a mistake to dismiss them so readily. Running deep in the background are strong intuitions about the nature of property and, more deeply, about the nature of the individual; about fairness, freedom, and efficiency—ultimately, harm—as mentioned above. Couple this with a cynicism about the foundations of any environmental ethics program, and students of environmental ethics are left to discard the preaching of intrinsic value arguments long before they've ever entertained the issue seriously. If this analysis of the wise-use movement is not compelling enough, the property position has strong proponents in academia, particularly in economics departments, and so may also be familiar to more advanced students. James M. Buchanan, Robert Tollison, and Gordon Tullock are among these proponents, and their arguments must be treated ingenuously by environmentalists.[15] Their well-argued and elaborate positions underwrite and prop up the electric claims of people like Arnold. Such public choice theorists are extremely skeptical of governmental intervention, and they see far more room for "bureaucratic failure" in regulation than for "market failure" in competition.

We must now ask why it is that such positions have any force. What is it, after all, that makes the claims of the wise-use movement seem so palatable to people who might otherwise also call themselves environmentalists? To the arguments, then.

Start with the great takings debate. Almost anyone can understand the appeal of the takings clause in the Constitution: nobody wants her hard-earned property to be taken away by the king's soldiers. In fact, it is probably fair to say that almost all of us would be irate if the government or some larger body were to swoop in and take even the smallest of our holdings away from us. We would be upset if it were to take our house, our car . . . and it is probably true also that the seizure of even the smallest items would upset us—as, for instance, if the government came to take away our toothbrushes. Compensation, presumably, is supposed to allow for government to make decisions that will affect the general public without upsetting many people by taking their property. In the end,

[14] See Posner 1974; for the foundational work on the economic theory of regulation, see Olson 1971.

[15] See, for instance, Buchanan and Tullock 1962.

however, we might find that this compensation can hardly make up for the value of what we have lost.

Wise-use advocates take the position one step further to argue that regulations and constraints placed on property effectively amount to government takings. This too is not difficult to understand. If someone tells us that we can continue to hold the title to our car but that we must keep it in the garage for the duration of its existence, we might have reason to be irate about this as well. This would amount, effectively, to *taking* our car. We would protest. We would expect compensation. We would expect *justice*. And we might even hate the people who wanted to take our car. This sort of reasoning stands in the background of the wise-use movement.

Let's avoid comparing a car to a wetland for a bit. There are clear enough differences to those of us who do not own wetland habitat. My car is a technological device that I have purchased with my own money, it has no living beings that depend on it, it does not provide other resources for people downstream, and so on. Wetlands are quite different from this. From the perspective of the property owner, however, they are both investments. Simply pointing out the differences will not necessarily overcome this point of view, though there is no doubt that it will help in many cases. The easier arguments therefore point out the differences between wetlands and objects of possession; between, say, the intrinsic value of a wetland and the instrumental value of a car. But it is wrong to believe that the arguments should stop there. The more difficult environmental questions address what makes it fair for someone to relinquish his seemingly legitimate authority over a given property in the face of an alleged public interest.

Environmental ethicists can suppose that there is only a clash of value here, but what is also at play is the obligation that an individual has to sacrifice his own authority and well-being to the general public. Environmentalists are butting heads with wise-use activists not on questions of value but on questions of fairness, freedom, efficiency, and, ultimately, harm. Arnold puts it this way: "Asserting such onerous control over others was not attractive and clarified the environmental movement as just another special interest protecting its selfish economic status. Economics is not about money, it is about the allocation of scarce resources. The wise-use movement bared the environmental movement's ambition to be resource allocator for the world" (Arnold 1996, 19). As far as the wise-use advocate is concerned, environmentalism is about control of resources, about economics, about power—not about anything related to the environment. Imagine: you are a property owner, reliant upon your property for your livelihood. Some person—it doesn't matter who, or for what reason—tells you that you cannot or ought not to use your property for an activity you feel it should be acceptable for you to use it. This costs you something; this harms you. It is this that motivates the person, this

that scares him; and here is where environmental ethics must step up to its task and address not just questions of value, status, beauty, and worth but also questions related to property.

As I mentioned at the beginning of this article, property theories break into three rough kinds. I have been trying to suggest here that these three rough kinds map onto the claims of the wise-use movement. Roughly, wise-users attempt to justify their property rights by making appeals to these three rough kinds:

1. *To fairness*. Here the justification appeals to our place in line. "We got here first!" This transforms the environmental question from a question about what is best for the environment or for the community into a question about fair play.
2. *To freedom*. Here the justification appeals to the products of one's own labor and map nicely onto the labor theory of value claims we saw in Locke. This transforms the environmental questions about value into a question about self-determination.
3. *To efficiency*. Here the justification appeals to the optimal welfare that will be brought about by allocating property rights. This transforms the environmental question into a matter of procedures for social utility optimization.

Harms in this case cut in many directions: one's *person* is harmed when one's property is taken; one is harmed because one is robbed of one's capacity to create *freely*; and one's *welfare* is harmed when markets cannot run efficiently, because everyone is worse off. To put this another way, wise-users think that they are standing for all of the classic concerns of a modern civil society: they are concerned with justice (!), freedom (!), and the American Way (!).

Conclusion

This article, then, begins from the claim that the mainstream environmental ethics literature does not sufficiently touch on the concerns of students in environmental ethics classes. Mainstream environmental ethics as a discipline tends to take its set of questions as given: What matters? What is valuable? What will work? What is nature? What is wilderness? Should we conserve or preserve? Restore or let lie? And so on. These are all fantastic and interesting questions. Realistically, however, many of these questions are lost on students who may sincerely hope to address applied environmental problems in a serious manner. Meanwhile, environmental economists are busy devising measures and calculi for valuing the environment, environmental biologists are busy detailing the specifics of endangered and indicator species, environmental policy analysts are busy seeking legislation that will best benefit nature, and environmental lawyers are busy seeking judicial decisions that will save

particular tracts of land. But where are the philosophers on this count? Where are the environmental ethicists?

They are busy arguing that the environment matters, for such and such a reason.

What is curious about this narrow focus is that many who study and understand the environment—environmental science or environmental policy majors, for instance—also already accept and understand the value and status of the environment; have a reasonable, if not fully formed, notion of what nature is; and are willing to debate the principles of restoration and intervention on biological or economic grounds. When it comes time to conduct an analysis, therefore, they generally do not employ the arguments of Aldo Leopold, Peter Singer, Tom Regan, Albert Schweitzer, Paul Taylor, or others to any great effect. What is needed from environmental ethics classes, then, along with these other important discussions, is a lucid account of why current property regimes are or are not appropriate to environmental decisions.

While contemporary political theory and ethical theory may not treat the claims of libertarians, Randians, or Nozickians as seriously as they were treated twenty years ago, I think it fair to say that environmental ethics is in a slightly different category and must continue to engage these debates. Environmental ethics is an extremely public niche of ethics. It is a popular class among undergraduates, it is sometimes the only philosophy class that students of environmental studies will take, and its topics commonly come up around dinner tables. (Should we eat animals? Even parents join in on the fun of this discussion.) Insofar as environmental ethics is this public, its arguments must be geared to address slightly more public concerns. So, even though mainstream philosophy may not be addressing the somewhat rigid concerns of the staunch libertarian, environmental philosophy must. Perhaps more important, when students of environmental ethics leave their classes, they may well be persuaded by the arguments common to such classes: that, say, the environment is morally considerable or intrinsically valuable. Faced with truly difficult property rights and regulation questions, however—which they will encounter at some point if they take the intrinsic value arguments seriously—they may not know where to turn. The hard-won anti-instrumental ground of environmental ethics may be readily ceded if it does not address also the public counterclaims of the wise-user.

This is the important point of this article: arguments such as those that emanate from the wise-use movement reveal that environmentalists are not necessarily butting heads with heartless land-hogs, and that the questions that have motivated political theorists for decades are also at play in the background of these land disputes. The teaching of environmental ethics need not, must not, be as narrow as it currently is: the ethics of the environment does not pertain just to matters of intrinsic value and natural aesthetics, it also must pertain to questions of fairness, harm,

freedom, and efficiency, streaks of which are tied to particular conceptions of property.

John Meyer's interesting paper outlines three responses of environmentalists to the Lockean myth: they can seek to transform it, they can seek to evade it, or they can simply embrace it (Meyer 2005, 6). I am arguing that we must embrace it. Not that we must embrace it because it is true. It is a myth. Accepting it as true would mean giving up on our search for the truth, and concomitantly giving up on any clear or worthwhile interpretation of Locke. What I mean when I say that we must embrace it is that we must entertain questions of property and understand their implications. If we don't, we run the risk of making ourselves obsolete.

There is a danger in doing this, of course. Opening the property discussion may mean legitimating a mythological and flawed discourse about whether nature is ownable. Still, I think that teachers of environmental ethics have much more to gain by engaging this discussion than by evading it. Accepting this as a challenge means that the relatively few ethicists working on environmental questions—readers of this journal and professors of environmental ethics—have a mountain of work ahead of them.

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