

The Justification of Private Property

Property Law

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The notion of property is one that has long preceded us, or anyone we know. We know that the earliest social theory of property originated in the works of Saint Thomas Aquinas who had said that humans have a natural right to the use of or ownership of an unspecified amount of property. He also said that the amount of property to which you are entitled, is based on your need and no one was entitled to more than they needed to survive. The communal aspect of early property began as the bible implied in its teachings that earth and everything on it was available as property to be taken by everyone. Therefore, everyone can take from nature and convert to her own use anything she needs in relation to what uniquely you need, as a person to survive. Private property was therefore thought of, as the outcome of personality and it did not exist until someone made it their own. In this essay I will discuss the notion of private property first by examining it in terms of the justifications of private property and the rules that govern private property and subsequently the origins of private property. I will then discuss the notion of the justification of private property as depicted by “The Father of Classical Liberalism”, John Locke. Lastly, I will then parallel Locke’s illustration of private property with that of the Genevan philosopher, John Jacques Rousseau.

To begin, private property can be classified in one of four existing property right regimes. Private property is defined as being owned and controlled by private individuals or companies. Private property can even exist in the control of corporations. The right to private property is grounded on three things; the want of a human being, the ability to separate yourself from others and lastly the ability to exclude others from what is yours. Keeping this in mind, these three grounding principles lead us to base property law on two assumptions. The first is that every rationale person knows what is in her best

interest. Second, based on the belief that individuals know better than anyone else what is on their best interest. The notion of private property also had a moral element to its existence. The right of private property is a moral necessity for making the pursuit of happiness possible. If humans have the right to life, then they have two further rights connected to it. These rights include the right to live in whatever manner you choose; provided only that you do not infringe on the rights of others.

Despite all these doctrines and justifications surrounding private property “closer investigation has shown that private property has not always existed as an institution. It was the tribe, the clan, which first said, *This is mine*” (Sheldon, 24). As W.L. Sheldon states in his article entitled *What Justifies Private Property*:

“It was not the individual but society, which first asserted the principle of ownership. We are forced to recognize that communal possession was the preliminary stage in the evolution of property. Private ownership came as a later step in the long series of changes, by which the human race has developed into its present condition” (Sheldon, 24).

Furthermore as we trace the origins of private property back through time we find it clear that the origins of justifying private property had its derivation in another way. “It came through violence and aggression. Men took what they could get and kept it as long as they could. It was appropriation by the strongest which probably first established the principle of individual ownership”(Sheldon, 26).

In present day, the law in Canada now holds that things found on private property belong to the property owner, where as things found on private property to which the public is invited, things found belong to the finder.

Moving on, “John Locke, was an English [philosopher](#) and physician regarded as one of the most influential of [Enlightenment](#) thinkers (Delaney, 18). In terms of property, Locke used the word in two different contexts. He used the narrow sense to refer to material things. He used the broader sense to refer to human interests. With respect to material property, he divided them into 2 categories; common property and private property. Humans, according to Locke, originally existed in the state of nature and they needed to answer only to the laws of nature, they were therefore free to do whatever they wanted as long as they did not harm others. Locke also said that people have a right to self-preservation, meaning they have the right to do and to take things that are required for their preservation or survival. Locke also argued that because you have the sole use of your bodies and your bodies belong only to you, the product of your labour must also belong to you. Therefore, this means that a person is entitled to take from nature what is necessary to survive subject to two qualifications. First, no one can take possession of something if he harms someone in doing so. Second, no one can take possession of more than she can use because that person would be wasting what others could use.

Locke goes on throughout his works by identifying a number of rules that guide his theory on the justification of private property. When you first gather or expend your energy in terms of first taking, something you take from nature becomes your property. You also do not need permission to take from nature because that would be impossible.

Locke said that god gave humans the world to make use of, and that we acquired property by mixing our labour with some natural resources, like walking to get a pail of water for example. In terms of mixing, Locke placed limitations on mixing that include; waste, which holds that you could not take so much property that some of its goes to waste and secondly enough and as good, which holds that when I take from nature what I need, I must leave enough for everyone else and of a similar quantity.

Locke also fashioned a theory known as the labour theory of property which argued that god wanted people to have private property for convenience. It said that every human has a property in his own person. In order to keep what you took from nature one only has to follow the two rules; do not waste, and leave enough for others. On the other hand the only way to lose what we took from nature is by violating one of the two rules. The moral basis for our property claim came from god, as Locke argued that god said that he set up the world for the use of all of us and that it pleased god by taking. In terms of land, Locke established the Homestead Principle, which holds that we gain ownership over un-owned land by performing an act of taking. The right to homestead private property, which was taken from nature, is acceptable only so long as no one is made worse off. Despite Locke's theory, his theory of property does not suggest that everything can be made into private property. The rule is that things in short supply ought to remain common.

Lastly, John Jacques Rousseau was a [Genevan philosopher](#), writer, and composer of the 18th century. His [political philosophy](#) influenced the [French Revolution](#) as well as the overall development of modern political, sociological, and educational thought.

According to Rousseau there were two sides to the private property argument. On one hand, ownership of private property was seen as bad, which could be explained by three reasons. First, it was the cause of social unjust, as not everyone was equal, albeit in brain or brawn. Second, because of this social unjust it facilitated and paved way for tyranny. Third, this was the result of the elusive element of ownership. On the other hand, private property could be seen as a good thing. First, because private property is the driving force behind technological advancement. Second, because private property improves our standard of living.

According to James D. Delaney, the period of Enlightenment refers to the European culture of the 18th century. The People of Enlightenment believed the almightiness of human knowledge and defied the tradition and the pre-established thoughts of the past. This is the period in which the humans became overconfident in the human reason and rationality. Philosophers and scientists committed the fallacy of *argumentum ad ignorantiam*. Anything, which cannot be understood by rational knowledge and the current status of sciences, was defied as meaningless or superstitious. The two fundamental characteristics of the philosophy of enlightenment are: faith in the European reason and human rationality to reject the tradition and the pre-established institutions and thoughts and search for the practical, useful knowledge as the power to control nature.

Rousseau was a two-fold believer in enlightenment. His theory was based on five realities. The first is rationalism, which is the belief in logic and the belief that reasoning should be based on facts. The second is secularism, which is the application of science to

religion in society. Third, is utilitarianism, which is the belief that laws are created for the common good rather than to benefit the wealthy few. Fourth, is the rule of law, which is the focus on individual rights and the inherent value of the individual. Fifth, is tolerance, which is the acceptance of the value of cultural minorities or societies. Rousseau was leading enlightenment in two ways, he rejected things not of this world in favour of science and he focused on the reasoning of humans.

In regards to criticism, Rousseau and other critics focused on three things. The churches rejection of science, the churches focus on things not of this world and lastly, the belief that the natural state of humans is depravity. The main themes of Rousseau's works were two fold as well, due to the belief that humans were inherently good, but humans were in turn corrupted by civilization. Rousseau believed that humans were born free and naturally virtuous and in the state of nature they were essentially good. Her referred to pre civil society as inhabited by noble savages who was interested in her own welfare and were compassionate about the suffering of others.

In conclusion, the notion of the justification of private property is an important one, but a complicated one. John Locke and John Jacques Rousseau are two of the "so called" pioneers of the private property and each offer great intellectual insight into the justification of the notion of private property.

Works Cited

Delaney, Tim. *The march of unreason: science, democracy, and the new fundamentalism*

Oxford University Press, New York, 2005. p. 18

" Jean-Jacques Rousseau (1712—1778)," by James D. Delaney, *The Internet*

Encyclopedia of Philosophy, ISSN 2161-0002, <http://www.iep.utm.edu/>, February 17th

2015.

Sheldon, W. L. "What Justifies Private Property?" *International Journal of Ethics* 4.1

(1893): 17-40. Web. 26 Feb. 2015.