Crossing the Property Line: Some Directions for Environmental Ethics

Abstract

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 so infrequently taken up questions of private property. The question of property is certainly addressed 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. It 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. 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. However, there is no reason why property questions should not also be addressed by environmental ethicists, and in fact very many reasons why they should. In this paper I argue that politically-inclined environmental ethicists must engage seriously the three dominant positions of private property.

I approach this matter by first conducting a short survey of the property literature. I address occupation arguments, labor theory of value arguments, and efficiency arguments. I then contextualize these arguments in light of the contemporary wise-use movement, in an attempt to make sense of the concerns that motivate wise-use activists, but also to demonstrate how intrinsic value arguments miss the mark. Finally, I offer 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.

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CROSSING THE PROPERTY LINE: SOME DIRECTIONS FOR ENVIRONMENTAL ETHICS

"In the beginning, all the World was *America*." – John Locke[1]

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 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. It 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.[2] Indeed, a cursory review of the environmental ethics literature reveals that the dominant figures have only the slightest interest in the philosophy of property.[3] 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 amongst themselves: deep ecologists versus social ecologists, land ethicists versus biocentric individualists, animal welfarists versus ecological holists.[4]

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 non-instrumentalist ethics is a worthwhile endeavor, and that it is only a matter of determining what the right principles and arguments are. It

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[1] Locke, John, *Two Treatises of Government*, Bk. II, Sec. 49

[2] I certainly cannot claim to know the entire history of articles written on this matter, so in a sense, this is not entirely true. However, this does appear to be a trend in environmental ethics. Kristin Shrader-Frechette, expressing perhaps similar frustrations, argues that "soft" variants of environmental ethics will not get us "where we need to go." Her point is that environmental ethics, when it is too "hypothetical-deductive," cannot provide the important sorts of criticisms apropos to real environmental problems. Her concern in her work attends to the lack of scientific input in the environmental ethics mainstream literature. In a similar vein, Garrett Hardin argues in *The Tragedy of the Commons* that philosophers of conscience will hardly be able to convince lay people to abandon their practices, for reasons that people are always torn between self-interest and conscience, where self-interest wins most of the time. I am pointing to further directions for environmental ethicists to explore because I think, from similar concerns about insularity, that environmental ethics can be a much broader, much more expansive discipline. See Shrader-Frechette, Kristin, "Practical Ecology and Environmental Ethics," *Journal of Philosophy*, Vol. 92, No 12 (1995), 621-635; and Hardin, Garrett, "The Tragedy of the Commons," *Science*, 13 December 1968, vol. 162, pp. 1243-48.

[3] There are some central texts that do address these issues. See, for instance, Munzer, Stephen R. *A Theory of Property* (Cambridge: Cambridge University Press, 1990); Wenz, Peter, *Environmental Justice* (Albany: SUNY Press, 1988); Becker, Laurence, *Property Rights: Philosophical Foundations* (New York: Basic, 1977) and others mentioned in the footnotes below.

[4] I include myself among the guilty. My doctoral dissertation was 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 efforts to engage the established debate before diverging too terribly from the flow of thinking. This paper is an attempt to redirect some of the environmental ethics discussion to cover issues of property.

is my purpose in this paper to argue that there is no reason why property questions should not also be addressed by environmental ethicists, and in fact very many reasons why they should. I argue here that politically-inclined environmental ethicists must engage seriously the three dominant positions of private property.

I approach this matter by first conducting a short survey of the property literature. I address occupation arguments, labor theory of value arguments, and efficiency arguments. I then contextualize these arguments in light of the contemporary wise-use movement, in an attempt to make sense of the concerns that motivate wise-use activists, but also to demonstrate how intrinsic value arguments miss the mark.[5] Finally, I offer 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. This paper is intended to address concerns to the environmental ethics community and is primarily a work oriented to outline some directions for future research. It is meant to open alternative avenues for discussion and development.

THE LEGS OF THE THEODOLITE: STAKING THE TERRITORY[6]

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 only cover the three rough kinds here and leave the more nuanced discussion to separate papers. As well, these three arguments have been rehearsed many times, so 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 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.[7] Also, these theories do not attempt to distinguish between common, private, and collective property systems, though this too is an important distinction.[8] Rather, the section here emphasizes the way in which property rights can be said to be generated and justified.

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[5] 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-nineties. 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 United States political establishment.

[6] 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 cannot pinpoint a clear origin for the term 'theodolite', and 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 uncautious etymologist into believing that theodolites are instruments of the Gods. They are not.

[7] Jeremy Waldron carves up property stories slightly differently than I have here. Instead, 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 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 paper. See: Waldron, Jeremy, "Property," *The Stanford Encyclopedia of Philosophy (Fall 2004 Edition)*, Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/fall2004/entries/property/>

[8] Hohfeld, W. N. *Fundamental Legal Conceptions as Applied in Judicial Reasoning* (New Haven: Yale University Press, 1919).

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 to some extent also Rousseau.[9] 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. They can either have the property rights passed down to them or they can take them by force. So long as they can defend themselves from marauders, the rights, understandably, remain their own. Of course, the better a person is at convincing others that they maintain *control* over their property, the more likely they are to maintain their 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.[10] 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 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 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.[11]) Further, securing these rights at the end of a gun provides *security*, because agreements reliant upon the altruistic well-wishes of self-interested neighbors are mere words.

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

It is perhaps an interesting observation that on Hobbes' view, animals are left entirely out of the property rights dispute, since man cannot make covenants with beasts. In this case, it is not that animals do not possess reason, nor that they cannot communicate, nor that they cannot feel pain or

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[9] 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 III, Richard, "Rousseau's Argument for Property," *History of European Ideas*, Vol. 2, No. 2, 115-134, 1981; or also, Putterman, Ethan, "The Role of Public Opinion in Rousseau's Conception of Property," *History of Political Thought*, Vol. XX, No. 3, 1999, 417-437.

[10] Hobbes, Thomas, *Leviathan*, Part II, Chp XVII.

[11] Schlager, Edella, "Property Rights, Water, and Conflict in the Western U.S.," in *The Changing Properties of Property*, edited by Franz Von Benda-Beckmann, Keebet Von Benda-Beckmann, and Melanie Wiber. (Berghahn Books. 2004).

be harmed that makes them negligible. It is that they cannot uphold contracts and exchange property. This may point to one more reason that environmental ethicists might object to this position. It apparently does not address concerns compatible with the moral status of the ecologically disenfranchised.

Labor Theory of Value

A far more accepted and central position in the property rights literature is the Lockean position.[12] The Lockean position is commonly called the Labor Theory of Value and is attributed to a wide range of libertarians and Marxists—most notably, to Marx himself.[13] 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.[14] 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 that gives me the right to call the table my own.

What is important to see with the Lockean position is that the position begins from the supposition that individuals hold a natural right to their own body.[15] In a way, 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.[16] This right can be thought of as either god-given or natural; in all senses, however, it is pre-political. 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."[17] 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 form 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 poetically placed question mark:

> "The root idea is here understood in terms of a derivation from prior 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." [18]

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[12] 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, Kristin, "Locke and Limits on Land Ownership," *Journal of History of Ideas*, Vol. 54 No. 2 (JHU Press, 1993); Wolf, Clark, "Contemporary Property Rights, Lockean Provisos, and the Interests of Future Generations," *Ethics*, 105 (July 1995), 791-818; and Sagoff, Mark, "Property and the Value of Land," Chp. 8, *The Economy of the Earth*, (Cambridge, UK: Cambridge University Press, 1988), 171-194.
[13] Cohen, G. A., "Marx and Locke on Land and Labour," in G. A. Cohen, *Self-Ownership, Freedom, and Equality* (Cambridge, UK: Cambridge University Press, 1995).
[14] Becker, Laurence, "The Labor Theory of Property Acquisition," *The Journal of Philosophy*, Vol. 73, No. 18, Seventy-Third Annual Meeting American Philosophical Association, Eastern Division. (Oct. 21, 1976), pp. 653-664.
[15] Christman, John, "Can Ownership be Justified by Natural Rights?" *Philosophy and Public Affairs*, Vol. 15, No. 2 (Spring, 1986), 156-177; Wheeler III, Samuel C. "Natural Property Rights as Body Rights," *Noûs*, Vol.14, No. 2 (May, 1980), 171-193.
[16] Locke, John, *Two Treatises of Government*, Bk. II, Sec. 27.
[17] Locke, John, *Two Treatises of Government*, Bk. II, Sec. 27.
[18] Becker, Laurence, "The Labor Theory of Property Acquisition," *The Journal of Philosophy*, Vol. 73, No. 18, Seventy-Third Annual Meeting American Philosophical Association, Eastern Division. (Oct. 21, 1976), pp. 653-664.

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.[19] 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" (§27) is sometimes referred to as the Lockean proviso, and it can provide an invaluable source of discussion for the environmental ethicist. 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.[20] His 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 such a hard 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."[21]

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, but rather 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 interests of the common good. Upon failing to do so, it 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 one's core self and makes them a part of one's *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 his person; whereas on the Lockean picture, curtailment of the use of property harms an individual because it constrains his actions, it keeps him from being free, from creating value.

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[19] Schochet, Gordon, "'Guards and Fences': Property and Obligation in Locke's Political Thought," *History of Political Thought*, Vol. XXI, No. 3, Autumn 2000.
[20] Nozick, Robert, *Anarchy, State, and Utopia* (Basic Books: New York, 1974), 175.
[21] Gibbard, Alan, "Natural Property Rights," *Noûs*, Vol. 10, No. 1, Symposium Papers to be Read at the Meeting of the Western Division of the American Philosophical Association in New Orleans, Louisiana, April 29-May 1, 1976 (Mar., 1976), 77-86.

Perhaps the most striking and disputable feature of Locke's theory of property is that it begins from the assumption that there is relative abundance of land and resources.[22] Locke addresses the circumstance in which property is scarce, and offers a proviso in such circumstances, but assumes primarily that resources are abundant enough to have little or negligible value in the absence of humans. This is widely understood not to be the case anymore, and so the Lockean Proviso might be more readily invoked. Indeed, it is a critical supposition of classical economic theory that resources are scarce. Without scarce resources, the price of objects would reduce to zero; and this is precisely the point that Locke reasons with regard to nature: that without human labor-mixing, nature is effectively worthless. Still, the labor theory of value holds great sway over many political theorists, and it has intuitive appeal that extends well beyond academia.

Efficiency Theory

Yet a third justification for private property comes out of the environmental economics camp. Ronald Coase, perhaps one of the more cited figures attached to this line of thinking, wrote in 1960 his foundational article, "The Problem of Social Cost," detailing this efficiency-oriented approach to property justification.[23] In this article, Coase argues that one of the primary reasons that 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, but rather to the overall welfare of society.

Coase's argument runs thus. He begins from the supposition that in some cases there are external social costs from production—as might be case, for instance, with a railroad conductor who accidentally sheds sparks and burns crops as a byproduct of doing business. He 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 to better 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 enough for him to travel. 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. 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 better accord with the externalities. Unfortunately, Pigouvian taxes are a blunt instrument. They 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.

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[22] Markley, Robert, "'Land Enough in the World': Locke's Golden Age and the Infinite Extension of Use," *The South Atlantic Quarterly*, 98:4, Fall 1999.
[23] Coase, Ronald, "The Problem of Social Cost," *Journal of Law and Economics* (October, 1960).

Coase observes that many market inefficiencies, but specifically transaction costs, are not present internal to the governance of competitive organizations. This is 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, he 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.[24] This is an important position for environmental ethicists to acknowledge and to criticize, because it underwrites much of environmental economics. Garrett Hardin, for instance, subscribes to a similar picture of the individual in his classic article the *Tragedy of the Commons*.[25] 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 misleading or rhetorical terminology embedded in the platform of the wise-use movement. Indeed, such language 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 environmental ethicists would benefit from understanding well, even if just for strategic reasons. (Joe Kansas and Suzy Student may not themselves have a fully reflective and developed sense of their political leanings, but their sense of freedom, narrowly and negatively understood, may resonate with the positions of the land rights movement; or they may very well be susceptible to the somewhat plausible claims that emanate from the wise use 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. In the early 1900s, Gifford Pinchot, the first head of

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[24] To call all non-egoistic 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.
[25] Hardin, Garrett, "The Tragedy of the Commons," *Science*, 13 December 1968, vol. 162, pp. 1243-48.

the United States Forest Service, is noted to have said 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, an enormous (but limited) number of trees, and using them judiciously seems, well, wise. At the same time, however, John Muir, founder of the Sierra Club and widely-regarded "Wilderness Prophet," argued that wilderness areas should be conserved for their own sake, that they should be left largely untouched. Thus began an historic showdown, pitting preservationists and conservationists 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.[26] 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, but it became the battering ram of the right-wing non-interventionist. The Sagebrush Rebellion, with its charged populism, eventually birthed James Watt, Anne Gorsuch, and, in the end, the Reagan Administration. Soon after Reagan was elected president, 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."[27] Over the 12 years that Reagan and Bush were in office, the 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 EPA enforcement.

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 Reverend Sun Myung Moon's American Freedom Coalition, but also to a grand establishment of public choice economics. In the late 1980s, Ron Arnold and Alan Gottlieb convened many of their supporters and composed a list of their top 25 goals.[28] 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."[29] Read that again. This was their solution to global warming.

One of their pet campaigns was an effort to get environmental regulations listed as a constitutional "taking." To do so, they appealed to language in the Fifth Amendment that states that "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."[30] 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 takings

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[26] Lowry, William R., "A New Era in Natural Resource Policies?" in *Environmental Policy: New Directions for the Twenty-First Century*, Norman J. Vig and Michael E. Kraft, eds (Washington, D.C.: Congressional Quarterly Press, 2003), pp. 329.
[27] Forest Service Daily News Digest, December 1, 1980
[28] *The Wise Use Agenda: The Citizen's Guide to Environmental Resource Issues*, Alan M. Gottlieb, ed., Bellvue, WA: Free Enterprise Press, 1989.
[29] *The Wise Use Agenda: The Citizen's Guide to Environmental Resource Issues*, Alan M. Gottlieb, ed., Bellvue, WA: Free Enterprise Press, 1989.
[30] United States Constitution, Amendment V.

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 had purchased two properties for $975,000 on the South Carolina coast with the intention of developing them, but then was later restricted from constructing any permanent structure on the properties.[31] Hardly the archetypal case of poor man versus evil bureaucrat, the Lucas decision was still enough to give the property rights movement steam throughout the nineties. For over twenty years, the Sagebrush Rebels raised money, grew their fan base, and developed an intricate platform on which to defend their position.

Curiously, the outspoken reactionaries who had stirred up a firestorm for over two decades in the west suddenly and inexplicably closed up shop at the beginning of the 21st Century. Only four days after the United States Supreme Court determined that George W. Bush was to be the 43rd 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.[32] 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, has been at the helm of the Department of the Interior from the beginning of the Bush Administration. Christine Todd Whitman, former Governor of New Jersey whose campaign slogan was, "New Jersey: Open for Business" was appointed to the head the Environmental Protection Agency. Like many cabinet members from Bush's first term, she eventually left for personal reasons. Moreover, 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 (PERC), the Center for the Defense of Free Enterprise, and the American Land Rights Association.[33] They continue to staunchly defend property rights. Since the heyday of the wise use movement, and immediately after September 11, 2001, Ron Arnold has both sunk back into the Center for the Defense of Free Enterprise, and has taken to rebranding environmental activists as eco-terrorists, in an attempt to foment concern about their activities in the minds of the general public. Again, concerns of freedom and property rear their ugly heads in a different way relevant to environmental ethics. It is thus of incredible importance that serious environmental ethicists begin addressing the philosophical issues raised by these movements.

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[31] For an illuminating overview of takings cases relevant to takings battle, see O'Leary, Rosemary, "Environmental Policy in the Courts," in *Environmental Policy: New Directions for the Twenty-First Century*, Norman J. Vig and Michael E. Kraft, eds (Washington, D.C.: Congressional Quarterly Press, 2003), 151-173.

[32] Walters, Heidi, "People for the USA! Disbands," *High Country News*, December 18, 2000.

[33] Many anti-environmental groups are engaged in justifying public policies by arguing that environmental regulations are curtailments of property rights. PERC, the Property and Environment Resource Center, is one of the most notorious. Out of this group has come the book *Enviro-Capitalists: Doing Good While Doing Well*, that 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.

The question is, Why are these people so fervent? What motivates them to hold such strong anti-environmental positions?

If it is not clear by now, one issue lies at the root of their acrimony: Property. More importantly, 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.

At the beginning of their 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. "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."[34] Venomous language for a movement with such purportedly good intentions. 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 counterproductive and not in accordance with the aims of academia. The other approach is to engage the arguments of the wise use movement, which I shall do below.

Ron Arnold and many in his activist encampment tend to refer to environmental regulations as "land grabs," occupations, and takeovers.[35] The imagery is curiously Hobbesian, implying that a beastly and menacing government, even a Leviathanesque sea-monster, reaches its tentacles into the lives of the individual and takes from him what he rightly owns. Where 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, the Hobbesian notion of fairness and security, the idea that property owners are constrained in the Lockean sense, and that it is economically inefficient for government to intervene with the development of property. More perplexingly, it relies on the last 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 bureaucratic institutions are. This market fundamentalism pervades almost all of the wise use doctrine, and wise users go to great rhetorical lengths to defend this fundamentalism.

Arnold identifies what he calles "three distinctive axes of influence" in the environmental movement: Establishment Interventionists, Eco-Socialists, and Deep Ecologists. As with much of his writing, he is extremely rhetorical in detailing these positions. 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

[34] Ron Arnold, "Overcoming Ideology," from *A Wolf in the Garden: The Land Rights Movement and the New Environmental Debate*, Brick, Philip D. and Cawley, R. McGreggor (Rowman & Littlefield, Inc, 1996).

[35] Take, for instance, the campaign to keep the Klamath Basin open for logging. One website for this campaign is "stobfedlandgrab.org". The mission statement of this website 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 mentioned earlier in this paper, I aim not to poke fun at these positions, but rather to understand what motivates them theoretically.

foundation community."[36] Eco-socialists, 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." 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."

What you'll notice about these above claims 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 environmentalists and their funders. To Arnold, environmentalism, and by extension, environmental ethics, is a giant 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 is sometimes called 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).[37]

The astute environmental ethicist 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. Moreover, this position has strong proponents in academia, particularly in economics departments. James M. Buchanan, Robert Tollison, and Gordon Tullock are among these proponents, and their arguments must be treated ingenuously by environmentalists.[38] 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?

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[36] All quotes in this paragraph from Arnold, Ron, "Overcoming Ideology."
[37] See, Posner, Richard A. "Theories of Economic Regulation," *The RAND Journal of Economics*, Vol. 5, No. 2 (1974), 335-358; and, for the foundational work on the economic theory of regulation, see: Olson, Mancur, *The Logic of Collective Action: Public Goods and the Theory of Groups* (Cambridge, MA: Harvard University Press, 1971).
[38] See, for instance, Buchanan, James M. and Tullock, Gordon, *The Calculus of Consent: Logical Foundations of Constitutional Democracy* (Ann Arbor: University of Michigan Press, 1962).

To the arguments, then: remember the great takings debate. Almost anyone can understand the appeal of the takings clause: nobody wants their hard earned property to be taken away by the king's soldiers. In fact, I think it 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 they 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, however, we might find that this compensation can hardly make up for the value of what we have lost.

Wise-Use activists 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 than 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.

We 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. Ron 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." [39]

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. Somebody—it doesn't matter who, or for what reason—tells you that you cannot or ought not to use your property for an activity in

[39] From "Overcoming Ideology"

which you feel that it should be acceptable for you to use it. This is what motivates them. This is what scares them. And this 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 paper, 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 the 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 that we discussed 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 (!).

WISING UP BY METES AND BOUNDS

Environmental ethicists, if they hope to make headway with not just wise users, but also the vast majority of the population that is less privy to the somewhat esoteric arguments of environmental ethics, must begin to engage the above legs of the theodolite. I say this because I do not think that environmental philosophy has gone far enough in arguing its case. Someone—many people—must start beating the property drum. Here I would like to outline a few areas in which I see potential for development.

Employing what we discussed above, we should point in the direction now of the way in which we might find arguments to approach matters of policy concern that will resonate with the concerns of property rights advocates. For starters, environmentalism must be argued to be just. Better, it must be demonstrated that the alternative is unjust and unfair. This would address concern (1) above. Environmentalism must also be argued to be positively in favor of the freedom of the individual. Better, it must be argued that non-environmental policies fly in the face of freedom. This will address concern (2). And finally, environmental ethics must address the concern that environmentally friendly policies generate suboptimal outcomes. Better, it must be demonstrated that social utility is not optimized by market solutions. Of the three concerns, the last has perhaps received the most treatment from environmental philosophers. John O'Neill and Mark Sagoff, among others, have argued against the classical and Austrian economic models that are used so

frequently to do violence to environmental interests.[40] Still, their arguments only scratch the surface of this vast and complex issue.

Property questions, not just questions of welfare, are almost always at play in the background of environmental policy discussions, where questions of intrinsic value and principle are often not. As it stands now, many environmental ethicists criticize instrumentalists as though their only problem is that they view the world as a world of standing reserve, as a world of natural resources. From the looks of it, environmental ethicists believe that their persuasive arguments for the moral status or the intrinsic worth of a given entity will suffice to turn these staunch instrumentalists over to the side of the right; to overcome these otherwise powerful, if not deeply entrenched, views on property. But note how facile intrinsic value arguments become in the face of arguments on property.

If it were only the case that "pro-development" policy advocates subscribed solely to a thoroughly instrumental position on nature—such that the *sole* reason that they would engage in actions deleterious to nature is that they do not recognize nature to have any status—then it would be natural that this position would be threatened by an intrinsic value argument. But most instrumentalists, I would guess, are not so clearly shot through with a mindless disregard for nature. It is a reduction to think so. Generally they subscribe to a host of beliefs and presuppositions that give rise to their instrumentalism. They do not view the world so much as an exploitable natural resource as much as a nutrient rich medium in which to grow and develop the creative spirit. To suggest that nature is nutrient rich here suggests that it can also be seen without contradiction to hold value—great value—but that this value can also be tapped, managed, and cultivated. I suspect that this is the "common sense view" of nature. In fact, some of the most egregious violators of natural entities might even see nature as containing value in itself, as many in the wise use movement argue about themselves.[41] Just because it has value in itself does not so clearly entail that it ought not to be treated just as it is currently being treated.

Environmental ethicists who do not address the concerns that accompany the notion of property are apt to overlook some of the primary bugaboos of the opponents of environmentalism. I would qualify, however, by adding that none of this should imply that one must always address the opponents of environmentalism. But insofar as environmental ethics is presumably about bridging gaps between those who see value in the environment and those who do not, it would behoove the savvy environmental ethicist to consider seriously the arguments of those who most aggressively argue against him.

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[40] See: O'Neill, John, *Ecology, Policy and Politics* (London: Routledge, 1993), 168-179; Sagoff, Mark, *Price, Principle, and the Environment* (Cambridge, UK: Cambridge University Press, 2004); and Sagoff, Mark, *The Economy of the Earth* (Cambridge, UK: Cambridge University Press, 1988)

[41] Arnold quotes Debra Callahan, former director of W. Alton Jones Foundation's Environmental Grass Roots Program, at the 1992 Environmental Grantmakers Association annual fall retreat, who says of the Wise Use movement: "What they're saying out there is that 'We are the real environmentalists. We are the stewards of the land. We're the farmers who have tilled that land and we know how to manage this land because we've done it here for generations. We're the miners and we're the ones who depend for our livelihood on this land. These environmentalists, they're elitists. They live in glass towers in New York City. They're not environmentalists. They're part of the problem. And they're aligned with big government. And they're out of touch. So we're the real environmentalists.'" (Taped session of the Environmental Grantmakers Association 1992 Annual Fall Retreat, Conference Recording Service, Berkeley, California, 1992. Session 26: "The Wise Use Movement: Threats and Opportunities.") from Arnold, Ron, "Overcoming Ideology."

Environmental philosophers are not without resources here. We can easily look to the contemporaries of the above theorists for at least some fodder. The occupation theory, for instance, certainly has its historical critics. As Rousseau puts it, the "first person who, having enclosed a plot of land, took it into his head to say *this is mine* and found people simple enough to believe him, was the true founder of civil society."[42] Rousseau, of course, is opening the door to speak of the inequality and exploitation that is generated in the face of property distribution, but he squarely appeals to Hobbes' supposition that, in the state of nature, property, as such, does not exist. There is a good deal of material in Roussau's *Origins* essay that could be employed fruitfully by the environmental ethics. Environmentalists might also look to Proudhon's arguments on property, who famously claims that "Property is Theft!" While his arguments come in the form of a polemic, there is much worth mining in his famous work *What is Property?*[43] Some useful resources might also be found in the egalitarians and analytic Marxists, Jon Elster, G. A. Cohen, John Roemer and the like.

Approaching property from the perspective of the occupation theory might also help those who argue on behalf of animals. It is not, under this picture, that animals do not feel pain, nor that they are not alive, but that animals cannot participate in the free exchange of property. Indeed, many property rights advocates may themselves be quite caring to animals. There is no necessary connection between the caring for animals and owning them as property, as is sometimes supposed. In his flawed yet provocative paper, Matt Zwolinski argues just this: that one can respect and care for animals and *own them as property*.[44] Zwolinski calls the claim that one cannot both respect animals and own them the "incompatibility thesis," and I agree with him that there is no clear reason to believe that one cannot do both simultaneously. But Zwolinski's point in the paper depends upon a more important shortcoming of the position that holds animals as property—he holds a contractualist, libertarian, and rational choice conception of the rights of individuals, conceiving them as a "bundle of rights"—and believes that since property rights are effectively rights of exclusion, we can reasonably hold the rights of exclusion to a given property while also holding this "property" in high regard. This follows from both the Hobbesian and the Lockean picture, and it is also clearly evident in the platform of the wise-use movement.

Another helpful distinction might come by way of caching out the difference between possession and ownership. It clearly can be the case that one might possess something but not own it, as it might be the case that you hand me your bag of jelly beans for safe keeping. In this case, I might be said to possess the jelly beans, even though you have not conferred ownership upon me. Such a distinction is written into the structure of public property laws, since it can also be the case that I might possess access to a plot of land on which I may graze my cattle, but not be said to own the land or to have rights over what is done on that land. Assessing this distinction could be of great value to environmental ethics, because many property rights advocates argue for the institutionalization of regulatory takings even in cases where there is a clear right of ownership belonging to another party; as, when, for instance, the government decides to decrease the allowable animal head units on a given piece of federal grazing land.

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[42] Rousseau, Jean-Jacques, *Discourse on the Origin of Inequality, Part II*, in Donald A. Cress, trans., *The Basic Political Writings* (Indianapolis: Hackett Publishing Company, 1987).
[43] Proudhon, P.J. (1840), *What is Property: An Inquiry into the Principle of Right and Government,* trans. B.R. Tucker, 1876 (Cambridge: Cambridge University Press,1994).
[44] Zwolinski, Matt, "Animals as Property," Presented at the meeting of the *Society for the Study of Ethics and Animals*, Eastern Division APA, 2002. Comments, Benjamin Hale.

Further important ethical distinctions can be found by returning to an investigation of Locke's Labor Theory. In a forthcoming paper, John Meyer calls this "Lockean Myth" in the wise use platform a "widely recognized but one-dimensional, account of Locke's argument."[45] I am in general agreement with Meyer on this issue, both that it is a myth about the nature of Locke's theory of property and that the Lockean theory of value is at play in the background of many of these discussions. Gordon Schochet points out about the Lockean position that the "mixing of one's labour most clearly applies to the goods that are appropriated in order to be consumed, that is, the various plants and animals that are taken by the members of what anthropologists call 'hunting and gathering' societies. It does not apply with the same self-evidence to land, a commodity that is itself the source of consumer goods and is today called a *capital* good."[46] Exposing this myth, as Meyer hopes to do, could provide invaluable to environmental ethics. This distinction between consumable goods and land, of course, appears also in Marx's conception between capital and personal property, and may therefore provide a worthwhile springboard into an argument that extensive property rights in the environment can also curtail freedom.[47]

Locke's claim that we have full ownership of our own body can and must be challenged by environmentalists as well.[48] It is of course true that we have the authority to exclude some uses of, say, our pancreas, but it is hard to imagine that we would want to call our pancreas our property. True, we have ultimate authority over what happens to our pancreas. True, we may even talk, at times, as though our pancreas belongs to us; as in, "Hey, that's mine. Don't do that to me." But we do not generally think of our body parts *as* our property. If we do, we entertain some antiquated and bizarre model of the self, in which a transcendental ghost-like 'I' hangs appendages like ornaments around a skeletal Christmas tree. It's not that our pancreas or our other glands aren't really ours, it's just that calling our pancreas our "property" seems a dramatic distortion of the term "property", and even further, dramatically distorts our own relation to our pancreas.

We might more readily see this if we consider things outside of our body. At times in his paper, Zwolinski conceives of children as our property, since we maintain the right to exclude others access to them. He argues that, in these cases, we must steward them, like we must steward animals and the land. But I would disagree. Like our pancreas, we also don't think really of our children as our property, even though we may exclude others from access to them. When we do speak of them as though we have rights of exclusion, as in, "Don't do that to my child!", we only do so in legalistic shorthand. We mean not, "Don't do that to that thing there that I own and control" but, "By the powers vested in me by the state and the universal moral law, on grounds that I am caregiver and guardian of this child's best interest, I have say, and do say, in the voice of the child, *Do not do that!*" When we speak of the child as "mine" or "ours", we speak of our relation to the child, not of our ownership of it.

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[45] Paper in progress. Cited pending permission from John Meyer. Pp. 6.

[46] Schochet, Gordon, "'Guards and Fences': Property and Obligation in Locke's Political Thought," *History of Political Thought*, Vol. XXI, No. 3, Autumn 2000.

[47] Brenkert, George G., "Freedom and Private Property in Marx," *Philosophy and Public Affairs*, Vol. 8, No. 2 (Winter, 1979), 122-147; see also, Cohen, G. A., "Marx and Locke on Land and Labour."

[48] G.A. Cohen has already been mentioned in this bibliography, but other interesting stepping off points might be found in the work of Michael Otsuka ("Self-Ownership and Equality: A Lockean Reconciliation," *Philosophy and Public Affairs*, Vol. 27, No. 1. (Winter, 1998), pp. 65-92), Herve Moulin and John Roemer ("Public Ownership of the External World and Private Ownership of Self," *The Journal of Political Economy*, Vol. 97, No. 2. (Apr., 1989), pp. 347-367) and Ian Shapiro ("Resources, Capacities, and Ownership: The Workmanship Ideal and Distributive Justice," *Political Theory*, Vol. 19, No. 1. (Feb., 1991), pp. 47-72).

Yet another approach to address such concerns might be found in Kant's theory of property.[49] Kant distinguishes between empirical possession (which is the state of appearing to own) and intelligible possession (which is the state of being owned in principle). From here three kinds of owning precipitate: that which is corporeal and external to the agent; that which is controlled by the will with respect to an act (as by a contract); and that which is procured by the relations between an agent and those around him. This last sort of property ownership was, for Kant, a kind of household possession, like the ownership that one has in one's family. In this case, ownership is strictly legal, and does not obtain in a moral sense.[50] And, as with the Aristotelian *Oikos*, Kant considered the family to be roughly of the same individual, such that the subjects under a master could be considered to be the master's "possessions," though in a very different way than as one might own a bicycle or a roller skate. Some environmental philosophers, like John O'Neill, have argued that the *Oikos* model is the right model by which to view our human relationship to the environment because not only does it expose the distinction between exchange and use value, but it also emphasizes use over exchange value.[51]

In a radically different vein, but one consistent I think with some environmental regulations, Hans Hoppe and Walter Block point to another way of addressing the property concerns. They argue that "what can legitimately be owned in a free society is only rights to physical property, not to the value thereof."[52] They thus reason that one can undermine the value of another person's property so long as one does not do damage to the property itself.[53] On this reasoning a devaluation of a property because of zoning regulations, say, would not be considered unjustified (though the authors would certainly contest this). Such an approach to property rights that distinguishes between *property as such* and the *value of the property* could be immensely valuable to environmental ethicists. Hoppe and Block employ the argument to argue for a more laissez-faire doctrine, as Block is a self-proclaimed "anarcho-capitalist," but the practical implication of such an argument, it strikes me, is exactly the opposite of what they argue. The same argument can be used to argue against inholder rights, since these are only intelligible (in Kant's terms) and not empirical.

In the end, the above few arguments only begin address the many positions that environmentalists might advance with regard to property. I do not claim to have covered all or even most of the property concerns available to environmentalists. Rather, the hope above was to point in a few directions, to expand the environmental ethics discussion to include these concerns.

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[49] The above argument is my own, but for an interesting tie-in between the argument on self-ownership and Kant, see: Munzer, Stephen, "Kant and Property Rights in Body Parts," *Canadian Journal of Law and Jurisprudence* 6 (1993): 320.
[50] Williams, Howard, "Kant's Concept of Property," *The Philosophical Quarterly*, Vol. 27, No. 106 (Jan. 1977), 32-40.
[51] O'Neill, John, *Ecology, Policy and Politics* (London: Routledge, 1993), 168-179.
[52] Hoppe, Hans Hermann and Block, Walter, "On Property and Exploitation," *International Journal of Value-Based Management*, 15: 225-236 (Kluwer, 2002).
[53] Note the similarity here to Nozick's defense of Lockean natural rights against the proscriptions of the Lockean Proviso: "Consider the first person Z for whom there is not enough and as good left to appropriate. The last person Y to appropriate left Z without his previous liberty to act on an object, and so worsened Z's situation. So Y's appropriation is not allowed under Locke's proviso. Therefore the next to last person X to appropriate left Y in a worse position, for X's act ended permissible appropriation. Therefore X's appropriation wasn't permissible. But then the appropriator two from last, W, ended permissible appropriation and so, since it worsened X's position, W's appropriation wasn't permissible. And so on back to the first person A to appropriate a permanent property right." Nozick, Robert, *Anarchy, State, and Utopia* (Basic Books: New York, 1974), 175.

CONCLUSION:

This paper begins from the claim that environmental ethics is not speaking with the broader environmental community when it takes up questions of intrinsic value exclusively. Environmental ethics as a discipline tends to take its set of questions as a 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 great questions. Realistically, however, many of these questions whiz past authors and students in the public policy literature. 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 also 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. But when it comes time to conduct a policy analysis, they generally do not employ the arguments of Leopold, Singer, Regan, Schweitzer, Taylor, or others to any great effect. What is needed from environmental ethics, then, along with these other important discussions, is a lucid account of why current property regimes are not appropriate to environmental ethics.

While contemporary political theory and ethical theory does not treat the claims of libertarians, Randians, or Nozickians as seriously as it did 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 a very 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?). Insofar as it 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 do so. More than this, though, when students of environmental ethics leave the classroom, they may well be persuaded that the environment is morally considerable and that there are good ethical questions to ask when determining what to do. Faced with truly difficult property rights and regulation questions, however, 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 paper: arguments such as those that emanate from the wise-use movement reveal that environmentalists are not necessarily butting heads with heartless land-hogs, but that the questions that have motivated political theorists for decades are at play also in the background of these land disputes. The discipline of environmental ethics need not, must not, be so narrow as it currently is: the ethics of the environment does not pertain just to matters of intrinsic value and natural aesthetics, but 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.[54] I am arguing that we must embrace it. Not that we must embrace it because it is true. It's 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 environmental ethicists have much more to gain by engaging this discussion than by evading it. Accepting this as a challenge means that the small group of ethicists working on environmental questions, we here at this conference, have a mountain of work ahead of us.

My aim here has not been to offend those who work in any area of environmental ethics that deals with intrinsic value or environmental aesthetics. It has also not been to disparage such issues as somehow irrelevant or useless to the debate. Indeed, I find all of these questions fascinating and important to a wide variety of environmental issues. Instead, it has been to point out an oversight in the environmental ethics literature, for the purpose of expanding the bailiwick of environmental ethics.

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[54] Paper in progress: Meyer, John M. "The Paradox of Property Rights and Environmentalism: Rethinking the Lockean Myth." Cited pending permission from John Meyer. Pp. 6.