

Abstract:

The process through which objects go from being owned to unowned has received little attention in liberal property theory literature. Liberals have spent most of their time attempting to justify unilateral appropriation within the constraints of the Lockean proviso. What is seldom discussed is how property rights can be dissolved once they have been created. In this paper I seek to fill this philosophical lacuna and argue that a consistent application of the Lockean proviso not only limits original appropriation and the exercise of some property rights, but also entails that individuals can lose their property rights when the property in question is not being used. This process, which I call 'Lockean Loss' (LL), allows us to satisfy the proviso by making objects which were hitherto owned candidates for original appropriation. Both Lockean Loss (LL) and the traditionally accepted strategy of abridging rights allow us to satisfy the proviso in different ways. The difference between the two strategies is that LL, in as far as it involves complete loss of rights, is far worse from the perspective of the owner. Notwithstanding, considering unused property unowned is justified in virtue of the value of property rights. As property is valuable in virtue of the contribution it makes to the fulfilment of our life-plans by providing us with robust spheres of control over resources, there is little of value to protect by merely limiting the owner's exercise of their full blooded property as opposed to considering it unowned.

Owned to Unowned: On Abandonment and Lockean Loss

The process through which objects go from being owned to unowned (i.e. abandonment and loss) has received little attention in the liberal property theory literature. Liberals have spent most of their time attempting to justify unilateral appropriation (i.e. just acquisition) and showing how this is compatible with there being 'enough and as good' for the next person. What is seldom discussed is how property rights can be dissolved once they have been created. In this paper I seek to fill this philosophical lacuna by bringing together the existent discussions of abandonment and arguing that a consistent application of the Lockean proviso not only limits original appropriation and the exercise of some property rights, but also entails that individuals can lose their property rights completely through a process I call Lockean Loss (LL). The paper proceeds as follows: In sections 1 and 2 I survey the traditional accounts of both how the proviso limits our ownership rights and how objects can go from being owned to unowned. This sets the stage for the argument that the traditional account of how property goes from being owned to unowned does not constitute an exhaustive account of how objects go from being owned to unowned. The account of Lockean Loss (LL) presented in sections 4, 5 and 6 provides the missing piece which allows us to explain our moral intuitions regarding cases in which objects seem clearly unowned despite the owner not having abandoned them explicitly or through death.

I.

In John Locke's theory of property individuals are free to appropriate objects, thereby

acquiring ownership rights over objects which were previously unowned. An individual's ability to appropriate unilaterally, however, is subject to the constraint that 'he leaves enough and as good for others and does not waste what he takes' (Cohen, 1995, p. 75), i.e. the 'Lockean Proviso' (LP). Unless LP is satisfied, all entitlements in the system of property are illegitimate. Demonstrating that entitlements to private property satisfy LP, hence, is crucial to justifying the owner's rights over particular objects.

LP can be satisfied in a number of ways. Traditionally, LP has been taken to justify such diverse interventions as imposing easement rights, establishing price controls (Nozick, 1974, p. 180) or subjecting people's property to taxation to fund social welfare or a Universal Basic Income. These abridgements of owner's rights constitute compensation for acts of acquisition which would run afoul of the proviso if they are not compensated for (Nozick 1974 p. 178, Attas 2003 p. 348). The extent to which owners will have their rights abridged is, on the traditional account of the functioning of the proviso, determined by specifying exactly what 'enough and as good' is taken to mean, a point of contention in the literature on the proviso (Cohen 1995 p. 78, Attas 2003 p. 354-372). In conclusion, LP has traditionally been taken as a reason to limit individuals' full blooded ownership over goods, granting them instead less robust forms of ownership. In other words, the 'Lockean Proviso' is not normally considered a way in which previously owned objects become unowned. It is this idea that this paper seeks to challenge.

II.

Having explained the role the 'Lockean Proviso' typically plays in the literature, it is now time to turn to the main topic of this paper: how property goes from being owned to unowned. Before arguing that the 'Lockean Proviso' can justify dissolving an individual's ownership rights (thereby making what was owned, unowned), it is first necessary to survey the existent discussion of how this occurs. There are two ways in which property can go from being owned to unowned that are considered in the liberal property literature: Explicit Abandonment (EA) and Abandonment through Death (DA). EA occurs when an owner intentionally divests themselves of property (Kinsella, 2003, p.28). DA occurs when the owner of a piece of property dies (Steiner, 1994, p. 278). EA is normally taken to be justified by the fact that an individual's rights over goods should be waivable. Steiner argues that DA is justified in virtue of the impossibility of post-mortem transfer.

III.

The combination of these two forms of abandonment, EA + DA, however, does not constitute an exhaustive account of how property goes from being owned to unowned. This is due to the fact that EA + DA cannot account for cases such as the following:

Ned, having found a new job in a new town, packs his bags and locks the front door of this house fully intending to return to his old home when the work in the new town dries up. Ned's new job becomes all-consuming and he is quickly promoted through the ranks and takes up permanent residence in his new town. The years roll by and Ned never returns to the house he locked up all those years ago.

If property only went from being owned to unowned through EA and DA we would have to wait until Ned passed away before considering Ned's house a candidate for legitimate appropriation. This, however, is counterintuitive when we consider the implications of considering Ned the owner of the house for all those years. Ned's continued ownership of the house entails that all others are obligated not to use the property for decades, regardless of whether or not Ned is using it. By locking up the house and never returning Ned has taken a piece of property out of circulation, thereby precluding others from using it to further their projects. It seems intuitively plausible to consider Ned's house abandoned at some point before he dies, regardless of whether or not he intentionally divests himself of his rights. This intuition suggests that, in order to provide a complete account of the ways in which property goes from being owned to unowned, we need to move beyond the confines of the existent literature and consider the case for a third way in which property can become abandoned: Lockean Loss (LL).

IV.

Lockean Loss (LL) is the process through which an individual loses their property rights over unused property in virtue of the application of the 'Lockean Proviso' (LP). LL, in virtue of it dissolving the rights individuals had over objects as opposed to limiting them, is different to the applications of the proviso considered in section 1. Unlike what happens in cases such as Nozick's waterhole scenario, where the application of the proviso must be made compatible with the individual's continued possession and usage of the good, in cases where the property is not being used, the proviso should lead to the complete dissolution (as opposed to abridgement) of the owner's rights. On this interpretation of the 'Lockean Proviso' the object goes from being owned to unowned, not fully owned to owned with caveats.

Lockean Loss (LL), Explicit Abandonment (EA) and Abandonment through Death (DA) are unlike the traditional limitations LP is normally taken to impose in virtue of the way in which they help us satisfy the proviso. Whereas the traditional applications of the 'Lockean Proviso' focus on *compensating* those who did not appropriate goods, LL, EA and DA allow us to satisfy the proviso by reducing the extent to which the world is fully owned. By providing opportunities to appropriate, LL + EA + DA reduce the extent to which compensation for appropriation is required. LL + EA + DA allow us to satisfy the proviso's requirement that 'enough and as good' be left for the next person by directly increasing the amount of unowned goods in the world.

EA and DA contribute to the existence of 'enough and as good' in a way compatible with full-blooded ownership of goods in life and the individual's ability to exclude others if they so wish. In this sense EA and DA are non-coercive and do not interfere with individuals' full blooded ownership. EA is non-coercive because it requires the owner divest *themselves* of their goods. DA is similarly non-coercive but for a different reason; there is no individual with a moral entitlement to the goods who can be coerced. Lockean Loss (LL) on the other hand, can occur regardless of whether or not the individual-formerly-known as-owner intended to remain the owner. Whilst this may give the most ardent liberals pause, the coercive nature of LL is unproblematic due to the fact that Lockean Loss (LL) is an application of the 'Lockean Proviso' (LP); which is a condition of the justice of the system of property. Arguing that LL is unjust in virtue of it stripping people of their entitlements is a non-starter for the simple reason that the justice of the entitlements in a system of property is conditional on LP being satisfied. Although LL is coercive, it is not coercive in a way which is more problematic than the traditional ways in which LP imposes upon an individual's property rights that were considered in section 1.

LL, however, goes further than other applications of the proviso in that it dissolves all

ownership rights as opposed to merely limiting some of the incidents of full blooded ownership. From the perspective of the individual-formerly-known-as-owner, LL is a worse fate to suffer. In light of the difference between the normative effects of LL and traditional applications of the 'Lockean Proviso' (LP) it is necessary to provide a justification for treating these cases differently. If lack of use determines whether an individual's property becomes unowned (as opposed to them being limited in the exercise of some of their rights of full blooded ownership) it is necessary to provide an answer to the following two questions: i) why does lack of use make a difference to the rights an individual should have? and, ii) what constitutes use? These two questions are taken up in turn in the following sections.

V.

Lack of use matters (and hence is a legitimate basis for distinguishing cases where the object goes from being owned to unowned from cases where we merely abridge rights) in virtue of the reasons we value property. Property is valuable in virtue of the contribution it makes to our life-plans. Property does this by providing us with robust spheres of jurisdiction in which we are entitled to determine what use particular resources are put to (Sanders 2002, Stilz 2009). In an increasingly owned world (i.e. a world in which there are decreasing opportunities for original appropriation), extended lack of use is a legitimate basis for an individual losing their rights to the object as there is no value to protect by safeguarding their holding of the good. If property is valuable in virtue of the contribution it makes to the furthering of an individual's life plan, nothing of value is lost by dissolving the rights as opposed to abridging them. This makes cases where the property is unused unlike cases such as Nozick's waterhole scenario (in which the individual's continued use of the property has to be made compatible with the satisfaction of the Lockean proviso). Having provided a justification for why the individual's lack of use of the object is a reason to dissolve (as opposed to abridge) their rights, it is now time to turn to answering the second question: what constitutes use?

VI.

In virtue of the normative consequences that stem from a property being considered unused, it would be foolhardy to not provide at least a sketch of how we should determine whether a piece of property is being used or not. In this section I argue that what constitutes use should be determined conventionally and provide a series of normative constraints derived from Simmons' (1976, p. 279-280) account of tacit consent to limit the set of justifiable 'use-conventions'.

What counts as 'use' of a particular object on the account presented doesn't hinge on the particular action having any particular inherent features (Mack 2010 p. 54, Attas 2003 p. 349) such as 'labour mixing'. The essence of this account is that, so long as conventions governing what counts as use are public and do not make it unreasonably burdensome for the owner to avoid Lockean Loss (LL), they are legitimate. Determining what counts as 'use' in a conventional manner allows for a measure of flexibility in the application of LL as there will be more than one 'use-convention' which can satisfy the normative constraints outlined above. So long as the convention operates within these constraints, there is scope for legitimate policy choice.

To say that there is scope for choice on what counts as use, however, is not to say that whether or not to satisfy the 'Lockean Proviso' (LP) is a matter of choice (it is, after all, a requirement of justice). It is merely to say that there is a choice between satisfying LP by

providing opportunities for appropriation (and hence reducing the extent to which the world is fully owned) or by compensating those who have been deprived of these opportunities for appropriation. Opting for conventions which make it easier for Lockean Loss (LL) to occur allows those who possess property to exercise full-blooded ownership while they still use it at the expense of those who lose their ownership rights completely through lack of use. Opting for conventions which are very liberal with what constitutes 'use', on the other hand, gives those who have appropriated goods increased security that they will have some rights whilst limiting the extent to which they can use the property they have as they so please. The choice liberals face is between property systems in which rights are robust but transient or systems in which they are less robust but settled.

VII.

On the traditional account of how objects go from being owned to unowned, this occurs in two ways: Explicit Abandonment (EA) or Abandonment through Death (DA). These two forms of abandonment, however, do not jointly constitute a complete account of how property becomes unowned. In this paper I have argued a third way in which property becomes unowned, Lockean Loss (LL), and shown that LL provides us with a novel way of satisfying the 'Lockean Proviso' (LP) which instead of focusing on *compensating* people for acts of appropriation, satisfies LPs call that 'enough and as good' remain by directly increasing the stock of unowned goods.

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