

Beyond Frontier Town: Do Early Modern Theories of Property Apply to Capitalist Economies?

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Abstract

The theories of Locke, Hume and Kant dominate contemporary philosophical discourse on property rights. This is particularly true of applied ethics, where they are used to settle issues from biotech patents to managerial obligations. Within these theories, however, the usual criticisms of private property aren't even as much as intelligible.

Locke, Hume and Kant, I argue, develop claims about property on a model economy that I call "Frontier Town." They and contemporary authors then apply these claims to capitalist economies. There

are two problems with this application: First, we'll be considering the wrong kind of property: The only property in Frontier Town are means of life. Critics, however, object to property in concentrated capital because they associate only this kind of property with economic coercion and political power. Second, the two economies differ in central features, so that very different claims about empirical consequences and hence about fairness and merit will be plausible for each. This second problem, I argue, is a consequence of the first. I conclude that Frontier Town theories are more likely to distort than to illuminate property issues in capitalist economies.

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"A main cause of philosophical disease—a one-sided diet: one nourishes one's thinking with only one kind of example." (Wittgenstein, PI, §593)

I

1 My Argument

I shall defend two claims:

Claim I: Most political disputes about private property are and must be about property in *concentrated capital*.

Claim II: The theories of private property by Locke, Hume and Kant are about property in *means of life*. Despite the wave of current attempts to do so, these theories cannot be applied to disputes about property in concentrated capital, nor can they easily be modified so as to allow application.

I conclude that the property theories of Locke, Hume and Kant are unlikely to deliver insights on most political disputes about property. They usually won't help us answer contemporary questions, such as "Should biotech companies be allowed to patent parts of the human genome?" or "Should there be a global tax on all stock market transactions?"

The structure of my argument hence is as follows: We disagree about X; Locke, Hume and Kant provide theories of Y; theories of Y cannot settle disagreements about X.¹

¹This argument bears similarities to the following criticisms of the liberal concept of property: Macpherson's (1962) historical analysis of its 17th-century foundations; Christman's (1994) distinction between "control ownership" and "income ownership" and the different justifications for these; Gourevitch's (2013) criticism of the neo-republican concept of domination as ignoring the structural domination at the workplace that developed with industrial capitalism; and Graeber's (2011, ch. 2) "Myth of Barter" as the origin of our contemporary understanding of markets.

2 How I Proceed

Claim I is defended in Sections 3–5. Section 3 shows that property only becomes a philosophical topic with the development of modern capitalism. Section 4 defines the two discussed types of goods: means of life and concentrated capital. Section 5 explains why only property in concentrated capital is contested and what the point of contention is.

Claim II is defended in Sections 6–10. Section 6 describes "Frontier Town," the model economy on which Locke, Hume and Kant develop their claims. The contested form of property, concentrated capital, does not exist in this model. Using Frontier Town to address political disputes about property hence usually means to miss the point of these disputes.

Sections 7–10 show in detail how Locke's, Hume's and Kant's theories are developed on the model of Frontier Town. They do not treat the kind of property that interests us, and this cannot be changed through minor modifications. It is false to think that, e.g., Kant's theory of means of life "applies to property more generally, and is perfectly consistent with various complex forms of property, including owning shares in a company, land subject to mortgage, and money" (Ripstein, 2009, p. 95). To apply what Kant says about outer freedom to company shares means to draw an invalid inference. Even worse: Our unsupported conclusion is likely to also be false. Concentrated capital has very different empirical consequences than means of life (e.g., regarding the distribution of wealth in a society), and hence very different normative claims (e.g., regarding fairness or merit) are plausible for the two types of property.

II

3 A Philosophical Topic Since Capitalism

Until the early modern era, philosophers treat private property as a minor issue in political theory, if at all.² In the 17th and 18th century, i.e., with the advent of modern capitalism, property then suddenly becomes the founding feature or even the very purpose of political communities. For Locke (*Second Treatise*, Ch. 5), property is one of our basic rights in the state of nature. One of the central functions of a political community is to protect this natural right. For Hume (*Treatise*, 3.2.1-4), property is even more fundamental: We need to adopt this right in order to be able to leave the state of nature. Without stability of possessions, it is impossible to form a community. Kant (*Metaphysics of Morals*, AA 6:245-268) takes this idea one step further again: The ability to acquire property is the very reason why we must leave the state of nature. Full agency is impossible without property, and property is impossible outside of a state.

Early modern theories depict property as something exclusively positive,³ which seemed to contradict the realities of the developing agricultural and industrial revolution. Since the 19th century, philosophers hence begin to focus on an aspect of property that is strangely absent in the early moderns, viz. the fact that *some kinds* of property seem systematically connected to massive inequalities, coercion and political power. "Socialists" and "anarchists" now argue that the concentration of privately owned "capital" forms the centerpiece of an oppressive social order. The influence of this particular kind of property, they claim, exceeds the purely economic sphere; it determines our self-understanding, our sciences, our religions, and most of our daily actions.

Their critique of property became possible through the development of a science of economics. Authors used a generic concept of

²The only notable exception is the 14th-century debate on poverty between Dominicans and Franciscans.

³A notable exception is Rousseau's *Second Discourse*, Part 2.

property, until Adam Smith and others began to distinguish different property kinds, according to the different macroeconomic roles these play. The single most important distinction here is that between consumption goods (or “personal property”) versus capital goods—i.e., between goods used up in keeping their owner in existence or for their owner’s pleasure versus goods used to produce further goods. The idea that capital goods are systematically connected to power, i.e., that capital has a political dimension, develops at the same time and often in the same authors. Thus, Adam Smith writes:

The workmen desire to get as much, the masters to give as little as possible. The former are disposed to combine in order to raise, the latter in order to lower the wages of labour.

It is not, however, difficult to foresee which of the two parties must, upon all ordinary occasions, have the advantage in the dispute, and force the other into a compliance with their terms. The masters, being fewer in number, can combine much more easily; and the law, besides, authorises, or at least does not prohibit their combinations, awhile it prohibits those of the workmen. We have no acts of parliament against combining to lower the price of work; but many against combining to raise it. In all such disputes the masters can hold out much longer. A landlord, a farmer, a master manufacturer, or merchant, though they did not employ a single workman, could generally live a year or two upon the stocks which they have already acquired. Many workmen could not subsist a week, few could subsist a month, and scarce any a year without employment. In the long-run the workman may be as necessary to his master as his master is to him; but the necessity is not so immediate. (1784, 1.8, §§11-12, *emph. added*)

Smith draws attention to the fact that the advantage for the owners of concentrated capital is two-fold: First, all non-owners depend on the owners for survival. The masters can wait out the workmen (and

-women and -children) because these cannot live as long upon their consumption goods as the masters, nor can they produce new consumption goods for themselves because the necessary capital is concentrated in the hands of the masters. I.e., owners of concentrated capital can economically coerce all others. Second, political power, too, is concentrated in the hands of these owners. They have the law tailored to their interest, which is "to give as little as possible."

It is important to note that Smith does not intend what he says here to be a *criticism* of capitalism; he treats it as a *description*. It is an obvious fact, Smith thinks, that a concentration of capital equals a concentration of political power because it equals a power over life and death of the thus propertied over the unpropertied. Only 19th-century authors such as Proudhon, Marx, Bakunin, Goldman and others then turn Smith's description into a criticism.

4 Two Kinds of Property

Smith's workmen can be economically coerced because they do not own what I shall refer to as *means of life*. I define these as

1. the consumption goods that a single human being needs in order to thrive *plus*
2. the capital needed to produce this personal supply.

You own means of life if you own what you need to produce for your own livelihood—Marx would say: if you are able to "reproduce" yourself (*MEW* 23: Ch. 21). We can leave it open what "thriving" consists in and hence what goods it requires.⁴

If Smith's workmen owned means of life, then they could not be economically coerced. The situation would even be reversed; they could now wait out the masters. Neither, of course, would they be workmen anymore; they would be small entrepreneurs.

⁴It could be mere survival, or a certain minimal quality of life (examples would be defenses of a universal basic income from basic human needs, such as Murray (2008), or of basic rights from capabilities, such as Nussbaum (2006)), or it could be the ability to preserve what characterizes you as a person (Radin, 1993a,b), or some type of equality or of freedom (e.g., Parijs, 1995)—to name just a few options.

Critics of property are traditionally not interested in these "petty bourgeois," for four reasons. *First*, small entrepreneurs cannot be economically coerced by others to work for them. *Second*, they themselves cannot coerce others. The situation that Smith describes (and that Marx criticizes as "exploitation") is simply not present either for them or through them. *Third*, means of life do not bestow the kind of political power that Smith describes; the owner of the local corner store does not have the law tailored to their interest. In sum, means of life do not systematically produce (a) economic coercion or (b) political influence. It hence is no wonder that even the fiercest critics of property approve of them.⁵ Proudhon (1840, Ch. 2, Sect. 3, §§32-33), e.g., argues that permanent possession of agricultural plots over generations even secures equality, as long as we are considering an economy of self-subsistence farmers. Inequalities develop once we allow the sale and hence the concentration of land (§38).⁶ Note that the distinction that Proudhon and other socialists make here cuts across the economist distinction between "consumption goods" and "production goods:" Private ownership of capital of the size that is necessary to reproduce one's own existence is regarded as beneficial. Only concentrated capital is the target of criticism.

A *fourth* reason not to be interested in small entrepreneurs is that they became a rare species through industrialization—Marx describes this process in detail (*MEW* 23, ch. 13). In a modern capitalist economy, Marx points out, almost everyone is in the situation of the Smithsonian workman, using the rent paid on their labor by capital owners to buy consumption goods to sustain themselves. We have such a situation of *concentrated capital*, if

1. a minority of the population owns the majority of the capital, to an extent that
2. the majority of the population lacks means of life.

⁵One of the very few counter-examples might be Plato (*Republic* 416-424). Even here, however, interpreters disagree about whether this 'communism' is to be implemented for all citizens or only for the guardians.

⁶See Christman (1994, ch. 7) for a contemporary treatment of this idea.

5 Only Concentrated Capital Is Contested

As Smith points out ("it is not difficult to foresee"), private property in concentrated capital systematically produces economic coercion and political power. Therefore, concentrated capital (but not means of life) raises political questions, such as: (a) Is this coercion a form of exploitation?, (b) Is this power unjustified, i.e., a form of domination? or (c) Does the ownership itself lack justification?

Up until this point, defenders and critics of property agree; i.e., they agree about the basic empirical facts. This is important to note in order to understand the dialectic of their disputes. Many people agree with Smith that money rules the world.⁷ The question is whether or not you agree with Marx that that is unjustified. Three stances are available:

Private property in concentrated capital systematically produces economic coercion and political power. This is...

1. ... unproblematic. (*oligarchic stance*)
2. ... problematic. (*critical stance*)
3. ... problematic but outweighed by other benefits. (*consequentialist stance*)⁸

What does this taxonomy imply for political disputes about private property? We need to note the following points: (a) All sides agree that private property in means of life is unproblematic or even desirable. (b) All sides agree that private property in concentrated capital produces coercion and power. (c) The critics conceive of this feature of capital as problematic. (d) The task of the defense is to show that this feature is not problematic—either as such or all-things-considered.

⁷This includes economists who advocate "free markets." Friedrich Hayek (2011, pp. 381-3), e.g., regards capital concentrations (or: "monopolies") and the resulting coercion as market failures and allows government regulations that prevent their occurrence, such as anti-trust laws.

⁸There is a grim, Hobbesian version of this consequentialism, according to which the current situation might be lamentable but still better than its catastrophic alternatives (read: Soviet planning), and an optimistic version, on which the rising tide of capitalism will lift all boats and furthermore diminish inequalities in the long run. (A famous example is "Kuznet's Curve," see Kuznets (1955).)

If you accept this last paragraph, then you accept Claim I proposed in Section 1: Political disputes about property usually concern one particular kind, viz. concentrated capital, and that makes sense because this kind is systematically connected to coercion and power, i.e., has a political dimension. We can hence move on to discuss my second claim.

III

6 Frontier Town

Since most political disputes about private property are and should be about concentrated capital, we draw an invalid inference if we attempt to settle them through a theory of property in means of life. In the remaining sections, I attempt to show that Locke's, Hume's and Kant's property theories are theories of means of life. Even if one of them should be correct, it would not allow us to infer conclusions about concentrated capital. In fact, the situation is worse: Such conclusions would be *unsupported*, but they are also likely to be *false* because the two types of property have very different empirical consequences, hence very different normative claims are plausible for them. Should you accept my arguments in these remaining sections, then you accept my Claim II.

Let me begin with the general economic model that Locke, Hume and Kant put forth, before I talk about their theories in detail. I call this model "Frontier Town."

"[I]n the beginning, all the world was *America*," Locke (*T2*, Ch. 5, §49, *emph. orig.*) says, and many early modern theories of property share his starting point. Needless to say that the states of nature imagined here have little to do either with historical colonializations or historical human development. The early-modern state of nature is an empty land of vast resources that suddenly starts to be populated by independent, adult, all male and able-bodied human beings. Human

adults arrive, stake claims and open their own farm, mine or other one-person production facility.

What characterizes these imaginary Frontier Towns? Each inhabitant owns the capital they use, such as land; there is no wage labor. This capital is furthermore available in excess of needs, so that everyone can produce enough to sustain themselves. None, however, can produce significantly more because production is limited to their individual labor power. In sum, the only kind of property that exists in Frontier Town are "means of life" (see Section 4); every inhabitant can possess these, and their possessions are proportional to their labor.⁹

As a consequence, there neither is economic coercion in Frontier Town nor political power based on property: (a) Since everyone has access to sufficient capital, no one can be economically coerced in the way that Smith's workmen can. (b) None employs the other, so there are no hierarchical workplace relations. Its inhabitants do not receive orders nor do they order others. (c) They all own roughly the same. Of course, some inhabitants might be more skilled than others, more disciplined, stronger or simply luckier, so Frontier Town is not a luck-egalitarian place. Economic inequalities, however, are limited to what a single human being can produce. (d) Consequently, there is no way to gather significant political influence through one's property.

Frontier Town differs radically from either contemporary or early modern economies; anthropologists have complained that it differs from any historical economy.¹⁰ The following table lists eight important differences between Frontier Town and capitalist economies.

⁹Note again that this does not mean that there is no capital in Frontier Town; it merely means that there is no concentrated capital. As per my earlier definition (p. 7), non-concentrated capital is a constituent of means of life.

¹⁰Thus, David Graeber (2011, ch. 2) lists examples from contemporary economic textbooks that all start by taking "us to what appears to be an imaginary New England or Midwestern Town," and he complains that it is difficult "to locate[] this fantasy in time and space" (p. 23) because it does not resemble any actual society studied by anthropologists or described in historical records. (For an analysis of the anthropological accuracy of Locke's property theory, see Widerquist and McCall (2017, ch. 4)). For my argument, it suffices that Frontier Town differs significantly from capitalist economies.

	FRONTIER TOWN	CAPITALIST ECONOMIES
1 Types of property	<i>means of life</i>	<i>concentrated capital, wages, some means of life</i>
2 Resources	abundant	scarce
3 Owner of the product	person who produced it	person who owns the capital used in production—usually not the producer
4 Wealth depends on	one’s own labor	one’s capital—which mostly depends on inheritance
5 Limit of wealth per person	product of one’s own labor	none
6 Differences in wealth	negligable	gigantic
7 Economic relations	all are independent	most are dependent
8 Social relations	all are equal	strong hierarchies

Table 1: Eight important differences between Frontier Town and contemporary economies

In sum, Frontier Town is a place of high equality, where one’s wealth is proportional to one’s labor; the opposite is true of capitalism.

It is important to note that the differences in Rows 2 to 8 are initially caused by the difference in Row 1, some of them indirectly, through the change in another row. (Once these differences develop, we will also see further interactions between the various rows.) This is Smith’s descriptive and Marx’s critical point. Let me briefly spell it out for each row.

Row 2, the availability of resources, changes when we shift from Frontier Town to capitalism because resources are “capital;” i.e., they

are among those objects for which we see a concentration of ownership. As a consequence, we shift from resource abundance to resource scarcity.

Row 3, the ownership of the product, changes as a consequence of the change in *Row 2*: The capital concentration in a few hands will leave all others to subsist as wage recipients. This means that the person whose work created the product and the person who owns the product are now usually two different people.

Row 4, the determinants of wealth, changes with *Rows 2 and 3*. Inhabitants of Frontier Town own as much as they personally produce. In a capitalist economy, most people own a certain percentage of what they personally produce (viz. their wage), and some others own the remaining percentage. Into which group any given individual falls is largely determined by inheritance, today as much as before WWI (Piketty, 2013, esp. chs. 3 & 7).¹¹

Row 5, wealth limit, changes with *Row 4*. Inhabitants of Frontier Town are limited by their personal labor power. Modern capitalists are limited only by the number of people they can employ and the amount of products they can sell.

Row 6, wealth differences, changes with *Row 5*. In Frontier Town, the difference between the richest and the poorest inhabitant can maximally have the extension of what a single successful versus unsuccessful farmer, craftsperson or the like can produce, on average, during their workdays. Wealth differences in capitalist economies are, in principle, unlimited.

Row 7, the economic relations, are a consequence of *Rows 1 and 2*: Like Smith's workmen, the unpropertied today can be economically coerced by the propertied. They might have more choices between employers than in Smith's time, but this does not change his basic point that they are in a very weak bargaining position (see Section 3). At the workplace, they furthermore stand in hierarchical relations; most have a supervisor.

¹¹The hackneyed super-wages (Markovits, under contract) are statistically a rare phenomenon (Piketty, 2013, pp. 50-53), and firm shares bought from middle-class wages (usually indirectly, through pension funds) do not fulfill my definition of "concentrated capital" (see Section 4).

Row 8, the social relations, are a consequence of Rows 6 and 7. Marx famously claimed that our property regime determines every other aspect of our lives, including even our religious beliefs. You might not want to go that far, but social statistics clearly demonstrate that central aspects of a person’s life—from level of education to health to leisure activities etc.—strongly correlate with their wealth. To a significant extent, you are—and are perceived as—what you own.

In sum, in an economy where we only have private property in means of life versus an economy dominated by private property in concentrated capital, (i) we see different empirical developments (Rows 2, 5, 6, 7 and 8), and (ii) different normative claims appear plausible (Rows 3 and 4). To illustrate #i: In one of these economies, gigantic wealth differences will develop; in the other, this is impossible (Row 6); hence the two economies will be markedly different after a few generations. To illustrate #ii: In one of these economies, the owner of the resources owns the final product; in the other economy, it is the person who actually put in the work (Row 3). The second arrangement seems intuitively fair to most people; the first seems questionable.

As a consequence of these eight important differences, “Frontier Town” is a thought experiment with questionable ecological validity. Not only does showing that a claim *C* is true of Frontier Town imply little for its truth or falsehood in the economies that interest us. Taking *C* and applying it to contemporary economies easily results in a *false* conclusion, given how different the two situations are.

7 Early Modern and Contemporary Discourse

Locke, Hume and Kant all develop their claims on the model of Frontier Town; hence they all provide theories of means of life. Consequently, the points of contention (see Section 5) cannot even be formulated within these theories.

Given that all three theories were developed before (or in Kant’s case: right at the point of) the development of a science of economics, their authors can hardly be blamed for this limitation. My demonstrations would hence be of historical interest only if it weren’t for the fact

that these theories dominate contemporary philosophical discourse on property, especially in applied ethics—as one look at databases such as *PhilPapers* will tell you. Locke’s Theory is particularly dominant, followed by Kant’s and, to a lesser extent, Hume’s. Thus, Locke is used or contested for topics from stock-market regulations (Herzog, 2014) to patents on genetically engineered seeds (Shrader-Frechette, 2005) to copyrights on works of art (Peterson, 2008). Historically, Locke’s ideas of self-ownership and original acquisition have given rise to a whole school of thought, libertarianism, which is large enough to be divided into a right and a left wing. Research on Kant’s property theory has multiplied exponentially over the past decade: People discuss Kant’s view on topics as diverse as the exploitation of natural resources (Breitenbach, 2005), managerial obligations (Mansell, 2013), or asymmetric economic relations in the household (Varden, 2012). Other authors suggest a synthesis of Kant and Hume on property (Westphal, 2016) or defend Hume against Locke (Waldron, 2013). If my demonstrations in the following sections are convincing, then these employments of early modern property theories are akin to going back behind Frege in logic: Theories that distinguish different kinds of property developed from the 19th century onward. Perhaps all of these theories are false, but why would we go back to a stage of theorizing before the development of the relevant concept, ‘capital’?

Please note that my following discussions limit exegetical intricacies to the necessary minimum, which means that all three summaries are coarse-grained and omit much secondary literature.¹²

8 Locke: Property Boosts Productivity

Following Locke, anyone in “America” may turn unclaimed natural objects into private property (*T2*, Ch. 5, §27). They create a property claim by ‘mixing’ the unclaimed object with something that they already own, such as their own body or the body of an animal that

¹²One possible interpretation that will not be discussed, e.g., is that all three authors only defend *some* property regime over remaining in the state of nature. They all specify a regime to adopt, and Locke and Kant believe that we already have property rights respectively a proto-version of these in the state of nature.

belongs to them (§27-28). Some conditions apply; they must leave enough and as good for others (§27, Locke's 'First Proviso') and they cannot rightfully appropriate what they would have to let spoil (§31, Second Proviso). Locke's examples of original acquisition are mostly of agricultural tasks small enough to be performed by one individual, working for their own survival and using their own tools: People in Chapter 5 of the *Treatise* cut turf and graze their cattle.¹³ The first proviso is easily fulfilled, given that resources are abundant and that "[t]he *measure of property* nature has well set by the extent of men's *labour and the conveniencies of life*: no man's labour could subdue, or appropriate all" (§36, *emph. orig.*). In other words, with respect to the rows of Table 1 (property type, resource availability, product ownership, determinants of wealth, limit of wealth per person, differences in wealth, economic relations and social relations), Locke's America clearly is a Frontier Town.

According to my argument in Section 6, all of this should change with the introduction of money (described in §§36-37), i.e., a method of concentrating capital. A change in Row 1 (types of property) should lead to changes in Rows 2-8. Once we have noticeable capital accumulation in a few hands, we should expect: a progressing scarcity of resources, the development of an intricate division of labor; the buying of the labor of some by others who then live off rents; production aimed at sale, monopolization of production and further capital concentration. Hand-in-hand with these economic changes, we should see the development of economic and social hierarchies because some now take a managerial position whereas others are subject to directives, because those who already own more than others disproportionately grow richer, because their comparative wealth generates political influence etc.

Locke, writing a hundred years before Smith, struggled with the transfer of his points about "conveniencies of life" to money. In §36,

¹³The mention of a servant in the respective passages should not be misunderstood as meant to indicate a class society—just as the mention of a slave by Hume (in the passage cited in Section 9 below), who also occurs in a list alongside cattle. Neither the Lockean servant nor the Humean slave are included in the group of people who adopt the social practice of property and form the state. They are part of the property.

he seems to say that the first proviso is no longer fulfilled once we have concentrated capital: "[T]here is land enough in the world to suffice double the inhabitants, had not the *invention of money*, and the tacit agreement of men to put a value on it, introduced (by consent) larger possessions" (emph. orig.). Macpherson (1962, p. 211) argues that Locke initially attempted to justify this violation of the proviso through the idea of consent: All inhabitants of Frontier Town have consented to the introduction of money and thereby also consented to its consequences, i.e., capitalism. Macpherson (1962, pp. 211-213) points out, however, that in the third edition of the *Treatise* Locke adds a further, completely independent argument for why his theory also applies to concentrated capital: "To which let me add, that he who appropriates land to himself by his labour, does not lessen but increase the common stock of mankind: for the provisions [...] produced by one acre of inclosed and cultivated land, are [...] ten times more than those which are yielded by an acre of an equal richness lying waste in common" (§37). I.e., Locke initially argues that, through consent, we can acquire capital, even though capital violates the first proviso (§36, see also §50); later, he argues that capital benefits all because it increases the total amount of value in the world (the revised §37).

Both arguments have obvious problems: One problem with consent is that the proviso is a principle of natural justice; why would consent allow us to override this? Another is that it seems a bit of a stretch to say that you consent to capitalism neck and crop simply by accepting money in exchange for goods. The main problem with the argument from increased productivity is that this would only compensate you if your neighbor who enclosed the commons shared their proceeds. Locke reacts to this last problem with yet another independent argument, viz. the claim that the rising economic tide produced by your neighbor will ultimately lift your boat, too: "There cannot be a clearer demonstration of any thing, than several nations of the *Americans* are of this, who are rich in land and poor in all the comforts of life

[...]. [...] [A] king of a large and fruitful territory there, feeds, lodges, and is clad worse than a day-labourer in *England*" (§41, *emph. orig.*).¹⁴

Every reader can decide how convincing they find Locke's arguments. Important for my purposes is that Locke himself switches his criterion when he moves from means of life to concentrated capital: The justification for why you must accept property in means of life is that your neighbor mixed themselves with, e.g., the land. The justification for why you must accept concentrated capital is, first, that you indirectly consented to your neighbor enclosing the commons and, second, that you indirectly benefit from the enclosure. In other words, Locke himself does not use labor-mixing as his justification for property in concentrated capital.

Contemporary authors who use labor-mixing to defend property in concentrated capital are hence strangely at odds with Locke's original account. Let's take an example to illustrate this point: the lively discussion about the patenting of genetically engineered seeds. Labor-mixing is used to argue, e.g., that patents should only extend to the benefits that the engineers added to the natural seed (Mancilla, 2015), that most such additions are too tied up with previous inventions for us to determine individual contributions and hence to apply Locke's labor-mixing criterion (Sterckx, 2006), and that such patents make developing nations worse off and thereby violate the first proviso (Shrader-Frechette, 2005).

On my reading of Locke, such deliberations are beside the point. The reason why seed patents arouse political dispute (whereas, e.g., patents on tractors don't) is that seed patents are systematically used to concentrate capital in the hands of a few companies and to deprive farmers of their means of life (Row 1). Traditionally, farmers save a certain amount of their harvest to sow again. For patented seeds, this practice counts as a patent infringement; i.e., farmers lose the right to reproduce their own capital. Critics add that seed giants economically coerce individual farmers (see, e.g., CFS 2013) and that they develop enormous political power by monopolizing global food produc-

¹⁴Note that Locke's argument here is an early predecessor of Kuznet's Curve (see fn. 8).

tion (CBAN 2015). These criticisms might be justified or not; the point is that deliberations about whether Monsanto-paid engineers mixed their labor in appropriate quantities with the naturally occurring seeds fails to address them because what we disagree about is whether to allow this concentration of capital. If we draw on Locke to decide this point, then we either need to argue that all of humanity consented to this concentration (through our acceptance of money) or that this concentration ultimately makes everyone better off. In the first case, there is no need to even deliberate, since we consented to *any* capital concentration, ergo that of seeds. In the second case, we need an empirical investigation rather than a philosophy paper.

9 Hume: Property Secures Social Peace

Hume does not think much of Locke's theory of original acquisition (T 3.2.3, Fn. 2); he dismisses the claim that property is a natural right as a conceptual confusion (3.2.1). He does, however, share Locke's assumption that property benefits everybody. For him, it is a social practice, adopted for its obvious benefits.

Hume (3.2.2, §9) reasons as follows: It is advantageous for human beings to live in communities. The necessary peace among the members can only be secured if all community members subscribe to the same set of rules regulating entitlements. Therefore, it is advantageous for human communities to adopt a shared set of rules regulating entitlements.

Like Locke, Hume proceeds from an economy of self-subsistence farmers. He lists five main ways to acquire property, "viz. Occupation, Prescription, Accession, and Succession." (3.2.3, §5) plus "the Transference of property by consent" (3.2.4). The examples that follow are again of small, agricultural pursuits. As examples of accession, Hume lists "the fruits of our garden, the offspring of our cattle, and the work of our slaves" (3.2.3, §10). "Succession" mostly means inheritance of the family farm: Following Hume, it seems natural to human beings that their "possessions shou'd pass to those, who are dearest to them," plus this is in "the general interest of mankind," since it will render

each current owner "more industrious and frugal" (§11). In such a society, where everyone owns their means of life (see Row 1 of Table 1), no one depends on others (Row 7) or orders others (Row 8). Every inhabitant's quality of life is determined by how industrious and fortunate they are (Rows 3-4); their destiny is mostly in their own hands. Therefore it only seems fair as well as in everyone's self-interest that each should reap what they sowed.

Hume's conclusions seems much less fitting for a contemporary economy in which most people are the employees of others (Rows 1 and 3), where social hierarchies are strong (Row 8) and wealth differences enormous (Row 6). In fact, they don't even fit the very hierarchical societies of his own times: Why should an 18th-century English coal miner have agreed with Hume that the owner of the mine must be left in the peaceable enjoyment of its proceeds? Or why should a Russian bondservant have been rationally required to leave the owner of the fields to peacefully enjoy the harvest? Hume's premises draw on people's self-interest and their natural intuitions about merit: We all want a society, he assumes, in which we can "safely enjoy" what we produced, i.e., in which our labor will be adequately and proportionally rewarded because others cannot coerce us into surrendering the products of our labor. These premises, however, are not fulfilled in a capitalist society (see Rows 3 and 4), with all resulting economic and social consequences. Why then would, e.g., the coal miner perceive such a society as serving his own interest or as fair? Once we split the person who makes the product from the person who owns the product (Row 3), very different assumptions about what is just and what is in people's self-interest start to look plausible, especially if this split is accompanied by large differences in wealth (Rows 5 and 6). Hume's claims might be correct for Frontier Town, but in capitalist economies most people do not reap what they sowed (Row 4). It hence neither seems naturally fair nor in the self-interest of all members and thereby a pragmatic guarantee of social peace that the capitalist property distribution stay as it is and be enshrined in legal conventions.

Let's look at a contemporary application of Hume's theory, the question whether there should be redistributive taxation: de Jasay

(2004, p. 65) objects to Murphy and Nagel (2002) with the argument that property is not a "myth" because "stable possessions" are not an "arbitrary" convention in Hume's sense. While this seems exegetically correct, it is unclear how we would use it as an argument against redistributive taxation in contemporary societies, given that neither natural intuitions about merit nor the presupposition that all members profit from the stability of possessions are respected here. It hence is no wonder that other authors infer the opposite or argue that Hume's views are consistent "both with strongly redistributive tax schemes and with only lightly redistributive schemes" (Lindsay 2014, p. 132; see also Waldron, 1994, p. 115). Capitalism is so far from fulfilling the presuppositions on which Hume's claims for Frontier Town rest that it is undetermined what his claims would imply for topics such as redistribution under capitalism.

10 Kant: Property Enables Us to Pursue Aims

Kant's metaphysical position on property is in between Locke and Hume. Similar to Locke, he believes that there is a proto-version of property even in the state of nature. We only have property in the full sense, however, once we have a state and hence a legal practice of property (AA 6:264-266), similar to what Hume claims.

For Kant, property is a prerequisite of rational agency: If it weren't for the practice of property, then we would not be allowed to act in the physical world, i.e., we would effectively have no outer freedom. In acting, we use physical objects, and this usage can require ownership. I would reconstruct Kant's "Postulate of Practical Reason with respect to Rights" (6:246-7) as follows:

1. Assume that, for a given object *O*, it would be illegitimate for anyone to use *O* because usage of *O* "could not coexist with the freedom of everyone in accordance with a universal law."
2. Then we could not exercise outer freedom with respect to *O*.
3. And if all objects were like *O*, there would effectively be no outer freedom.

4. There must be outer freedom.

Therefore: At least some objects must be unlike *O*. I.e., it must be possible for usage of at least some objects to coexist with the freedom of everyone.

Therefore: It must be possible to own objects.

You might wonder how we get from the first to the second conclusion: Why would we need to *own* objects in order to be allowed to *use* them? All that actually follows is “that there be some objects of certain types that are available for my use when I need them” (Breitenbach, 2005, p. 501); i.e., all that follows is *usufruct* (see also Westphal, 2016, ch. 8). I suggest we read Kant as making a conceptual claim: Certain usage rights effectively amount to property rights.

This claim was originally made by the Dominicans against the Franciscans in the 14th-century debate on poverty. The Franciscans purported to have no property at all, since their vast possessions were legally owned by the pope; they only *used* these—like a horse, they argued, which uses the hay *owned* by his master. The Dominican Hervé de Nédellec objected that human beings cannot stand in the same relation to things that they use as a horse stands to his hay.¹⁵ If rational creatures have extensive usage rights over certain objects, then they effectively own these. And since we need to use at least some such objects, he concluded that complete poverty is impossible for human beings.¹⁶ To defend Kant, we could take the same stance as de Nédellec.

Like Locke and Hume, Kant depicts property as a powerful social invention—not one that generates utility, but one that allows human beings to fully realize their nature as rational beings. His main example of property also is land. On Kant’s account, you need to possess land in order to possess anything, since the objects possessed need to be *somewhere*, and their owner needs to control this space (6:261-262). Adopting a property practice means to limit everyone’s claims

¹⁵Hervaeus Natalis, *De paupertate Christi et apostolorum*. For an English translation, see Jones 2005.

¹⁶This tradition might explain why most historical authors accept property in means of life (see Section 4).

to space and objects so that all claims are consistent with one another. The world Kant imagines here is a Frontier Town, too, although not as obviously as in Locke's or Hume's theories, since his descriptions stay very abstract: Land is necessary, e.g., but we never get to concrete examples such as farming. The following, however, seems safe to say about the Kantian state of nature: While land is not unlimited (6:262), there initially is a space for everyone to claim (Row 2). Economic relations (Row 7) consist in voluntary contracts among equals (Baier, 1987; Held, 2005, ch. 5-6); i.e., there apparently are no capital concentrations, with some taking over the others' domains (Row 1). Most importantly, Kant's theory seems to provide no justification for other property than means of life. The idea that we need to be able to use objects in order to exercise outer freedom has some plausibility if applied to an individual who carries out small, daily pursuits. We certainly need to be allowed to use objects in order to walk around, interact with other people, work etc., and arguably the usage of at least some of these objects amounts to appropriating them. However, while this would include objects such as the food we need plus the very limited resources to produce these objects (such as the agricultural land that no one else can use during the same time), it does not seem to justify more extensive acquisitions.

As an example, consider again the case of redistributive taxation. Wood (2007, pp. 195-196) reads Kant 6:326 as allowing the state to tax Rich in order to feed Poor, on the grounds that Poor would otherwise be unable to act—given that death is the ultimate denial of agency. Ripstein (2009, pp. 273-8) and Hasan (2018) derive the same conclusion from the idea that Poor would otherwise not possess the kind of agency required to form a polity of equals with Rich. It seems, however, that a tax grounded in Poor's needs for agency could only cover Poor's most basic needs. It should fund everything that is indispensable for Poor to be an agent, and that seem to be means of life. The same, however, should apply to the objects taxed: If property rights are grounded in the ability for agency, then why would Rich's right to acquire go beyond what Rich needs to be an agent? Rich would still be able to act in the physical world if the property practice of Rich's soci-

ety prevented private individuals from owning companies or mortgaging land. It thus seems that Kant's deliberations about Frontier Town provide little support either for an extensive program of redistribution or acquisition because the property for which his claims are plausible are means of life, and it is unclear how we would transfer them to concentrated capital.

If you accept this last step, then you accept my Claim II from Section 1.

11 Conclusion

I defined a model economy, which I called "Frontier Town." I then argued that Locke's, Hume's and Kant's property theories are developed on this model, but are today used to draw inferences about property rights in capitalist economies.

I argued that inferences from Frontier Town to capitalist economies are unsound because the model and reality differ in at least eight relevant features (see Table 1). In Frontier Town, everyone works, using their own capital; i.e. there is no possibility for economic coercion, and there are no hierarchical economic relations. Possessions are very limited and are approximately the same for all, which also means that none can gain significant political influence through their property. What each accumulates will partly be determined by luck but mostly by diligence and skills. In other words, Frontier Town is what most would consider a "meritocratic" society of independent equals. In capitalist economies, most people sell their labor to a few who live off rents. Possessions are vast, distributed very unequally, and usually not held by the producer. Wealth differences mainly stem from inheritance.

My diagnosis was that all mentioned differences result from a difference in the types of property that exist in the two situations. In Frontier Town, there only are means of life. Marxists, feminists, globalization critics, Occupy Wall Street and other critics of property, however, usually accept means of life. They oppose private property in concentrated capital because this is the type of property that systematically

generates coercion and power, and critics regard this coercion as exploitation and the power as domination. This means: Frontier Town theories of property are philosophically off-topic as well as dialectically ineffective.

Note that my result does not imply that the philosophers criticized above have nothing plausible to say about economic justice. Kant's *moral* philosophy, e.g., might justify stringent and global duties toward the poor (Gilbert, 2010) or might fruitfully be combined with Marxian ideas.¹⁷ Nor does the result rule out that elements of the discussed property theories could become part of a theory that distinguishes between different types of property (such as contemporary left-libertarian proposals, which keep Locke's idea of self-ownership but not much else from the original theory). But we start off on the wrong foot if we take, e.g., Locke's original theory and apply it to the question of whether Monsanto may patent genetically engineered seeds or whether governments should tax to redistribute wealth.

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¹⁷See, e.g., the special issue (vol. 22) "Kant and Marx" of the *Kantian Review*.

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