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A Minimalist Theory of Appropriation

ABSTRACT. This paper offers a conditional defence of a minimalist theory of appropriation. The conclusion of its main argument is that, *if* people do enjoy a natural right to appropriate unappropriated resources, *then* that right is best understood as a derivative right that stems from a more fundamental natural right to self-preservation. If this conclusion is correct, then insofar as people have a natural right to appropriation, it is much more limited than it is usually assumed, as the minimalist theory places very stringent restrictions on both the amount of unappropriated resources each person has a right to appropriate and the use they can make of those appropriated resources. The conclusion of my argument can be either used as a premise in a *modus tollens* argument to be used against natural-right theories of property rights or as a premise in a *modus ponens* argument in favour of a broadly left-libertarian theory.

KEYWORDS: Property Rights; Original Appropriation; Self-Preservation; Self-Ownership

1. INTRODUCTION

This paper offers a (conditional) defence of a minimalist theory of appropriation. The conclusion of its main argument is that, *if* people do enjoy a natural right to appropriate unappropriated resources, *then* that right is best understood as a derivative right that stems from a more fundamental natural right to self-preservation. If this conclusion is correct, then insofar as people have a natural right to appropriation, this right is much more limited than it is usually assumed, as the minimalist theory places very stringent restrictions on both the amount of unappropriated resources each person has a right to appropriate and the use they can make of the resources they have appropriated. My argument starts from one of the arguments offered by John Locke in support of his influential theory of appropriation in Section 28 of *The Second Treatise of Government*, which I call *the acorn argument*. In §2, I argue that, insofar as the acorn argument is sound, it supports a minimalist theory of appropriation rather than the labour-mixing theory that forms the core of Locke's own theory. In §3, I offer a number of further reasons to prefer the minimalist theory over Locke's theory. In §4, I argue that the minimalist theory is also preferable to a number of neo-Lockean theories of appropriation. Finally, in §5, I discuss some of the implications of the minimalist theory and argue that the minimalist theory can be used to support a broadly left-libertarian version of the entitlement theory, which I call the subsistence entitlement theory, which, I contend, is preferable to other versions of (left- and right-)libertarianism.

I should mention immediately that the purpose of this paper is not exegetical. While Locke's views about property rights in general and the right to appropriation in particular have been highly influential on liberal political thought, this paper is not an attempt to offer an interpretation of those views. Rather, it is an attempt to resolve a tension in Locke's views about private property in a way that produces a distinctive (and distinctively un-Lockean) theory of appropriation, which, I contend, is preferable to Locke's own theory of appropriation as well as the many neo-Lockean views currently available.

2. THE ACORN ARGUMENT AND THE MINIMALIST THEORY OF APPROPRIATION

It is hard to overestimate the influence of Locke's views on property rights in general and of his theory of appropriation on the history of liberal political thought. Since Locke's views on these issues raise many interpretive questions that are beyond the scope of this paper, I rely on a brief sketch of Locke's theory that aim to represent the standard understanding of Locke's views among contemporary analytic political philosophers rather than attempt to interpret Locke's actual views. On this standard understanding, Locke starts with the assumption that everyone enjoys a fundamental natural right of self-ownership, which, among other things, entails that everyone owns their own labour. Locke then argues that, whenever someone "mixes" their own labour with a resource that has not yet been appropriated (i.e., that is not already privately owned by someone else), they appropriate that resource (i.e., they come to privately own that resource) legitimately. On this understanding, the so-called labour-mixing theory of appropriation forms the core of Locke's theory.

The classic children's story of the Little Red Hen provides a good illustration of the labour-mixing theory. In the story, the Little Red Hen gathers some (presumably unappropriated) grains of wheat, sows them in a (presumably unappropriated) field, tends to the crop, reaps it, grinds it into flour, and, eventually, uses that flour to make a loaf of bread. All the while the Cat, the Goose, and the Rat refuse to help the Hen. When the loaf of bread is finally baked and the other animals ask the Hen for some of it, the Little Red Hen refuses to share the loaf of bread with them. From the point of view of the labour-mixing theory, she has every right to do so, as she owns the loaf of bread because the loaf is the result of "mixing" her own labour (which she owns in virtue of her right to self-ownership) with the previously unappropriated resources that went into making the bread.

The labour-mixing theory raises a number of notorious philosophical problems. Moreover, Locke qualified the labour-mixing theory by adding a couple of significant restrictions to legitimate appropriation, whose interpretation and adequacy are much debated. However, let me put aside these issues until the next section and, instead, turn to one of Locke's main arguments for the labour-mixing theory, which I call *the acorn argument*. Locke famously writes:

> He that is nourished by the Acorns he pickt up under an Oak […] has certainly appropriated them to himself. No Body can deny but the nourishment is his. I ask then, When did they begin to be his? When he digested? Or when he eat? Or when he boiled? Or when he brought them home? Or when he pickt them up? And 'tis plain, if the first gathering made them not his, nothing else could. That *labour* put a distinction between them and common. That added something to them more than Nature, the common Mother of all, had done; and so they became his private right. And will any one say, he had no right to those Acorns […] he thus appropriated, because he had not the consent of all Mankind to make them his? Was it a Robbery thus to assume to himself what belonged to all in Common? If such a consent as that was necessary, Man had starved, notwithstanding the Plenty God had given him. (II, 28)[1]

The acorn argument has a familiar form. It starts with two factual premises. The first is that that, at the beginning of the process, the acorn fallen from the oak tree does not belong to anyone (or it belongs to everyone). The second premise is that, at the end of the process, the digested acorn belongs to the person who eventually ate it (let's call him Gareth). In-between these two stages, there are a number of other stages—i.e., Gareth picked up the acorn, brought it home, boiled it, and ate it. According to Locke, since Gareth has unquestionably appropriated the acorn at the end of the process (i.e., when he has fully digested it), he must have appropriated it at some point during the process. The question is: 'At what stage?' The reason why the acorn argument is familiar is that it belongs to the same family of step-by-step arguments that also includes the much more famous sorites paradox.

[1] All quotations from *The Second Treatise of Government* in this paper are drawn from (Locke 1988).

However, unlike the sorites paradox, in the acorn argument, there seems to be one step at which, according to Locke, it is natural to draw the line between the acorn's being unappropriated and its having been appropriated by Gareth. Locke argues that, if Gareth had not appropriated the acorn at the first step of the process (i.e., when he picked up the acorn), then it is unclear how he could have appropriated by performing any of the subsequent steps. Therefore, Locke concludes that Gareth appropriated the acorn when he picked it up, which, according to Locke, indirectly supports the labour-mixing theory, as that is when Gareth first "mixed" his labour with it.

Unfortunately for Locke, however, this argument doesn't actually support the labour-mixing theory. The argument relies on the premise that Gareth has appropriated the acorn by the time he has digested it and, *prima facie*, it is tempting to believe that this premise is true. After all, the acorn is a typical example of what economists call a rivalrous good—i.e., it is a good whose (full) consumption by Gareth precludes its consumption by someone else. Once Gareth has consumed the acorn, no one else can consume it, so, by eating and digesting the acorn, Gareth has definitively appropriated it. However, while it is undeniable that, by the end of the process, Gareth has appropriated the acorn *de facto*, it is not at all clear that he has appropriated it *de iure*. In other words, while Gareth has undeniably appropriated the acorn by the end of the process, this does not mean that he has done so *legitimately*, but it is this premise that Locke needs for the acorn argument to deliver the right conclusion.

Locke seems to realize this, as, at the end of the quoted passage, he hints at a different reason for thinking that Gareth appropriated the acorn legitimately. The argument is that, if Gareth could not legitimately appropriate this acorn (or anything else) simply by picking it up, boiling it, and eating it (without everyone else's consent), then the only (legitimate) option for him would have been to starve to death. If we assume, as Locke clearly did, that everyone enjoys a natural right to self-preservation, then starvation cannot be the only legitimate option for Gareth other than seeking everyone's consent, which is practically impossible and would itself lead to starvation. The acorn argument, thus, crucially relies on the assumption that Gareth enjoys a natural right to self-preservation and that right trumps whatever claims everyone else's joint property rights (if any) over the acorn might give them against Gareth's eating the acorn. It is crucial to note that, while, on this reading of the acorn argument, Gareth's derivative right of appropriation stems from a more fundamental right, that right is not his alleged right to self-ownership but his right to self-preservation—a right that, practically, he could not effectively exercise if he had to ask for everyone's permission before consuming the acorn.

Locke's followers may argue that, while Gareth' right to appropriation might ultimately derive from his right to self-preservation, it is through his right to self-ownership that Gareth exercises his right to appropriation. In other words, while Gareth's general right to legitimately appropriate *some* resources might stem from his right to self-preservation, his right to legitimately appropriate *this* acorn stems from his right to self-ownership—it stems from the fact that Gareth "mixed" his labour with it. However, once we established that Gareth could legitimately appropriate some resources (in order to exercise his right to self-preservation), the process through which Gareth comes to appropriate that specific acorn seems to be irrelevant to the legitimacy of that appropriation. Consider, for example, the rather implausible scenario in which a starving Gareth is lying, motionless and on the brink of starvation, under a bush of ripe berries and a berry just so happens to fall into his open mouth, temporarily preventing him from starving. If Gareth enjoys a right to self-preservation, then it is hard to deny that his appropriation of the berry is legitimate.[2] However, in this scenario, it is at best unclear whether Gareth has mixed his labour with the berry in any way. Moreover, even if we concede, for the sake of the argument, that Gareth did "mix" his labour with the berry (e.g., by digesting it), it still seems that, at most, his digesting the berry is what the act of appropriation consisted in in this specific

[2] One way to deny it is to argue that Gareth appropriates the berry by eating it. However, if this is the case, then the Acorn Argument is unsound.

instance, but, it is not what made that act of appropriation legitimate. In light of the acorn argument, what made the appropriation of that specific berry legitimate was the fact that Gareth has a right to self-preservation and that, had Gareth not consumed the berry, he would have died.[3]

As far as I can see, the argument so far supports a conditional conclusion—*if* the acorn argument successfully establishes a natural right of appropriation, then this right derives from a more fundamental natural right to self-preservation rather than from a natural right to self-ownership. However, if this is correct, then the acorn argument does not support a labour-mixing theory of appropriation. Rather, it supports what we might call a minimalist theory of appropriation.

According to the basic version of the *minimalist theory of appropriation*, someone has a derivative natural right to appropriate some unappropriated resource insofar and only insofar as the appropriation of that resource (or of some other equivalent resource) is necessary for their own subsistence (or that of their dependents). According to the minimalist theory, therefore, resources are legitimately appropriated only if they are used for the purpose of subsistence (by the original appropriator or their dependents). Any legitimately appropriated resources can only be transferred to someone else if the ultimate user uses them for subsistence purposes and they can only be exchanged for other resources if all resources have been legitimately appropriated. So, for example, if Gareth has legitimately appropriated enough acorns to feed himself and his family for a month (and no more), he can exchange some of the acorns for some berries (provided that the berries were also legitimately appropriated). If Gareth has appropriated more acorns than his family need for their subsistence, then he has taken possession of (some) of those acorns illegitimately. According to the minimalist theory, legitimate appropriation, thus, extends insofar and only insofar as it is needed in order to exercise one's right to self-preservation, as it is this right that, ultimately, underpins legitimate appropriation.

The minimalist theory seems to resolve a profound tension in Locke's views about private property, a tension that the acorn argument brings to the forefront. The tension stems from the fact that, in developing and defending his theory of appropriation, Locke appeals to two distinct fundamental natural rights. The first of these rights is the one that is traditionally associated with Locke's views about property rights—i.e., the right to self-ownership. The second of these rights is the right to self-preservation.[4] In this section, I have argued that, in order to turn the acorn argument into a sound argument, the argument must rely on the right to self-preservation and that, once we do that, it becomes apparent that the right to self-ownership is no longer performing any real work. The minimal theory, thus, resolves the tension in Locke's views by relying exclusively on the right to self-preservation. In the next two sections, I argue that there are additional reasons to prefer the minimalist theory both to Locke's own theory (§3) and to some contemporary neo-Lockean theories (§4). In §5, I discuss some of the implications of adopting the minimalist theory.

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[3] Of course, Gareth did not have to consume *that* specific berry to survive and, in fact, he didn't even have to consume *a* berry (he could have eaten an apple instead), but. given that this is the berry that Gareth did eat in order to survive, the fact that he had a right to self-preservation gave him a retrospective right on whatever he would use to exercise that right. Analogously, if I have a natural right to free speech, I have a certain latitude as to how or even whether I exercise that right on any given occasion, but, whatever I decide to say, the specific utterance I make is protected by that right.

[4] Tellingly, Locke opens Chapter V of the *Second Treatise*, 'Of Property,' with the claim that '[…] natural *Reason*, […] tells us, that Men, being once born, have a right to their Preservation, and consequently to Meat and Drink, and such other things, as Nature affords for their Subsistence' (II, 25). Although that claim is mostly meant as a refutation of the patriarchal theory of property rights defended by Robert Filmer, in my view, it contributes to supporting an interpretation of Locke's views in which the right to self-preservation plays a more central role than contemporary analytic philosophers usually attribute to it.

3. THE MINIMALIST THEORY VERSUS THE LABOUR-MIXING THEORY

In the previous section, I argued that one of the main arguments for a Lockean labour-mixing theory, when properly understood, is actually an argument for the minimalist theory and not for the labour-mixing theory. In this section, I argue that there are at least four additional reasons to prefer the minimalist theory over Locke's own theory. The first is that the minimalist theory raises many fewer and much more tractable philosophical problems that the labour-mixing theory. Admittedly, the version of the minimalist theory I have offered in the previous section is somewhat underdeveloped and it does raise some thorny questions. For example, its critics might argue that it is not clear where, exactly, the minimalist theory should draw the line between "needs" and "wants" and they might claim that, if something needs to be strictly necessary for one's survival in order to be legitimately appropriated, then the minimalist theory sets an excessively high bar for legitimate appropriation.[5] In this paper, I do not have much to say about these important issues, except that the bar for legitimate appropriation should be set somewhere between the mere subsistence level (i.e., the absolute minimum level required for survival) and what sufficientarians refer to as "the sufficiency level"[6] and that, at times, Locke himself seem to limit legitimate appropriation to what people can actually use.[7] However, while the minimalist theory might not be entirely unproblematic, its issues pale in comparison to the notorious problems raised by the labour-mixing theory. So much so that even Locke's contemporary followers tend to be critical of it. One of Locke's most prominent followers among contemporary analytic political philosophers, Robert Nozick, lists a number of these problems in the following memorable passage:

> Locke views property rights in an unowned object as originating through someone's mixing his labour with it. This gives rise to many questions. What are the boundaries of what labour is mixed with? If a private astronaut clears a place on Mars, has he mixed his labour with (so that he comes to own) the whole planet, the whole uninhabited universe, or just a particular plot? Which plot does an act bring under ownership? The minimal (possibly disconnected) area such that an act decreases entropy in that area, and not elsewhere? Can virgin land (for the purposes of ecological investigation by high flying airplanes) come under ownership by a Lockean process? Building a fence around a territory presumably would make one the owner of only the fence (and the land immediately underneath it). Why does mixing one's labour with something make one the owner of it? Perhaps because one owns one's labour, and so one comes to own a previously unowned thing that becomes permeated with what one owns. Ownership seeps over into the rest. But why isn't mixing what I own with what I don't own a way of losing what I own rather than a way of gaining what I don't? If I own a can of tomato juice, and spill it in the sea so that its molecules (radioactive, so I can check this) mingle evenly throughout the sea, do I thereby come to own the sea, or have I foolishly dissipated my tomato juice? Perhaps the idea, instead, is that laboring on something improves it and makes it more valuable; and anyone is entitled to own a (thing whose) value he has created. […] Ignore the fact that laboring on something may make it less

[5] In addition, the minimalist theory should be able to determine how many resources can people appropriate for future consumption. I am inclined to think that they should be not be entitled to appropriating more than they can reasonably expect to be sufficient for their own needs and those of their dependants. However, I cannot defend that view in detail here.

[6] For a review of sufficientarianism, see (Shields 2020). I should note that, while sufficientarianism as a theory of distributive justice raises a number of philosophical problems, the sufficientarian version of the minimalist theory does not share most of those problems.

[7] For example, Locke writes: 'And thus considering the plenty of natural Provisions there was a long time in the World, and the few spenders, and to how small a part of that provision the industry of one Man could extend it self , and ingross it to the prejudice of others; especially keeping within the *bounds*, set by reason of what might serve for his *use*' (II, 31) While it is not clear that Locke takes this to be a universal proviso on legitimate appropriation (along the lines of his much discussed "enough-and-as-good" proviso), adding the use proviso to Locke's theory would result in a theory of appropriation that is close to being coextensive with the minimalist theory.

> valuable (spraying pink enamel paint on a found piece of driftwood). Why should one's entitlement extend to the whole object rather than just to the *added value* one's labour has produced? (Nozick 1974, 174–175)

Of course, the fact that the labour-mixing theory raises so many difficult questions does not necessarily mean that it is false. However, it is significant that, while Locke's general views about property rights have been highly influential, to my knowledge, no contemporary analytical philosopher fully embraces the labour-mixing theory. In fact, as I discuss in the next section, most contemporary followers of Locke, including Nozick, more or less explicitly reject the labour-mixing theory.

Second, unlike the labour-mixing theory, the minimalist theory does not require additional conditions in order to limit legitimate appropriation. The minimalist theory is a self-limiting theory—i.e., the theory limits the extent to which any one person can appropriate resources legitimately. The labour-mixing theory, on the other hand, is not self-limiting. In theory, each person can legitimately appropriate as many resources as they can "mix" their labour with.[8] It is to avoid this consequence that Locke adds (at least) two distinct provisos on legitimate appropriation to the labour-mixing theory. The best-known (and most controversial) of these provisos is *the "enough-and-as-good" proviso*, which states that, in order for an act of appropriation to be legitimate, the appropriator has to leave for others enough resources as the resources that have been appropriated and resources that are at least as good as the resources that have been appropriated (see, e.g., (II, 33)). However, it is hard to see how the proviso should be interpreted in most real-world situations and it is even harder to see how, in a world with a growing population, the proviso does not ultimately render all appropriation illegitimate.[9] Once again, it is significant that most of Locke's contemporary followers have rejected the "enough-and-as-good" proviso in favour of different provisos. I will address this topic in §3 below. The second (and less controversial) proviso is *the non-spoilage proviso* (see, e.g., (II, 31)). According to this proviso, people should not appropriate more perishable resources than they can consume before they spoil. Locke's motivation for both provisos was the worry that the unrestricted labour-mixing theory would give rise to over-appropriation of resources, which would bring the derivative right to appropriation into conflict with other people's right to self-preservation.[10] The minimalist theory thus seems to be preferable to the labour-mixing theory in that, since the former is a self-limiting theory of appropriation, it does not require any of these additional provisos.

Third, the right to self-preservation is a less controversial candidate for the role of a fundamental natural right than the right to self-ownership. With the possible exception of those who support an unlimited right to appropriation,[11] everyone else is likely to concede that, *if* people have any natural rights, then these include a right to self-preservation. And even the most radical critics of private property concede that the minimal level of appropriation necessary for one's subsistence is legitimate, as one's very survival depends on being able to legitimately appropriate the basic resources required for one's subsistence. While the notion of a natural right to self-ownership might also be appealing, it does not seem to be completely uncontroversial. For example, many contemporary governments forbid people from selling their own organs, which would seem to be a clear violation of a full right to self-ownership. However, while some people are critical of these sorts of bans, one would expect

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[8] The only limit the theory places on legitimate appropriation seems to be practical, as there is only that much labor that each individual can perform in their lifetime. However, since Locke believes that one can appropriate by proxy (i.e., by paying other people to mix their own labor with unappropriated resources on their behalf), even this practical limit is essentially irrelevant.

[9] See, in particular, Nozick's famous zip-back argument (Nozick 1974, 175–176). One way to avoid this conclusion would be for the appropriator to pay the competitive rental value of the illegitimately appropriated resource. However, discussing all of the options available is beyond the scope of this paper.

[10] For example, Locke writes.

[11] See, e.g., (Feser 2005).

much more widespread and intense opposition to these bans if a majority of people believed that the right to self-ownership is a fundamental, inviolable natural right. While these considerations are far from being conclusive evidence that most people do not believe in an unlimited natural right to self-ownership, they seem to provide presumptive evidence against the widespread acceptance of an unlimited right to self-ownership.[12] Moreover, one might argue that everyone who accepts a right to self-ownership should also accept a right to self-preservation (as Locke clearly did), as it is not clear if it even makes sense to maintain that we enjoy ownership rights over ourselves while denying that we have a right to do what it takes to ensure our own preservation. If anything, the right to self-preservation might seem to be stronger and more fundamental than the right to self-ownership.

Fourth, the connection between the right to self-preservation and the right to appropriation is much more direct and uncontroversial than the alleged connection between the natural right to self-ownership and the right to appropriate. As I have argued above, the appeal to the right to self-preservation provides us with the crucial step in the acorn argument. Without assuming the existence of a right to self-preservation, one of its key premises would be unsupported (namely, that Gareth had a right to appropriate the acorn he ate). However, as I have argued, once we assume the existence of a right to self-preservation, the existence of a right to self-ownership becomes irrelevant to the argument. Moreover, as we have seen, attempts to derive a right to appropriation from a right to self-ownership raise substantial problems. For example, even assuming that (i) I do own my own labour in virtue of my right to self-ownership, (ii) I am literally mixing something that is mine with something that is not mine when I work on an unappropriated resource,[13] and (iii) I am not simply disposing of my ownership in my labour when I literally mix it with an unowned resource, as Nozick notes in the passage above, it is not clear why I come to own what I did not own before as opposed to still owning only my labour. Also, even assuming that Locke could explain this bit of magic, why does the magic only work with unappropriated resources? If I "mix" my own labour with something someone else owns, why don't we both become owners? Why have I seemingly abandoned my ownership of my own labour in the second case but not the first? As far as I can see, these questions can only be answered in the way Locke and his followers would like them to be answered by appealing to consequentialist considerations.

The minimalist theory, thus, seems to enjoy a number of clear advantages over Locke's theory of appropriation. But does it fare as well against contemporary neo-Lockean theories of appropriation? I briefly turn to this question in the next section.

4. THE MINIMALIST THEORY VERSUS NEO-LOCKEAN THEORIES

In this section, I briefly comment on how the minimalist theory compares to some contemporary neo-Lockean theories. While, for reasons of space, the discussion cannot be exhaustive, I hope to show that the minimalist theory is also preferable to some of the main neo-Lockean theories available. Let me start with the most influential contemporary neo-Lockean theory of appropriation—i.e., the one

[12] Supporters of the right to self-ownership might object that a similar argument could be made against an unlimited right to self-preservation. After all, most governments forbid people from stealing from other people, which, in some cases, would seem to violate an unlimited right to self-preservation. While I cannot discuss this claim extensively here, I should note that, first, a ban on organ sales is a violation of an alleged right to self-ownership in every case to which it applies while the illegality of theft violates the right to self-preservation only in some cases and, second, if all cases of theft were cases in which people steal in order to survive, there would be widespread opposition to laws that make theft illegal.

[13] David Hume, for one, takes issue with this premise of Locke's argument as he writes: "We cannot be said to join our labour in any thing but in a figurative sense. Properly speaking we only make an alteration on it by our labour" (Hume 1969, 557).

sketched by Robert Nozick in *Anarchy, State, and Utopia*. While, as we have seen in §3, Nozick is sceptical of the labour-mixing theory, his theory is based on what Nozick describes as an interpretation of Locke's "enough-and-as-good" proviso. In a nutshell, Nozick's theory claims that people can legitimately appropriate as many unappropriated resources as they wish insofar as no one is worse off as a result of their appropriation of those resources (this condition is what is often referred to as *the non-worseness proviso*).[14] As far as I can tell the most serious problem with Nozick's theory in is that, while Nozick seems to think that the right to appropriation is a natural right, he does not explicitly tell us whether it is a fundamental or a derivative right and, if it is derivative, he does not tell us from which natural right(s) it allegedly derives.[15] Another problem with Nozick's theory is that the rationale for accepting of the non-worseness condition is not entirely clear either. Nozick presents the non-worseness proviso as an interpretation of Locke's own "enough-and-as-good" proviso and, while it is hard to take this claim very seriously, this would seem to suggest that the two provisos are motivated by similar worries, which is the worry that an unlimited right to appropriation might interfere with other people's right to self-preservation.[16] Overall, Nozick's theory of appropriation seem to be ill-motivated. Whether or not Thomas Nagel (1981) is right in claiming that Nozick's overall theory is a form of "libertarianism without foundations" is accurate, it seems to definitely true of Nozick's theory of appropriation. In fact, Nozick's entire case for his theory of appropriation seems to be that it is less problematic than Locke's. However, this seems to be a meagre accomplishment that is due more to the weakness of the competition than to the merits of the theory itself. The minimalist theory I sketched above seems to be a much more worthy opponent for Nozick's theory. First, unlike Nozick's theory, the minimalist theory offers an account of the derivative natural right to appropriation rather than merely postulating the existence of such a right. Second, if I am correct that Nozick's non-worseness proviso is at least in part motivated by the worry that unlimited appropriation might interfere with other people's natural right to self-preservation, then it seems that Nozick would accept the existence of the right on which the minimalist theory bases its derivative right to appropriation. So, by Nozick's own lights, the minimalist theory seems to be better motivated than his theory or Locke's. Finally, in the absence of a clear account of the exact nature of the supposed natural right to appropriation postulated by Nozick's theory and in light of the welfare considerations the non-worseness proviso seems to be concerned with, it is unclear whether Nozick's theory of appropriation is a genuine natural-right theory of appropriation or is, in fact, a consequentialist theory scantily disguised as a natural-right theory.[17] The minimalist theory, on the other hand, is unambiguously a natural-right theory. In light of these considerations, those who are attracted to natural-right theories of appropriation should see the minimalist theory as clearly preferable to Nozick's own theory or any of the many other neo-Lockean theories that, like Nozick's, start from the presumption of an unlimited natural right to appropriation and then rely on some proviso or other to limit the right in one way or another (see, e.g., (van der Vossen 2021)).

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[14] In fact, even weaker interpretations of Nozick's proviso are possible. For example, Nozick might be claiming that others must be made no worse off than they would have been if everything had remained in the commons.

[15] While Nozick is sometimes interpreted as being committed to a right to self-ownership (see, e.g., (Cohen 1995)), I tend to agree with those who believe this interpretation of Nozick's version of libertarianism to be incorrect (see, e.g., (van der Vossen 2019)). Whatever the correct interpretation of Nozick's general views, it is undeniable that Nozick does not explicitly appeal to a natural right to self-ownership anywhere in his discussion of appropriation.

[16] Nozick's non-worseness proviso might be motivated by a more general worry about an unlimited right to appropriation interfering with other people's freedom. However, this worry would clearly include the freedom of other people to secure the resources required for their subsistence, as, minimally, one needs to be alive to be able to exercise one's freedom.

[17] Similar considerations apply to various theories of appropriation in which the notion of staking a claim plays a central role (see, .e.g, (Moller 2019)). Due to lack of space, however, I cannot discuss these theories.

Neo-Lockean theories that, like Locke's, explicitly rely on a natural right to self-ownership, however, do not fare any better against the minimalist theory. Consider, for example, the incorporation theory defended by Samuel Wheeler (1980). Like Locke's theory, the incorporation theory starts from the assumption that everyone enjoys a fundamental natural right to self-ownership. However, instead of claiming that someone can legitimately appropriate an unappropriated resource unilaterally by "mixing" their own labour with it, the incorporation theory maintains that appropriation is a process by which someone *literally* turns an unappropriated external resource into a part of oneself. On this view, for example, one's own house is literally a part of one's body like a tortoise's shell is part of the tortoise. While, for reasons of space, I cannot discuss the incorporation theory in detail, I suspect that its sheer implausibility might be enough to undermine its credibility as the foundation to a widely accepted theory of property rights. One of the many counterintuitive consequences of the incorporation theory, for example, seems to be that renters literally live inside their landlords' or landladies' bodies. More worryingly, many of the arguments Wheeler uses to motivate incorporation theory bear a striking resemblance to the arguments used by metaphysicians to undermine the notion of restricted composition (see, e.g., (van Inwagen 1990)). These arguments, however, are usually taken to support either mereological nihilism (i.e., the view that there are not composite objects) or mereological universalism (i.e., the view that any two objects have a mereological sum).[18] Unfortunately for Wheeler, neither of these metaphysical views is compatible with incorporation theory, which requires an unusual sort of restricted composition. The advantages of the minimalist theory over incorporation theory are, thus, similar to its advantages over Locke's original labour-mixing theory. First, the minimalist theory relies on a less controversial candidate for a fundamental natural right than the incorporation theory. Second, the relationship between the relevant fundamental right and the derivative right to appropriation is not as speculative or questionable as the one postulated by incorporation.

Before concluding this section, let me consider a possible objection to the minimalist theory. The objection is that the minimalist theory restricts the right to appropriation excessively. While unqualified appropriation theories with a presumption in favour of appropriation might result in over-appropriation, the minimalist theory might go too far in the other direction—it sets the bar for legitimate appropriation too high and, if adhered to, it would have left humanity in abject poverty. Let me mention three issues with this objection. The first is that this objection seems to presuppose a consequentialist justification of appropriation that seems to be at odds with the assumption that the right to appropriation is a natural right. Second, the minimalist theory takes the claim that the right to appropriate is a derivative natural right seriously that provides a clear and seemingly sensible account of how a derivative right to appropriate arises from a plausible candidate for a fundamental natural right—the right to self-preservation. Unlike Locke's theory or the many neo-Lockean theories available today, the minimalist theory does not start with a preconceived notion of how much the original appropriators should be able to legitimately appropriate only to then adjusting the theory *ad hoc* until it delivers the desired level of legitimate appropriation. The supporters of the minimalist theory just follow the argument where it leads them. Third, my argument is only meant to support a conditional conclusion—*if* people have a natural right to legitimately appropriate unappropriated resources, then the minimalist theory provides a much better account of this right than any of the extant natural-right theories of appropriation. Those who are unwilling to accept the consequent of that conditional, maybe, should either reject the antecedent or propose a theory of appropriation that is at least as good as the minimalist theory but that permits a more extensive right to appropriation.

[18] For an informative review of this literature, see (Korman 2020).

5. IMPLICATIONS

Why should we (still) care about original appropriation? After all, it is usually assumed that appropriation is something that has not happened on any significant scale for centuries. However, there are at least two reasons why we should still care. The first reason is practical. As human space exploration intensifies, the appropriation of unappropriated resources on a large scale becomes once again a genuine possibility and we need a consistent theory of legitimate appropriation to determine how extra-terrestrial resources can be legitimately appropriated. In the absence of that, it is likely that the appropriation of extra-terrestrial resources will be based on a "finders, keepers; losers, weepers" approach that seems to be unacceptable. The second reason is theoretical. A natural-right theory of appropriation plays a crucial role in natural-right theories to property rights and in historical theories of distributive justice. The most prominent example of these is perhaps the entitlement theory defended by Nozick in *Anarchy, State and Utopia*. In its general form, the entitlement theory states:

> (1) A person who acquires [i.e., appropriates] a holding in accordance with the principle of justice in acquisition is entitled to that holding. (2) A person who acquires a holding in accordance with the principle of justice in transfer, from someone else entitled to the holding, is entitled to the holding. (3) No one is entitled to a holding except by (repeated) applications of (1) and (2). (Nozick 1974, 151)

Specific versions of the entitlement theory are obtained by specifying the principles of justice in acquisition and of justice in transfer as well as a principle of rectification, which is supposed to address those situations in which either of two other principles has been violated. Within the framework of the entitlement theory, a theory of legitimate appropriation provides us with a principle of justice in acquisition. As I have argued above, Nozick's own theory of appropriation is ill-motivated, and its natural-rights credentials are questionable. But what happens if we were to accept the entitlement theory while casting the minimalist theory in the role of the principle of justice in acquisition? Let me call this version of the entitlement theory, the *subsistence entitlement theory*.

While Nozick and his right-libertarian followers seem to take the entitlement theory to vindicate, by and large, the current system of ownership titles, their critics often question this result. This is because, on the entitlement theory, one illegitimate step in the series of steps that goes from the original acquisition of a resource through its subsequent transfers to its current ownership is sufficient to render all subsequent steps illegitimate. So, for example, if I bought a stolen bike from someone who (unknowingly) bought it from the thief, then my title to the bike (as well as that of the previous owner) is illegitimate, and (more crucially for us) if any of the raw resources that went into the production of my bike were illegitimately appropriated, then I do not hold a legitimate title to my bike.

Given that the minimalist theory of appropriation only legitimizes appropriations for subsistence purposes, the subsistence entitlement theory should rule as illegitimate the vast majority of current titles to raw resources, as the vast majority of these resources that were originally appropriated for non-subsistence purposes, as well as the titles to the material possessions that partly consist of illegitimately appropriated resources. When the entitlement theory is combined with a minimalist theory of appropriation, therefore, the vast majority of current titles to tangible property (including my title to my bike) would seem to be illegitimate, as they ultimately rely on titles to illegitimately appropriated resources.

Does this mean that virtually all current ownership titles should be vacated? Not necessarily. Let me focus on two options for the entitlement theorist here.[19] The first is to claim that, beside natural

[19] Admittedly, there are other options that I cannot discuss here. For example, entitlement theorists could maintain that historic injustices are eventually superseded. Nozick himself seems to have toyed with this idea from time to time (see, e.g., (Nozick 1974, 158–159)).

rights to appropriation, people also enjoy artificial rights to appropriation. For example, the entitlement theorist might argue that more extensive artificial rights to appropriation promote a more efficient use of resources and that, as a society, we should agree to allow people to appropriate more than it is necessary for their subsistence at least insofar as it benefits everyone (or most, or the least well-off, or…). Even if we grant that that such a consequentialist justification of private property rights is acceptable, it seems that the resulting theory would be a natural-right theory of appropriation in name only, as the artificial rights to appropriation would be playing the leading role while natural rights would be playing at most a very marginal supporting role.

The second option is to concede that most current ownership titles to tangible property are illegitimate. Of course, this does not necessarily mean that all current ownership titles need to be vacated (at least insofar as they ultimately derive from illegitimately appropriated resources). It does mean, however, that they are not unencumbered. In particular, if we start from the assumption that resources were originally unowned (as opposed to being collectively owned), then it seems that, by appropriating more resources than they had a right to appropriate, over-appropriators and their successors have imposed significant opportunity costs on everyone else, who, as a consequence, have a claim to being compensated. The principle of rectification, thus, would seem to require that the current successors of the original over-appropriators compensate others for those opportunity costs. While it is beyond the scope of this paper to discuss in any detail how this compensation scheme should work, it seems unlikely that this can be done in a perfectly principled manner, as identifying the successors to the original overappropriators would be practically impossible. However, this does not seem to be a reason not to rectify those past injustices and their current ramifications. Rather, it seems to be a reason to adopt a rough-and-ready approach to their rectification. One possible approach to compensation would be through a generous Universal Social Dividend financed by high taxes on wealth and income from capital.[20] This approach would seem to be a practical compromise between the two seemingly unacceptable options of vacating all ownership titles on the basis of their illegitimacy or letting past injustices and their present effects go unrectified.

Entitlement theorists are likely to argue that, even conceding that many of the original acts of appropriations were illegitimate, taxing wealth and income from capital would be unjust, as most of the current wealth and income from capital are primarily attributable to the talents and efforts of the owners of those resources rather than to the resources themselves (or to no resources at all). On this view, raw natural resources are of little value in and of themselves and it is only through the labour, entrepreneurship, innovativeness of the appropriators and their successors that those resources could be turned into something truly valuable.[21] While a proper evaluation of the merits of these claims is beyond the scope of this paper, this response seems to miss the problem, which is that, by illegitimately appropriating the original resources, the original over-appropriators deprived everyone else of the opportunity to exercise *their* talents and efforts over those resources.[22] Moreover, even if one were to concede that, even if the unappropriated resources were of little value compared to their current value, this does not mean that those who happen to have possession over them now are entitled to that value.[23]

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[20] One might ask, as an anonymous reviewer for this journal did, 'Why not just tax income from natural resource capital, since that is what was unjustly taken possession of?' While a full answer to this question is beyond the scope of this paper, the short answer is that the appropriation of natural resources is the original form of accumulation of all capital and that, if natural resource capital has been unjustly taken possession of, then the capital that has been accumulated as a result of that original unjust act, is also unjustly possessed.

[21] Locke himself clearly thought this to be the case (see, e.g, (II, 40)). For a particularly extreme version of this view, see (Kirzner 1978).

[22] See, e.g., (Cohen 1995, chap. 3).

[23] I would like to thank an anonymous reviewer for this journal for this point.

Another possible objection is that, on this proposal, it is not the successors of the original over-appropriators who end up compensating everyone else. If Jack illegitimately took possession of a gold mine and Jill bought it from him, it seems unfair that Jack (or his successors) enjoy the benefits of his illegitimate possession while Jill (or her successors) are left to pay a wealth tax on the mine. However, this ignores two issues. The first is that Jack is likely to invest the proceedings of the sale of the mine and, since income from capital is taxed, he (and his successors) would also be contributing to the compensation scheme. The second is that, as the current owner of the mine, Jill is the one who is currently imposing opportunity costs on everyone else by excluding them from the opportunity to exploit the mine and should, therefore, contribute to the compensation scheme.

Of course, a Universal Social Dividend financed by high taxes on wealth and income from capital is not the only option and it is, admittedly, a blunt tool that is unlikely to fully redress the injustices due to centuries of illegitimately accumulated wealth. Moreover, a number of issues would have to be settled in order to determine the appropriate level of taxation and the amount of Universal Social Dividend each individual is entitled to (such as, e.g., a calculation of the opportunity costs imposed on society by the illegitimate appropriations vis a vis their benefits or the weight that should be given to the contribution that the labour and entrepreneurship of previous owners of the assets being taxed did to their current value). However, a Universal Social Dividend would seem to be one of the most realistic ways to achieve a modicum of corrective justice to rectify the illegitimate appropriations of the past and their ramifications in the present and the future.

6. CONCLUSION

In this paper, I have argued for a conditional conclusion—i.e., *if* there is a natural right to appropriation, this right is best conceived as a derivative right to minimal appropriation based on a fundamental natural right to self-preservation. As it is often the case with conditional conclusions, one philosopher's *modus ponens* is another philosopher's *modus tollens*. If my arguments in this paper are sound, critics of natural-right theories of property right are likely to take the conclusion to be a premise in a *modus tollens* argument to the effect that there is no natural right to appropriation in the first place (or even if there is one that it is way too limited to play any significant role in a theory of property rights). This seems to deal a significant blow to the prospects of right-based theories of property rights, as these theories seem to require some account of a natural right to appropriation and, as we have seen, theories that simply postulate such a right as a fundamental right can be suspected of not being genuinely based on natural rights while theories that try to derive such a right from the right to self-ownership are dubious at best.

Alternatively, the conclusion of my argument can be taken as a premise in a *modus ponens* argument for a (broadly) left-libertarian view that maintains that the vast majority of existing ownership titles are illegitimate. While other (broadly) left-libertarian theories reach similar redistributive conclusions,[24] the minimalist theory enjoys a number of advantages over theories. First, unlike many (left- and right-) libertarian theories, the subsistence entitlement theory does not rely on the assumption that property rights are ultimately based on a natural right to self-ownership. Although the subsistence entitlement theory, does not necessarily deny that people have a right to self-ownership, it simply denies that that right is relevant to whatever natural right we might have to appropriate unappropriated resources. Second, unlike typical left-libertarian theories, the subsistence version of the entitlement theory does not rely on any assumption that right-libertarians can easily reject, such as the assumption that resources were originally jointly owned, or on the assumption that the right to appropriation is limited

[24] See, e.g., (Steiner 1994, chap. 8)

by some egalitarian proviso.[25] In fact, the subsistence entitlement theory only relies on assumptions that most right-libertarians should be unwilling to reject—i.e., the assumption that we have a natural right to self-preservation and the assumption that only a minimal level of appropriation is required to exercise that right. Moreover, while left-libertarians might hope to reach similar conclusions about the illegitimacy of current ownership titles just by examining the historical record and highlighting the many ways in which throughout history the principles of justice in acquisition and justice in transfer have been violated, this historical approach does little to undermine specific holdings, as each title has to be examined in a case-by-case basis. For example, in order to determine whether my ownership title to my bike is legitimate, we would have to trace the long and complex chain of acquisitions and transfers that terminated with my buying the bike, which would be an incredibly difficult and time-consuming task. The subsistence entitlement theory, on the other hand, offers us a general reason to think that my title to my bike is illegitimate—the reason is that the raw resources that went into the production of the bike were illegitimately appropriated, as they were not appropriated to be used for subsistence purposes. To be sure, I do not have much hope that right-libertarians (or, indeed, many others) will accept this conclusion. However, if they refuse to do so, they face a dilemma—either they propose an alternative natural-right theory of original appropriation that is at least as good as the minimalist theory but that endorses more extensive appropriation, or they concede that we do not have a natural right to appropriation (or that even if we do have one it only plays an idle role in an adequate theory of property rights) and that property rights need to be ultimately justified on different grounds.

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[25] See (Cohen 1995, chap. 4) for a classic discussion of the first of these options and (Otsuka 1998) for a prominent example of the second option.

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