Libertarianism and Georgism on Private Property

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Introduction
In this essay, I will discuss two of the main theories of property: One which I call the libertarian theory, which is based on Locke (a classical liberal) and further developed by Nozick, and one which was popularised by Henry George, which I call the Georgist theory. I will also discuss Rothbard, an anarcho-capitalist, whose theories fit within the spectrum of libertarianism.

When I use the term “property” in this essay, I specifically mean land ownership. Other forms of property, such as personal property (sometimes called possession) or intellectual property will not be discussed. The question of land ownership is an important one, since it deeply affects society.

The issue of ownership is controversial due to the fact that land was not created by humans. In this essay I will discuss and analyse what various thinkers have said about property. I have decided to mainly focus on two theories: The libertarian, where I mainly discuss Locke, Nozick, and Rothbard, and the Georgist, where I discuss the ideas of Henry George and some modern philosophers influenced by his ideas.

In this essay I will attempt to answer the following questions: Is the libertarian theory of property ideal? If not, could it be improved?

Libertarianism

Overview of Locke
John Locke’s Two Treatises of Government is one of the most influential works of political philosophy, and his thoughts on private property have influenced many philosophers, including Robert Nozick. According to Locke, the earth was given to mankind in common by God. If so, is private property even possible? Yes, says Locke. God granted mankind reason, which allowed them to live with the greatest conveniences of life. In order for natural resources to be of use they have to be appropriated by someone. The earth and “all inferior creatures” are owned in common by all men, according to Locke, but each human has “property” in their own person. When they mix something from nature with their own labour they remove it from the state of nature and make it their own property.¹ Locke believes that when labourers mix their labour with land they gain property in the land. “As much land as a man tills, plants, improves, cultivates, and can use the product of, so much is his property. He

¹ John Locke, Two Treatises of Government [1690], New Haven, Yale University Press, 2003, pp. 111-112.
by his labour does, as it were, enclose it from the common.” Locke made it clear that such appropriation of land would not leave others worse off; “[...] for he that leaves as much as another can make use of, does as good as take nothing at all. Nobody could think himself injured by the drinking of another man, though he took a good draught, who had a whole river of the same water left him to quench his thirst; and the case of land and water, where there is enough of both, is perfectly the same.” This is related to Locke’s proviso. One problem with this is that there is currently a lack of available land, so it is quite likely that appropriation might harm others. The amount of unowned land has gone down drastically since Locke’s times, so his conclusions might be false.

To further defend private property, Locke claims that God never meant for the world to remain owned by men in common, since it would not lead to the greatest conveniences of life. God intended for humanity to be industrious and rational, and he wished that they would improve the world by labour.

**Locke and Property Forfeiture**

It is important to note that Locke did not believe that property owners could do whatever they wanted with their property: “But if either the grass of his enclosure rotted on the ground, or the fruit of his planting perished without gathering and laying up; this part of the earth, notwithstanding his enclosure, was still to be looked on as waste, and might be the possession of any other.” Locke also stated this: “Before the appropriation of land, he who gathered as much of the wild fruit, killed, caught, or tamed as many of the beasts as he could [...] did thereby acquire a propriety in them: but if they perished in his possession without their due use [...] he offended against the common law of nature, and was liable to be punished; he invaded his neighbour’s share, for he had no right, farther than his use called for any of them, and they might serve to afford him conveniences of life.” I find this stance very interesting and would like to discuss it. It is possible that I am reading too much into it, but it seems to me that Locke is saying that it is possible to forfeit ones right to property if one wastes it. Granted, the punishment need not necessarily be the forfeiture of property. Perhaps a wasteful proprietor could get away by paying fines? What if the property in question is quite valuable and it could

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2 Locke, p. 113.
3 Ibid, p. 114.
4 Ibid.
6 Ibid.
be of much better use in the hands of another? If we are to believe Locke, then the world is
given by God to humanity in common, and private property is created by mixing labour. Labour
appears to be the key factor here. If a property owner does not use their property that they once
worked on and they let it decay, do they still own the property? This waste does not lead to the
greatest conveniences of life, so it should make the property illegitimate. On the other hand,
one could claim that once property is created through labour it cannot be lost. This argument is
compelling. If you truly own something, then it seems reasonable that you should be able to use
and abuse it. In order to justify the loss of ownership or even legal penalties, such as fines, one
would have to argue that property ownership is not full ownership. It is certainly possible to do
so, either by arguing that property ownership is not full ownership but rather limited ownership
with conditions.

Would speculation count as misuse of property? If someone buys a large amount of land and
leaves it be while waiting for the value to rise, would that count as misuse? Perhaps. It seems
easy to argue that such a speculator took from the commons without increasing value, and it
might have denied others the opportunity to improve their conveniences of life. On the other
hand, one could argue that by speculating the property owner is maximizing their own profit,
thus creating the greatest conveniences of life from themselves. I find this argument somewhat
questionable. Would it not be better if the land were used instead of lying dormant while the
land value is rising? Perhaps. Henry George certainly believed so, and I will discuss him more
later.

Overview of Nozick
According to Nozick, creators are entitled to the product of their labour. They may also use
any legitimate resources they have to buy things, and other legitimate contracts are acceptable
as well.\footnote{Robert Nozick, \textit{Anarchy, State, and Utopia} [1974], Oxford, Blackwell Publishers Ltd, 1999, p. 160.} When it comes to land ownership Nozick admits that many of the current possessors
of land have not acquired the land through legitimate means. If the land were stolen at some
point, then the ownership of the thief was not legitimate, and the thief had no right to sell or
give away the land. Whoever acquired it afterwards still had no legitimate right to the land.
Nozick assumes that the victims of injustice were harmed by the theft, and he also assumes
that those that are currently worst-off in society are more likely to be descendants of victims.
It is hard to know which property is legitimate and which is not, so Nozick suggests a
compromise: In order to rectify some of the past justice we should let the state redistribute some resources.\textsuperscript{8} Is this solution really fair? No, I do not believe it is. It would be really hard, sometimes impossible, to find out who the original criminal was, and it is not obvious that it would be justified to punish their descendants anyway. Any modern property theft should be rectified, of course, though I suspect modern law already protects against blatant property theft. Nozick’s solution will force legitimate land owners to pay for crimes they had no part of, and people who do not deserve it will benefit as well. Still, Nozick’s solution is likely to bring more overall fairness than doing nothing would, so it might not be a bad temporary solution for libertarians.

Nozick wants to protect the right to own land, but land is not created by humans. In order to solve this problem, Nozick adapts a version of Locke’s theory of acquisition. When someone mixes their labour with the land they gain ownership of the land. Nozick admits that some limits are necessary. For instance, if an astronaut clears a place on Mars, do they own that particular part of Mars, or the whole planet? If you build a fence around a territory, do you own that whole territory or just the land immediately under the fence? He wrote: "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 (made 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?"\textsuperscript{9} Walter Horn adds another example: If a farmer has ploughed some soil, does he just own the earth that he has ploughed? Or does he also own the air above and the earth bellow? If he owns the earth below, does he also own earth on the other side of the planet? Would he be able to plough large areas of unowned land in order to gain ownership of the land?\textsuperscript{10} Here is my take on this: It seems unreasonable to let someone own the sea by mixing tomato juice with it, or letting someone gain ownership of land on the other side of the planet. I doubt many deontological ethical theories would allow it, and I am certain that utilitarianism would not. This issue needs to be solved if we want to keep Locke’s theory of acquisition alive. Nozick suggests that when someone improves something they also gain ownership over that thing; so if someone improves a piece of land they gain ownership of that piece of land.

\textsuperscript{8} Nozick., pp. 230-231.
\textsuperscript{9} Ibid, pp. 174-175.
Nozick and the Lockean Proviso

In order to avoid libertarianism leading to the worsening of others situation, Nozick suggests the use of the Lockean Proviso. When appropriating land, one must leave “enough and as good left in common for others”. 11 I will shortly elaborate on that; before I do that I will discuss a thought example by Nozick: Let us assume that person Y appropriates land that leaves person Z without enough and as good to appropriate. This means that Y has worsened Z’s situation. This is not allowed, so Y may not appropriate the land. This means that when person X appropriated land X left Y in a situation where Y would not be able to appropriate, which means that X had worsened Y’s situation. X’s appropriation was not permissible either. This goes on and ultimate we end up with A, who, by appropriating land, makes the situation worse off for B. Nozick argues that this counter-argument proceeds too quickly. Perhaps a weaker requirement could be used instead. Person Z might not be able to appropriate land, but Z might still be able to use land. Thus Y has not violated the Lockean proviso. 12

What happens when individuals end up worse off? Nozick offers a solution: The property owners should pay compensation. If the worse-off individuals do not get compensated then the Lockean proviso has been broken, and thus the ownership is rendered illegitimate. 13 Will Kymlicka argues that Nozick’s theory has some issues with equality. Appropriation of land leads to riches for some, while others remain without property. These differences will accumulate into the next generation, where some inherits riches while others do not.

According to Kymlicka, Nozick would accept these differences, as long as individuals are no worse off than the original position. Kymlicka criticises Nozick for not setting the bar higher. Kymlicka argues that most alternatives would end up being better than the original position, due to the tragedy of the commons, such as state ownership, joint ownership, or limited private property. Almost every system in the history of mankind have had some sort of solution to the tragedy of the commons, but few have been capitalist. 14 Kymlicka’s criticism seems reasonable. Private property is likely to lead to significantly different level of resources. Nozick is a minarchist who supports a minimal state, no wellfare state or any other mandatory redistribution channel. Granted, he does support some temporary redistribution to

11 Nozick, p. 175.
rectify past injustice, though that is not going to be enough. If we accept Nozick’s theory of property then we will have to accept great difference in resource levels. With that being said, most societies of today already are unequal. Punishing illegitimate property might lead to a more equal world.

Nozick and Natural Rights
Nozick is a natural-rights libertarian. Like Kant, he believes that individuals may not be treated solely as a means towards a goal, but ultimately they may decide for themselves.\textsuperscript{15} Nozick, being a natural-rights libertarian, values freedom and liberty higher than equality. The right to keep what you create is more important than egalitarian considerations. Libertarians who base their theories on natural law will have to accept that their society may be very unequal. Individuals may choose to try to create a more egalitarian society, but any welfare state would not be acceptable (aside from temporary measures to deal with injustice, as mentioned earlier). Is this reasonable? A utilitarian might criticise Nozick’s idea, but Nozick himself was no utilitarian. His ideas seem consistent from a libertarian natural rights perspective. If self-ownership leads to private property and private property leads to inequality, well, then we will have to live with that inequality.

Does the Lockean proviso give the property owner the right to set whichever prices they want? According to Nozick there are some situations where the property owner is restricted. Let us assume that a person owns the only water hole in a desert. This property owner may not set whichever prices they want, since others would be worse off compared to the original position. This may lead to a situation where if you own a water hole among many, you get to set whichever prices you want, but if the other water holes dry out then you would be required to lower your prices. Another example of Locke’s proviso in action is ownership of an island. Let us assume that you own an island and a castaway reaches it. You would not be allowed to force the castaway away, since that would leave them worse off compared to the original position.\textsuperscript{16} By applying the Lockean proviso Nozick manages to avoid some issues with private property that could have proven problematic.

\textsuperscript{15} Nozick, pp. 30-31.
\textsuperscript{16} Ibid, p. 180.
The Tragedy of the Commons
Will Kymlicka argues that one of the strongest arguments for private property is to avoid the tragedy of the commons. There is no incentive for an individual to invest in land which they have no property in, since they cannot guarantee that they get to reap the fruits of their labour. Furthermore, people have incitement to abuse the commons, such as with overfishing. If a fisherman chooses to not overfish the seas then someone else might. From an egoistical perspective it would be rational to take as many resources as possible before they run out. This would seriously harm the fish population and the opportunities for sustainable fishing. The commons will remain undeveloped and impoverished. Kymlicka argues that criticizing the commons would create incitement to improve them and avoid destruction. Most people would benefit from this, despite not everyone getting access to private property. They might gain other benefits instead, such as access to jobs and the costs for goods going down.17

Kymlicka’s Criticism of the Proviso
What does “worse off” mean? According to Nozick, it means “worse off compared to the original position”. Kymlicka is critical of this interpretation, since it ignores other options. If a person starves under capitalism, would that person not have been better off with another system? Kymlicka proposes a clarification: “We might say that a system of appropriation worsens someone’s condition if there is another possible scheme in which they would do better.” 18 He admits that this definition is flawed because it is too broad. Different systems would benefit different individuals: A talented individual would probably prefer Nozick’s system, while one with poor conditions would prefer Rawl’s system of redistribution.19 I suggest narrowing it down a bit more, to “if there is another possible realistic scheme”. This removes various unrealistic scenarios and makes it more useful. The definition is arguably still too broad, but it can be used to help people who indirectly would be hurt by Nozick’s libertarian system. Still, the broad definition might lead to many people arguing that their position have been worsened compared to a possible realistic scheme.

Ben and Amy
What does Nozick mean with worsening someone’s situation? Kymlicka notices that Nozick takes a materialistic standpoint; worsening economic conditions. Kymlicka questions this and

17 Kymlicka, pp. 113-114.
18 Ibid, p. 119.
19 Ibid.
uses a thought experiment to illustrate his point. Ben and Amy are living on land that belongs to the commons, without any private property. Amy appropriates large portions of the land, enough to leave Ben without to live on. Amy hires Ben to work on the land and gives him a salary that is higher than what he earned before. This salary is less than half of what Amy earns. There is not enough land for Ben to do anything else, so he takes the job. This does not break Nozick’s definition of the Lockean proviso, since Ben is better off compared to the original position. Kymlicka questions this assessment. Is Ben not worse off in several ways? His options are limited, and he can no longer live in peace with nature; he is instead forced to exploit nature. Kymlicka argues that Ben is worse off, despite not being worse off economically. I believe Kymlicka’s assessment of the situation is correct. Each individual have different preferences and values, with material wealth just being one potential preference. Other factors might be just as important, perhaps even more so. A worker that is forced to move away from their family might have preferred to stay with a lower wage. Some privatizations might lead to higher wages but work-related injuries and increased stress levels. Lots of people, perhaps most of them, have other preferences than just economical. Nozick’s view is problematic.

Kymlicka develops the Ben and Amy example: Let us assume that Ben is the one appropriating the land. Amy gets to work on the land, with slightly higher wages than before the privatization. She earns significantly less than she would have if she were the one appropriating the land. According to Nozick’s view, this is acceptable, since she is better off compared to the original position. This means that whoever appropriates the land first is the one making the greatest benefit, at least in this example. Kymlicka adds yet another factor: Let us assume that Ben is much better at organising work than Amy is. His skills are so superior that Amy actually makes more working for him than she would have if she were the one owning the land. Both benefit more if Ben is the owner. It would still be acceptable for Amy to appropriate the land, according to Nozick’s view, since no one would be worse off compared to the original position. Nozick is obviously not a utilitarian when it comes to land ownership. The proprietor just has to avoid making it worse compared to the original position, which is not that hard due to the tragedy of the commons. Should someone be worse off the proprietor could compensate them to fulfil the proviso. This may be acceptable according to a rights perspective, but would it be acceptable under utilitarianism? Probably

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20 Kymlicka., pp. 115-117.
21 Ibid, pp. 117-118.
not. It is better for both Ben and Amy if Ben owns the land, yet it would still be acceptable, according to Nozick’s view, if Amy owned the land.

Rothbard and the Columbus Complex
According to Murray Rothbard there has been theorists proposing that the first discoverer of a new, unowned island or continent can legitimately own it by simply stating that they claim it. Rothbard calls this the “Columbus Complex” in reference to Christopher Columbus who “discovered” America. Rothbard is highly critical of the Columbus Complex, and he criticises it with the following example:

Imagine that Robinson Crusoe lands on an unowned island, which he claims for himself. Imagine that Friday lands on another part of the island. Rothbard presents two alternatives for Friday: Either produce products from his own labour and trade with Crusoe, or use violence against Crusoe to steal the fruits of Crusoe’s labour. Rothbard claims that Friday would own part of the island should he choose to mix his labour with it. Rothbard adds a complication to the example: Imagine that Crusoe claims ownership of the whole island since he landed there first. According to Rothbard, this claim is illegitimate since Crusoe has not mixed his labour with the whole island, and if he attempts to evict Friday he aggresses against the second homesteader.22 Is his example convincing? I believe it is, although I do have some reservations. I do not intend to nit-pick it, however; instead I intend to focus on the core of the example. Is Rothbard right in saying that Crusoe would aggress against Friday if Crusoe evicts Friday? That seems reasonable, yes. Even if we disregard Locke’s proviso (which would ban eviction) it would be unreasonable, since Crusoe does not own the whole island. I have not seen any convincing arguments as to why simply putting a flag and claiming an area would actually grant ownership of that area. Here is my reservation: What if the island were small enough for Crusoe to mix his labour with all of it? Rothbard rejects Locke’s proviso, so what would happen then? Would it be morally permissible for Crusoe to evict Friday?

Rothbard and Defence of Private Property
While Rothbard defends legitimate private property he feels uneasy to defend all private property, since some of it may not be legitimate. He compares it to seeing a man (A) take a watch from another man (B). What if it was A’s watch and he is simply taking it back?

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Rothbard’s conclusion is that in a libertarian society only legitimate or just or “natural property” should be defended.\(^{23}\) He also claims that if the victim or heir of a theft is clearly identifiable and can be found, then the watch should be returned, regardless of whether the current possessor bought it in good faith or not.\(^{24}\) Rothbard is critical of utilitarianism. According to Rothbard, since utilitarians lack a theory of justice they are forced to pragmatically view all current property as worthy of defending. Rothbard claims that free-market utilitarians are forced to defend current property rights, and, by extension, accept what the government deems as legitimate property. He calls such a praise of the utilitarian free market invalid and ethically nihilistic.\(^{25}\)

I do believe that Rothbard has a point. If A is the proper owner of the watch then it is hard to argue that A does not have the moral right to reclaim it. If X steals Y’s land, then it seems reasonable for Y to have a right to get it back. However, I could foresee complications. Let us assume that Y is not able to reclaim their land immediately. Perhaps X was a corrupt official who got Y thrown into jail, and several years later, when Y is released, Y finds out that X has turned the land into a prosperous farm, creating several jobs and lots of resources. Y has no idea how to run a farm, and failure is very likely should Y give it a shot. What should be done? I suspect Rothbard would suggest that Y should get the land back, regardless of the consequences. Would a utilitarian accept this? I could see a few different ways a utilitarian might handle this: The utilitarian could argue that the benefits of having X run the farm outweighs the harm done to Y. Perhaps Y should get some compensation of some sort, though X would still run the farm. Another alternative is to argue that people believing in justice outweighs the benefits of X owning the farm, thus it would be better to uphold justice despite the short-term consequences. Let is further complicate the issue. Let us assume that Y sold the farm to Z. According to Rothbard, even if Z bought the farm in good faith it would be necessary to return it to Y without compensation. I doubt that utilitarians would accept that. Even if we disregard the fact that Z is a better at running a farm than Y would be, it seems very likely that the consequences would be potentially disastrous if such a transaction would happen. For one thing, it would make buying any expensive property very risky, since even if the buyer was very careful there might be a risk of the seller not being the legitimate owner. A utilitarian might say that X should compensate Z for the loss, but forcing X to compensate might prove hard. Perhaps X went underground after the transaction, or perhaps X even died.

\(^{23}\) Rothbard, pp. 51-52.
\(^{24}\) Ibid, p. 57.
\(^{25}\) Ibid, p. 52.
This is a tough situation for the utilitarian. If Y does not get fully compensated, then justice has been compromised, but forcing Z to fully compensate for Y’s loss risks hurting the foundation of trade. Perhaps a compromise should be met, where Z pays Y a sum of money to compensate for some of the loss, but not all of it? Though that might mean Z ends up paying more than the land is worth, especially since Z might have paid too much to X to begin with. Not all deals are beneficial to the buyer, after all. This is a tricky situation, one that I do not see an obvious utilitarian answer to. Rothbard’s answer, which is based on natural law, seems consistent with his overall perspective.

Is Rothbard correct in criticising free-market utilitarianism? From his point of view, yes. Rothbard believes in natural law, and thus the pragmatism of utilitarianism might seem unethical to him. However, I do not believe that it is necessary for free-market utilitarians to defend all current property rights. There might be other reasons to criticise current property rights, such as the negative consequences of property theft. If defending illegitimate property rights leads to the best consequences, then that is what utilitarians should do. If criticising illegitimate property rights leads to the best consequences, then *that* is what they should do. I suspect the latter case is more common than the former, although I admit that it is possible that, at least in some cases, not criticising illegitimate property rights would lead to better consequences.

**Ludwig von Mises’ Defence of Property**

Austrian economist Ludwig von Mises means that even if all property derive from appropriation or robbery we should not abolish ownership.26 He states the following:

“Whether or not private property was everywhere preceded by common property is irrelevant when we are forming a judgment as to its historical achievement and its function in the economic constitution of the present and the future. Even if one could demonstrate that common property was once the basis of land law for all nations and that all private property had arisen through illegal acquisition, one would still be far from proving that rational agriculture with intensive cultivation could have developed without private property. Even less permissible would it be to conclude from such premises that private property could or should be abolished.”27

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Does he have a point? Perhaps. Let us assume, for the sake of the argument, that all current property rights in some way derive from appropriation or robbery. Perhaps we would like to claim that they are illegitimate, but then what? Should property be redistributed? Perhaps owned commonly? Perhaps through some kind of possession and occupancy? Maybe, but let us look at this from Ludwig von Mises perspective. According to him, private property is the only way for rational agriculture with intensive cultivation to develop. Without private property, humanity’s development would have been stunted. Thus, it seems unreasonable to condemn private property, at least from a consequentialist perspective. What if someone reject’s Ludwig von Mises utilitarian viewpoint? What if we instead consider a natural rights based approach? I suppose we would then end up in a situation where such illegitimate private property would be abolished. I do not believe such a view would necessarily lead to the abolishment of all property rights, however. Perhaps we could accept some kind of “clean state”, where governments redistribute the current resources and then everyone is free to mix their labour with now unowned property, thus creating legitimate private property. Or perhaps we could accept that the owners of illegitimate private property pay restitution, perhaps similarly to what Nozick suggests with his one-time redistribution. With this being said, it does seem like a natural right based private property theory would be pressed to do something about all the currently illegitimate property, while a utilitarian could more easily accept the status quo. So, given a utilitarian viewpoint, is Ludwig von Mises correct in asserting that we should not aim to abolish private property solely because of such premises of illegitimacy? I believe that he is correct. Granted, even a utilitarian would likely argue that justice is important, but fully abolishing private property due to prior injustice would be, from a utilitarian viewpoint, somewhat petty. A utilitarian could certainly argue for the abolishment of private property, but such arguments would have to be stronger than “prior injustice”, especially since there might be other ways to compensate for prior injustice. Ultimately, it would seem that Ludwig von Mises has a point, although there might be other, stronger, arguments for the abolishment of private property.

**Rothbard and the Kingdom of Ruritania**

Rothbard tries to illustrate some issues with illegitimate property posing as legitimate property by using a thought example: Imagine a fictional country called “Ruritania”. This country is ruled by a king who has seized all property. A libertarian movement threatens to overthrow the king, so he decides to abdicate. He dissolves his government, but before doing
so assigns one-twelfth of the land to himself and one-twelfth each to eleven of his relatives. The land is now their private property, and tenants no longer need to pay taxes, but they must pay rent. According to Rothbard, consistent utilitarian libertarians would be forced to accept this. He suggests that libertarians who want to refuse should differentiate between just and unjust property, but then they cannot be utilitarians.28

Would utilitarian libertarian really be forced to accept that? I doubt it. Utilitarians might not believe that justice has any intrinsic value, but that does not necessarily mean that they find justice meaningless. Justice might very well have some instrumental value. In this case, having just property is likely to be superior to unjust property, where twelve people own all the property. It is likely to be better for the economy, civil rights, and overall happiness, so why would not a utilitarian libertarian accept it? I suppose Rothbard argument rests on utilitarians being unable to accept justice as a factor, but I do believe he is selling utilitarianism short there. John Stuart Mill discussed justice quite a bit in Utilitarianism. Granted, John Stuart Mill was not a libertarian, but it still seems reasonable to assume that utilitarian libertarians would be able to have a concept of justice, even if they do not consider justice as important as Rothbard does.

Rothbard and Continuity

Rothbard argues that it is enough to mix one’s labour with land once in order to gain permanent property in it. Continual use is not needed. Rothbard admits that this sometimes makes it hard to distinguish between land that is not used in the present but was once used and thus owned and land that was never used. Rothbard criticises adverse possession with an example: Suppose Green finds land that appears to be unowned, and he decides to use it. The legal owner of the land returns to his land and evicts Green. According to the local law in this example, adverse possession determines that land that has been unused for twenty or more years becomes unowned. Rothbard believes that ownership should be permanent, so Green is in the wrong regardless of how long the original user left the land unused.29

There seem to be a few major issues with this stance. For one thing, a person could mix their labour with a large area, and then simply prevent it from being used. This would violate the Lockean proviso, which Rothbard disagrees with anyway. Even so, could this not lead to one

28 Rothbard, pp. 54-55.
29 Ibid, p. 65.
person gaining a monopoly of a large area, and others would be forced to follow that person’s rules or find someplace else to live? From a utilitarian perspective, this could lead to terrible consequences, and from a libertarian perspective, it could severely limit the opportunities of free enterprise. The market might very well turn into a monopoly or an oligarchy. Another issue is that it could make it incredibly hard to know who owns what. Perhaps X used the land fifty years ago, and Y used it twenty years ago, and now Z is using it. According to Rothbard, X would have the right to the land, but Y might very well believe that Y is the proper right-holder. Y might thus try to evict Z, despite not having any right to do so. Y would risk getting evicted as well, and might it not be possible that someone, W, used the land before X?

Let us consider another alternative. W used the land 200 years ago, but left it, and X and X’s heirs used it in the meantime. 200 years later heirs to W claim the land as their own, using convincing proof that W used the land before X did. Should X’s heirs be forced to return the land? According to Rothbard, they should, since they did not legitimately own the land to begin with, and they should be paid no compensation. I find this highly questionable. A person may have mixed their labour with the land, but should that really create permanent ownership of the land, ownership that can be handed down from generation to generation? Might that not create powerful families who own a lot while other families remain propertyless?

It seems to me that permanent land ownership would create more trouble than it is worth, at least if it is not restricted in some way. The Lockean proviso would be one way to restrict it, although the proviso might be a bit too lenient, as least Nozick’s formulation of it. Another way to restrict it might be adverse possession. It might be hard to justify what the requirements should be from a natural law standpoint; would a fifteen year limit fit natural law better than a twenty year limit? From a utilitarian perspective, having some restrictions would likely create better consequences, and if so, then that is what should be done. If private property should be used, then I believe it is a good idea to place some restrictions. It does not seem reasonable to let someone prevent others from using the land just because they used it fifty years ago. Rothbard seems to go too far in his defence of private property.
Georgism

Rent and Labour
Henry George, the economist who popularised the economic philosophy that later came to be known as “Georgism”, was very critical of land rent. Henry George mentioned that one can become rich by buying land and then rising rents. “If I buy land for a small price and hold it until I can sell it for a large price, I have become rich, not by wager for my labor or by interest upon my capital, but by the increase of rent. Rent, in short, in the share in the wealth produced which the exclusive right to the use of natural capabilities gives to the owner.”30 This raises the question: If one has a right to own what one has produced by one’s own labour, then is land rent not somewhat problematic? If you buy some land and leave it unused while waiting for prices to rise, how can you then argue that the increased value belongs to you? What if you buy some land and hire some farmers to work on it, would you then have a legitimate claim to some of the resources? There appears to be some conflict between the right to own what you produce and the right to private property. Let us assume, for the sake of the argument, that you bought the land with money you had rightfully earned, and the one you bought it from was the legitimate owner of the land. It seems to me that Nozick or Rothbard would both be likely to say that it is fully legitimate to leave the land unused for speculation, since you own the land and may do whatever you wish with it. Not letting you do so would infringe on your right to private property, as would not letting you hire workers. On the other hand, should the workers not own the products of their work? Nozick would likely answer that one has the right to sell what one produces. You could argue that the workers sign a contract that lets them work on the land and use whatever equipment the landowner provides in exchange for some of their products. This would be a legitimate contract and thus it would be acceptable. The workers would still own what they produce, but they would barter it away in exchange for the right to work at the land and a wage from the land owner (or, perhaps, they would pay rent and keep whatever is left). It seems to me that Nozick’s libertarianism does not falter in this question. What about Locke’s classical liberalism? I discussed Locke and property forfeiture earlier, and land speculation might indeed prove problematic under Locke’s views, granted that it is indeed wasteful. If it is not wasteful then it is legitimate, however. Perhaps the state should make checks to see if speculation is wasteful or not, and in

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case it is wasteful the land speculators would either have to use the property more actively or pay a fine?

I should mention that George would likely not agree that the workers’ right to the fruits of their labour is maintained in such a scenario. “If one man can command the land upon which others must labor, he can appropriate the produce of their labor as the price of his permission to labor. The fundamental law of nature, that her enjoyment by man shall be consequent upon his exertion, is thus violated.”31 Does he have a point? I believe so. If someone has no choice but to work for a wage that just meets the minimum or starve, then it seems reasonable to assume that the proprietor is abusing their land ownership. It could be possible to argue that if the proprietor instead pays reasonable wages then the workers still have a right to the fruits of their labour, and that they have traded away some of the produce for the right to labour on the land.

George and the Price of Monopoly
Another word for rent, according to George, is “the price of monopoly”. If someone owned all land in an area, they could set any price or condition for the use of the land, and other people would have to follow his rules, leave, or die.32 What would libertarianism say about this? First off, there is Locke’s proviso, which both Locke and Nozick accept. Are people worse off if they are forced to follow a person’s rules, leave, or die? Probably. They would thus have to be compensated in some way. Perhaps they would be given a small amount of land to live on, or perhaps they would get some say in the rules and the prices should be set at reasonable rates. What about libertarians like Rothbard who do not accept Locke’s proviso? This scenario would be acceptable for Rothbard. From a natural rights position that does not accept Locke’s proviso, perhaps it is acceptable. From a utilitarian position, it most likely is not. I am inclined to side with George here, and I would like to argue that if we are to have private property we would need to have safeguards in order to prevent scenarios such as these. Rothbard himself argued against the Kingdom of Ruritania, but if the king had acquired the property legitimately it would have been acceptable in his eyes. Any property right theory that solely focuses on the means and ignores the end results is problematic in my view, since people will,

31 George, p. 341.
in the end, live with the consequences of the applied theory. George makes a strong case for why private property without restrictions is highly problematic.

George and Common Property
Henry George wants to solve the issues with unequal ownership of land that causes unequal distribution of wealth, and he suggests that “We must make land common property.” George admits that some might call the abolishment of private property unjust, and he concedes: “If private property in land be just, then is the remedy I propose a false one; if, on the contrary, private property in land be unjust, then is this remedy the true one.” Like many others, George claims that a person owns the products of their labour, and land rent would deny them the products of: “It is production that gives the producer the right to exclusive possession and enjoyment. If so, there can be no right to exclusive possession of anything that is not the product of labor. Therefore, private property in land is wrong.” Some might argue that when someone improves on land they also gain ownership of it. Henry George takes the opposite viewpoint: Then the improvements become blended with the land and the individual loses their right to the improvements while the common right gains them. “It is the greater that swallows up the less, not the less that swallows up the greater.”

It seems clear to me that George puts quite a bit on emphasise on rights and values. He is willing to concede that if private property is just then it should not be abolished. He differs from the libertarians when it comes to the source of ownership, however. If person A works on a farm and produces products through their own labour, then A is the rightful owner of those products. Did A create the land through their labour? No, and thus A cannot be the rightful owner of the land. This is different from the libertarian view, where it is enough to mix labour with unowned land in order to gain ownership of the land. As I mentioned earlier, Nozick believes that one who improves upon the land, with one’s labour, also gains property rights. George would answer that it is “the greater that swallows up the less”, thus that those improvements are lost to the commons. You may work on land and improve upon the land, but that does not mean that you own the land, since you did not create it. There are some issues with George’s perspective. For one thing, it would seem like it would the use of any

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33 George, p. 328.
34 Ibid, p. 333
36 Ibid, p. 343.
natural resources. A miner might mine some ore, but they did not create the ore. Do they have a right to the ore? No, they merely extracted it. From a libertarian perspective, this would not be an issue, since they have mixed their labour with the ore and perhaps improved upon it as well. It might, potentially, be problematic from George’s perspective, since the miner did not create the ore. Perhaps the correct answer is to say that ore is, indeed, part of the commons, and that if one extracts all ore in the world then they have acted unjustly against everyone else. If he chooses such a defence, then there is no inconsistency. If he does not, then his position would need to be defended somehow.

Private Property, Common Property, or State Property?
John Pullens criticizes Henry George when it comes to Henry George’s definition of private property. John Pullens understands Henry George thusly: There is a difference between possessors and proprietors. The current proprietors will keep possessing the land after Henry George’s land reforms, but they will no longer own it. George did not consider this confiscation of land, but rather confiscation of rent. George would consider this the abolishment of private property, with the state now being the owner of the land; a land tax would be introduced. Those in possession of land may consider themselves proprietors if they want to, but they will not be the actual owners and they will have to pay land tax.³⁷ Pullens is critical of this; he argues that these “possessors” actually are proprietors. If someone owns the land in all aspects aside from having to pay a land tax, then that person actually is a proprietor. He suggests a definition like this: “a conditional, modified, or restricted private ownership […]”³⁸

Pullens goes on to discuss which rights land ownership entails. He argues that the right to ownership of land should not be considered merely one right but rather several rights. He offers a few examples: “the right to use the land in question; the right to exclude others from use of the land; the right to dispose of the land by way of sale, gift, or bequest, etc. Now, in practice, these rights are often subject to restrictions. For example, one's right to use one's land might be modified by public health and town planning regulations. Your right to bequeath it to whomsoever you wish might be challenged by persons who feel they have been

³⁸ Pullen, p. 550.
unfairly disinherited. And your assumed right to retain any increments in its value might be limited by government taxation.”

Kris Feder does not share Pullen’s interpretation of Henry George when it comes to nationalisation of land. Feder argues that there is a difference between common property and state property. If the state owns the property then the state can force individuals to give up part of their natural rights; if the state handles taxation but does not own the property then the rights of the individuals are protected. Another difference between state owned property and common property is that the state may decide what is to be done with state owned property, and the state is free to earn money from its property. When it comes to state owned property, Pullens claims that the state should redistribute resources somewhat equally for everyone, and not merely to the governing party.

I am inclined to agree with Feder’s interpretation of Henry George. Henry George finds land tax justified since the world is owned in common, but if land were owned by the state then it would be harder to justify a liberal point of view, and it would also be hard to argue that the state is obliged to redistribute the resources.

I am, however, inclined to agree with Pullens when it comes to his argument that there is more than just one aspect of private property. Restricted private ownership is still private ownership, although it is not absolute. One could argue that Locke’s proviso restricts private property, yet many still accept it.

Land tax

One of the basics of Georgism is the advocacy for a single tax: All other taxes should be replaced by a tax on land. James M. Roberts mentions one difference between land tax and other taxes, such as a tax on sugar: A tax on sugar would reduce the production of sugar and thus supply, while a tax on land ownership might actually increase supply. A land tax would not reduce production of land, since land cannot be produced. It would, however, increase the cost of holding land out of use, and thus the amount of available land would increase. It seems likely that a land tax would reduce speculation and thus increase the amount of land

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39 Pullen, p. 550.
41 Ibid, p. 567.
available, although there seems to be an issue with this reasoning, and it is the following: If the supply increases but the available land prices go up due to the tax, then it might be possible that middle-income households and small business owners would struggle more to acquire land for themselves, which might make it harder to be a small business owner. On the other hand, in Henry George’s ideal society, income tax would be gone, corporation tax would be gone, sales tax would be gone, payroll tax would be gone, all taxes except for the land tax would be gone. Furthermore, if land speculation is reduced or eliminated, then it seems likely that base land prices will go down. The end cost of land might still go up due to the land tax, but with the removal of all other taxes the middle-income households and small business owners might end up with more money. On the other hand, if the land tax is too high then some land probably will not be used at all, since the cost of using the land outweigh the benefit. The argument about production and supply seems like a fairly solid one, although there has to be some balance. The exact numbers of the land tax will, in a representative democracy, be decided through political means.

Joint Ownership or Several-Ownership?
Derrel Moellendorf makes a distinction between joint ownership and what he calls “several-ownership”. With joint ownership everyone has an undistributed entitlement to the land, and in order for an individual to change the land they will need consent from everyone else. With several-ownership each owner has a right to exclusively use an equal share of the land, although no one has a right to a specific share. Mollendorf illustrates one of the complications with joint ownership: “If two people jointly own a large acreage, and one decides to fence off a small part of it to keep his cow from wandering on the vast estate, this is a violation of the rights of the other owner unless she has consented.”44 It seems obvious that it would be virtually impossible to enforce a consistent joint ownership over all land in the world. Asking billions of people for their consent is not feasible. The alternative for a Georgist is, therefore, several-ownership. In practice, it might be hard to really give everyone a piece of land, and that is where the land tax comes in. The land tax can be used to pay for societal functions, and those will act as compensation for all property-less people.

Tideman and the Lockean Proviso
Nicolaus Tideman, who calls himself a geoliberal in honour of Henry George, argues that it is impossible to claim ownership of land based on the argument of self-ownership. Land is scarce, and exclusive ownership would interfere with the rights of future generations. Just because someone mixed their labour with a natural resource first does not mean that it is reasonable that they should have a claim on that scarce resource. Tideman offers two possible solutions: That they leave as much for the rest as they have appropriated for themselves, or that they compensate adequately for their appropriation. This will, according to Tideman, generally suffice, although he mentions that it can be trumped by “Most of us want common rights to that particular resource rather than exclusive rights for one person or one group”, which, in turn, can be counter-trumped by “We have already made so many natural opportunities common property that if any more are made common property people will lose meaningful rights to themselves.”

I see many similarities between Tideman’s ideas and the Lockean proviso. Leaving as much for the rest is similar to the idea that one should leave “enough and as good”, although they are not quite the same. The Lockean proviso does not require the appropriator to leave as much for the rest; it could, theoretically, be justified to take 90% for oneself if there still is “enough and as good” left. What would Locke’s proviso say about the cases where most want common rights to a particular resource? In that case, I believe the answer is this: Taking such a property for oneself would violate the Lockean proviso. Others are worse off, since they prefer access to that common property over monetary compensation. It seems to me that Tideman’s objection is a strong one, and it should thus be taken into account. It should be possible to have common property that will not be owned by private interests. One could, for instance, argue that national parks qualify as such common property, and that privatizing them and turning them into farms would not be justified, since most people would prefer that they remain in common property.

Tideman argues that the Georgist land tax satisfies the Lockean proviso. He attempt to answer this question: Is private appropriation of land, when the appropriator pays market rent that is divided among the population, unjust because it deprives the populace of common use of land?” Tideman argues that if the answer is always yes, then people cannot have meaningful rights to themselves, since they would always have to ask for permission from everyone else before they would be allowed to do anything. Tideman concludes that “always yes” is

46 Ibid., p. 498.
unacceptable. “Always no” is also unacceptable, since people could assert that common resources should not be auctioned away to the higher bidder in certain cases, such as when production would go down. Tideman’s conclusion is that “[…] some resources should be available for exclusive access by one rent-paying person while other resources are not available for rent.”

We should keep in mind that, despite Tideman using the term “private appropriation”, that he still keeps George’s ideas in mind and such private appropriation would still include a land tax. He is more of a Georgist than a Lockean.

Would Libertarianism Benefit from a Dose of Georgism?

Robert V. Andelson makes the argument that libertarianism would be more consistent if it used a single land tax, in the style of Georgism. A minimal state may need less resources to function, but it still needs resources, so why not use a single land tax? This is an interesting perspective. Libertarians are generally not fans of income tax, since one has a right to the products of one’s labour. A land tax, however, would not be a tax on labour, but a tax on private property. Seeing how Locke mentioned that the earth was given by mankind in common by God it makes sense to limit taxes to what was given in common. When you appropriate a piece of land through the efforts of your labour, then you should also compensate others by paying a land tax. This would help ensure that the Lockean proviso is fulfilled, and it would also be the one kind of taxation that would not violate the right to self-ownership. Nozick, who did not factor God into his theories, might still be willing to accept a land tax. Even if libertarians do not share George’s ideas they might still find his solution appealing. A land tax seems less invasive than other means of taxation, so perhaps that would be the best way to finance a minimal state.

Conclusion

As I have shown in this essay, the libertarian theory of property has several issues, especially variants that do not take the Lockean proviso into account, such as Rothbard’s variant. One of the issues is the weakness in “enough and as good”, since most alternate systems would be better than the original position thanks to the tragedy of the commons. It would seem that Nozick’s approach to Locke’s proviso is too weak; lots of alternatives, such as state

47 Tideman, p. 498.
ownership or occupancy and use, would prove better than the original position. Leaving someone worse off needs to be more than just worse off compared to the original position.

I do believe that the single tax of Georgism is unrealistic. If we want to keep a welfare state (which I believe we should), then it would be unlikely that a single tax would be sufficient. Parts of Georgism is very appealing, but there seem to be some issues with some of the economic ideas, so that would have to be adjusted.

My proposal: It is hard to find a perfect theory of property, especially since it would be hard to change the law in every nation. Perhaps the ideal theory of property would be a kind of limited private property, which severely limits the amount of property one person may own. It seems like the consequences of one person owning a lot of property would be quite bad, even if they did pay for it fully. Speculation also seem problematic, so it might be reasonable to set a time-limit for vacancy; if you do not use your property enough you lose it. This would solve many of the issues with private property, although I admit that it is somewhat vague. Practical and pragmatic solutions may not be quite as easy to universalise as solutions based on theories of natural rights, but they are more flexible and they do, potentially, lead to better results.
References

Books


Journal Articles


