

LEIDEN UNIVERSITY

Limits of the State and Property

Can state issued limitations of property be legitimized to prevent climate change?

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17-06-2012

Bachelor Thesis - Political Philosophy

Word Count: 7704

Leiden Repository

1. INTRODUCTION

While testifying before congress, Al Gore said he wanted to "testify today about what I believe is a planetary emergency - a crisis that threatens the survival of our civilization and the habitability of the Earth" (Gore, 2007). The effects of global warming are slowly but surely becoming visible, habitats are slowly becoming inhabitable and riverbeds are overflowing. Property is damaged, lives are in peril. Given this situation, is the state at freedom to intervene in this process with hopes to prevent the consequences of climate change?

The libertarian supporters demand that sacrificing an individual's rights for the good of society is blasphemous (Nozick, 1974:31). A well-known fault of the free/mixed market are negative externalities, negative by-products of production which no one pays for, pollution being an obvious example. The state's common strategy is to directly tax the groups/individuals producing these negative externalities. Another strategy is direct subsidization on production of products which do not include these negative externalities. But is the subsidization of renewable energy sources within the limits of government function? This thesis will be focusing on the moral limits of individual property rights, collective goods and state functions. Can the state legitimately limit our property rights to prevent climate change? The state, not to be confused with government, is the internal and external sovereign territories of which citizens are its inhabitants, while a government is that body of authority instructed to lead the state.

But what is the academic relevance? Why is the morale philosophical debate surrounding climate change so important? It is because climate change affects and will affect every single person on this earth, and not just the living generations but the future one's too. We are discussing not only our welfare, but also that of people who don't yet inhabit this earth. Barry claims there are principles of justice we must adhere to vis à vis future generations: equal rights, responsibility, vital interests and mutual advantage (Barry, 1997:97). Future generations have a vital interest in resources which they cannot properly constitute a claim to, without us feeling the responsibility to constitute it for them.

The initiation of this thesis occurred after reading the following passage of Nozick's *Anarchy, State and Utopia*:

"But why may not one violate persons for the greater social good?

Individually we each sometimes choose to undergo some pain or sacrifice for

a greater benefit or to avoid a greater harm: we go to the dentist to avoid worse suffering later; we do some unpleasant work for its results, some persons diet to improve their health or looks; some save money to support themselves when they are older. In each case, some cost is borne for the sake of the greater overall good. Why not, similarly, hold that some persons have to bear some costs that benefit other persons more, for the sake of the overall social good? But there is no *social entity* with a good that undergoes some sacrifice for its own good. There are only individual people, different individual people, with their own individual lives. Using one of these people for the benefit of others, uses him and benefits the others. Nothing more..."

- Nozick in *Anarchy State and Utopia*, 1974: 32-33

Nozick argues that we have no duties or responsibilities towards other people if we remain in our personal sphere of rights, regardless of the cost to other people (Nozick, 1974: 31), this would include responsibilities towards future generations. We don't have duties or responsibilities towards others if this makes us better off. We are free to do with our property, so long as our actions don't inhibit other people from enjoying their property. However, there must be some way the state can limit property rights and enforce extra costs on individuals for the sake of society because after all, this is the *raison d'etre* of the state: peace and security.

John Stuart Mill claimed that "to individuality should belong the part of life in which it is chiefly the individual that is interested, to society, the part which chiefly interests society" (Mill, 1991: 83). Does climate change "interest" society? Naturally it should, because the effects of climate change has an effect on us all. Each person holds a share in society's labors and sacrifices in defending "its members from injury and molestation" (Mill, 1991: 83). Because each person holds a share, it would seem natural that everyone enjoys the benefits but must also accept the costs. But "what seems natural" is not a convincing argument, so we must enter the realm of moral philosophy within the climate change debate to find a solution to my thesis: can the state legitimately limit our property rights to prevent climate change?

Firstly, I will give a general view on libertarian environmentalism and climate change prevention. After establishing that preventing climate change is the only realistic policy, I will show that property rights are not absolute. In section three I will explain what absolute property rights are, and in section four I suggest that property rights aren't absolute at all. I do this by proposing that firstly, property rights only exist by the grace of the state, thus being prone to curtailment by the state, and secondly, that the libertarian basis for property rights are

not fully justified. By showing that these rights aren't absolute I provide an opportunity for the state to legitimately limit our liberties for the sake of societal benefit. Furthermore, in section five I will offer an existing theory to replace the full-blown property rights which the libertarians support: usufructuary rights. I conclude my thesis in section six by proving that the state is allowed to prevent climate change, even within the libertarian framework. In short, I will argue for a new type of property right because libertarian absolute property rights are severely lacking. This then paves a way towards legitimate government action to prevent climate change.

2. CLIMATE CHANGE DEBATE

The purpose of this section is to contextualize the thesis. First I will briefly describe libertarian environmentalism to give an overview of their general ideas. Concluding this chapter on the climate change debate will be an argument for climate change prevention in favor of climate change adaptation, the latter being a method of action which libertarian environmentalists would prefer. By doing this we will have established that something has to be done about climate change¹.

The libertarian position surrounding climate change is known as free market environmentalism and suggests that combating climate change at the expense of the individual is illegitimate, mostly due to foregone costs². Some libertarians suggest that government activity, letting the market solve the climate change problem, is simply inefficient. Private property is the best way to preserve our environment, because people take the best care of their own possessions, and the person most interested in improving yourself, is you (Narveson, 1996: 154). Some libertarians suggest that the state is failing in allowing free markets to extend towards environmental resources. Advocates of this belief such claim that we should be viewing negative externalities as a product of the failure to "permit markets and create markets where they do not yet - or no longer- exist" (Smith, 1992: 192). There is an insistence that sacrificing the rights of an individual for the greater good is not an option, even though climate change might exist. This argument focuses on the extent of a state's functions within its society: what can and can it not do? The libertarian argument is that the state was introduced to collect 'the arms' of society, effectively creating a monopoly on force: a

¹ For a report on scientific background on climate change refer to GSCR (2009) "Global Climate Change", in *Global Climate Change Impacts in US*.

² For common critiques on climate change prevention refer to Gardiner et al (2011) "Ethics and Global Climate Change" in *Change*: Volume 114, Issue 3, Pages 555-600.

sovereign (. The state is instructed to keep us alive, to make sure our property isn't harmed, to ensure that we can lives in a peaceful manner, but no more than that.

An argument against government intervention is the inefficient nature of central planning which was portrayed by the Soviet experiment in the USSR. Instead of allowing the state to fix prices and issue quota's, free market environmentalist suggest we look positively at resource scarcity. In his 1968 article, Gerrit Hardin coined the phrase "Tragedy of the Commons" in which he explained that when you introduce competitors for a finite resource which is collectively owned, the competitors will try to use as much of the resource as possible before it is exhausted (Adler, 2009: 301). The economic motive behind this is the fact that it is a zero-sum game, the more person A consumes of product X, the less person B has to consume. Free market environmentalists see no problem with this situation, given that the possessions within the commons can be privatized. They cite various arguments. Generally, important resources are asymptotic in that they never really run out because the cost of consumption vis à vis other resources becomes too high over time, leading consumers to divert their preferences to other resources. The latter is part of their second argument, by the time a resource is near depletion, other (better) substitute resources will have been discovered.

In *Ethics and Global Climate* S. Gardiner critiques various arguments for adaptation in favor of prevention. He argues that adapting to climate change because preventing it would be too costly is exaggerated, while claiming that economic analysis excludes non-economic factors (Gardiner, 2004: 570). Henry Shue argues a 'No Harm Principle' (Shue, 1999: 43) which establishes that despite all the uncertainty surrounding climate change, it would be irresponsible to let future generations suffer the consequences caused by the risk seek.

I agree with Shue that it would be irresponsible to impose risks on future generations, if the available alternatives, such as prevention, aren't significantly worse. For this reason, this thesis will be assuming climate change prevention to be the policy choice and not delve deeper into the debate surrounding the costs and benefits of adaptation or neglecting climate change altogether³. So, within this context there are two options: either you extend or limit property rights. The discussion surrounding property rights seems to me to be the most important for libertarians in discussing climate change. In this section, we have acknowledged

³ For further literature on climate change adaptation see S.Gardiner "Ethics and Global Climate Change" and for alternative methods to battle climate change see B. Barry "Sustainability and Intergenerational Justice".

that libertarianism believes private property to hold the key to solving the climate change problem. For this reason I will use the rest of my thesis to discuss private property.

3. WHAT IS ABSOLUTE PROPERTY?

In the following section I will be discussing private property rights and its significance to libertarian thought. Firstly I will define property and how the rights to property originates, a process called property acquisition. Subsequently, I will explore what libertarians mean when they predicate property as absolute. I will extend this section by looking at how absolute property rights define the limits on the functions of the state, according to libertarians. The conclusion to this section will try to link the concept of absolute property to libertarian rights and duties towards society. Libertarians suggest the individual predominates society, which seems troubling in the situation of climate change.

Libertarians uphold the premise that one's property is absolute: there is nothing anyone can legitimately do to your property if this is against your will. Property is more than just a shovel or a house, it also covers income and according to Locke, even one's body (Locke, 1960: 267). Property is paired with the right to it, enabling citizens to lay a claim to that property. These rights "prevent others from stealing, invading, destroying or otherwise interfering with [your] property" (North, 2002: 84). The magnitude of the libertarian restriction on interfering with other's property is referred to as being absolute. What makes this phenomenon absolute is that the property owner has the sole right to his property, and is free to exploit his property in the way he sees fit: he has unilateral ownership over his property (Narveson, 1995: 145).

John Locke, to many libertarians a source of inspiration, claims the absoluteness of private property has to do with the way property was acquired, the mixing of labor with nature fixes "one's property in them" (Locke, 1960: 289). The owner has acquired his property in some manner, by taking 'it' from the commons and staking a claim onto it, granting him the right to that 'thing'. This is known as appropriation and was introduced by Locke through his theory of property acquisition (Locke, 1960: 216). Through the mixing of one's labor with resources, one increased the wealth of that resource qualifying it as one's property. For example, if one plowed the earth in order to produce cabbage, the farmer has made a product which otherwise would not have been there. The added value by labor is due to him, enabling him to claim a right to the cabbage. Locke added side constraints, more popularly referred to as Locke's Proviso. Firstly, property can be claimed but within reason, they cannot be spoiled because the hoarding of food is deemed as unjust to people who could use your surplus property.

Secondly, enough products must be left for others, but foremost, these resources must have roughly the same quality as the rest of the goods (Locke, 1960: 290). Locke's theory as a foundation for theorizing the absoluteness of private property is rather weak, and will be covered in more detail in section four.

To make the meaning of 'absolute' concrete, Stephen Munzer listed the do's and don'ts of the inclusiveness of property rights, they "claim-rights to possess, use, manage, and receive income, powers to transfer, waive, exclude, and abandon; liberties to consume or destroy and immunity from expropriation without compensation" (Munzer, 1993: 320). This list is quite inclusive and begs the question what an external party such as the state is allowed to do? Robert Nozick utilizes *Anarchy, State and Utopia* to answer that question: "a minimal state, limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on, is justified; that any more extensive state will violate person's rights not to be forced to do certain things" (Nozick, 1974: ix).

Wolf mirrors Nozick and Munzer when stating that libertarians are indeed mistrustful of any limitations on what they believe to be absolute rights. It has been made clear that absolute rights are paramount to libertarian thought, but why is it so important that people have absolute property rights? These rights serve to protect the individual liberty and enterprise which comprise the core of libertarian thought (Wolf, 1995: 816) which defines the individual as the most important entity, believing that the betterment and protection of all individual rights will eventually improve society as a whole. Much of this has to do with efficiency: the individual is more capable of allocating production and consumption for himself, than the state can. John Stuart Mill based the latter on the idea that no entity or person can order another to structure his life against his will, because a social entity like the state is incapable of knowing the situations and preferences of microeconomic activities. No one is capable of comprehending and achieving person A's wishes and goals but person A himself. Person A is, of all people, most interested in his own self-preservation and wellbeing, in the sense that he or she is best acquainted with his or her own circumstances. States are permitted to advise individuals, but the individual remains the final judge in his or her case. "All errors which he is likely to commit against advice and warning, are far outweighed by the evil of allowing others to constrain him to what they deem his good" (Mill, 1991: 85). Violating person A's property rights, adding minimal pain to their life, in return for greater social good is unthinkable (Nozick, 1974: 31). Society is not an entity, solely a collection of individuals, individuals who only live their own lives once. Harming person A's rights is on par with using

him, much like a tool as a means toward an end, while Nozick demands that we view the wellbeing of humans as an end. No one, least of all the state, is entitled to force this constraint upon person A, adding to it the promise that *in the end* society will improve because of it (Nozick, 1974:33).

When saying that the state is not entitled to constrain property rights, libertarians are opposing taxation or quotas on consumption and production. Taxation decreases disposable income, it increases the price of consumption of a certain product, while quotas decrease the amount of a product that can be consumed. These economic instruments limit the use and extent of their citizens property rights. By doing this, libertarians suggest that the state is using individuals in order to achieve a social benefit. In the past section I have established what absolute property encompasses, and what the libertarian view is on the individual versus the state. In the next section I will explain that private property is not absolute, thereby allowing the state to enforce limits on property rights.

4.WHY PROPERTY IS NOT ABSOLUTE

In the following section I will claim that property rights aren't absolute, which will allow me to proceed to claim that the state is allowed to prevent climate change by limiting property rights. Remember, it is the property of its citizens that the state affects when subsidizing and taxing in order to prevent climate change, so showing that property isn't untouchable by a third party is essential to this thesis. To do this I will first have to explain that property rights are acquired after the creation of the state. By showing that property rights are social constructs, I can show property exists by the grace of the state, making property not self-evident and that it can be exposed to limitations.

Before the state occurs there has to be some kind of "state", a form of social order: "...In such a condition, every man has a Right to every thing; even to one another's body. And therefore, as long as this naturall Right of every man to every thing endureth, there can be no security to any man" (Hobbes, 2006: 73). The condition which Thomas Hobbes speaks of is the state of nature, a condition of "Warre of everyone against every one". Any right which exists within the state of nature is considered a natural right, and is also held to be a right when entering civil society. In a state of anarchy people have a liberty to everything, not a right (Morris, 2005: 149), seemingly accepting the notion that the world is either unowned or commonly owned in the state of nature, but no one is able to lay a lawful claim to these rights. "A law of nature, (Lex Naturalis), is a Precept, or generall rule, found out by reason, by which a man is

forbidden to do, that, which is destructive of his life, or taketh away the means of preserving the same;...For though they that speak of this subject, use to confound Jus, and Lex, Right and Law; yet they ought to be distinguished" (Hobbes, 2006: 72). Hobbes insists that a right is a liberty to do or refrain from doing, while Law is that which binds the right to a claim. While possession may exist in the "law of nature", the rightful claim to these rights do not.

We must not confuse the 'claim to property' with possessions, the latter being in abundance prior to the state, while the former does not exist in the way it exists after the creation of the state. "It seems clear that the nature and extent of (just) ownership in contemporary societies is in part dependent on state determination, regulation, and enforcement of property" (Morris, 1998: 278). Is a right not hollow if there is no valid claim to that right? I can claim to have a right to the ownership of the Palace of Versailles, but without solid explanation of why that right is mine, I have no claim. If I managed to earn enough money to purchase the Palace of Versailles, then there is the right, which I believe I have, and a solid claim, my spent money. This claim that I would be able to acquire is based on the contractarian principle of consent, the process in which the people respect the authority of the state. Contractarians such as Hobbes described earlier theorized that people left the state of nature by giving up their rights in return for a sovereign who monopolizes force, to ensure peace and safety. Through birth we have accepted the *acquis communautaire* of our state, if you will. Obviously, it is impossible to collect the consent of the whole population but through pre-set rules and procedures we are able artificially manage that consent. Lomasky agrees as much when saying that "moral and legal rights are the product of social determination...and can be packaged in any way the social unit elects to recognize" (Lomasky, 1987: 119). 'Recognize' is an especially important word: the property and the claim to it have to be recognized by an external party, or else the claim remains hollow. By transferring my property in a just exchange for the Palace of Versailles I have adhered to the "Law" which Hobbes describes as a binding factor (Hobbes, 2006: 72). Right and claim have been combined. In this paragraph I have shown that property rights are the combination of possession and claim, with the former being pre-state and the latter by grace of the state's existence. But what effect does this argument have on whether or not property rights are absolute?

If property rights are comprised of possession and a claim and a person is only able to have a claim to property when there is a state, then there can be no property rights before the state. Although property has an origin in nature itself, the way that society today "conserves it (property) in the present owner are entirely due to civil society" (Burns, 1986:73).

Furthermore, possessions before the state cannot be absolute because that would imply there being any sort of rights surrounding those possessions, which only occur after the state. So Libertarians suggest the rights to possessions become absolute after the state has been created? Where did the absoluteness come from?

The only way absolute rights can become absolute is if states wish them to be: "absolute rights are preserved, to the degree that the legislature thinks wise, in a form shaped by positive law" (Burns, 1985: 73). But this requires a proactive state, meaning the absoluteness of property isn't self-evident, it has to be achieved. Additionally, even if property rights, possession plus claim, were somehow absolute before the state, the transition to civil society would make them relative simply by agreeing to common law. The way the state is built, through rules and regulations which must be adhered to, significantly changes the social contract that each citizen "signs". Nevertheless, libertarians barely agree.

Jan Narveson questioned if it was really true that "human institutions as property...are the creatures of government? (Narveson,2005: 941) but added that Rousseau once claimed that the governments, which guide the state at all times, "turns possessions into property" recognizing "certain claims to possession, and not recognizing others" (Narveson, 2005: 941). Narveson argues that this is an awkward point considering that governments should not be able to arbitrarily change the way the state is constituted because it has "an excellent chance of being wrong". I do not agree with this for two reasons. Firstly, governments are allowed to arbitrarily change the way our state is constituted, because that is generally the reason they exist: to execute policies which alter the framework of the state. Governments govern its people within the state, which it can alter if the people support the government's plans. If the majority of the Dutch state wishes to peacefully eliminate their state, hypothetically, there is nothing to stop them. His second point of there being a chance the government is wrong is mere speculation. There is also a chance the individual is wrong in his preferences and choices, but this would not be a valid basis for any argument which would like see the removal of individual liberties.

The second claim I wish to make is that the manner of acquiring property, which is the basis for individuals property rights for libertarians, is flawed in various ways. Wolf hits the nail on the head when claiming that unless absolute property rights can be fully justified, then they probably shouldn't be used as a the foundation to a political theory (Wolf, 1995: 816). Why is it that absolute property rights are not fully justified? I'll try to argue in the following

paragraph that property rights as we know them aren't fully justified because the way they are acquired is seriously flawed. Libertarians depend on their method of acquiring property to legitimize the absoluteness of property. I will start my argument by returning to Locke's theory of appropriation.

When mixing our body, or labor, with nature we acquire the fruit of the result. He added a proviso in which people are able to consume resources only if enough of it is left for others, and the quality of the resource is just as good. His theory assumed a world with infinite resources, which is obviously not the case. There is no way I can appropriate without leaving the rest of the world less resources. Nozick too realized the flaw in Locke's proviso, questioning the legitimacy of initial acquisition ((Nozick, 1974: 176). If person Z is the last one to appropriate but is not able to do so due to a lack of land, person Y's appropriation of land is not permitted because he didn't leave person Z sufficient property. Subsequently, person X's appropriation is also not permitted because person Y isn't able to appropriate because of person Z, etc...

A standard critique is considered by John Sanders who argues that "one justly acquired title to whatever land one can cover with little chocolate bunnies" (Wolf, 1995: 794). If I put grenadine syrup into the Mediterranean sea, is the sea then mine? Obviously not, but that is what the theory of labor-mixing implies. Also, there is no denying that if the acquisition of current property rights could be traced back to their beginnings, we would come to the conclusion that a large portion would be appropriated illegitimately, indeed through violence (Wolf, 1995: 813). So again, the question whether or not initial appropriation is legitimate is posed. If the absolute character of property rights cannot be properly justified, which has been sufficiently discussed in this thesis thus far, then perhaps they shouldn't be used as the foundation of a political theory (Wolf, 1995: 816).

In the past paragraph the Lockean theory of appropriation has been critiqued, partly because of the theory of labor-mixing, and partly because of the problem of initial acquisition. If labor-mixing isn't a sufficient principle for appropriation, then what is? Wolf suggests the following theory of appropriation instead: " A's appropriation of an unowned resource X constitutes a valid property claim if no other person is harmed by As appropriation of X" (Wolf, 1995: 805). This proviso is based off the 'Harm Principle' in which the actions of individuals should only be limited if and when it harms others. The difference between this theory and Locke's is that Wolf utilizes the Harm Principle to be sufficient *and* necessary

while Locke's was only intended to be sufficient (Wolf, 1995: 804). Within this paradigm there is no valid claim to inexcusably appropriate without concern for other's basic needs⁴.

What I have tried to stress throughout the last few paragraphs is that private property is not absolute, in contrary to what Libertarians suggest. My first argument was that property cannot be absolute because of the part the state plays in enabling property rights. I began by explaining the state of nature and the difference between possessions and property rights, explaining that the latter appears after the creation of the state. My second argument was that because libertarian absolute property rights do not have a solid basis, and cannot be fully justified, they probably shouldn't be used as a basis for a political theory. I have argued that their account of absolute rights is unjust because the method of acquisition which is used is faulty. Instead, I agree with Wolf and propose his theory of appropriation instead, which utilizes the Harm Principle: the limiting of appropriation is only allowed if this harms another person.

5. USUFRUCTUARY RIGHTS

What has been concluded thus far is that libertarian absolute property rights aren't justifiable. But if full-blown property rights are not accepted, than what are property rights based on? One cannot possibly deny the basis of the whole libertarian school without offering an alternative basis for property rights. In the next section I will introduce what are known as usufructuary rights. To use something in usufruct is to use the belongings of others for own profit, it is a right which allows the lending of resources in order to further one's own utility satisfaction. I will assume that the Earth is commonly owned, not necessarily intragenerationally, but definitely intergenerationally, and I will explain what my motives are for this assumption. It is important that this assumption is made in order to fit usufructuary rights into the equation, because I don't see how future generations needs would constitute a claim to current resources if we wouldn't assume that what we own now is in some form or another also theirs. Firstly I will shortly explain the assumption of a commonly owned world. Subsequently, I will further expand the concept of usufructuary rights, and give an example of how usufrucuary rights might work in practice. I will conclude this section on usufructuary rights by explaining that they aren't necessarily worse than full-blown property rights, in fact, they are very similar.

⁴ For a more detailed description of the theory see *Contemporary Property Rights , Lockean Provisos , and the Interests of Future Generations* by Clark Wolf.

Locke starts his second treatise with a referral to the story of Adam and Eve: "It having been shewn in the foregoing discourse, that Adam had not either by natural Right of Fatherhood, or by positive Donation from God, any such Authority over his Children, or Dominion over the World as is pretended (Locke, 1960: 267). There is a common ownership "in which the entity belongs to several individuals, each equally entitled to using it within constraints" (Risse, 2008: 287) and in which every human has some sort of "symmetrical claim" to its natural resources. The appearance and existence of these resources is in most cases no accomplishment of our own, yet they are needed for our subsistence (Risse, 2008: 285). If no property has been claimed on Earth, who does it belong to? Intuitively, we all have a potential claim to property. What has happened, though, is that we view the Earth as individual pieces of property, instead of a sum of its parts. If you accept that there is more to Earth than just your property, than you should be able to accept that initially the Earth was commonly owned. I argue that this has to be the case because as I have mentioned in section four: initially, in the state of nature, there are no property rights. What is left is unclaimed property, or commonly (un)owned property, which we use in usufruct. I have just explained why I assume that the Earth is commonly owned and will continue to explore usufructuary rights.

Nozick's proviso considering initial appropriation, which was mentioned earlier, has some powerful implications. As Wolf legitimately states: "If no initial appropriation was justified, then our actual claims, as descendants of prior illegitimate takings, cannot be justified either" (Wolf, 1995: 798). So what are property rights based on? Clark Wolf describes that property rights should be based on usufructuary rights, rather than full-blown ownership. Usufructuary rights include all liberties which full-blown ownership provides except that one cannot legitimately annihilate the resource, by fully expending its existence because essentially it isn't yours. Secondly, one cannot modify 'the resource' insofar it takes away the possibility for other people to still enjoy the original. Wolf gives the example of usufruct land which everyone is permitted to use, but they are unable to cover the field with concrete, thereby keeping others from using the land for agriculture (Wolf, 1995: 812). An important requirement however is that basic needs must be met, even if that means future basic needs might not be. Naturally, not everything is to be labeled usufruct, for example: the consumption of food obviously remains a full-blown ownership of rights. If the world is indeed commonly owned, then we must critically address our unsustainable lifestyles, for it is against the principles of usufruct rights to deprive future generations due to our luxurious and superfluous wants. The claim to property does not include a possibility to "use these resources

in ways that might inexcusably deprive future persons of what they need to survive and to live adequate lives" (Wolf, 1995: 811).

He gives the example of a theatre performance of Cicero: "Tho' the Theatre is common for any Body that comes, yet the Place that every one sits in is properly his own" (Risse, 2998: 280). The people sitting in the seats have no duty to cede their seats to latecomers, because the seats that they are on are actually his for that show, but just because they were there first doesn't mean they are allowed to 'own' their seat for as long as they like (analogously: just because I am on this Earth first, doesn't mean I have the right to exhaust resources which future generations should be able to enjoy). This is an interesting example when considering climate change, and subsequently the effects it can have on future generations. During the show attendants are not allowed to damage their property, and after Cicero's showing is finished they cannot keep their seats because they no longer have the right to that seat. They might have possessed the seat for the two hours while the showing took place, but the arrangement stops there. The people who are currently watching the show must keep in mind that there are people who would enjoy the show in the future. However, individuals aren't always interested or capable of overseeing the needs of future beings, which is perfectly natural. Luckily, that is why we created an external entity (the Theatre's organisation or analogously: the state) which enforces this policy, so that future generations may enjoy the same goods we enjoy now. In section six I will expand on the reason why the State is the entity needed to intervene in order to prevent climate change.

In order for people to enjoy the same show, in the same way, the seats must be left by the earlier attendants in accordance with Wolf's theory of appropriation: one cannot appropriate if this is harmful to others. The attendants of Cicero's showing aren't appropriating, they are using the product in usufruct, they are utilizing another party's property to acquire utility: satisfaction from the show. I see similarities between this example and climate change. Although the inhabitants of this Earth are momentarily its rightful owners, they have to appropriate with the future generations in mind. Any surplus appropriation which inhibits future generations from appropriating is illegitimate if we follow Wolf's theory of appropriation. Similarly, the people in this world are morally obligated to leave sufficient resources for future generations, yet still have the proper rights to consume according to their wishes. By temporarily consuming resources without exhausting them and while being free to appropriate without unnecessarily harming others we have emulated the property rights which

libertarians support. However, what are the significant differences between full-blown property rights and usufructuary rights?

Not all libertarians approve of this conclusion, claiming that usufructuary rights are very weak property rights (Wolf, 1995: 815). The way usufructuary rights are protected is through the 'no harm' principle, in that trying to appropriate that which already has been appropriated by others through forceful means is illegitimate. The issue with usufructuary rights is that it would seem to lack sufficient protection of property and harmful appropriation of others. Loren Lomasky claimed in his book that "the only bundle of rights that can intuitively be identified with ownership of a thing is the bundle that constitutes complete control over that thing. Less inclusive bundles are an embarrassment for the property-in-things account" (Lomasky, 1987: 119). What Lomasky argues is the intuitiveness of what comprises the 'bundle of rights', while the real debate is the moral fiber of the bundle. In a discussion, if two parties use their intuition to determine whether or not property belongs to them, then our property rights are indeed an embarrassment. For this reason we should determine property rights based on morality, not on instinct, and we should reject Lomasky's statement. Furthermore, the only significant restriction which usufructuary rights proposes is that although we may have temporary property rights, we have no right to exhaust our property.

Nozick waves the critique on initial appropriation of absolute property rights away and suggests that scholars who propound collective rights to property face the same problem of initial appropriation, and the matter of exclusiveness (Nozick, 1974: 178). Wolf's theory suggests one can only appropriate if this does not harm someone else, which is significantly different than Locke's theory of appropriation, whose Proviso demands that enough is left for others.

In the past section I have offered an alternative to full-blown property rights. Usufructuary rights are similar, but do not inherit the negative aspects of absolute rights. While scholars as Lomasky insist that usufructuary rights are insufficiently protective of property rights, I do not see how the moral fiber of absolute and usufructuary rights differ? They both prevent illegitimate appropriation, but usufructuary rights are more permissive, without losing its emphasis on individualism.

6. WHY DOES *GOVERNMENT* HAVE TO PREVENT CLIMATE CHANGE?

We have to discuss why the state's functions should extend beyond the Libertarian wishes. This will be done by explaining that what Libertarians actually believe to be a minimal state is actually more than that, as it encompasses so much more than just the collection of arms.

Levin argues that when entering the state each individual surrenders "their liberty to use their swords" (Morris, 1998: 269). Giving up one's "sword" ensures that the ability to wage war is taken away, promptly defining the role of the state as a guardian. This transaction, according to Levin, does not count for the surrendering of plows, for which the state will return the pledge that each individual will be fed (Morris, 1998: 269). While in the former example the transaction ensures safety, the latter only offers a pledge, there is no assurance of food. For this reason, Levin argues that any function of the state beyond that of a guardian is illegitimate, a conclusion Robert Nozick had reached years before. But as mentioned earlier, what happens when we consider the basic security of individuals and possessions to be a collective good? What about social order? Levin's enforcement of contracts is much too simplistic to be theoretically sound. Morris critiques Michael Levin's analogy of swords and plows when he correctly claims that: "it would be stretching the metaphor of swords to claim that by disarming its citizens the state also prevents fraud" (Morris, 1998: 275) or any other form of violence, for that matter. Morris suggests that security is a public good, meaning more than a minimal state can be justified. If our peace and safety is at stake, the state has the power to intervene to ensure peace: "one notable task of actual governments is the provision of other collective goods, such as pollution control, protection of the environment, public safety regulations, public health..." (Morris, 1998: 273). When the state levies taxes on its citizens, and directs these funds to the building of dams, or when the state attempts to steer companies away from production which pollutes, this falls under the state's functions. This is not only true because pollutants affect the quality of the air we breathe, a collective good, but also the more disastrous consequences pollution will have on our environment, such as levies breaking and dams bursting.

The state has a duty to keep social order, it has an obligation to keep its citizens safe. Philosophers usually interpret this duty as a way of keeping individuals from killing each other or stealing property, while this duty actually encompasses much more. The state is needed to play the role as a facilitator, by "providing facilities for private arrangements between individuals": the state is also needed for enforcing voluntary contracts. The state, as

Raz correctly claims, does not necessarily impose its will on its citizens, but instead "serves them in realizing their own will" (Raz, 1983: 170). at least, that is what liberal democracies intend. Within the libertarian framework, citizens have the power to initiate private agreements but due to the enforcement of contracts, additional services are required inspiring a certain spillover effect of bureaucracy. This makes the state more than minimal per definition, not so much because it has extra functions, but because the magnitude of the existing, libertarian functions of the state keep expanding. There aren't more functions, the original tasks simply encompass more than before. Committees have to be set up, regulators have to be installed, new infrastructure has to be built, and where does the money come from? Taxes. In order to keep its citizens safe, the state is forced to burden them with more costs than initially thought. My final argument is that exactly: if libertarians still do not accept that their property rights are not absolute, they will have to accept limitations on property rights to prevent climate change, because it does not trespass what libertarians think of as absolute property rights. It is simply the state's duty to perform these tasks.

In this final section I have asserted that security and peace is the primary function of the state, this is its *raison d'etre*, which libertarians will wholeheartedly agree with. I argued that climate change forms a threat to the Earth's security, in which security can be viewed as a collective good. I continue my argument by claiming that the state is responsible for providing this public good, because climate change threatens our peace and security. I will now conclude my thesis and offer final remarks.

CONCLUSION

Climate change is a threat to our existence. Droughts, floods, acidification and increased volcanic activity are just a small number of threats we are facing if we continue this unsustainable lifestyle. In section two we briefly explored the climate change debate and that it should be prevented in any case. Subsequently I started to define absolute property rights, and in section four I began arguing why they do not exist. Throughout this thesis I have tried to argue that property rights aren't absolute, they can be limited, simply because they are already limited by nature. The claim to property only comes after the creation of the state, which inherently means that if the state has the means to create property rights, it has the means to take them away. They are further limited by the method of appropriation which form the basis to libertarian thought. The theory of labor-mixing is severely flawed in that Locke assumed an infinite amount of resources, which is obviously not the case. Adding Locke's

proviso adds extra stress to absolute property rights, with Nozick accepting that initial appropriation can not be justified.

In section five I offer an alternative to full-blown property rights: usufructuary rights. It is my belief that one cannot simply reject the basis of libertarian property rights without offering an alternative. Instead of viewing the Earth as a collection of private properties, we should see Earth as common property, in which all of us may use the Earth in usufruct. This implies that at some point we have to leave our property to future generations. The theory of usufructuary rights prohibits inhabitants from the Earth from needlessly exhausting resources. Because libertarians question the protective nature of usufructuary rights, I tried to explain the similarities and differences between usufructuary and absolute rights, concluding that the differences are minimal.

I concluded my thesis by answering the question if the state has the legitimate power to limit our liberty for the sake of climate change prevention. I insist that the functions which Nozick outlines in *Anarchy, State and Utopia* are too simplistic. Simply collecting 'the swords', following Levin's metaphor of the plows, isn't enough to ensure peace, surely not in the twenty-first century. In fact, enforcing this task encompasses much more than just the action of collecting taxes, it must be regulated, and in order to enforce and regulate, the bureaucracy must increase. Morris adds to this argument by claiming that security and social order are actually collective goods and demand that the state safeguards that. The taxation of citizens for the building of dams, keeping forests and protecting coral reefs are essentially just extensions of social order, so they too must be deemed legitimate. Essentially, this thesis has argued that if we want to prevent climate change, the state is the social entity to handle it. The state is enabled to do this, because our property rights aren't as rigid and absolute as libertarians think, they can be limited if this benefits the social entity. Instead, if we accept the view that the Earth is commonly owned and accept usufructuary rights as the basis for our property rights then climate change prevention by the state, for the sake of future generations, is fully legitimate.

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