

PRIVATE PROPERTY: THE STORY RETOLD

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INTRODUCTION

Arguments about the legitimacy of private property have long made use of state-of-nature tales describing how private property first arose and how individual rights fit together with the interests of surrounding communities.¹ Sir Robert Filmer presented one such tale in the seventeenth century, when Stuart rulers asked Filmer to defend their claim to absolute control over all of England's lands. Filmer began his story with Genesis, which recorded (according to Filmer) God's gift of the entire Earth to Noah and Noah's sons. Noah's sons, in turn, passed the earth along to succeeding human rulers. Their successor-in-interest in England, many generations later, was the ruling king (Charles I, at the time Filmer wrote). Thus, the king held title by divine right, rather than based upon the consent of any people, past or present.

Penned in response to Filmer's story was what became the most prominent of all state-of-nature property tales, by John Locke.² God's gift in Genesis, Locke countered, had been to humankind in common, not to any particular human rulers ("tis very clear, that God . . . has given the Earth to the Children of Men, given it to Mankind in common"³). The Earth was thus owned by all people collectively. God also gave to each person, Locke contended, ownership of his own body and of his own labor.⁴ It was that latter gift that, indirectly, gave rise to a natu-

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1. For a useful survey, see RICHARD SCHLATTER, *PRIVATE PROPERTY: THE HISTORY OF AN IDEA* (1951).

2. Locke's ideas on property appear chiefly in Chapter V of his *Second Treatise of Government*. JOHN LOCKE, *The Second Treatise of Government*, in *TWO TREATISES OF GOVERNMENT* §§ 22–51, at 283–302 (Peter Laslett ed., Cambridge Univ. Press 1988) (1690) [hereinafter *LOCKE, Second Treatise*]. They are also discussed in SCHLATTER, *supra* note 1, at 151–61.

3. LOCKE, *Second Treatise, supra* note 2, § 25, at 286.

4. At the same time, Locke also contended that humans belong to God rather than to themselves—a point of beginning that would have made private property more problematic. According to

ral right to acquire individual private property. Whenever a person mixed his self-owned labor with a part of nature and added value to it, a private property right naturally arose:

27. Though the Earth, and all inferior Creatures be common to all Men, yet every Man has a *Property* in his own *Person*. . . . The *Labour* of his Body, and the *Work* of his Hands, we may say, are properly his. Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his *Labour* with, and joyned to it something that is his own, and thereby makes it his *Property*. . . . [A]t least where there is enough, and as good left in common for others.⁵

Locke limited the individual rights that arose in this manner, not only with his now-famous proviso (a person can acquire property only so long as “there is enough, and as good left in common for others” to do the same),⁶ but by drawing upon then-prevailing natural rights reasoning:

31. It will perhaps be objected to this, That if gathering the Acorns, or other Fruits of the Earth, &c. makes a right to them, then any one may *ingross* as much as he will. To which I Answer, Not so. The same Law of Nature, that does by this means give us *Property*, does also *bound* that *Property* too As much as any one can make use of to any advantage of life before it spoils; so much he may by his labour fix a *Property* in. Whatever is beyond this, is more than his share, and belongs to others. Nothing was made by God for Man to spoil or destroy.⁷

Thus, a person could not claim ownership of a thing if the remaining stockpile was inadequate for all others to acquire property in the same manner (the “Lockean Proviso”—paragraph 27), nor could a person hoard more property than he could use before it spoiled (the natural rights limit—paragraph 31). Subject to these two limits, however, private property arose when a person’s labor added value to a thing; as a matter of natural justice, the laborer had a right to the value created and thus had a natural right to take the thing out of the communal stockpile, without the consent of others.

After a sizeable amount of private property had thus arisen in the state of nature—and due to the unfortunate “ill condition” (i.e., fallen nature) of humanity, which bred strife—people gathered together to form governments to protect their individual proprietary entitlements:

127. Thus Mankind, notwithstanding all the Priviledges of the state of Nature, being but in an ill condition, while they remain in it, are quickly driven into Society. Hence it comes to pass, that we seldom

Peter Laslett, a leading Locke scholar, Locke was perhaps “the least consistent of all the great philosophers.” Peter Laslett, *Introduction* to JOHN LOCKE, TWO TREATISES OF GOVERNMENT, *supra* note 2, at 3, 82.

5. LOCKE, *Second Treatise*, *supra* note 2, § 27, at 287–88.

6. *Id.* § 27, at 288.

7. *Id.* § 31, at 290.

find any number of Men live any time together in this State. The inconveniences . . . make them take Sanctuary under the establish'd Laws of Government, and therein seek the *preservation of their Property*.⁸

Governments arose, in short, to protect private rights that already existed, or so Locke claimed.⁹ Property predated government, and indeed predated the time when people were “driven into Society.”¹⁰

No anthropologist takes seriously tales such as Locke's. Nor, history aside, is it even sensible to talk about private property rights in a world without law and without a community that embraces the rule of law. Private property is inherently a social institution: it arises, not when an individual in isolation asserts a claim of ownership, but only when other people agree to respect that claim. Farmer Jones does not own the field he covets until neighbor Smith and all others acknowledge his dominion; until then, it is merely the lawless world of might makes right. Yet Locke's tale lives on, providing a conceptual, if not historical, foundation for our understandings of liberal private rights.

Given the flaws in Locke's tale, historical as well as conceptual, it may prove useful to consider an alternative to it, a more secular state-of-nature tale that is informed by today's issues (as Locke's was by his time) and yet that is grounded in serious history and anthropology; a tale that recognizes the social nature of private property and that captures more faithfully how private land ownership, Anglo-American style, made its way to the present. A more apt tale would necessarily recognize the communal origins and communal justification of property and property law, with Lockean-style liberal individualism arising only late in the narrative day. It would begin with sovereign and proprietary powers largely fused, and would chart their division into separate realms only slowly and incompletely. It would include chapters that feature violence, duress, and outright theft, by lawmakers as well as by the lawless, along with chapters in which property-based power is used to oppress. Scarcity would arise in the story (unlike in Locke's), and only far into the tale would the term “right” take on its current, individualistic meaning. Market thinking would appear early, but it would gain strength only by imperceptible steps, fragmenting nature's web, bit by bit, into discrete commodities. What might be owned, and what it means to own, would change from generation to generation—as it did, and continues to do, under Anglo-American law. Only in later narrative stages would private property become a tool that an owner might use to fend off undesired governmental interference. Finally, never far from the surface, there would be the lingering question of fairness that lies at the very heart of

8. *Id.* § 127, at 352.

9. JOHN LOCKE, *The First Treatise of Government*, in TWO TREATISES OF GOVERNMENT, *supra* note 2, § 92, at 209.

10. LOCKE, *Second Treatise*, *supra* note 2, § 127, at 352.

Locke's theory and that, to this day, greatly weakens its logical force: if private rights attach only to value created by labor, how can anyone fairly claim the value that attaches to nature alone—to the bare field, to the flow of water, to the oil in ground, or even to the land beneath the tallest office tower? Is not this, as Locke opined, the common right of all?

THE STORY RETOLD

The time came when only the eldest of The People could remember the stories about the early days, when their ancestors lived in caves and communal huts. Generations had passed since then, and the dangers they faced had lessened. The People now lived in flatter, more fertile lands and embraced more settled ways of life.

Of the dozen or so families who made up The People, nearly all controlled their own huts and garden plots. Most also possessed territories in which they snared small animals. Along the river, however, The People continued to work as a single team, as they had done since time immemorial, harvesting and drying the migrating fish. Fall and winter hunts were also collective outings; the men hunting, the women curing the meat and treating the hides. Even with their garden plots, however, The People still turned to the surrounding woods for berries, nuts, mushrooms, and herbs that all were free to gather.

From time to time, The People departed their lands and moved to new places, taking as many belongings with them as they could. New garden plots were more fertile, and the lands surrounding a new home would be more fresh. The Elders collectively decided when and where to move, and The People made the journeys together. Upon reaching their new home, the Elders allowed families to select places for their huts. And yet, by long tradition, family heads in subtle ways first learned whether other families might object to their choices before committing to them. Days would go by before garden lands were staked out; even longer before trapping territories were set. Although the Elders always assigned lands in open gatherings, the real work of allocation had already taken place by then, quietly, almost invisibly, as Elders and other family heads talked among themselves.

There was the time, one season, when an estranged young family head moved his hut away from the others, behind a hill and into the middle of his trapping territory. The others watched quietly. A month later, the gathered Elders summoned the young man and told him that he must return. They offered no explanation for their conclusion. Afterwards, one Elder pulled the young man aside:

And so it is important that The People stay together and be one, that we might protect ourselves and thrive. We thrive as a people. We thrive when we follow the traditions by which we bind ourselves

to one another. As The People, we have our particular ways. To turn from those ways is to cease being part of The People.

There was also the time when one young man, not yet a family head but living alone, took an extra robe from the hut of another and began using it. No one remarked, and yet as the season unfolded, day by day, the young man sensed that others were less friendly. They talked to him less, included him less, and assigned meaner tasks. Finally, when no one could see, the young man returned the robe to the hut. Still nothing was said, and the man's treatment did not change. And then, as slowly as his treatment had worsened, so now it improved, step by step.

When a family head died and no son of age could carry on, remaining family members joined with another family and became subject to the head of that family. As they shifted, they retained control of their personal belongings. Lands of the disbanded family were left unused for a season unless times were harsh. Then, the Elders reassigned the lands to those best able to use them.

During seasons when crop and forest lands failed to produce, The People quietly looked after one another. Formal sharing rarely occurred, except for foods gained through collective hunts or gatherings. And yet those who had enough helped those who were short, quietly and with little direct contact.

One year the drought lasted long. By late summer, the river ran dry and water was scarce. In the garden field of one family, a small spring dampened the land surface, hardly noticeable beneath the rocks. Once cleaned of debris, the spring flowed consistently, with enough water to fill gourds and buckets.

It had become the custom of The People not to enter the garden plots of others, just as it had been their custom for adults to avoid the space immediately around the hut of another, unless openly visiting. At first, families lacking water came to the spring only in secret. Many left behind small offerings, a piece of dried fish or small basket of nuts. Others were reluctant to visit it all; they looked to the Elders for guidance and waited.

When the Elders gathered to consider the drought, the holder of the garden plot stepped forward. "My garden is being disturbed by those coming for water," he said. Gazing at the Elders, one by one, he turned silent. The Elders talked quietly among themselves. Some left and then returned. Finally, The People all began to assemble, sitting or standing quietly. An Elder spoke:

With our river dry, our old ways of inhabiting the land can no longer continue. We must give thanks that the Earth has nonetheless made water available to us. We have a spring in our land and it can meet our needs, so long as we use it with care. As for the family whose garden includes the spring, we thank them for inviting us to share.

A murmur rippled among The People. Several nodded in the direction of the family that controlled the land. The Elder continued:

And we shall show our thanks with an equal generosity of spirit. Because of our need to use the spring, we shall together till and plant a new garden for the family. Those who have taken water may also show their gratitude in their own ways.

Again, a soft murmur arose.

More seasons passed and The People moved several times. Then again there came a time when the river was low and when forest and fields provided too little food. The beaver departed entirely, threatening The People, who relied on the animal in many ways. One day a young man of The People, traveling far away, came upon a stream rich in beaver. He returned home and, without announcing his find, took traps and returned to the beaver's river. Another member of The People followed quietly, out of sight. He witnessed what the young man had found and informed the others. Several nights later, an Elder took the young man aside in the dark and spoke to him of beaver and of The People's ways:

Young man: I was the one who found the beaver. They should be mine, just as if I had found berries or nuts. The beaver are scarce and they have great value. I will trade them with others of The People, and at trading spots with those who are not The People, and my family will thrive.

Elder: But you forget that the produce of the land and waters is offered to all of The People. As The People, we are guided always by the right. When our traditions are silent, it is for the Elders to lead, asking always (as they have and do) what is right for The People and for generations to come. We must stay on good terms with nature, or the land will turn against us. We cannot waste or let spoil, but must use honorably all that we take.

Young man: I have heard these things many times. But the beaver are from lands away from us. I would take nothing from the stock of The People. Why should not the beaver and its territory become mine? I have found them, and plan through my labors to bring them to The People, for their benefit and my own. Indeed, why should I even search for beaver if my share of them is no bigger than others'?

Elder: You are right that in finding beaver you have done a good thing. It is only appropriate that we honor you. But do not exaggerate your work. You did not create the beaver. You did not create the trees upon which the beaver feed and get fat. You did not create the waters in which they swim. What really have you done, you, acting alone? The world of the beaver is the world in which we all live. Our use of it is guided by the traditions that alone have enabled us to endure. We share, divide, help one another, stay close: by such acts we live rightly and survive.

Young man: Yes, but others did not find the beaver. I was the one who did. Without me, The People would not have known of the beaver.

Elder: Perhaps you are right, though perhaps another of The People would soon have found the beaver. And yet it is proper for you to expect fair treatment. To the hunter who brings down the great animal, we offer praise and give the first share. Honor is due and our traditions provide for it, in the hunt and in other settings. Your finding of the beaver is just such a success, and yet your secretive ways diminish your honor. So does your attempt to enrich your family without concern for others. You found the beaver because you are healthy and secure and have the skills to trap. And yet where did these abilities come from? Not because of your efforts alone, but because you are one of The People, supported and protected by others. You have succeeded on behalf of The People, as well as yourself. Your share of the beaver is a matter for our traditions and Elders to determine.

Seasons went by and many moves occurred until the time came when a strong tribe living beyond the hills began asserting influence over neighboring tribes. Members of the strong tribe came to talk with The People. They told of great fighting occurring far away, and of distant tribes that were seizing the lands of weaker ones and enslaving their members. They demanded that The People become allied with them and turn to them for help in defending against marauders. They had come to help The People, or so they claimed. Yet The People could see how angry and aggressive the visitors were, and so they named them The Angry Ones. The Angry Ones demanded payments of fur, food, and crafts in exchange for their protection. Only in that way, The Angry Ones said, could The People retain their lands.

The Elders of The People met. What must we do, they asked? We need protection, and yet our lands have always been ours. They came to us from nature. To pay tribute to keep them is to pay for what we have always had. The produce of our lands has always been ours to keep. Now to hold the land we must give a portion to The Angry Ones. Our traditions instruct us to take from the land only what we need to live. Now, to pay tributes, we shall have to take more than that. Will the land continue to provide for us if we ignore our traditions?

More generations went by, and the time arrived when a single Strong Man swept into the land with many warriors, enough to force everyone into submission. He demanded personal loyalty as well as payments. More than that, he declared that all lands belonged to him, and that people could occupy lands only with his permission. The Strong Man claimed many lands for his personal use, and insisted that everyone leave them alone. Other lands—most of the lands—he would allow others to use, but only on his terms.

By this time The People had accepted the burden of paying tribute. Indeed, only faint memories remained of times when The People lived without obligations to others. And yet the Strong Man's demands reached far beyond anything they had known. The People's lands would no longer belong to them. Indeed, the Strong Man disliked the power exercised by the Elders. Questions about land use, he announced, would thereafter be submitted to him to resolve.

Soon, the Strong Man sent to The People's lands one who was called the Local Ruler. The Local Ruler would control their lands, himself paying tribute to the Strong Man while extracting far greater payments from The People. So great were the payments demanded by the Local Ruler that The People were compelled to labor far harder and use their lands far more intensively than ever before. Much of what they produced went to the Local Ruler, and many work days were also owed. Aided by his advisers, the Local Ruler eclipsed most of the powers of the Elders, especially on land matters. Some of The People helped the Local Ruler and were allowed to act on his behalf, but only so long as they served him without question. Like the Strong Man, the Local Ruler claimed personal control over many of The People's fields and forests. The Local Ruler compelled The People to work these lands without compensation, save for the food and drink they enjoyed at festivals that the Local Ruler put on.

As the shock of the new wore off and the added burdens became routine, members of The People gathered to talk as they always had, deferring still to their Elders. And yet the Elders were saddened because their authority had declined. Young adults looked more and more to the Local Ruler and his staff: They strove to get ahead by serving the Local Ruler, even as they contrived to evade some of their many burdens. Even more troubling to the Elders was the declining sense that they still were The People, and belonged to one another. Declining too was their respect for traditions and their once firm belief that their lives were shaped, guided, and indeed made possible by tradition. Particularly on issues of land use and collective responsibility, the new, onerous rules from the Local Ruler now took precedence.

With this fundamental shift came a new attitude toward the law, especially among young adults. In the old days, traditions were honored and few were prone to violate them. The traditions gave strength and guidance; they were not constraints, but sources of communal power and identity. Because of the traditions and only by following them had The People thrived. The new rules of the Strong Man and Local Ruler commanded no such respect, except insofar as they protected a family's share of land and produce. Indeed, many people openly derided the rules as unjust interferences. They complied with them only because of the Local Ruler's power to punish violators. Those who secretly transgressed did

so more with pride than shame, a pride that came from tricking the Local Ruler and gaining the upper hand.

At one occasion when many of The People (though far from all) gathered, a respected Elder spoke:

We are much troubled now, and there is little hope that our troubles will end. We labor for others, day upon day, and even the parts of our lands we control are claimed by them. We work hard, yet barely have enough to survive, even as we dishonor the land and our traditions. It is not the hard work, though, that disheartens us most, nor is it how little we have to show for it. We have known hard times. No, it is that we are ceasing to be The People and losing our sense of the right. Our traditions, the wisdom of the Elders that we have carried forward, generation upon generation; all of it built upon our shared understandings of the right. But who now speaks of the right? Indeed, what does it mean any longer, now that our rules come from above, now that the law has become our foe, save when it protects us from arbitrary action?

Generations went by and the descendants of The People who still labored on ancestral lands rarely thought of themselves as The People. The oldest ones were no longer called Elders and they enjoyed little respect. The bonds that remained among them were most evident, not when people shared food with others or talked about right living (which now they rarely did), but when they gathered to complain about burdens that weighed them all down. Families jealously guarded their separate lands and their precisely defined portions of produce. Except to protect their own incomes, few cared about the land itself and few remembered, even in part, the various ways that The People's traditions had constrained uses of it. At their casual gatherings, loud complaints were aired against the Local Ruler and others who enforced the unfair rules. Young family heads boasted of how they had deceived the Local Ruler by shirking work or taking extra produce. Many who listened, though, were troubled by these evasions, for they knew that the Local Ruler in one way or another would extract his due. If one person did not pay, then another would be made to do so. Then, too, the labor being avoided was sometimes needed to maintain the land's productivity. Among those who knew this, some harbored strong resentment against the violators, even as they concurred that the system was unfair.

One day, several restless young men gathered to vent their frustrations:

First man: The Local Ruler, like the Strong Man above him, claims that he is the right, that his will is our command. And yet, are we not as good as he is? Why should he get such a big share of all that we do?

Second man: Yes, he claims that he is the right, and yet what he does is not at all right. He treats us unfairly, taking too much.

Third man: Indeed, he has no right to act as he does. We labor hard, we are the ones who produce, we are more in the right than he is. Yes, the right is on our side.

Fourth man: Just so, we have the right, we all have the right, and it is proper for us to assert it against the Local Ruler and his extravagant claims.

Fifth man: The right is with us, with each of us. I have the right, and I plan to assert my right against the Local Ruler. Either he respects my right, or I will refuse to do as he says.

One of the oldest descendants of The People, as full of wisdom as any, overheard the talk and beckoned the young men to come. They were slow in responding, and slower still in quieting down. Finally, the old man rose:

I hear you speaking of your rights, and I can appreciate why you do so. We are all treated unfairly. There was a time, you may know, when the Local Ruler did not extract so much, a time even when there was no Local Ruler and when our ancestors owed few payments to anyone. Yes, it is understandable that you feel aggrieved. And yet there are many ways that we might give voice to our frustrations. There are many ways that we might explain how things ought to be.

The old one paused, assessing the reactions.

I am troubled by the ways that you speak of the right, and of your rights, collectively and individually. We can agree that the system violates fundamental justice. But do we advance matters by speaking about the right as if it were best understood as something possessed by a person alone? What does it mean for one of you to proclaim "I have the right?" Your complaint, of course, is against the Local Ruler. But the right that you assert is a right against your friends and neighbors, as well. For you to have a right, they must have a duty to respect that right. The louder and more expansive your claimed right, the more burdensome is the duty you would impose on others. And so what comes from this aggressive pursuit of individual rights? Will it push the Local Ruler to act more fairly? Perhaps so, and if it does we can count it good. Will it push us to treat one another with at least modest respect? Again, perhaps it will, or at least it could, and this too we could count as good. But aside from the matter of fair treatment, where does one look to find the content of this right that you proclaim? You each individually seem to want more and more; it has become our nature to do so. But where does it all end? The more one person gets, the less there is for others. The more one person pushes and demands, the more others are pushed against and sapped. And the more others are pushed, the more prone they are to push back by declaring rights of their own. As for the land, who is to push back on its behalf? Who is to look out for the good of nature when individual users push hard to use land as they see fit?

The old one paused again before continuing:

To talk of rights is to wield a potent tool, rhetorically if not legally. Rights talk can bring good, but it can also cause harm. It can drive wedges between and among people, as people use it to claim more for themselves as individuals. Such talk encourages us to put ourselves in the center and others on the edge. And it can lead us, too easily, to forget what our ancestors once knew so well: that to speak of the right we must first consider the good of the whole. The rules that govern our lives—the rules within which we become free to live—should arise from a clear sense of what is good for all. The good of the whole should provide the outer bounds of what we do, particularly in dealing with nature. On few points was our inherited wisdom more clear. To recognize such limits was a matter, not of recognizing rights, but of seeing clearly what *was* right. Of course, to see clearly the right is merely to lay a solid foundation. One must go on, to ensure that we also treat one another fairly and respectfully.

After a final pause, the old man concluded:

And so I ask: How might we best speak of the oppressions that now afflict us so greatly? We are not being treated fairly as individuals, and it is important to say so; but the present rules have other defects as well, defects that are best talked about in terms of how they affect us collectively. Whether we know it or not, whether we remember it or not, we remain a people. To cast that truth aside in the name of individual rights is to pursue a route that will surely drag us down, however much it helps for a time.

It was only a generation or two later when descendants of The People joined ranks with similar people nearby to challenge the authority of the Local Ruler and of the Strong Man. They presented their objections passionately, using the rhetoric of individual rights. The existing system, they claimed, interfered with their rights. Their land use rights in particular were too insecure and subject to exactions by higher authorities. Heated rhetoric about political equality and democratic control mingled with such talk. Arising out of it all was a growing image of the liberated individual, of a person who owed social and political homage to no one. Burdens and restraints were resisted in the name of this liberated individual. In his honor—and occasionally her honor—a new era was taking form.

Hardly had the revolt achieved success when some individuals within the new order—descendants of The People, as well as descendants of the Local Ruler—began amassing great landholdings and controlling vast amounts of the region's wealth. Populations rose and land values swelled. Those who owned land began to charge rents that resembled the payments once made to the Local Ruler—fully half of the land's produce, or nearly half of a family's income. The new landowners, though, no longer held festivals as the Local Ruler of old had done, nor did they

look after their subordinates the way the Local Ruler sometimes did. In the new era, tenants were free to come and go without social restraint. Land had become a market commodity; relations were reduced to cash; market forces pressed upon tenants directly.

Flush with new wealth, the rising entrepreneurs gained greater control over government, particularly when many poor people, admiring the success of the wealthy, endorsed their views of the world. Rich and poor alike felt excitement about rising economic development. Most were prepared to revise their laws to facilitate it. Landowners gained greater rights to use their lands intensively. With the intensified land uses came a slow deterioration of nature and its ecological processes. Protest arose among citizens who connected with nature emotionally, as it did among those who mourned the losses taking place in ways of life dependent on fertile lands and waters. But the protesters remained on the fringe or powerlessly silent, as those who wielded influence led the country in other directions.

In a few regions, enough citizens rose up to pose more forceful challenges to new patterns of ownership and land use. A mere two percent of the people had taken over ninety percent of the land. Leaders of the citizens questioned the system's fairness, likening the owners' high rents and profits to the mandatory payments extracted by rulers of old. Others bemoaned the fact that most landowners were excluding the public from entering and using their lands, even in such modest ways as walking and gathering mushrooms, berries, and nuts. Still others lamented the continued disruption of the land's ecological processes and biological communities.

Defenders of the system used the rhetoric of individual property rights, as they explained why any curtailment of private rights would conflict with core social values. Land ownership, they asserted brusquely, had always included the exclusive right to use land as one saw fit. If land conservation was a desired public goal, then landowners should be paid to conserve. To force them to conserve without payment was necessarily to violate their rights. As for the claimed unfairness of having so few people hold vast power, a new argument emerged to defend the status quo: The system was fair, its wealthy defenders claimed, so long as anyone could rise through the ranks to great wealth. So long as no restraints held any individual back, the country remained a land of opportunity, even when economic inequality was vast. As for the public's desire to enter and enjoy unoccupied private lands, the shift toward greater landowner control, they claimed, also promoted the good of all. When private owners held the right to exclude, they could negotiate with the public to determine precisely what rights the public would enjoy, with the public making payments accordingly. So long as such arrangements could be made, the system was sound, even if such negotiations rarely took place.

Outside a large city, citizens concerned about sprawling development demanded that government act to halt what they saw as the cumulative ill effects of individual, self-centered decisions. They called for a new regional governing body, one that went beyond planning to impose controls on unwise development. The loudest opposition to their call came, not from government, but from a progrowth coalition funded by the construction and development industries, which claimed to speak on behalf of ordinary home buyers. Land ownership by definition, the coalition argued, included the right to build on one's land, as well as the right to exclude. Government could ban development only when a project was plainly and unreasonably harmful in and of itself. In all other settings, the coalition said, landowners deserved payment whenever they had to give up their development rights. Otherwise, property rights everywhere would be under attack. If government could curtail property rights in one way, then it could do so in all ways. If a landowner could not build a home on her land, then what did it mean to own land? And as for the sprawl, it was obvious that people wanted it, the spokesman urged. The market merely gave people what they wanted. If they really wanted an open countryside, then everyone would simply refrain from building there.

Near a city not far away, a similar conflict simmered. A developer proposed to construct a new retail area on the suburban fringe, with several large warehouse stores, numerous restaurants, and nearly 100 new homes. When the developer agreed to set aside twenty acres as a conservation reserve, city planners pronounced the development a "win-win" project—good for nature and good for jobs. A local citizen, appearing at a hearing, objected to the plan, pointing out that the new stores would cause existing stores and restaurants to go out of business. This would cause the loss of as many, if not more, jobs than those being created, leading to a decline in the downtown area. Indeed, she asserted, the community already had empty retail space and restaurant locations and had no need to devote more land to that purpose. The citizen also argued that the twenty-acre conservation reserve was not an added benefit to the community, given that the twenty acres already existed; the project's effect instead was to degrade the hundreds of acres being transformed into stores, homes, parking lots, and roads. City planners responded to the criticism: If we don't allow the project, they asserted, then the developer will simply construct the development in another suburb, causing the same loss of jobs, while bringing new jobs to the other suburb. The woman countered: "But I thought we were in charge of our own community and land-uses within it." The planners demurred: not really true, they confessed. We must bow to market pressures, they said. So long as suburbs can compete with one another in attracting development, the market is more powerful than government.

In one part of the country, disgruntled citizens did take control of land-planning processes, many of them landowners concerned about widespread degradation. After mapping the landscape and deciding where they thought development might wisely take place, they imposed stern restrictions on all land, parcel by parcel. Some landowners were allowed to develop and their land values rose; other landowners could not, and their values diminished. Landowners with adjacent, nearly identical lands were often treated differently. Rural lands were subject to the control of a newly formed nature preserves commission, which surveyed lands for their natural values. Hundreds of parcels, from all over the region, were identified as important natural sites with intensive activities on them banned. The values of such lands diminished considerably, while the values of adjacent lands escalated.

One owner of land designated as a nature preserve challenged the new regulations. In legal arenas and before the news media, he claimed that his rights as landowner were being slashed. His land held great potential for residences and yet the new law assigned it to a use category that allowed only sustainable timber harvesting, livestock pasturing, hay production, and recreation. Loudly the owner proclaimed, "These new laws conflict with my inviolate private rights." The nature preserves commission responded:

Our high courts tell us that we can regulate individual parcels as much as we like, so long as we do not physically invade an owner's land and so long as we do not prohibit all economic uses of it. In your case, there is no physical invasion and modest economic uses are allowed; hence, your rights have not been violated.

The landowner responded, more vehemently:

This simply cannot be, or if it is, then it is unfair. How can government wield such great power in reducing the rights held by an individual landowner? The high courts must be interpreting wrongly our fundamental charter. Unless the charter protects me more as an individual owner—unless the charter protects some core rights of landownership, including the right to build—then government can just ravage this splendid institution of private ownership. Either I have more rights as individual owner, or our entire system will fail.

The nature commission responded: "We are obligated by law to protect all critical natural values on the land, which we have done in your case. No other matters are relevant to our inquiry." The landowner retorted: "But what about my neighbors, who get to develop? Surely this is unfair, one getting to develop and the other not."

Some members of the nature commission took the complaints seriously. One wondered whether the commission's procedures were broad enough, in terms of the factors the commission took into account; perhaps it was too ad hoc, she suggested, and too narrowly focused on pres-

ervation concerns. The commission chair, however, saw little reason to take the landowner's complaint seriously:

According to our charter as commonly understood, it is not relevant how we treat landowners around you. The sole question is the effect of our legal actions on your land, and in your case, the effect is not too severe. Our sole obligation is to avoid violating your minimal rights; so long as we do that, our action is proper.

Not long thereafter, a citizens group called a public meeting to discuss landscape degradation and private property rights. The gathering was small but attentive. Various perspectives were presented, nearly all with passion. Everyone who spoke touched upon values and aims that seemed important to all in the room. Many talked about nature and its decline. Others talked about noise, congestion, and the stresses of life. Still others worried about the threats of government, and about the kinds of decisions that it might make if really given free rein to act. A few spoke critically about individual decisions that government had made.

Late in the meeting, an elderly woman rose. An historian at the local college, she had long studied the various peoples who had inhabited their region, paying particular attention to the ways they had lived in relation to the land—how they saw it and valued it, how they used it, the kinds of private rights they recognized in it, and how various regimes of private rights shifted over time. Her comments ranged widely:

My role as an historian, as I've tried to say, is not to recommend where we ought to go, though as a citizen I have my ideas. It is to help us use the past, honestly and accurately, to inform us as we move ahead. In that light, it is worth remembering that the people who first lived here saw themselves in more communal terms than we do now. They were a people; they belonged to tribes, and their identities and self-images were based on those tribal memberships. Important decisions were made by the group, yet they were made as best we can tell in ways that treated people fairly and that derived so far as possible from consensus rather than conflict. As for the land, people viewed it with far more mystery than we do today, and their senses of value were much broader. Much that we know about nature they did not know, and yet much that they knew has likely been lost to us, particularly their detailed knowledge of the local landscape. Their lives were far more dependent on the local land than our lives are today. They were far more familiar with other life forms, and with the ways that the earth maintained its fertility. No doubt the landscape they knew was richer in stories. Many more of its natural features had names.

As she continued, she reviewed the ways that tribes had used the land, and how they divided rights in it and made decisions about it.

For better or worse, then, we have lost much of the old sense that private rights in land should promote the good of the communal whole. At the same time, despite our liberal practices, we have lost

much of the compassion for one another that characterized life long ago. Though individuals then had few of the rights that we now possess, their culture was far more egalitarian. Perhaps most visible, though, has been our loss of restraints in dealing with the land itself. Our knowledge has increased, to be sure, yet our arrogance toward nature has risen even more rapidly. We are a proud people, or rather a proud gathering of individuals. We desire maximum freedom, and at times and in places have largely achieved it. Yet what have its effects been overall? How has it transformed the land? What types of communities has it fostered? And how long can it all endure?

When the historian sat down, a younger man arose. He too was from the local college. His area of study was philosophy, and like the historian he maintained a particular interest in land and peoples' links to it. Like the historian, he sought a larger context for the issues of the day:

And so it would seem, speaking as a philosopher, that we confront two central issues today. There is the particular issue of how we might best protect the public interest in all of nature, especially in the parts of nature turned over to private owners to manage. In my view, the public needs to be more forceful in identifying that interest and laying claim to it. Then there is the more general issue of which this is a component, one of the most enduring issues of all time. I refer to the matter of the parts and the whole, of how the world's countless parts fit together to form larger things. When we look at a bee in a hive, or at a single ant, we know we are studying an individual organism, yet it is an organism that can live only a brief time in isolation. The individual is part of something larger—the hive or the colony. It depends on that larger something, and carries out genetically assigned tasks that promote the good of that something. The hive or the colony itself, in turn, is integrated ecologically into landscapes, and thrives or withers based on factors beyond its control. If an individual human possesses more flexibility than bees or ants in how he or she might live—as surely we do—then there is nonetheless the same essential dependence and interconnection. Just so, an acre of land can be bounded and used in isolation, yet it remains true that the acre can never sustain life in isolation, nor can activities undertaken on it occur in isolation. All is connected.

Having said that, it must be added that it is highly useful in many ways to respect the parts and to honor them as such, for how can the whole be sound if the parts are not? For the parts to form something good, the parts themselves must be vigorous. This is true in nature. It is true in the human social realm, and it is true in the ways that people and nature come together to form integrated ecological systems. Considered alone, a human is a distinct being, entitled to respect and opportunities. But it is just as apt when studying a person to see, not an isolated individual, but a function-

ing member of various communities, a member whose actions for good or ill affect the well-being of such communities. In the same way again, the acre of land: it too is both distinct and fully indistinct.

And so, in setting after setting, we confront the question: Do we treat the parts as separate and independent, allowing for wide individual freedoms, or do we assert more communal control to ensure that the parts operate in ways that sustain the wholes, which are themselves so vital to the well-being of the parts? We can imagine a Utopian world where the parts operate on their own in ways that automatically sustain the whole. But when is this Utopian world going to arrive? And how should we act in the meantime, as populations rise, technology becomes more intensive, and our lands and communities sicken? Freedom, yes, but how much, and at what cost? Communal control, yes, but cannot we exercise control with greater fairness and wisdom?

