

Property and Progress

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1. Introduction

In a series of articles published since 1990, David Schmidtz has argued that the institution of property plays a crucial role in the progress of humanity.¹ According to Schmidtz, the original appropriation of resources as property is necessary to prevent the tragedy of the commons. Moreover, the ongoing practice of property facilitates the mobilization of those resources in a way that creates wealth and opportunity. Thus, Schmidtz argues that property is the engine of human progress. In what follows I will carefully examine Schmidtz's arguments. Despite their ingenuity, I will explain how these arguments fail to support Schmidtz's conclusions. Property is not the only way to avoid the tragedy of the commons, nor is it evident that property is the only way to achieve progress.

2. Is Property Necessary to Avoid the Tragedy of the Commons?

Schmidtz's first argument begins with a description of life without property.² Without property, everything would be part of an unregulated commons. The defining feature of an unregulated commons is that no one has a right to exclude anyone from using anything. Consequently, it is in everyone's self-interest to take whatever they can get, and it is in no one's self-interest to preserve or protect anything. To preserve or protect something would risk wasting valuable energy, since someone else might come and take it. In these circumstances, the resources in the commons will be depleted and perhaps even destroyed. That is the tragedy of the commons, and it is imperative for human beings to find a way to prevent this tragedy. Therefore, human beings must not allow an unregulated commons to persist. That is the

¹ See David Schmidtz, "When Is Original Appropriation Required?" *The Monist* (1990), pp. 504-18; David Schmidtz, "The Institution of Property," *Social Philosophy & Policy* 11, no. 2 (1994), pp. 42-62; David Schmidtz and Robert E. Goodin, *Social Welfare and Individual Responsibility* (Cambridge: Cambridge University Press, 1998); and David Schmidtz, "Property and Justice," *Social Philosophy & Policy* 27, no. 1 (2010), pp. 79-100.

² What follows in this paragraph is a summary of Schmidtz, "When Is Original Appropriation Required?" pp. 506-8.

first step in Schmidtz's argument. What follows from this? According to Schmidtz, in order to exit an unregulated commons, people must appropriate resources as property. By appropriating resources as property, people are able to exclude others from the use of those resources, and thus they can preserve and protect those resources from depletion and destruction. So the appropriation of resources is required in order to prevent the tragedy of the commons.

However, the fact that appropriation will prevent the tragedy of the commons is not sufficient to justify appropriation. If appropriation is not the *only* way to prevent the tragedy of the commons, then we must consider the other ways of doing this before we can conclude that appropriation is justified. The relevant question is not whether appropriation is *sufficient* to prevent the tragedy of the commons, but whether it is *necessary* for preventing the tragedy of the commons. And the problem is that the answer appears to be *no*. Instead of appropriating resources as property, people could establish regulations for the responsible use of resources, and then enforce those regulations. This would prevent the tragedy of the commons without converting the commons into property. So the appropriation of resources as property is not necessary for preventing the tragedy of the commons.

Schmidtz argues that regulating the use of resources in the commons is not really an option. The reason is that "we choose for ourselves, not for everyone. And what people should choose for themselves differs from what would be right . . . if they were choosing for everyone."³ If an individual finds himself in an unregulated commons, and the community as a whole does not establish regulations for the preservation of the commons, then the only way for that individual to preserve resources is to exclude others from using resources, so that he can protect them from depletion. In excluding others from the use of those resources, he has effectively appropriated those resources as property.

This argument fails to support its conclusion, and for at least two reasons. First, an individual need not exclude others from the use of a resource in order to prevent its depletion. One could simply regulate the use of that resource. I am not repeating the previous suggestion that this individual can somehow decide for everyone else how they will behave. Rather, the point is that a single individual could regulate the use of some particular resource without appropriating it as property. The difference between merely regulating and appropriating is that in mere regulation others will not be *excluded* from using the resource. Their use will simply be regulated. Schmidtz might reply that it is impossible for a single individual to enforce such regulations. However, if it is impossible for one to enforce regulations for the use of a resource, then it would be equally impossible for anyone to enforce an appropriation of that resource as property. So if appropriation of property is possible, then mere regulation is also possible.

³ Ibid., p. 507.

Consequently, an individual does not need to appropriate resources from the commons as property in order to protect those resources from depletion.

Second, and more importantly, Schmidtz's argument makes his conclusion conditional on the absence of any other communal agreement to regulate the use of resources. Schmidtz's argument shows only that *if* there are no enforced regulations for the responsible use of resources, *then* one is entitled to appropriate those resources as property. If a community were to establish some other set of regulations for the responsible use of resources, then the reason that formerly justified appropriation of property would disappear. This undermines the significance of Schmidtz's argument, because it reduces the argument to saying: "Property is justified, at least as long as you cannot agree on anything else." That conclusion is simply too weak to be of any interest in the debate over property.

3. Does Property Create Wealth and Opportunity?

Schmidtz's second argument for property is based on the claim that the institution of property has played an indispensable role in creating wealth and opportunity. The core of the argument is contained in the following passages:

[I]n taking control of resources and thereby reducing the stock of what can be originally appropriated, people typically generate massive increases in the stock of what can be owned.

Leaving resources in the commons is not at all like putting resources in a time capsule as a legacy for future generations. Time capsules may be a fine thing. They certainly preserve things. But before you can put something in a time capsule, you have to appropriate it.

The institution of private property preserves resources under a wide variety of circumstances. It is surely the preeminent vehicle for turning negative-sum commons into positive-sum property regimes.⁴

According to Schmidtz, then, the institution of property has prevented serious harms, and has caused great benefits.

Suppose that Schmidtz is right about this. What follows from it? Presumably, Schmidtz sees these facts as reasons for the institution of property. However, that does not follow. That is because there might be other, better ways to achieve these same results. A simple analogy will illustrate the point. Imagine a follower of Thomas Hobbes who asserts that absolute monarchy will prevent a war of all against all, and thus maintain the peace that is necessary for commerce. Suppose that he cites this fact as a

⁴ Schmidtz, "The Institution of Property," pp. 46, 48, and 50, respectively.

reason for absolute monarchy.⁵ We could respond to him, in the spirit of John Locke, by pointing out the disadvantages of absolute monarchy.⁶ However, we need not go that far in order to respond to the argument. We could simply point out that there are other ways to keep the peace. The alleged benefits of absolute monarchy can be achieved through other forms of government. Since those benefits can be achieved in other ways, they do not constitute a reason for choosing absolute monarchy over other ways of achieving them. If either of two actions, X or Y, will achieve a certain benefit, then achieving that benefit is not a reason for doing X rather than doing Y. Here is the fundamental mistake in Schmidt's defense of property. Schmidt asserts that the institution of property has produced certain benefits, and then implies that this is a reason for maintaining that institution. However, if those same benefits can be achieved through some other institution, then those benefits do not constitute a reason to prefer that institution to another institution that also could achieve them. Thus, the fact that property has caused these benefits is not, in itself, a reason in its favor.

However, that is not the end of Schmidt's argument on the subject. In much of Schmidt's work, he offers historical case studies as empirical evidence for his assertions about property. As Schmidt interprets them, these cases show that property has succeeded where other arrangements have failed. One such case is the story of Jamestown, a colony in seventeenth-century Virginia. Here is Schmidt's summary of that story:

The Jamestown colony is North America's first permanent English settlement. It begins in 1607 as a commune, sponsored by the London-based Virginia Company. Land is held and managed collectively. The colony's charter guarantees to each settler an equal share of the collective product regardless of the amount of work personally contributed. Of the original group of 104 settlers, two-thirds die of starvation and disease before their first winter. New shiploads replenish the population, but the winter of 1609 cuts the population from 500 to 60. In 1611, visiting governor Thomas Dale finds living skeletons bowling in the streets, waiting for someone else to plant the crops. Their main food source consists of wild animals such as turtles and raccoons, which settlers can hunt and eat by dark of night before neighbors can demand equal shares. In 1614, Governor Dale has seen enough. He assigns three-acre plots to

⁵ Thomas Hobbes, *Leviathan*, ed. Edwin Curley (Indianapolis, IN: Hackett Publishing Company, 1994), p. 104. Hobbes himself argues for absolute political authority in this text, but in this passage he does not insist on monarchy as the form of government. That is why I have imagined a follower of Hobbes making this argument.

⁶ John Locke, *The Second Treatise of Government*, ed. C. B. Macpherson (Indianapolis, IN: Hackett Publishing Company, 1980), secs. 137-38.

individual settlers, which reportedly increases productivity sevenfold. The colony converts the rest of its landholdings to private parcels in 1619.⁷

This example is intended to constitute evidence for Schmidt's claims about property.

However, there are simply too many variables that are peculiar to this case to draw any general conclusions. This is the standard problem with using an anecdote to support a general conclusion. A preposterous argument will illustrate my point. Suppose that I argue as follows: "We once set up a socialist society among a group of convicted criminals in a maximum security prison, and it didn't work. Therefore socialism doesn't work." Obviously, that would be a terrible argument. The fact that socialism doesn't work among convicted criminals in a maximum security prison does not show anything about the prospects for socialism in other circumstances. Although this is a preposterous argument, the very same problem undermines Schmidt's use of the case of Jamestown. The fact that common ownership and guaranteed provisions did not work among those particular people, in those particular circumstances, does not show anything about the prospects for those social arrangements among other people, in other circumstances. There is no reason to think that this small group of people was representative of the whole population, nor that the circumstances of Jamestown were representative of the kinds of circumstances that people find themselves in. So any attempt to generalize from this case would be a hasty generalization. Unfortunately, that is what Schmidt does.

It is worth stopping to note the rest of the Jamestown story.⁸ The dark side of the Jamestown story was the growth of indentured servitude. In fact, some historians argue that indentured servitude was the real key to the survival of Jamestown. Needless to say, indentured servitude was no picnic. In the later years of the Jamestown colony, forty percent of the indentured servants did not survive long enough to become freemen. Between 1619 and 1622, company records indicate that 3,570 settlers arrived in America, yet the population remained constant at the 1619 figure. If we subtract the 347 settlers who were killed in the Native American attack of 1622, we can conclude that 3,223 settlers died of other causes (presumably, malnutrition, etc.) in Jamestown during 1619-1622, despite the institution of property. So, contrary to Schmidt's suggestion, the institution of property in Jamestown was no panacea.

⁷ Schmidt and Goodin, *Social Welfare and Individual Responsibility*, pp. 53-54; footnotes omitted.

⁸ What follows in this paragraph is from Karen Ordahl Kupperman, *The Jamestown Project* (Cambridge, MA: Harvard University Press, 2007).

Before I proceed to the last issue raised by Schmitz's work, I should address what appears to be an additional argument for the claim that property is necessary for prosperity. Schmitz contends that people are better off when they internalize responsibility. To internalize responsibility is "to plan your future, to deal with your own mistakes as best you can, to deal with other people's mistakes as best you can, to make the best of your good luck, and your bad luck as well."⁹ According to Schmitz, people's lives go better when they internalize responsibility, because people are more productive when they internalize responsibility. According to Schmitz, "A variety of property institutions are internalizing responsibility and unleashing people's productive energies right now, not merely in the distant future. And that is why not everyone is destitute."¹⁰ By giving people control over resources, the institution of property gives people some control over their well-being. If they use their property to produce, then they will prosper, whereas if they do not use their property to produce, then they will not prosper. This control over one's own prosperity encourages one to internalize responsibility for one's own prosperity, and that, in turn, makes people more productive than they otherwise would be.

No one would doubt that property often has this effect, but is there any reason to think that property is the *only* way to get people to internalize responsibility? Schmitz offers no argument for this supposition. The closest thing he offers to an argument is a detailed description of the enormous progress that has been made in the United States over the course of the twentieth century.¹¹ The tacit implication is that the institution of property is at least partially responsible for this progress. However, there is another plausible hypothesis about what caused this increase in well-being. The twentieth century marked the advent of a multitude of social programs: Social Security, Medicare, Medicaid, Aid to Families with Dependent Children, Temporary Assistance to Needy Families, Federally Subsidized Student Loans, etc. Why think that the institution of property rather than the advent of these social programs caused the increase in prosperity in the twentieth century? Schmitz offers no reason to prefer his hypothesis to this one. I will now turn to the latest move that Schmitz makes in his defense of property.

4. Is Property Prior to Justice?

Even if property is the only way to achieve great benefits, does it automatically follow that property is just? In his latest work on this topic, Schmitz maintains that property is, in some important sense, "prior to

⁹ Schmitz and Goodin, *Social Welfare and Individual Responsibility*, p. 10.

¹⁰ *Ibid.*, p. 36.

¹¹ *Ibid.*, pp. 37-42.

justice.” After comparing the institution of property with a system of traffic lights, Schmitz says:

The traffic management function of property conditions what can count as justice, given that whatever we call justice has to be compatible with the system of property that enables people to prosper. If whatever we choose to call justice is not compatible with property, then we have no reason—indeed, no right—to take so-called justice seriously.¹²

He proceeds to amplify this point:

Property’s normative roots are to be found less in philosophical theorizing about justice and more in whatever the truth of the matter happens to be in a given time and place about what it takes for people to be able to prosper together.¹³

Schmitz seems to think that the nature of justice is conditional on which practices generate prosperity. However, that is unacceptable. Imagine a society that has an institution very similar to slavery. Whether or not it really is slavery is immaterial for my purposes here. In this society, some people are compelled by law to do whatever labor their masters command. However, their masters are required by law to provide these laborers with a very comfortable life outside of work. Let us suppose that this system, which we could call a quasi-slave system, is very effective at generating productivity. Would that suffice to make it just? Surely not. Even if the laborers share in the prosperity of the society, this would not suffice to make their situation just. On the contrary, the subordination of the laborers to the masters is unjust, no matter how much prosperity it brings. So if Schmitz is saying, as he appears to say, that whatever generates prosperity is *ipso facto* just, then that is mistaken.

5. Conclusion

Despite the ingenuity of Schmitz’s arguments, they fail to justify the institution of property. It is not evident that the appropriation of resources as property is the only way to preserve those resources, nor is it evident that the practice of property is the only way to generate prosperity. Moreover, prosperity is not sufficient for justice, and so the institution of property is not prior to justice. These claims require further defense, if Schmitz is to justify the institution of property.

¹² Schmitz, “Property and Justice,” p. 86.

¹³ *Ibid.*, p. 96.

