

Economists and American Indian Private Property

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Contents

- Individual Private Property is a specific system of territoriality.
- Indians did not have individual private property rights in land; they did have systems of relationships that included land, their lands were very productive because good relationships promote productive commons.
- Early social theorists and economists agreed in 18th century, American Indians did not have private property, for different reasons: to justify occupying Indian land, or as a consequence of Indians being hunters.
- Recent economists argue otherwise, either ignoring evidence or using it selectively in trying to explain the emergence of private property by its efficiency, to argue Indian material wealth was based on private property and can be again, or to argue entrepreneurship had created a strong private sector based on market principles.

Property

- Private Property in modern economies is a well-described and clear; it involves individual ownership and markets in land.
- Owners have rights to exclude others, to use the income for themselves, to manage the land, and to sell it, plus more. Their rights are protected by a nation-state, and private property is not possible without such governments, conceived in theory as created by a social contract among individuals.
- A major error occurs when one of the items on this list is assumed to mean the rest of the list is present. All the parts have to be present to claim modern ideas of private property apply. Unfortunately, “Economic analysis has long been content with a very casual understanding of the institution of property.” (Merrill 2002, S337)
- When Indians have gone to court to prove they owned land, they lose. In Canada particularly, if two bands shared land when hunting, neither could claim they owned the land. To recognize Indian interest in land, courts have invented “aboriginal title,” which is a use right but not a private property right.

Indians did not have private property in land

Indigenous Property (family hunting territory version)

- Head Stewards control access.
- Head steward selected by family, based on knowledge of land.
- Head steward must comply with community standards for relationships with land.
- Head Steward cannot sell the land or lease it without community consent.
- Stewards share income with the family and others in need.
- Territory is full of conscious beings, including physical features.

Private property

- Owners control access.
- Owner purchases based on financing.
- Owner can use the land as he wishes.
- Owner can sell the land (hence, land market exists.).
- All the income belongs to owner, subject to taxation.
- Land is a thing containing things.

Fundamental bases of two systems

Relationships with people and land

- All entities on the land are conscious beings, worthy of autonomy in living.
- Living entities cooperate to create mutually beneficial relational agents in which the members share relational goods like trust, identity, solidarity, equity, mutual flourishing.
- Society is composed of relationships among relational agents, each with its own autonomy.
- Leaders in war or hunting, when coordination is key, are different from leaders in peacetime, when relational goods are key and despotic leaders are not allowed.

Individual private property

- The object to be owned is a thing with no rights of its own
- The owner is fully in charge of his things; individual liberty exists among owners; but such autonomy is not extended to domesticated animals or persons who do not own enough things. It was not extended to humans in slavery.
- A market in things exists and individuals can buy and sell things.
- Long-term associations are governed by contracts.
- A state recognizes and enforces owners rights and their contracts, but is not too strong.

Indigenous Economics

- I have a book in press, *Indigenous Economics: Sustaining Peoples and Their Lands*, coming out in Fall 2022 from U. of Arizona Press.
- The book uses relationality and the consciousness of all living beings as fundamental Indigenous assumptions.
- Individualism imposes the prisoners' dilemma on people dealing with common pool and public goods. Relationality provides the tools to overcome the dilemmas.
- In a previous book (Trosper, 2009), I showed that the relational systems on the Northwest Coast created productive fisheries and landscapes by solving the social dilemmas fisheries present.

Eighteenth Century

1690 - 1800

Locke on origin of property (1689)

- Labor mixed with land (or anything) creates property, just as catching a deer does so. [Arneil 1996]
- Money and trade allows acquiring more land than an individual can utilize, hence Locke justified inequality and acquisition of large land holdings.
- The land in America, being not owned, is open to be turned into property, i.e., taken from the Indians. Settlers like to have open access.
- A social contract creates a government (public) that enables the economy based on property (private) to prosper.
- Locke argued an Indian could hold property if he adopted English culture. The four stage theory, however, created a racial stereotype that excluded Indians from English society.

Four Stages Theory (1750 – 1800)

- Turgot [1751] responds to Kandiaronk [1704] and Zilia [1747] with a theory that explains European advancement through different systems of production. [Graeber & Wengrow 2021, 52-62]
- Hunting, then pastoralism, then agriculture, then commerce [eventually, industrialization]. The division of labor, and property, and inequality are justified by the wealth produced by commerce.
- Indians had no pastoralism; they had horticulture (tending perennials in place) and agriculture (growing annuals), which had to be ignored to justify taking their land by asserting they only roamed the land. (Jennings 1976)
- The Scottish School (Smith, Millar, etc.) elaborated on the four stages. Smith in 1762 saw property growing more important through the stages and fundamental for national wealth in 1776. [Meek 1976, 120-130]
- Cattelino (2018) recounts how the racial stereotypes of Indians as poor and without governance grew from the four stages theory, informed John Marshall when he declared “somesitic dependent nations,” and still explains why many think authentic Indians are poor and should lose what sovereignty they have if they are rich.

1967 -Present

Demsetz's Origin Story is False.

- Demsetz 1967, “Toward a Theory of Property Rights”
 - Family hunting territories solved the problem of open access for beaver as a result of the fur trade.
 - Algonquians, therefore, discovered the virtues of private property.
- His theory founders on the fact that the family hunting territories (FHT), then and now, are not examples of private property.
- Ironically, the problem of open access originates in Locke's theory of the hunt as the justification for settlers taking what they want. Thus, the articles in the *Journal of Legal Studies* (June, 2020) that examined the plausibility of Demsetz's theory all assume open access as the problem to be solved. None noticed that FHT systems are not examples of private property.
- The Lake Babine people of the Northwest Coast say they adopted the coastal version of FHT in order to make peace and solve their problem with open access. [Fiske and Patrick 2000, 102-108]
- Macfarlane (1998) and Sato (2018) give the correct historical explanation: private property emerged from the feudal systems of England and Japan, islands where land estates became things; primogeniture created individual owners; and the governments supported emerging private property rights, through enclosure in England and the Meiji Restoration in Japan.

Terry Anderson's "Get the incentives right"

- Chapter 2 of *Sovereign Nations or Reservations?* [1995] elaborates the thesis that the “common law of Indian property” arose from “the reciprocal expectations of individuals who depended on one another”[30], not from the philosophy attributed falsely to Chief Seattle. This common law “served to internalize costs and benefits of individual action’ that is, to get the incentives right.” He argues the generality of private property by using examples from many places and times to illustrate this or that component of private property without taking care to examine the absence of full components of private property.
- In 1997, he concluded, “Rather than shunning property rights solutions, we should embrace them, as did our predecessors on this continent.” (Anderson 1997, 782) This supports the arguments in *Free Market Environmentalism* (Anderson and Leal 1991).
- Chapter 3 cites Demsetz’s analysis for FHTs.
- In Epilogue to Anderson, ed, 2016, p. 295 he identifies two keys to unlock the wealth of Indian nations:
 - First, free Indian tribes to set up private property rights.
 - Second, limit the power of tribal governments.
 - These are the last two of the five lessons that conclude Anderson 1995, 168-175
- Both Demsetz and Anderson have a “very casual understanding of the institution of private property.” (Merrill 2002, S337)

Miller and others promote entrepreneurship

- Robert J. Miller (2012,12-24; 2016,246-248, and 2019, 11-36) connects past Indian prosperity and entrepreneurship to private property and free market economics.
- I would argue that entrepreneurship can originate in non-individual ways, through the relationships of families, clans, villages and confederations.
- Further, all economic activity was “private” historically, because Indians did not have modern governments which today define the difference between public and private.
- Miller, like Anderson, draws selectively from many examples, none of which actually had full individual private property systems.

Relational societies trade with each other

- Miller and others emphasize long distance trade as further evidence of entrepreneurship. That evidence is consistent with relational societies trading with each other.
- Also, relational societies have the trust and other relational goods that contribute to dealing with the dilemmas of common pool goods and public goods.
- At Celilo Falls, coastal Indians traded salmon-based dried pemmican for warm buffalo robes (Gladstone 2017, 20), both being products of successful common pool management.
- Trade is an exchange of things and needs a unit of account. Money is a feature of exchange, which does not need property in land. Neither does a private property system need to exist for land to be productive.
- Economists such as Smith, Demsetz and Anderson have falsely mixed money, property, individualism and civil government together. Indigenous economics needs to disentangle the concepts.

Conclusion

- 18th century theorists were right and today's theorists are wrong regarding the claim that American Indians had private property rights;
- BUT, 18th century theorists incorrectly claimed Indians were poor and the data now show that Indians were well off and the land was productive.
- The 18th century theorists had a model that said their system was the pinnacle of progress, attributing the result to money and private property. The four stages model is wrong on the facts. 21st century theorists are either trying to again justify private property, or are simply looking for ways to help Indians out of poverty. In either case, to assert Indians had private property is factually incorrect.
- Whether relational economic systems survive better than individualistic ones is a question to address in another paper.
- Individualistic market capitalism has reached a crisis and may not survive rising oceans and falling land productivity as the atmosphere heats up. Individualists cannot solve the dilemmas of either common pool or public goods. They can't even deal with an epidemic, let alone a warming atmosphere.

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