Journal of Libertarian Studies
Volume 27, No. 1 (2023): 307–322

Book Review

Property and Justice: A Liberal Theory of Natural Rights

Billy Christmas

Routledge, 2021, 184 pp.

Charles Amos

ABSTRACT: *Property and Justice* presents a new theory of original acquisition out of which two applications are drawn: a defense of the commons and a defense of the right of necessity. Author Billy Christmas attempts to robustly link freedom to property and mostly succeeds. However, the work contains two serious flaws. First, his right of necessity allows some individuals to partly own others. Second, his theory of original acquisition permits far more conflict between individuals than the author admits, and adjusting the theory to overcome this problem ends up undermining freedom by implausibly allocating property rights.

In *Property and Justice*, a fascinating book, Billy Christmas, a senior lecturer in political philosophy at King's College London, makes a significant original contribution to the scholarship on property rights by reformulating the theory of original acquisition. Out of this reformulation, Christmas draws two applications: a defense of

Charles Amos (charlesamos1846@gmail.com) is an English individualist writer with particular interests in paternalism and rights theory. He graduated with a first-class degree in political economy from King's College London, and currently studies at Lady Margaret Hall at the University of Oxford.

Amos was previously a student of Billy Christmas. He would like to thank Petr Svoren and Daniella Bassi for helpful comments on a draft of this work.

Creative Commons
CC BY 4.0 License

the commons and a defense of the right of necessity. Both applications make the libertarianism defended throughout the work far more coherent and seemingly palatable than that espoused by Robert Nozick and Murray Rothbard. Crucially, the author, in most cases, robustly links freedom to property, which allows libertarianism to overcome many awkward counterexamples. However, Christmas's right of necessity is unacceptable, as it allows some individuals to partly own others. Furthermore, his theory of original acquisition permits far more conflict between individuals than he admits, contrary to the purpose of justice; and if adjusted to overcome this problem, the theory ends up undermining freedom by implausibly allocating property rights. When the theory is adjusted, one of Christmas's main ambitions, "of robustly connecting freedom to property," is self-defeating (7).

The crux of Christmas's work, built up in the first three chapters, is the right of individuals to "to non-interference in their ongoing non-interfering activities" (38). The condition of this right being respected is said by Christmas to constitute freedom. And according to Christmas property is simply an embodiment of each individual's right to freedom, the adherence to which makes up justice. The three concepts of freedom, property, and justice are inextricably bound up together throughout the work. Even this brief summary makes it clear that Christmas is taking a far "more austere" (2) set of foundations to natural rights than contemporary libertarians. Contrary to Eric Mack and Rothbard, Christmas maintains that there is no independent right to acquire property, and nor does he understand property as an application of a foundational right to self-ownership, as implied by Nozick (Mack 1990; Rothbard 2002, 29–34; Nozick 2013). Motivating his rejection of all three of these right-libertarian theorists is Christmas's belief they fail to sufficiently connect freedom to property. To overcome this problem and correct many others within libertarian rights theory, Christmas develops a new theory of original acquisition, which stands at the heart of his endeavor.

Christmas contends that in order for many of our activities to remain uninterfered with—for us to remain free—extensive abstention from other people is required. As such, given the way we use many resources, the individual will acquire rights over resources that become "functionally identical to the extensive right to exclude that characterises private ownership" (69). Using land

to grow crops is taken to establish property rights in the field, for almost any action others take concerning the land will interfere with the extended activity of farming. Crucially, the farming activity would still be interfered with by building or dirt biking and many other activities (though not all), even when the land is left fallow for a period. So far, this theory may simply appear to restate Locke's; this is not so ([1689] 2002).

Consider the field, according to Christmas: Others may not "construct a well on the adjacent land and lower the water table in a way that interferes with the growth process, as determined by natural laws and A's actions. . . . [Nor may they] construct a skyscraper nearby if it blocks out the sun and thereby interfere with A's crop cultivation" (70). To conduct any of these activities would interfere with the farmer's ongoing activity of farming, and thus it is established that the farmer always had the right to those conditions of sunlight and water table access. If the property right was simply in the soil with which the farmer "mixed his labour" (Locke [1689] 2002, 13), none of the aforementioned rights to the use of the water table and sunlight would be established (and as we will see later, such a physicalistic division of the world leads to absurdities). What should by now be clear is that Christmas understands all property rights to ultimately be "strictly parasitical upon those use-rights one has in them [i.e., the objects with which the activities are undertaken]" (68) and that these use rights are the embodiment of the right to noninterference (i.e., freedom).

While libertarians have sensed the problem of defining property boundaries, none of them have made their case as convincingly as Christmas. In answering how much land is acquired by farming, Rothbard maintained that a homesteader owns the "technological unit" (i.e., the amount of resources necessary to use it as the kind of resource it is) (Rothbard 2011, 401). In response to this Christmas quips, "This proposal, however, puts the cart before the horse" (72), for objects themselves do not inform us what kind they are of; rather it is only our uses of them which do. He also convincingly critiques Mack's recent "elbow room for rights" approach, which argues for specifying our claim-right to property only so as to allow for our liberty-rights (Mack 2015). As Christmas points out, though, Mack does not specify which liberty-rights should be protected, leaving the potential for (amoral) conflict when individuals disagree, contrary to justice. If property rights are

constituted as the right to engage in particular extended activities, as Christmas theorizes, "the liberties people have are whichever liberties can be historically vindicated by their non-interference with any other person's antecedent activity" (73). Although maybe not concerning for Mack, the fact that Christmas's theory permits individuals walking over farmed land (provided no crops are damaged) may put off hardcore libertarians (e.g., Rothbard and Hans Hermann Hoppe) from considering such a formulation of property rights. It would be remiss not to mention as well the slight air of mutualism to Christmas's property theory. After all, it does, contrary most libertarianism, allow for abandonment "if the presumptively ongoing activity is patently no longer ongoing because of an extended period of apparent cessation" (78). This is in stark contrast to Rothbard, who maintains land ownership need only require "that the land be *once* put into use" (2002, 64).

One of the most cutting critiques of libertarian rights theory is that it leads to the paralysis of society. In recent years this case has been put convincingly by Peter Railton and David Sobel, among others (Railton 2003; Sobel 2012; Zwolinski 2015; Friedman 2014). The critique takes the physicalistic account of property rights, as espoused by Hillel Steiner, as its target (1994, 39). According to Steiner's understanding of our property rights, no physical alteration to them is permissible. This proves to be far too stringent a requirement. Talking to someone, driving down a road, turning on a light—all of these, via projecting carbon dioxide molecules at the person, creating vibrations, or sending photons onto her property—violates the person's rights. Thus, consent would have to be acquired for each of these everyday actions, which would itself paralyze society, irrespective of whether society could later be paralyzed by individuals refusing to give consent to such minor intrusions. All pollution, indeed all breathing, would have to be made presumptively impermissible. Perhaps the chief virtue of Christmas's theory of original acquisition is that it largely overcomes this problem, primarily because he conceptualizes property as the right to continue an ongoing activity at a particular time and in a particular space, as opposed to "physical objects tout court" (72). Driving down a country road, which will create vibrations next to a farmer's field, will nonetheless not interfere with the activity of farming. Nor will breathing in itself interfere with anyone's activities. Thus, under Christmas's understanding of property rights, these actions are entirely permissible. Importantly, this understanding bolsters

his theory that "given that any workable conception of ownership cannot be of the physicalistic type and must [thus] make exceptions along use-based lines, there is no reason ownership cannot just be an enumeration of use-rights" (71).

However, this reconceptualization of property still faces problems which may lead to the paralysis of society (although certainly to a lesser extent). This is because driving cars and manufacturing goods still do create carbon dioxide emissions which do "[interfere] with activities that depend upon a certain disposition of ecosystem services" (e.g., through increasing sea levels, flooding low-level farmland; 154). More work on this topic clearly needs to be conducted, but Christmas has certainly overcome numerous problems for libertarians and provided a better understanding of rights on which to base solutions to these issues into the future.

Two applications of Christmas's theory of original acquisition also represent significant contributions to libertarianism, the first being a robust defense of the commons outlined in the fourth chapter and the second a strong defense of the right of necessity, put forward in the fifth chapter. Regarding the commons, according to Christmas, in many instances of homesteading an individual will "leave [considerable] action space open to others" (94). This means that these others may also make use of the nonrival resource, provided that these new uses do not interfere with the original activity of the first homesteader. He gives a thoroughfare as the chief example: One person's regular use of it for walking is not interfered with by others' also doing the same. Neither would riding a horse down it interfere with others' use of it. Equally, when an individual starts fishing "she acquires a right to the pond," but this right does not subsume the whole of the resource (94). Instead, swimmers may still swim (provided they don't disturb the fishing), and additional individuals may also fish the pond (provided their catch doesn't come at the expense of the first fisher's). Christmas labels these forms of resources as public property because their nonrival nature permits additional users without interfering with existing users (and their activities). Hence no one is permitted to exclude people from them because to do so would interfere with *their* freedom. Christmas argues that many public parks, streets, squares, forests, and fisheries fall under this conception.

At the point where an additional use of the resource will interfere with others' activity (e.g., when fish are taken out above the replacement

level), Christmas argues that the public property is transformed into collective property. This means that the resource becomes owned by the existing users, which gives them the right to exclude newcomers: "the status of the resource *vis-à-vis outsiders* resembles that of private property" (95). Nonetheless it should be understood that each existing user maintains his use right to whichever activity he is engaged in. All the resource's uses are not suddenly subject to the majority's vote. Following Elinor Ostrom (1990), though, Christmas believes it is likely that individuals will "collectively consent to a set of primary rules binding each individual [, meaning the group will] . . . behave more like a firm" (96). This would allow the group to overcome problems such as the high transaction costs associated with trying to negotiate with everyone individually on each and every issue which arises concerning the resource.

Without doubt, this understanding of homesteading links freedom to property far more robustly than do alternative theories. In contrast to Locke's theory of appropriation, Christmas's has no problem in explaining the injustice of European settlers' forcing natives off their collective land in the nineteenth century, or indeed that of the English enclosure movement in the eighteenth. For in both instances "liberty . . . [was] sacrificed for private property, rather than property strictly following liberty" (90). As Christmas points out, some libertarians have only perpetuated the view that their ideology allows for such actions. Christmas picks out Nozick as a primary offender in divorcing the two concepts when he writes of a nonappropriator, as a result of another's appropriation of a given resource, "no longer being able to use freely . . . what he previously could" (Nozick 2013, 176). In this regard, the understanding of property rights as use rights rather than as over objects or spaces tout court is clearly superior for accounting for our intuitions. Indeed, if the latter understanding of property were adopted, it would be impossible to conceive of the commons (e.g., "thoroughfares" could only be established and owned by their first users)!

It would be remiss not to note the beauty of Christmas's account of use rights undergirding *all* forms of property: "Though I assign different labels to private and public property, the distinction is one of degree and not kind" (95). The intensity of the use of the crop field is all that really distinguishes it from the part of the field which is used as a thoroughfare. And use rights are in turn simply embodiments of our natural right to be free: everything is neatly tied together.

When it comes to the right of necessity, Christmas ensures it is built into the very foundation of his theory of justice. He does this by arguing that our original right to noninterference in our noninterfering activities presupposes that we all have claims to "the necessary preconditions of our being an actor at all" (103). These preconditions must be met simply in order for the right to noninterference to make sense: we must be alive in order to have the right. Christmas thus contends that the property rights of individuals are always "automatically delineated so as to leave space" for the right of necessity (104). The result of this right is that if there are no other means of acquiring it in order to avoid starvation, individuals are entitled to take food from others. No theft is committed because the desperation of the starved man "makes . . . [him] the rightful owner of the nearest available food" (104). For the "owner" of the mentioned resource to stop the desperate individual from taking the resource would be unjust, as the owner's action would prove to be interfering. Given that the right of necessity molds all property rights to ensure its existence, it is an entirely negative right (i.e., it requires no course of action by others to be fulfilled).

After the fifth chapter outlines the limits to appropriation (and also argues that intellectual property rights are impermissible), the sixth chapter consists of a sustained rebuttal to alternative foundations for a right of necessity. Nozick's proviso (building on Locke's) is thoroughly critiqued, as are the egalitarian provisos of Michael Otsuka and Hillel Steiner. Christmas's right of necessity is most plausible in contrast to their theories.

Two critiques of Christmas's book can be put forward—the first concerning an issue of application, the second being foundational.

An unacceptable implication of Christmas's right of necessity is that it allows for some to partly own others' bodies. This is in stark contrast to Nozick's libertarianism, which usually takes such an implication to be reason enough to reject alternative political philosophies, such as Rawlsianism. First, it must be emphasized that Christmas does not defend self-ownership; he writes, "[I do not invoke] a claim-right *to* one's physical body tout court" (51). Rather, he defends a right to noninterference which is said to be "as stringent as possible" in protecting individual's bodies (51). Crucial to Christmas's endeavor is that this right to noninterference underlies our rights both to our person *and to our property*. Indeed, this is one of the "significant departure[s]" of the book from

traditional libertarianism (1). He sets out the traditional position (that one has a right to self-ownership and an independent right to homestead) and then denies it: “However, private property rights are typically taken not to be justifiable purely on the bases of these personal rights [to noninterference in our activities] alone. This chapter argues that this is mistaken” (59).

In many places throughout the work, this difference is emphasized again. As we have seen, Christmas takes the right to noninterference to entitle everyone to the right of necessity. This is put most starkly when he writes “the right of subsistence [i.e., of necessity] entitles everyone to [take] . . . any action that they need to take in order to avoid expiration” (53). It thus follows, just as Christmas explicitly allows individuals to take food from others in order to survive, so too must he allow those suffering from organ failure to take the spare organs of others as well. Furthermore, given that Christmas takes the bread in front of the starving man to become that man’s property, thus ensuring that the taking is not theft, so too must the spare organ become the property of the person with organ failure. Some become partly owned by others.

To bolster this reasoning, consider how Christmas believes we own ourselves. The author believes our bodily processes, and hence our bodies themselves, cannot be interfered with since “they are the necessary conscripts of the possibility of one’s activity whatsoever” (52). True for most of the body, no doubt. But in the case of our spare kidney or pint of blood, this is simply not so. For we can in many cases carry on our activities just as well without these bodily resources (or perhaps in some cases even be made better off). Strangely, Christmas mentions an example such as this from Bas van der Vossen but leaves it totally unaddressed. Given the continual insistence that our body and external property are ours by the same right (“there is no fine line between our biomass and our tools” [51]), if the right of necessity applies in one case, it simply must apply in the other. Indeed, even if taking these bodily materials did nonfatally interfere with the other person’s activities, the takings would still be permissible. For just as Christmas allows food to be taken, thus interfering with dinner party activity, so can blood be taken even if that interferes with running activity. The conclusion that others can come to own part of you clearly doesn’t capture “the liberal concern of the separateness of, or distinctions between, persons” (44). It still permits others the right to partially own you.

Against this reasoning Christmas may argue, given that his right of necessity is a negative right, that individuals cannot be required to give up their organs. Two things can be said in rebuttal to this. First, if one is asleep and it is possible to extract a spare kidney there is no requirement "that others [the operated on] *proceed* to take particular courses of action" (104). Thus we can discern that the right to a spare kidney, deriving from the right of necessity, need not invoke an impermissible positive right, because no one need be forced to do anything for someone else. Second, even if Christmas can wiggle out of this predicament, his theory still allows for the taking of organs when they are external to the body. For example, if your kidneys had to be taken out of your body for an operation, while one of them was on the medical tray, a fellow patient with kidney failure could seize one of them. Again the body parts of some still remain the property of others.

Yet even if this extrapolation of the right of necessity is denied, its explicit formulation by Christmas still proves to be too broad. This is because the blanket nature of the right seems to permit the very old to seize whatever resources are necessary for their continued existence. As we have observed, the right to noninterference in our noninterfering activities presupposes or is "inclusive of the preconditions of acting whatsoever, constitut[ing] a kind of right of necessity" (103). There is no qualification to this. Thus if a very old, bedridden man were in need of treatment to extend his life by ten years, there would seem to be no reason why employees of his could not go into the parking garage of the hospital and sell off all the cars to finance it. Seizing property (e.g., houses or furniture) for sale could go on and on, given the great demand for expensive medical services and treatments. Nor would it be reasonable for Christmas to contend that the roundabout nature of exercising the right makes the takings impermissible. If the starving man could only access food via a vending machine, it is doubtful Christmas would deny that he could take money out of a till to use one. At this point, it is admitted that exchange to acquire resources to satisfy our right to subsistence is permissible, and thus so is the aforementioned example. And if qualification were made to the right of necessity to exclude the very old, it would likely invoke values other than freedom, which is contrary to Christmas's commitment to "liberty as the only . . . value to be considered a matter of justice" (44). The right of necessity, being enforceable and thus part of justice, cannot rely on values other than liberty, and yet to limit

the right of necessity, it appears other values must be invoked, contrary to Christmas's explicit rejection of such an idea.

Here it would be easy for libertarians to revert to the physicalist conception of self-ownership, which even Christmas concedes "makes it very easy to see how others have a duty not to harvest your blood while you sleep" (52). Nonetheless, this physicalist approach will not do for libertarians, who would then face the problem mentioned earlier of society being paralyzed. It appears that Christmas is thus caught between the rock of undermining self-ownership and the hard place of paralyzing society. Either way, it should be clear that more thought is needed to stop the right of necessity from yielding the aforementioned conclusions, of some owning parts of others, while still ensuring that the framework, which connects freedom to property so convincingly, remains intact.

Beyond issues of application, a foundational problem belies Christmas's theory of original acquisition. This is its indeterminacy in specifying property rights, which must either permit conflict or require more theory than is provided in order to be corrected. To understand this critique, we must first return to the intricacies of original acquisition. For Christmas an individual only acquires where they have, and are, engaged in "ongoing activities" (60) with regard to a particular, previously unowned object or space. Crucially, the constitutive rule of the said activity is the operator through which the individual subsumes part of the world. These "[c]onstitutive rules are conventional rules that define the conduct that they apply to" (145). For example, farming as an activity is partly defined as accessing the water table and using the sun, thus entitling the farmer to these resources. The constitutive rules of fly-fishing prohibit the use of explosives to catch fish, and thus fly-fishers do not have the right to catch fish in such a manner.

The indeterminacy of property rights in Christmas's theory arises from the constitutive rules for "ongoing activities" being, in many instances, multiply realizable, which can lead to conflict where different parties seem to hold equally valid conceptions of the constitutive rules. Consider this example. A walker uses some virgin land as a path from a wood to a beautiful river every fortnight. At some point, a housing developer comes along and starts construction by this beautiful river, thus blocking the walker's way. Now, according to Christmas, the walker should be entitled to his way (i.e., the land would become public property) if

he engages in the "regular activity of walking down to the river" (78). The walker brings a case against the developer on the basis that he has engaged in such "regular activity." In the court proceedings the developer argues fortnightly use does not constitute "regular activity." Who is right? Christmas would dictate that we must consult the constitutive rule of the word "regular," as "constitutive rules determine the content of our rights" (135). Evidently, though, there is no such rule; rather, individuals all have different views on what "regular" means. When discussing the interaction of peoples new to each other, Christmas maintains the following:

> Indeed, justice just presupposes that we are able to understand one another's actions. We cannot hope to live in relations of justice until we can actually understand what we are doing. . . . Coordination over the use of the external world cannot take place unless there is agreement of what *constitutes* different kinds of uses of the external world. (151–52; emphasis in original)

Given, then, that it must be admitted there is no agreement on what the word "regular" means, there can be no relations of justice between these individuals. Instead, the walker and the developer must come to blows, contrary the very purpose of rights: "to avoid the very possibility of conflict" (25). Against all our moral intuitions, whoever has the biggest stick gets his way. This may not appear to be of much significance in an already homestead world, but Christmas also wants to allow for property abandonment where an activity or use is "patently no longer ongoing because of an extended period of apparent cessation" (78). Again, if you have some apple trees you only occasionally harvest from in the autumn, does this allow others to pick the apples if you miss a harvest or two because you are on holiday? There appear to be no constitutive rules for the meaning of "patently no longer ongoing" in the aforementioned phrase. It should not be thought that this criticism is inconsequential. As Christmas notes, Kant and Grotius have totally differing conceptions of what constitutes the use of a resource, and no doubt Proudhon would have too (Proudhon [1840] 1977, 70). This issue appears serious—conflict appears inevitable.

Additionally, many activities themselves lack unambiguous constitutive rules attached to them. Take the creation of a garden. Getting on his lawnmower one day, a man decides he would like a five-acre garden for the activity of leisure pursuit, and so mows a virgin area and stakes claim to it, using the space regularly thereafter

(but not for mowing). Others, though, consider five acres to be excessive, not believing all five acres are necessary, or indeed constitutive, of the pursuit of leisure. They therefore decide to regularly use as a path the part of the garden they consider as unnecessary to leisure pursuit. How can Christmas determine who has the claim to the part of the garden being used as a path? The constitutive rule for leisure pursuit is so vague that it gives no guidance. Leisure pursuit, unlike farming, has no rules which clearly subsume certain resources into the ongoing activity. As before it appears that coordination is not possible because we don't have "agreement of what constitutes different kinds of uses of the external world" (152).

Perhaps the activity should be more precisely specified. Assume the mower uses the area purely for sunbathing. This activity definitely would not be interfered with by others using part of the garden as a path. However, neither would any activity which didn't block the sun interfere; does this mean the mower is really only entitled to a shed-sized plot? This seems implausible. It cannot simply be the case either, though, that any intervention into the five acres which detracts from the pursuit of leisure constitutes interference and thus a property rights violation, for this proves to be far too much: flying a plane, with its slight noise, over the five acres would be considered a property rights violation according to this understanding, because it may annoy the mower and thus interfere with his leisure pursuit. This is most unfortunate, as Christmas claims his theory ensures "fine-tuning [of property boundaries] from the ground floor" (59); yet no fine-tuning exists here.

In sum, the multiple realizations of the constitutive rules for both the term "regular" and many activities themselves make determining what is originally acquired very difficult to impossible. Christmas acknowledges the seriousness of this critique: "Without a publicly knowable standard for what counts as an acquisition, there is no principled way to end any given dispute that may arise" (140).

This interpretation of Christmas may be considered uncharitable. Perhaps we are supposed to assume that where constitutive rules are disputed it falls upon juries to decide which shall be operative. In a recent postscript to *Property and Justice*, Christmas alludes to this idea when discussing how his theory could preserve natural resources:

> My only answer is to suggest that communities could in principle, either *intentionally* or spontaneously, come to some meaningful way to distinguish between appropriation for engrossment . . . and acquisition for preservation. (Christmas 2022; emphasis added)

If this jury idea were adopted, all the aforementioned disputes could thus be peacefully ended. Why should the juries have the authority to determine who is right, though? It is reasonable to contend that they should have the authority, as it ensures no one's will dominates (juries ensure we all exercise equal moral authority). This contention also fits with the underpinnings of Christmas's work: "This likeness of juridical powers that each person has over themselves reflects the moral equality of persons" (45). It certainly accords with Locke's position: that the natural condition of mankind is "[a] state of equality, wherein all power and jurisdiction is reciprocal, no one having more than another . . . [and all should] be equal one amongst another without subordination or subjection" (Locke [1689] 2002, 2).

While constitutive rules will be clear enough to prevent conflict most of the time, where they are vague this mechanism solves any conflicts. The problem with this mechanism is that it is likely to be self-defeating for Christmas, as it will allow some to undermine the freedom of others, which is contrary to his central claim that "we are [all] bound by justice to respect each person's right to freedom" (4). An example demonstrates this. A developer intends to build on a field by a housing estate. The residents object and claim their property rights would be violated, as construction noises would interfere with their ordinary activities concerning their homes and gardens. The developer claims that no right to a low noise level is included within the property rights to their homes and gardens. A jury is called to determine the constitutive rules of the working from home activity. The jury, which is mostly made up of those who dislike housing, rules in favor of existing residents. They cite the fact that just as fishing associations may exclude those nearby who "engage in noise pollution that scares all the fish away" (94) because of the interference, so may the developer be excluded because the noise pollution from construction will damage the productivity of writers working from home, thus interfering too. This argument could be deployed to stop almost all construction; this is clearly not respecting the freedom of the developer.

Strictly speaking, Christmas would be forced to accept that under his own theory, the developer's freedom is not restricted, because according to this allocation of property rights, the developer would be operating outside of his sphere of freedom (i.e., interfering), and being forced not to interfere is not freedom diminishing. Here it should be clear that there is something wrong with the method through which juries determine constitutive rules which in turn define the extent and allocation of property rights (and thus freedom). Given that we have taken juries to be the most plausible solution Christmas could give to the problem of conflict arising from indeterminate constitutive rules, it is clear that more research in this area is necessary. Without doubt, a moral theory must govern the creation of constitutive rules by juries. My aim is to point this research in a potentially fruitful direction.

Returning to the jury deciding on the permissibility of the development, I think each of the jurors must be reasonable (i.e., hold noncontradictory beliefs). This requirement would prevent the jury from defining the property rights of the existing residents such that construction would not be allowed nearby. This is because many of the jurors themselves will live in houses constructed near existing residences which presumably they accept were permissibly constructed. Given that most will deny that their houses were built with unjust methods (e.g., methods that created construction noises and dust of a scale which would require restitution they would not want to pay), they will ensure everyday living does not contain constitutive rules creating property rights which exclude all nearby development. The developer would thus be free to build under this juridical method. No doubt many criticisms could be raised against this argument; nonetheless, libertarians could certainly learn from such contractualist notions (see Oberdiek 2017).

Despite these criticisms of Christmas's theory of original acquisition, it still provides much theory which can be usefully built upon. This is certainly so given that the theory is at least partially capable of overcoming the paralysis of society, which seemingly straightforward physicalistic accounts of property are incapable of doing. And crucially, Christmas has done more than any other libertarian theorist to overcome these problems without falling into some form of consequentialism for boundaries (i.e., by determining the edges of property boundaries by cost-benefit analysis). The mentioned issues are surmountable by the author.

In sum, *Property and Justice* offers an interesting new theory of original acquisition which has significant advantages over existing theories. Importantly, it offers a partially convincing answer to the problem of paralysis and allows for a robust defense of the commons. However, in its present form, the theory contains a foundational problem of indeterminacy, which detracts from its plausibility. Because of this flaw, the work only partially succeeds in its ambitions, especially given that this novel theory of original acquisition is central to Christmas's endeavor. Nonetheless, the book abounds with insights and originality, and I certainly recommend it. Billy Christmas's *Property and Justice* warrants the attention of everyone who is seriously interested in rights theory and in libertarian approaches to that topic in particular.

REFERENCES

Christmas, Billy. 2022. "A Postscript to Property and Justice: A Liberal Theory of Natural Rights." *The Reading Room* (blog), May 3, 2022. https://oll.libertyfund.org/reading_room/Christmas_Postcript_Property_and_Justice.

Friedman, David. 2014. *The Machinery of Freedom: A Guide to Radical Capitalism*. New York: Writers' Representatives.

Locke, John. (1689) 2002. *The Second Treatise of Government and a Letter Concerning Toleration*. New York: Dover.

Mack, Eric. 1990. "Self-Ownership and the Right of Property." *Monist* 73, no. 4 (October): 519–43.

———. 2015. "Elbow Room for Rights in Sobel." In *Oxford Studies in Political Philosophy*, vol. 1, edited by David Sobel, Peter Vallentyne, and Steven Wall, 194–221. Oxford: Oxford University Press.

Nozick, Robert. 2013. *Anarchy, State, and Utopia*. New York: Basic Books.

Oberdiek, John. 2017. *Imposing Risk: A Normative Framework*. Oxford: Oxford University Press.

Ostrom, Elinor. 1990. *Governing the Commons: The Evolution of Institutions for Collective Action*. Cambridge: Cambridge University Press.

Proudhon, Pierre. (1840) 1977. "The Birth of Anarchy: The Death of Property." In *The Anarchist Reader*, edited by George Woodcock, 65–71. Glasgow: Harper Collins Distribution Services.

Railton, Peter. 2003. "Locke, Stock, and Peril: Natural Property Rights, Pollution, and Risk," in *Facts, Values, and Norms: Essays toward a Morality of Consequence*. Cambridge: Cambridge University Press, 187–225.

Rothbard, Murray N. 2002. *The Ethics of Liberty*. New York: New York University Press.

———. 2011. *Economic Controversies*. Auburn, Ala.: Ludwig von Mises Institute.

Sobel, David. 2012. "Backing Away from Libertarian Self-Ownership." *Ethics* 123, no. 1 (October): 32–60.

Steiner, Hillel. 1994. *An Essay on Rights.* Oxford: Blackwell.

Zwolinski, Matt. 2022. "Libertarianism and Pollution." In *The Routledge Companion to Environmental Ethics*, edited by Benjamin Hale, Andrew Light, and Lydia Lawhon, 623–35. New York: Routledge.