

## THE ROLE OF NATURE IN THE SELF-OWNERSHIP PROVISIO

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### ABSTRACT

Eric Mack defends a version of John Locke's proviso. Mack applies his proviso to original appropriations, uses, and systems of private property. His proviso precludes severely disabling the world-interactive powers of others. Mack specifically warns against using concrete features of the natural world as a baseline for determine whether the proviso has been violated. While his proviso is plausible, I argue that he cannot. eschew employing the receptivity of the natural, unowned world to the extent that he suggests. We cannot determine whether one's powers are disabled or diminished without knowing how receptive the world would be to those powers had a system of private property not arisen. The upshot of this paper is that the requirements of a well-formulated proviso is an empirical matter.

**Keywords:** Self-ownership; Provisio; Nature; Eric Mack.

### Introduction

John Locke's proviso serves to prevent individuals from being 'straitened' by the arrival of a system of private property (LOCKE, 2005, 36). He famously held that just original appropriations, in particular, must leave "enough, and as good" for others to use (LOCKE, 2005, 27). Eric Mack attempts to improve this proviso. Specifically, Mack aims to design a plausible proviso, the content of which is not identified "with the relatively concrete features of the pre-property state of nature, and in turn, require the preservation of that relatively concrete feature in all subsequent property regimes" (MACK, 1995, 202). Mack argues that one can eschew this comparison with the natural world and, instead, support a proviso that precludes individuals from engaging in activities that severely disable or reduce the world interactive powers (WIPs) of others. Mack calls his proviso the Self-ownership Provisio (SOP). While I am generally amenable to Mack's proviso, I argue that we cannot eschew the natural world to the degree Mack seems to suggest. Any plausible proviso must be compared against the *general* level of receptivity the natural world would offer in the absence of a system of private property.

There are three lines of argument for this conclusion. First, I adduce cases in which Mack's proviso is intuitively too weak and others in which it is intuitively too strong. The second, and broader point, is that we need the natural world to determine whether a proviso is too weak or strong. Indeed, I claim that there is no fact of the matter about whether an agent's WIPs have been disabled by others unless there is a fact of the matter about how those WIPs function (or would function) prior to the actions of others.<sup>2</sup> The way to determine this is to determine how the natural world would be, had no private property existed. Finally, I focus on Mack's own commitments. I argue that without the natural world's general receptivity serving as a baseline for comparison, we might inadvertently establish a lien on behalf of some on productive activities of others. Mack has frequently denied that individuals can have such a claim. Thus, he must employ nature to some extent in determining the content of his proviso.

The broader implication of the argument is that the content of a plausible proviso is largely an empirical matter. In the proviso debate, there are sundry views of the nature and content of the proviso (MACHAN 2009; BLOCK, 2011; ROARK 2012; WENDT 2018). My focus is only on Mack's proviso. I do not defend the SOP here. Instead, I aim to show that we need to know about the natural world's general level of receptivity in the absence of a system of private property in order to determine which group's claims are most plausible. This also means that there could be different provisos in different places both on this planet and different provisos in different logically possible worlds.

I do not specify precisely how much receptivity one must preserve. Beyond the challenges of measuring receptivity, I think that the limits of theorizing prevent a precise account of how much receptivity one must preserve. The point of the essay, though, is to show that we need to refer to nature to determine the content of the proviso. I am not settling the content of the proviso.

### **The self-ownership proviso**

Before constructing the SOP, I offer a synopsis of Mack's relevant commitments and some relevant background material. Briefly, the 'natural world' in this paper refers to the non-artificial environment as it would be had humans never existed upon it. This, I believe, fits with how Mack uses the term.

Mack affirms the proposition that each individual is a self-owner (1989, 1990, 1995, 2002a, 2002b). Each self-owner enjoys a moral jurisdiction over her WIPs. The idea that each person has such a jurisdiction

over her WIPs is pre-philosophically attractive. It explains why things like murder, rape, forced labor, false imprisonment, and so on are impermissible. Mack does not say that these rights of self-ownership are the only rights that people have. Indeed, he argues that people have rights to have promises kept to them when others make them and rights not to be excluded from systems of private property (1990).

He also endorses the doctrine of historical entitlement (2002a, 2002b). This doctrine was made famous by Robert Nozick (1974), of course. On this theory of justice in holdings, individuals generate entitlements to use their holdings in the manner they see fit. Holdings are just provided they may be traced through just transfers back to just original appropriations, or, in the event that the holding may be traced through unjust transfers or to unjust appropriations, the holding must be traceable through a proper principle of rectification (NOZICK, 1974, 150). Nozick leaves the specific details of justice in transfer open to “particular conventional details fixed upon in a society” (NOZICK, 1974, 150). Mack seems to follow suit. In Mack 2009, endorses what he calls a ‘practice conception’ of private property. This practice conception accommodates the fact that the means of generating private property rights are “highly conventional” (MACK, 2009, 55). Neither Mack nor Nozick holds that property rights are completely conventional. Instead, each recognizes that there is no means for philosophers to specify *ex ante* the specific rules of transfer and appropriation that all societies must endorse (MACK 2018).

The doctrine of historical entitlement allows individuals who hold justly hold things to enjoy the promises of justice. Justice promises individuals that they may dispose of their holdings as they see fit. The justness of an individual’s holdings is not held hostage to the demands of equality or utility. If an agent justly holds some object and the object in question could be ‘better’ employed to satisfy some distributional principle, like, distribution according to moral merit, the entitlement theory denies that the individual must use (or give up) the object to achieve the goal in question.

Relatedly, on non-entitlement theories, planning for the future becomes challenging. If individuals are not confident that their holdings are isolated from the activities of others, they cannot make plans for what to do with their entitlements. The whole point of justice in holdings is to allow people to do as they see fit with their just holdings, as Mack sees it. Yet, distributional demands make it challenging to know what one will have in the future (MACK 2002a; RODGERS and RODGERS 2017). It might always be difficult to know what one will have in the future, but if one has an object now, one will at least not be required by the demands of justice to give it

up in the future – unless one promises it to someone else. The activities of others do not bear on what one must deliver as a matter of justice.

Part of the attractiveness of self-ownership and the entitlement theory is that these ideas protect individuals in the pursuit of their own values. Value exists for agents only in relation to their life plans, or projects (MACK, 1989, 1998). Individuals derive their primary reasons for action from their own values. The acquisition, use, and/or consumption of various goods, are very nearly necessary to the achievement of values for creatures like us. The status of persons as beings of separate, free standing value requires that other agents constrain their behavior toward them. Each agent rightly attributes a sphere of discretion to others in which they may pursue their own values. This sphere protects the WIPs of each agent from invasion by others.

Persons' WIPs are "essentially relational" (MACK, 1995, 87). WIPs require the existence of an extra-personal environment upon which one can bring them to bear. Mack's view of self-ownership is not what G.A. Cohen calls 'merely formal' (MACK, 1995, 237). Mack does not hold that people have only rights to their bodies, but not rights against being excluded from using their bodies to pursue their values. Instead, Mack holds that the same reasons that give rise to prohibitions on invasive violations also give rise to prohibitions on certain non-invasive violations. It is the role of the proviso to specify which sorts of non-invasive violations are impermissible. Because such non-invasive violations are supported by the same considerations that justify belief in self-ownership and because the proviso protects self-ownership, Mack calls his proviso, the "Self-Ownership Proviso" or SOP (MACK, 1995).

What is wrong with Locke's more familiar proviso that appropriations should leave "enough, and as good" for others to use? (LOCKE, 2005, 27) Perhaps the problem is not directly with Locke's proviso at all, so much as how Locke's proviso tends to be handled by its expositors, friendly and unfriendly. First, commentators, and perhaps Locke himself, take a violation of the proviso to undermine the claim to a property right in whatever object or set of holdings one has generated (MACK, 2002, 98-99). However, a proviso grounded in individual rights does not need to say that the violation of a proviso negates a putative claim to some particular holding. Instead, the proviso should simply constrain how an individual may employ her property.

Think of Nozick's famous example in which one claims the only water hole in a particular area. This individual may not "charge what he will" for access to the water hole (NOZICK, 1974, 179). Nozick writes that, "Once it is known that someone's ownership runs afoul of the Lockean proviso, there

are stringent limits on what he may do with (what it is difficult any longer unreservedly to call) 'his property'" (NOZICK, 1974, p. 179 interpolation original.)

Mack's diagnosis of this sort of case is that the stringent limits on what one may do with her property does not show that the holding in question is not her property. Mack claims that his is what Nozick really believes as well (Mack 2002, 98-101). There are always limits on what one may do with one's property. The water hole owner may simply not charge "certain prices" for access to the water hole (1974, 179). This does not mean that the water hole is not his though.

There are always restrictions in how individuals may deploy their legitimate holdings. Just as one may not place one's knife in the chest of others, so one may not use their property in ways that bring about the same general effect of stabbing someone. Forcing others to die of dehydration, when they would not have done so, had one not used one's property in a way that relevantly decreases their opportunities below what would have existed in the natural world, is a non-invasive means of causing the death of another. This use of one's property thus falls under the purview of the proviso (ROARK, 2012; MACK 1995; MACK 2002b). The proviso thus enriches the concept of self-ownership (MACK, 1995, 192).

A second problem with treatments of Locke's proviso is that expositors tend to identify the moral baseline under which individuals may not be lessened "with the relatively concrete features of the pre-property state of nature, and in turn, require the preservation of that relatively concrete feature in all subsequent property regimes" (MACK, 1995, 202).

One finds hints of this reading in several well-known commentators. Judith Thomson writes "if the first labor-mixer must literally leave as much and as good for others who come along later, then no one can come to own anything, for there are only finitely many things in the world so that every taking leaves less for others" (THOMSON, 1990, 330). Barbara Fried echoes this when she claims that "we leave enough and as good for others only when we take what is not scarce" (FRIED, 1995, 230). She informs us that most of the goods people might appropriate in our world are scarce. Finally, Jeremy Waldron writes the following. "If the 'enough and as good' clause were a necessary condition on appropriation, it would follow that...the only legitimate course for the inhabitants would be death by starvation...since no appropriation would leave enough and as good for others" (WALDRON, 1976, 325). The conclusion that these authors intend, at least in the passages in question, is that the proviso cannot be satisfied and/or leads to absurd results. All of these passages seem to rest on identifying the proviso

with precisely the quality and quantity of goods or opportunities that are present in the world pre-appropriation.<sup>3</sup>

Alternatively, and related, there is a tendency to treat Locke's proviso as a requirement that individuals enjoy as much utility as they might have enjoyed pre-private property. Mack regards both the focus on identical liberties and identical utility as mistaken.

What matters for Locke is not a baseline of utility that an individual would enjoy in a world that was still an open commons. Instead, what matters is a baseline of noninterference with that individual's employing his self-owned labor in pursuit of his comfortable preservation. The proviso is satisfied if and only if the institution, development, and elaboration of private property yields an economic environment that is at least as receptive to that individual's deploying his talents, efforts, and time in pursuit of his comfortable preservation as the pre-property environment would have been (MACK, 2013).

Mack's proviso largely applies to the market order. As mankind transitions from hunter-gatherer, through agrarian arrangements, to a market, what really matters is that agents can bring their WIPs to bear on the extra-personal environment. We should see the market order as the moral analog of the state of nature (MACK, 1995, 213). It is the opportunities the market presents that matters to whether one's WIPs are rendered nugatory.

In the state of nature, if an individual's use of her property were to nullify an individual's WIPs, then the use would be unjust. Similarly, if a market order has the same effect on an individual, then the individual would have a claim of injustice against the market order. To illustrate the sort of impermissible effect that the market order may not have on individuals, consider the following vignette based on a similar thought experiment in Mack 1995.

Adam's Wand: In the state of nature, whenever Zelda is about to use an object to further her ends, Adam uses his legitimately owned magic wand to propel the object beyond Zelda's reach<sup>4</sup>.

The problem here is not that Adam invasively violates Zelda's rights over her WIPs. However, we are to find Adam's use of his rightly held property to be problematic. It is problematic because it non-invasively nullifies Zelda's WIPs; it violates the SOP.

In his discussion of the proviso, Mack intentionally refrains from "judgments about whether the transition from some specific pre-property

state to some specific market circumstances enhances rather than nullifies this or that agent's world-interactive powers" (MACK, 1995, 213). This is in part because he finds it too problematic to identify a state of nature baseline. What really matters is "that the enabling transformation wrought by the development of a liberal market order ...establishes the presumption that, for any individual participating in that order, the constraint against her (non-invasive) disablement through others' deployment of their legitimate holdings is satisfied" (MACK, 1995, 213).

How might some individual overcome this presumption?

With respect to any agent, the presumption is that she has before her an array of occupational opportunities akin to what someone with her endowment of powers would enjoy if the market order ... were operating as friends of the market expect. Thus, the presumption can be defeated by showing that...the market order is not operating in accord with that natural expectation (MACK, 1995, 213).

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The two ways one might expect the SOP to be violated are in the event to of a natural monopoly or effective cartelization (MACK, 1995, 213). If a monopoly or cartel denies individuals the "bountiful opportunities anticipated by market advocates," the presumption is defeated (MACK, 1995, 214). Of course, if an individual can show that she is in the same position as she would be in were monopoly or effective cartelization presenting here with the opportunity to bring her powers to bear on the market, she could also defeat the presumption.

The most relevant aspect of Mack's proviso for the purposes of this paper is that it avoids using the natural world to identify a baseline. He says that there is nothing wrong with thinking that the proviso should establish some condition that individuals would have enjoyed, had a system of property not arisen (MACK, 1995, 202). However, as I suggested above, he warns against identifying this with concrete conditions such as Hohfeldian liberties. Mack holds that it is challenging to compare the ability to use things in the state of nature to the ability to use things in a market order anyway. He asks, "How many microchips equal a hectare of rice paddy?" (MACK, 1995, 209). Presumably, there is no answer to that sort of question.

With respect to expected utility, a similar problem arises. There seems to be no way to compare the expected utility of a fig, which in the state of nature has no value beyond its immediate use, and a dollar bill, which can be exchanged for all kinds of goods on the market.

Finally, Mack wonders whether we “appeal to the natural state that existed before, during, or after the last Ice Age... Or do we appeal to the non-property state that would exist if property rights of things currently existing were abolished” (MACK, 1995, 209). This is particularly complicated by the fact that some agents would not have existed if the market order had not made it possible for them to be born and continue living.

For the SOP to be satisfied, with respect to Zelda, she must have before her an array of occupational opportunities that is not strikingly narrower than the fan of the market would predict for someone of Zelda's talents, energies, and adaptability. The ‘have before her’ is important. In order that she not face an effective threat of (noninvasive) disablement, opportunity must be there ‘for the taking’ in the sense that Zelda has assurance that offers to enter into economic relationships will be tendered in the marketplace upon her evidence of the degree of adaptation expected of her ‘on the market’ (MACK, 1995, 215).

I think that Mack’s proviso is correct on several fronts. He is right to deny that one should focus on specific questions about preserving Hohfeldian liberties. It is unclear how one would reasonably specify such a set in the first place. Similarly, we should avoid identifying the baseline with the level of receptivity in the pre-property natural world. What matters is that the environment is similarly receptive, not that it is identically receptive. I also believe that the market has a net enabling effect in *this* world. However, this is going to lead to my central claim. My primary contention is that we can only arrive at that judgment by knowing – or perhaps reasonably estimating – what the world would be like in the absence of private property.

Where I think that Mack goes too far is in the apparent complete elimination of comparisons to the natural world in establishing his baseline. In the following section I construct a largely top-down case for reestablishing a role for the natural world to play in thinking about permissible uses and appropriations. I rely heavily on what I take to be the most intuitively plausible reactions to thought experiments. The argument, then, is that the general receptivity of the natural world must play a large role in how one specifies the content of the proviso. Following Mack, I focus my discussion on uses of justly held property.



## **The Natural World and Unjust Uses**

To begin to carve out the role that I think the natural world should play in the proviso, consider Land O'Plenty.

Eve lives in a world of super abundance. The food available on nearby trees is so filling and nourishing that Eve spends just moments a day on foraging for enough sustenance to live 80 healthy years. The environment is so receptive that Eve has no trouble constructing a small home to live in during her long, comfortable life.

Adam arrives on the scene with his magic wand. He does not prevent Eve from collecting food and keeping up her home. However, he does cause objects that Eve has neither claimed as her own nor homesteaded in any manner to roll away from Eve so that she must spend 60 hours a week working to live precisely as long and healthy a life as she would have had Adam not arrived and used his wand in this manner.

I am relying on the reader's having the intuition that Adam's use of his wand is impermissible. I think that the problem is neither that Adam reduces Eve's expected utility nor that he reduces her expected welfare. There are clearly cases in which it is permissible to reduce the expected utility or welfare of others. To illustrate, consider Mack's "Unrequited Love".

Adam, the proprietor of the island, allows the able-bodied Zelda to come ashore, but then refuses to reciprocate Zelda's budding romantic passion for him – a fate which Zelda experiences as worse than death (MACK, 1995,194).

I do not expect the reader to find Adam's activity to be a violation of Zelda's rights – especially if one affirms the self-ownership hypothesis, as Mack does. Still, her welfare is severely diminished. Similarly, Adam could decrease Zelda's expected utility without violating her rights. To see why, consider Aloof Adam.

Zelda has heretofore been able to sway everyone she encounters to do her bidding. She forms the reasonable expectation that she will be able to sway anyone she meets. Then, she encounters a newcomer, Adam, and when she attempts to sway him, he is unmoved. Eve's expected utility is diminished.

To get at the real problem in Land O'Plenty I want to point to two separate strands of discussion in Mack's presentation of his proviso. At times, he says that the proviso prohibits "disabling" the WIPs of individuals (MACK, 1995, 194). Adam's Wand is to illustrate this sort of non-invasive violation. At others, he says that the proviso is not met if the WIPs of others are "damagingly diminished" (MACK, 1995, 216). In this second line of thought, he has us imagine that Adam uses his rightly owned property to "propel objects beyond her grasp whenever she attempted to utilize them with her right hand, or whenever she attempted to utilize them without wearing a blindfold" (MACK, 1995, 197-198).

Obviously, disabling and damagingly diminishing are not identical; the former seems to prohibit more than the latter. As the Land O'Plenty illustrates there is a conceptual gap between the two prohibitions. What is more, if Adam's use of his property in Land O'Plenty is impermissible, then there are grounds for a proviso more demanding than Mack's. I think that Mack agrees with this. Where we seem to part ways is in the role I think that the natural world must play for determining whether one's WIPs are disabled or damagingly diminished.

I agree with Mack that a plausible proviso will preclude both disabling and damagingly diminishing the receptivity of the environment to agent's WIPs. Such a proviso could be triggered even if the world is still quite receptive compared to what might happen in other logically possible worlds. In Land O'Plenty, Adam's actions arguably leave the world more receptive than it was to many English and French workers during the early stages of the Industrial Revolution.

That does not show that the proviso was violated our world, however. My suggestion is that the only means of determining whether a violation like that in Land O'Plenty has occurred is by determining how receptive the natural world would be to an agent's WIPs. Otherwise, the questions, *Damaged compared to what?* and *Disabled compared to what?* have no means of being resolved. To see why, consider Eve in Scatter Land.

Eve lives in a land on which all the available nourishment is oddly mobile. Even fruits and vegetables run when they find themselves on the cusp of being harvested. She must spend 60 hours a week living precisely as long and healthy a life as her counterpart in Land O'Plenty lived before Adam's arrival. Adam arrives with his wand and watches Eve work, even though he could use his wand to make it easier for her to harvest food.

Adam's actions here are not a proviso violation. Yet, Eve here and the Eve in Land O'Plenty (after Adam's actions) enjoy precisely the same amount of receptivity (or lack thereof) of the extra-personal environment to their WIPs. However, the latter was a pretty clear case if a non-invasive

violation. Eve in Scatter Land has suffered no violation of any sort. The only way to reach this judgment is by comparing the receptivity the natural world provides.

The same is true of an anti-disablement proviso. To see why, consider Ice Age Eve.

A meteor causes the onset of a sudden Ice Age, Eve finds herself on a stubbornly frozen tundra that is unreceptive to her WIPs. Adam's watching this from the safety of a bunker that he built and stocked with supplies for just such an occasion would be a permissible exercise of his property rights. Eve's natural environment simply is unreceptive; her WIPs do not work. There is no further non-invasive way to 'disable' them.

As we shall see, Mack shares my judgment that Adam's use of his property is not a violation of Eve's rights in Ice Age Eve. So, he should agree that we need to know how receptive the natural world would be before implementing an anti-disablement proviso.

To be clear, my claim is not that any reduction in the world's receptivity violates the proviso. Mack convincingly argues that one may legitimately reduce the number of opportunities others have to exercise their WIPs. He has us imagine that "Harry uses some natural material to make his plastic; but there is lots of similar material around for Sally to use" (MACK, 2002b, p. 247). Instead, the claim is that one must neither nullify nor severely reduce the opportunities for others to exercise their WIPs. I say that one can only determine whether this has happened by determining how receptive the natural world would be.

I think that what cases like those above show is that agents' rights over their WIPs are linked to the natural environment. Agents rightly have expectations based upon their natural environment.<sup>5</sup> The reason that Mack's proviso is plausible is that it rests on the reasonable assumption that the natural world *here* is largely unreceptive to our WIPs. It is only through the enabling effect of the market system that we now find the market pleasantly receptive to our abilities. Still, for an agent to suffer a proviso violation, he would need to suffer a surprising level of exclusion. In my view, this is why both Mack and Nozick are right to think that a functioning market would not run afoul of a well-formed proviso.

A final point to address before moving on is Mack's pondering whether the natural world baseline should refer to the time after the last Ice Age or so on. I believe that Ice Age Eve shows that the environment to use as a means of general comparison is what the world would have been like *at the*

*time of the use*, had humans never existed. This might seem problematic for several reasons, but I think none of them is particularly telling.

First, it might be challenging to determine how the world would be in such a case. However, that does not mean that it is wrong. It might be challenging to determine who committed a particular crime, but that fails to show that only the criminal should be subjected to punishment or the like. Even in terms of general principles, I do not think that the near impossibility of determining which actions produce the greatest utility shows that utilitarianism is *false*. Instead, we say that it is unclear what sort of guidance the principle offers. Yet, without entering an empirical debate of the sort that is unbecoming of philosophers, I am going to dig in and hold that we can have a decent enough idea of how receptive our world would be if there were no system of private property in place. If am wrong, that is a problem for the position I am defending here.

Another problem might be that my model suggests that different people at different times or locations could have different baselines. I do not see why this is counterintuitive. As I understand it, the Sahara Desert was once verdant enough to support both carnivorous and vegetarian dinosaurs. It is now nearly uninhabitable for humans. If the dinosaurs had not been around as a confound, it seems that had humans been around instead of the dinosaurs, the baseline then would be different from what it is now. I am taking my intuition here to be representative of what most people will have. If that is a correct assumption, there is not a problem with different baselines at different times. Perhaps that, all by itself, shows that there is no problem with different people in different locations having different baselines. The Southern United States has forests far more receptive to human WIPs than does the North Pole, for example.

It is important not to confuse the proviso with the entitlement generating processes. The proviso is neither a theory of justice in holdings nor a theory of how it is permissible to treat people, full stop. The proviso delimits proper uses of holdings. It would be wrong to kill Ice Age Eve irrespective of whether her environment would eventually kill her or not. I mention this to stave off the objection that using the natural world as I am suggesting is problematic because it licenses what looks like murder in some cases. That does not follow.

I conclude that there is not a major problem with using the natural world's general level of receptivity for establishing a baseline, at least vis-à-vis the concerns I have just considered. In the following section, I construct a bottom-up argument in favor of using the natural world's receptivity as a means of determining whether a proviso violation occurs. My central claim is that any alternative means of setting the benchmark for

proviso violations will come into tension with the advantages the entitlement theory is to have over its rivals. I focus this discussion in light of Mack's own commitments. If one denies that people can hold a lien on the productive activities of others, as Mack does, one should use the natural world as a means of determining the content of the proviso.

### **Entitlements and the natural world proviso**

Before beginning the argument from this section, a brief word on why I do not cast the tension as being between the proviso as Mack casts it and self-ownership. While I believe there is such a tension, I do not want to use the controversial assumption that one can move directly from self-ownership to opposition to libertarian opposition to redistribution. It is G.A. Cohen who suggests that one may do so and Mack restructures Cohen's argument to secure that conclusion. Still, I will adopt a weaker position here and hold that the tension is between the entitlement theory and a proviso that eschews that natural world as a means of setting the requirements of the proviso.

I want to begin the argument from this section with a vignette from Mack. I believe that this vignette supports my contention that we need to use the natural world to determine whether an individual's use of his property violates the proviso.

(Adam's Made Island): Since his arrival at the previously unowned and uninhabited island, Adam has engaged in actions that, according to liberal theory, confer upon him sole dominion over all of the island. Indeed, he has so labored on the island - by building retaining walls, planting protective trees and grasses, and so-on-that he has prevented the island from disappearing entirely into the sea. Now the innocent, shipwrecked Zelda struggles toward the island's coast, but Adam refuses to allow Zelda to come ashore (MACK, 1995, 193)<sup>6</sup>.

Mack's judgment here is that Adam's actions do not amount to a proviso violation. I think that there are two complimentary justifications for this judgment. I have already suggested one of them. It is that the island would not have existed in the natural world. Thus, depriving Zelda of the opportunity to use the island, even to save her life, is not a violation of her rights. That was the justification from the previous section.

The other line of justification is that Adam has expended his time and energies to keep the island in the world. He was, *ex hypothesi*, entitled to

the island. If Zelda has a right not to be excluded from the fruits of Adam's labor, she has a lien on his productive capacities. If Adam owns his WIPs and can generate entitlements, how can Zelda have such a lien?

Mack has denied that individuals have a claim to the fruits of others' labor many times (MACK, 1983, 1989). Indeed, that denial is crucial to his and Nozick's rejection of patterned and end-state theories of justice. So, I think there would be no disagreement between us here. What I want to show is that no matter how one renders an acceptable proviso – as a prohibition on disabling or damagingly diminishing the WIPs of others – one must use the natural world to set the baseline; otherwise, the advantages of the entitlement theory, which I canvassed in section 1, will be called into question.

Imagine that we return to the scenario in which Eve encounters a sudden Ice Age.<sup>78</sup> Her WIPs do not function because her environment is inhospitable. Just after this happens, several dozen technologically advanced spaceships arrive. The owners of each crafted their ships from parts that they worked to earn. They are rightful owners by any halfway reasonable theory of rightful ownership. They set up a market system on Eve's home planet. Each owner refuses to offer Eve employment opportunities.

Eve is in the same practical position as any Zelda who is excluded either by a natural monopoly or a successful cartel. However, if we affirm that Adam may exclude Zelda in Adam's Made Island (at least without running afoul of the SOP) and that Adam need not aid Eve in Ice Age Eve, then we should also affirm that Eve does not suffer a proviso violation here. While I stressed in the last section the importance of using the natural world to determine the baseline for comparisons, here the obvious tension is between a disablement proviso and the entitlements of others. The spaceships would not exist, save for the effort of others. In Ice Age Eve, Eve can have a claim against disablement only if she has a claim to the productive endeavors of others. Yet, Mack clearly denies this. Thus, he can endorse neither an anti-disablement constraint, nor a constraint against damagingly diminishing the receptivity of the natural world, without using the natural world as a baseline for comparison.

## **Conclusion**

I have not specified precisely what it means to preserve a general level of receptivity in the natural environment. The failing here is, I believe, due to the limits of theorizing. Specifying, say, 93% of the native environment's level of receptive would be arbitrary – and probably

impossible to determine. This is not uniquely a problem for the principle defended here. Philosophers can justify specific principles that justify private property, for example. Yet, they cannot defend the fine-grained rules governing actual transactions (MACK 2018). Philosophers cannot specify from the armchair that one must slide a credit card into a chip reader at a grocery store, for example. They can defend only the reasons to accept private property in the first place and the general principles that should govern just acquisitions of property.

The fundamental claim I have urged is that we need the natural world's general level of receptivity in the absence of a system of private property to specify how receptive systems of private property must be to agents' WIPS in order to determine the content of the SOP. One implication of this is that the content of a good proviso is in many ways an empirical question.

Finally, the argument here suggests that any alternative means of thinking about the issue will be subject to both top-down and bottom-up challenges. Alternative analyses will grant individuals a lien on the productive activities of others; and that is something Mack frequently rejects. Thus, facts about the natural world's general receptivity need to be included in the specifying the content of the proviso.

## Notes

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<sup>2</sup> I have the 'would function' here to handle both the case of the disabled in this world and thought experiments that hinge on the idea that one can non-invasively violate the rights of others even if they cannot detect the violation. I do not think that the 'able-bodied' enjoy protection from a proviso more demanding than do the disabled. I do not offer an argument for that claim here.

<sup>3</sup> These passages also ignore the fact that some appropriations can increase the stock available in common. For discussions, See LOCKE 2005, §35 and SCHMIDTZ 1994. I thank Bill Glod for reminding me of the Schmitz piece.

<sup>4</sup> I follow many Lockeanes in believing that individuals may rightly hold property in the state of nature.

<sup>5</sup> This does not mean that all expectations agents actually have are legitimate. Agents could be wrong about their natural environments or how receptive those environments would be.

<sup>6</sup> This shows that Mack would have to say that Adam's actions in Ice Age Eve are permissible.

<sup>7</sup> It might be that the original version of Ice Age Eve shows this all by itself.

<sup>8</sup> I leave aside questions about what one may do when a 3<sup>rd</sup> party preserves something that others are using as if it were natural.



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