

University of Minnesota Law School

Scholarship Repository

Constitutional Commentary

1992

Book Notes: A Theory of Property. by Stephen R. Munzer.

Ann M. Burkhart

Follow this and additional works at: <https://scholarship.law.umn.edu/concomm>



Part of the [Law Commons](#)

Recommended Citation

Burkhart, Ann M., "Book Notes: A Theory of Property. by Stephen R. Munzer." (1992). *Constitutional Commentary*. 67.

<https://scholarship.law.umn.edu/concomm/67>

This Article is brought to you for free and open access by the University of Minnesota Law School. It has been accepted for inclusion in Constitutional Commentary collection by an authorized administrator of the Scholarship Repository. For more information, please contact lenzx009@umn.edu.

Book Notes

A THEORY OF PROPERTY. By Stephen R. Munzer. Cambridge, England: Cambridge University Press. 1990. Pp. 491. \$50.60.

Rather than examining property theory in a vacuum, Professor Munzer's stated purpose for this book is to construct a unified theory of property, property laws, and economic systems that will best serve people as individuals. To that end, Munzer addresses not only the traditional questions of whether all people should be supplied with at least the minimum goods necessary for survival and of how great a disparity should exist between the most and least propertied members of society, but also the role of property in forming and reinforcing moral character. Munzer believes that existing property theories and economic systems pay insufficient attention to this latter question.

The book's organization and focus reflect this concern for the individual. After discussing the basic concept of property, Munzer analyzes a person's ownership rights in his or her body. He concludes that such rights are fairly minimal when compared to the usual conceptions of ownership rights in external objects. Despite this conclusion, Munzer believes that ownership plays an important role in human development. He argues that human interaction with and ownership of external objects significantly affect personality development. He also argues that ownership of external goods plays an important role in satisfying the human needs for control, privacy, and individuality and in forming and reinforcing moral character. Like Marx, Munzer believes that private property also creates the potential for negative consequences, such as alienation and exploitation. Because of the important overall positive role of ownership in human development, however, Munzer concludes that property ownership is justified.

Munzer then examines the factors that should govern decisions concerning the distribution of property. After criticizing Locke, Bentham, and Marx for propounding unidimensional perspectives on ownership, Munzer proposes a pluralist theory. This theory is a

combination of factors that have been offered by other theorists for determining the proper distribution of property—utility and efficiency, justice and equality, and labor and desert—and provides guidelines for resolving conflicts that may exist among these factors when applied to a particular problem. Despite Munzer's attempts to create a systematic and thorough framework for applying these factors, the resolution of a conflict by means of his pluralist theory often can become a choice based on personal predilection. As Munzer states: "In the pluralist theory of property advocated here, the moral judgments are the considered judgments ('intuitions'), of various levels of generality, about public and private property that strike one as correct." Munzer claims that, despite the potential indeterminacy in the theory's application, it at least will eliminate subjective choices that are based on "bias, prejudice, class associations, or poor empirical information."

To illustrate the application of his pluralist theory, Munzer then applies it to selected problems of property distribution, including governmental takings of private property. He applies the three factors that comprise his pluralist theory to provide an analytic framework for determining when the government should exercise the power of eminent domain and the appropriate amount of compensation when it does so. His analysis offers only refinements to the existing literature on these questions, though he does raise the possibility of paying only partial compensation when doing so would maximize net gains and minimize net losses. He also raises the possibility of substituting private insurance for government compensation, though he acknowledges that such insurance generally is unavailable. Munzer's discussion of the legal framework also adds little that is new. He reviews the development of the factors courts have applied in reviewing takings claims and the tests proposed by some scholars, but he concludes, as have the courts, that no litmus tests exists for determining when a compensable taking has occurred.

This book represents an ambitious undertaking to reformulate the role of property in society. It synthesizes a substantial volume and variety of sources and is intended for students of philosophy, law, political theory, the social sciences, and corporate organization. The book's effectiveness is undercut, however, by a turgid writing style.

*Ann M. Burkhardt **

* Associate Professor of Law, University of Minnesota.