

THEORIES OF ORIGIN OF PROPERTY

Natural law theory – Property is acquired by occupation of an ownerless object.
(Proponents: Grotius, Pufendorf, Locke and Blackstone)

Criticism by Sir Henry Maine and Bentham - According to them possession does not give rise to title nor the property is originated by the first occupation of an ownerless thing but it is a creation of law.

Labour Theory/positive theory – **Spencer** was propounder of the positive theory. According to this theory, a thing (res) is the property of a person who produces it or brings it into existence.

Historical Theory - **Henry Maine** was the main supporter of the historical theory of the origin of property. This theory says that property was originally owned by society in general and later ownership transferred to family and then to individual level.

This theory says that there were many stages in the growth of individual property.

1st Stage - Natural possession which existed independently of the law or state, this was possession in fact, because there was no state or law.

2nd Stage - Juristic possession, this was possession in fact as well as law.

Last stage of development was that of the legal concept we know today as 'ownership'

Psychological Theory – According to this theory, property came into existence on account of acquisitive tendency of human beings. Every individual desires to own things and that brings property into existence. **Bentham** pointed out that property is altogether a conception of mind

Sociological Theory - The sociological theory was propounded by **Duguit, Laski, Karl Marx**. According to the Sociological Theory, property should not be considered in terms of private rights but should be considered in terms of social functions. Property is an institution which secures a maximum of interest and satisfies the maximum of wants.

Metaphysical Theory – The metaphysical theory was propounded by **Kant and Hegel**.

According to **Kant**, *"A thing is rightfully mine when I am so connected with it that anyone who uses it without my consent does me an injury."*

According to **Hegel**, *"property is the objective manifestation of the personality of an individual. In other words, property in an object on which person has liberty to direct his will."*

Theory of State Creation - Rousseau is the main supporter of this theory. He asserted that property was the creation of the state. According to this theory; the origin of property is to be traced back to the origin of law and the state. The supporters of this theory observed that property and law born together and would die together. In other words, the property came into existence when the laws were framed by the state.

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