

On the Cato-Koch Affair

By Charles Murray
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As a libertarian, I have been naturally interested in the attempt of the Koch brothers to take control over Cato's board. It's a complicated story. Here's the Kochs' [side of it](#) and here's [Cato's side of it](#).

Summarizing, Cato was formed in 1976 with an unusual arrangement whereby the founders received shares in the organization. After the recent death of Bill Niskanen, the Kochs are arguing in court that his shares should be returned to Cato, thereby leaving the Kochs with two-thirds of the shares and Ed Crane with one-third.

I have no idea who is right legally. It's the moral issue that baffles me. How can Charles and David Koch, who are both devoted to classic Lockean conceptions of freedom and property, think they have a moral right to the control of Cato as of 2012?

In the Lockean formulation, a property right is inextricably mixed with labor: Something becomes yours because it was previously unowned by anyone else and you mix your labor with it — or, in broader terms, you may mix your money with it. It may be legally true that the Kochs and Ed Crane still “own” Cato because of the founding document, but for the Kochs to use preservation of donor intent as the basis for their action requires them to ignore the sense of Locke's argument.

Donor intent normally applies to endowments that are used to finance a foundation's operations forever after. The Kochs didn't create such an endowment. Instead, all of the founders mixed their labor and money, and expended both, from year to year in an ongoing project. Through 1991, the Kochs' money was indispensable. Forget about their shares; they had an indisputable moral right to be at least equal partners with Crane and Niskanen in deciding how Cato was run.

Then Charles dropped out altogether, and David became just one of many large donors. To me, it seems obvious that Charles's Lockean property right to Cato ended when he stopped mixing his money with that ongoing, expanding project, just as Ed Craneis would have ended if he had resigned as president in 1991. David's Lockean property right didn't end, but over the years it diminished as his contribution became a small fraction of the total monetary effort that was going into Cato.

I have enjoyed a friendly acquaintance with both Charles and David Koch for more than 20 years, and continue to admire their efforts on behalf of a cause that I share. (Full disclosure: Ed Crane is a close personal friend.) And so I want to ask them, more in bewilderment more than in anger, how they can justify this lawsuit — not legally, but in terms of principles they cherish.

N.B.: The views expressed are my own, and do not necessarily reflect the views of anyone else at the American Enterprise Institute.