

Natural Property Rights

ALLAN GIBBARD

UNIVERSITY OF PITTSBURGH

I. INTRODUCTION

If a person owns a thing, his ownership enhances his liberty, but it does so at the expense of the liberty of others. Ownership of a thing gives a person the right to exclude others from its use, and that right, though it adds to the freedom of the owner, detracts from the freedom of those others. The question I want to explore in this paper is whether, nevertheless, strong property rights can be grounded on natural rights to liberty.

A *natural right*, as I understand the term, is a right one has independently of institutional arrangements. The rights in question here are moral rights: when I say that a person has a *right* to do something, I shall mean that it is morally permissible for him to do it and morally impermissible for anyone else to coerce him not to do it. A *property right* is, roughly, a right which a person has with respect to a specific thing. Property rights, then, as I am using the term, are moral rather than legal rights. They may include rights of full ownership, and they may also include more limited rights to things—the moral equivalents of leaseholds, easements, and the like.

In what follows, I shall be asking what kind of ownership, if any, can be justified on libertarian grounds. I shall consider at length what I call the *hard libertarian position* on natural rights: that a person can be denied the right to use a thing only with his consent. Later I shall turn to Locke's modification of this position, according to which, under certain conditions, one becomes the owner of a previously unowned thing without the consent of those who are thereby excluded from using it.

Neither libertarian position, I shall argue, plausibly justifies widespread unencumbered ownership.

II. THE HARD LIBERTARIAN POSITION

Everyone, let us suppose, has certain natural rights, and he can lose a natural right only by a voluntary act, such as agreeing to give that right up, or forfeiting it through violating the rights of someone else. In what follows, I shall ignore all ways of losing a right through a voluntary act except agreeing to forego the right. Now what are one's natural rights with respect to things? For my purposes, I shall need only a vague answer to this question: I shall suppose that everyone has equal rights to use all things. A full statement of a position of the kind I am sketching would have to say what these equal rights are. It would have to deal with situations in which two people want to make incompatible use of the same thing, and say precisely what their natural rights are in such a situation. Here I shall only say vaguely that those rights are naturally equal.

Within limits, I shall suppose, a person has a right to consume things, and to transform one thing into another. Such acts change the position of others by changing the world physically, and thereby denying other people opportunities they would otherwise have. My rights to do such things may well be limited. I do not; though, invariably need another person's consent to change the physical world in a way that reduces his opportunities.

I do need his consent to bring him under new moral constraints: to make it cease to be morally permissible for him to do certain things that he can do, or to make it morally permissible to coerce him in certain ways. A distinction must be made between depriving someone of opportunities and depriving him of rights. To deprive someone of an opportunity is to make a physical change in the world; to deprive someone of a right is to change what it is morally permissible for him and others to do. What I am supposing is that it is morally permissible, in certain cases, to deprive someone else of an opportunity without his consent, but that it is impossible to deprive someone of a right unless he himself gives up or loses that right through a voluntary act.

What happens, then, when a person takes something in its natural state and transforms it into something else—when, say,

he clears land for farming or makes trees into lumber? According to the hard libertarian position I am considering, such an act is morally permissible in certain circumstances, but a person's performing such an act can never by itself deprive anyone else of his equal right to the use of all things. Only a voluntary act of the person who loses the right could do that. In the absence of an agreement to the contrary, a manufactured thing is to be regarded simply as commonly owned raw materials put into a new form, and hence everyone has an equal right to it.

What will happen in a community governed by hard libertarian principles? In the absence of an agreement allowing unequal property rights, the people in that community will lead miserable lives. Consider the clearing and cultivation of land in a situation where uncleared land is plentiful. It is only possible for a person to benefit from clearing and cultivating land if he can exclude others from the harvest. For although land in its natural state is plentiful, grain is not, and if everyone has an equal right to the grain, the planter will get little of the harvest from the land he cultivates. Thus if there are no exclusive property rights, no one will have a noticeable incentive to clear and cultivate land, and so all will be reduced to living from the land's natural produce.

Here is the basis for an agreement. If everyone is in the position I have described, all may agree to allow appropriation—to allow each person complete ownership of a piece of land.¹ Each is better off if he has some land from which he can exclude others and is himself excluded from other pieces of land than he would be if no one were excluded from anyone's land. The hard libertarian position, then, seems to yield an argument for complete ownership: people who respect the rights which are claimed by the hard libertarian position would agree to establish complete ownership, because all would be much better off with such an agreement than without it.

The argument so far, though, depends on comparing just two alternative systems: complete ownership and a complete absence of exclusive property rights. Other arrangements are possible. (Cf. Mavrodes' discussion of "fragmented ownership", [2]: 261.) People might agree, for instance, that each shall have a right to exclude others from a piece of land and its produce, on condition that everyone shall pay a given person—call him the "king"—a tenth of his harvest. Everyone, then, would enjoy

a kind of limited ownership. Presumably even with this tithing arrangement, each person is better off than he is if he cannot exclude others from land, and the king himself has reason to insist that there be this agreement or none.

What we have here, then, is a bargaining situation. There are many agreements that would make each person better off than he would be if people did not agree to be excluded from certain pieces of land. There are various ways the benefits of exclusion may be distributed. Each person has an incentive to hold out for a system that will entitle him to great benefits, even if that means giving others lesser benefits.

What kind of bargain would be made in this situation? There are a number of axiomatic treatments of the problem which, depending on the axioms chosen, yield different results. Schelling (in [5]) argues that the outcome of a bargaining situation will depend on factors not included in the axiomatic treatments that have been proposed: that bargainers will hold out for especially salient outcomes, and in particular, that if there is a past history of such bargaining situations, each person will hold out for as much as people in similar positions have received in the past.

Now if all bargainers are in like circumstances, then any axiomatic treatment that has been proposed will yield an efficient, symmetrical outcome. In the case where land is plentiful, the efficient symmetrical outcome is that each person should be free to appropriate, and no one should pay anyone else. If Schelling is right about the importance of salience, as I think he is, then the case for free appropriation is even stronger: even if the situation is somewhat asymmetrical, an outcome with free appropriation is likely to be most salient.

If different people are in notably different situations, however, then it is not clear what bargain will be adopted. Suppose, for instance, some people are handicapped, so that they could do little better with the exclusive use of a plot of land than they could do in a propertyless state. Since they gain little from assenting to free appropriation, they are in a strong position to hold out for substantial benefits in return for renouncing their rights to lands others appropriate. Those who can derive great benefits from the exclusive use of a piece of land can expect that they will not be able to get the agreement of the handicapped unless they offer them something more than the right to appropriate land.

Thus when we examine the bargaining situation produced by the hard libertarian position, we get a justification for something resembling a welfare state. The hard libertarian position in effect makes everyone joint landlord of all land, in the sense that all collectively can set whatever conditions they unanimously agree on for the use of the land. The handicapped may in effect collect a rent, rather than exchange their joint proprietorship of all land for ownership of a piece of land. The able will achieve not unencumbered ownership, but ownership subject to taxation for the handicapped. A right to welfare, in this situation, stems not from factors which override considerations of natural liberty, but from considerations of natural liberty itself.

So far, I have been considering a world in which everyone's rights are respected. In such a world, on the hard libertarian view, rights are determined not by the agreements it would be rational to make in hypothetical circumstances, but by agreements actually made. This, of course, has no direct application to the world in which we live. Unanimous consent has rarely or never been required for the appropriation of land, and when it has, it has been achieved, no doubt, by unjust threats. We are faced, then, with the question of whether the way things could have happened justly has any bearing on the rights people have, given what did happen. (Cf. [3]: 152.) If it does have a bearing, then what we have here is the beginning of a hypothetical contract theory of property rights—a theory according to which the rights one has in the actual world depend in some way on the agreements that people would make in a hypothetical fair situation.² The injustices of the world make an actual contract theory inapplicable.

Let me return, though, to an actual contract theory for a world in which no one's rights are ever violated. So far, I have talked as if all people find themselves in a state of nature at the same time. If that were the case, then at a single time, everyone could agree to certain restrictions for the sake of benefitting from the entire system of restrictions. In fact, however, people live through different, though overlapping, periods of time. Now if anyone who has not agreed otherwise has a right to use things on the same basis as everyone else, agreements made by others before a person was born, to which he was not a party, cannot remove that right. When a child reaches adulthood—when, that is, he first becomes competent to make agree-

ments—he has the same right to the equal use of all things as he would have if everyone were in a state of nature. He can lose that right only by agreeing to give it up.

What happens, then, when a child first grows competent to make agreements? If others have produced goods which are scarce, the new adult is in a very strong bargaining position. For abjuring his natural right to equal use of scarce goods such as cleared land, stored food, and housing, the new adult can exact a high price. Because of that fact, however, each adult knows that if he produces scarce goods, new adults will have a claim to a full share of their use. He may, then, have little incentive to produce scarce goods, and if scarce goods are not produced, then everyone will live in poverty.

If somehow the new adult had been able to agree at the outset of human existence to a system of property rights that would foster production, it would have been in his interest to do so. It would then be to his advantage to bargain for a small enough share in things produced before his adulthood to leave his elders a strong incentive to produce. These considerations again seem to push us away from views that base property rights on an actual contract, and perhaps toward a view that bases property rights on a hypothetical contract—the contract people would accept under ideally fair conditions.³ Such a hypothetical contract might accord new adults some share of their elders' production: the young might be able to insist that they will not begin their adult lives with no assets whatsoever, or depend simply on what their elders might freely decide to give them. They will not, however, claim a share of previously produced things that will destroy their elders' incentives. Property rights agreed to by everyone before anyone began his life might well benefit young and old alike, making each person better off than he would be if rights were determined by a series of actual agreements.

III. LOCKEAN APPROPRIATION

Locke explicitly rejects what I have been calling the “hard” libertarian position, and tries to show “how men might come to have a property in several parts of that which God gave to mankind in common, and that without any express compact of all the commoners” ([1]: Section 25). I shall consider Locke's position only briefly. According to Locke, I *appropriate* a

thing—become owner of a thing previously unowned—if I mix my labor with it and things of its kind exist in superfluity—if there is “enough and as good left for others”.

Is there any principle of natural liberty which would allow appropriation under such conditions? Consider the case of land, and suppose land of a given kind exists in superfluity. If I appropriate some of this land, I exclude others from its use, and this might seem *prima facie* to be a violation of their liberty. Because, however, there is land in superfluity, my excluding others from the use of a piece of land does not make them worse off than they would be if they could not use it. Moreover, if I were not able to exclude others, then I could not work the land to my benefit, since others would harvest what I planted. Appropriation, then, helps me without hurting anyone else, and that seems to be what justifies the appropriation.

The principle invoked here might seem, then, to be simply this: one has a right to do anything that will benefit oneself without worsening the position of anyone else. That, however, will not do. To appropriate is not to commit an act that changes the physical world; it is to alter the rights of others. For one person to appropriate something is for others to cease to have a right to use it.

Perhaps this misstates the effect of appropriation in the Lockean system. True, to appropriate something and do nothing else would be solely to alter the rights of others with respect to it. According to Locke, however, there is no such thing as bare appropriation. Appropriation is rather the moral result of the physical act of mixing one's labor with a thing. According to Locke, where there is unimproved land in superfluity, everyone has an equal right to use uncleared land, but no right to use cleared land without the consent of the person who cleared it. Clearing land, one might say, does not take away anyone's rights, it simply makes the right to use uncleared land cease to apply to a particular piece of land.

The earlier point, though, remains: from the principle that one has a right to do anything that will benefit oneself without worsening the position of anyone else, it does not follow that by applying labor to a thing of a kind that exists in superfluity, one appropriates it. The issue is not the moral permissibility of a physical act, called appropriation: in the case of land, for instance, the issue is not whether it is morally permissible to clear land, but the moral status of cleared land.

According to Locke, if a person clears land and farms it, he has a right to the exclusive use of its produce. Why should we accept that rule rather than an alternative—say, that if a person clears land and farms it, he has a right to nine-tenths of the produce, and the handicapped have a right to one-tenth? The principle behind the choice of the Lockean rule seems to be something like this: moral rules should be so constructed that, if the rules are obeyed, the acts of each person benefit or harm only himself, except as he himself chooses to confer or exchange the benefits of his acts. It is thus permissible, on the Lockean view, to coerce a person not to benefit from the acts of another, if such coercion increases the benefit the other derives from his own act, and that act, given the system of coercion, does the person coerced no harm.

To me this principle is far from self-evident. Rather than discuss this principle further, though, I shall turn to another question: how is superfluity to be interpreted in a Lockean system when initial superfluity turns to later scarcity? Suppose that in 1826, there was more good uncleared land in a certain locality than anyone then wanted to clear and farm, but that such uncleared land, if it existed there in 1976, would be extremely valuable. Could people in 1826, on a reasonable Lockean theory, appropriate the land?

To distinguish what is scarce and what is not in this case, we should think of land as a dated commodity. The right to exclude others from a given piece of land during the year 1826 is distinct from the right to exclude others from the same piece of land in 1976. The person who acquires the former right does not necessarily thereby acquire the latter. We can think of a plot of land *X* as consisting of the parts plot-*X*-in-1826, plot-*X*-in-1827, and so forth. Commodities of the same kind as plot-*X*-in-1826, we have supposed, exist in superfluity, whereas commodities like plot-*X*-in-1976 are scarce.

Suppose the superfluity of such land lasted for fifty years, through the year 1875. A person who cleared plot *X* in 1826 and farmed it through 1874 thereby altered plot-*X*-in-1875 in a way that made it more useful. Thus, as of 1874, he had applied his labor to plot-*X*-in-1875, and since like commodities exist in superfluity, he had thereby appropriated plot-*X*-in-1875. Likewise, as of 1875, he had applied his labor to plot-*X*-in-1876. Commodities of that kind, however, are somewhat scarce. Whether, then, by clearing plot *X* in 1826 and farming it

thereafter, he had appropriated plot-X-in-1876 depends not on the principle that applies to appropriation of superfluous commodities, but on whatever principle applies to the appropriation of scarce commodities. What that principle should be I have not discussed.⁴

IV. CONCLUSION

My purpose has been to question whether rights of ownership can be plausibly grounded in principles of natural liberty. If everyone began his adult life at once, I have argued, the hard libertarian position might yield a system of qualified ownership, which both fostered production and made provision for those who were unable to produce for themselves. Because, however, people begin their adult lives at different times, a society which respected hard libertarian principles would probably be unproductive. Recognizing appropriation by Locke's rule would foster production, but I have questioned whether Locke's rule is grounded on evident libertarian principles. In any case, Locke's rule, plausibly interpreted, rarely justifies permanent ownership: it justifies ownership of a thing only for as long as things of its kind continue to exist in superfluity. Few claims to unencumbered ownership of a thing are justified, then, either by the hard libertarian position or by Locke's modification of it.

REFERENCES

- [1] John Locke, *The Second Treatise of Government*, 1764.
- [2] George L. Mavrodes, "Property," *Personalist* 53(1974): 245-62.
- [3] Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974).
- [4] John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971).
- [5] Thomas Schelling, *The Strategy of Conflict* (Cambridge, Mass.: Harvard University Press, 1960).
- [6] Hal R. Varian, "Distributive Justice, Welfare Economics, and the Theory of Fairness," *Philosophy and Public Affairs* 4(1975): 223-47.

NOTES

¹ For a characterization of ownership in the sense needed here, see [2]: 247.

² Rawls' theory presented in [4] is, of course, a prime example of the hypothetical contract approach. In the ideally fair situation suggested by considerations here, however, people would have full knowledge of their tastes and abilities, whereas in Rawls' "original position" such knowledge is lacking.

³ Nozick, on the contrary, argues that in the absence of injustice, it is actual rather than hypothetical occurrences that determine property rights ([3]: 151-2).

⁴Mavrodes discusses temporally limited property rights ([2]: 211), as does Varian ([6]: 237). Nozick, as I understand him, advocates a right of permanent appropriation whenever no one is left worse off by such a system than he would be if there were no exclusive property rights at all ([3]: 176-7). He does not, as far as I can see, provide an argument for this rule, and it is hard to see why, when there are not enough objects of a given kind for everyone to appropriate as much as he wants to use, things of that kind should be appropriated permanently on a basis of first come, first served: other ways of distributing the right to appropriate would seem to be more fair.

ABSTRACT OF COMMENTS

By Norman S. Care

OBERLIN COLLEGE

What you *cannot* do, according to Gibbard, is reason *from* the Hard Libertarian Position (whereby a person can be denied the right to use a thing only with his consent), or Locke's modification of it (whereby a person has the right to use a thing only when his having it does not worsen the position of others, or, alternatively, when his having it harms or benefits only himself), *to* a system of property that allows "unencumbered ownership". For the situation described by the Hard Libertarian Position either leads, *via* imagined agreements or contracts, to qualified ownership (if everyone begins adult life at once), or it is "unproductive" (if persons begin adult life at different times); and Locke's rule either fosters production but in that case is not based on libertarian principles, or justifies, not permanent ownership, but only ownership of things which continue to last "in superfluity".

It is not clear to me that anyone favors a system of property rights of the strength suggested by Gibbard's notion of unencumbered ownership. But, nevertheless, I respond to Gibbard's line of thought by exploring the conditions that must be satisfied by the view that unencumbered ownership is justified. It may be that libertarian principles are compatible with unencumbered ownership, even though they do not directly imply it. But in that case there may be further conditions which can be combined with the libertarian position to yield a system involving unencumbered ownership.

We can approach an understanding of these conditions by asking in what circumstances the adoption of a system allowing

LINKED CITATIONS

- Page 1 of 1 -



You have printed the following article:

Natural Property Rights

Allan Gibbard

Noûs, Vol. 10, No. 1, Symposium Papers to be Read at the Meeting of the Western Division of the American Philosophical Association in New Orleans, Louisiana, April 29-May 1, 1976. (Mar., 1976), pp. 77-86.

Stable URL:

<http://links.jstor.org/sici?sici=0029-4624%28197603%2910%3A1%3C77%3ANPR%3E2.0.CO%3B2-Y>

This article references the following linked citations. If you are trying to access articles from an off-campus location, you may be required to first logon via your library web site to access JSTOR. Please visit your library's website or contact a librarian to learn about options for remote access to JSTOR.

References

⁶ **Distributive Justice, Welfare Economics, and the Theory of Fairness**

Hal R. Varian

Philosophy and Public Affairs, Vol. 4, No. 3. (Spring, 1975), pp. 223-247.

Stable URL:

<http://links.jstor.org/sici?sici=0048-3915%28197521%294%3A3%3C223%3ADJWEAT%3E2.0.CO%3B2-V>

Notes

⁴ **Distributive Justice, Welfare Economics, and the Theory of Fairness**

Hal R. Varian

Philosophy and Public Affairs, Vol. 4, No. 3. (Spring, 1975), pp. 223-247.

Stable URL:

<http://links.jstor.org/sici?sici=0048-3915%28197521%294%3A3%3C223%3ADJWEAT%3E2.0.CO%3B2-V>

NOTE: *The reference numbering from the original has been maintained in this citation list.*