THE NATURAL RIGHT TO THE MEANS OF PRODUCTION

By Hillel Steiner

Affirmations that there are natural rights typically provoke queries as to which rights they are. And it has been the lack of convincing answers that has, understandably, engendered much if not all of the scepticism with which such affirmations are frequently greeted. Perhaps the only unexceptionable claim that can be registered about the subject of human or natural rights is that agreement on their existence is more widespread than is agreement on their identity. Philosophical attempts to vindicate them—that is, attempts to display the intelligibility of the concept of natural rights—are, at best, necessarily confined to grounding their existence on the formal features of rights-claims in general. Such arguments cannot extend to a further demonstration that rights-claims themselves enjoy, not merely an historically important, but also a logically entrenched position in moral discourse.[1] Our acknowledgement of the aspect of personal inviolability implied in any justified rights-claim is a moral and not a conceptual judgement.

To say this is not, however, to say that we are debarred from engaging in fruitful reasoning about the content of natural or human rights. For within these limits, it can be and has been shown that any such rights must possess certain properties. Being presupposed by contractual and conventional rights, natural rights can (trivially) be characterized as non-contractual and non-conventional.[2] That is, the individual entitlements they prescribe cannot accrue to their possessor by virtue of some action he or another has previously performed. Being in this sense *undeserved*, such rights must evidently accrue to their possessor by virtue of what he or she *is*—technically a moral agent, more conventionally a human being. And this in turn implies two further properties commonly ascribed to such rights: namely, that they are universal and inalienable. These rights accrue to beings if they are human and are theirs so long as they are human.[3]

What I shall try to show in this paper is that one can go some distance toward specifying the content of human or natural rights, by considering the conditions under which a set of rights can be universally and inalienably

[1]H. L. A. Hart, "Are There Any Natural Rights?", *PR*, 64 (1955), 175-191; Hillel Steiner, "The Natural Right to Equal Freedom", *Mind*, 83 (1974), 194-210.

[2]Hart, *op. cit.*

[3]'Inalienable' means ineligible for expropriation but not—in Locke's view, at least—for forfeiture. Thus Locke denies the natural right to immunity from the "absolute arbitrary power" of another, to anyone who irreparably violates others' rights, by claiming that the violator is thereby "revolting from his own kind to that of Beasts" (*Second Treatise* (hereafter *T* II), XV, § 172).

enjoyed. The phrase 'some distance' is used advisedly since the ensuing argument will, I hope, reduce somewhat the abstractness of the claims usually described as natural rights, but it will not eliminate it. Some links will be forged between the aforementioned properties of such rights and more concrete (and familiar) moral and political demands. But the reader should not be surprised to find lacking any indication of the institutional framework within which such demands can be satisfied.

We speak of rights as being exercised. A right thus denotes a sphere of action, a domain within which the right-holder may act—or require others to act—as he chooses, and must not suffer interference by others with the execution of his choices. *Any coherent or well-ordered set of rights must therefore be such that it is logically impossible for one individual's exercise of his rights (within that set) to constitute an interference with another individual's exercise of his rights (within that same set).* Any set of rights which are so formulated as to imply the possibility of one right-holder's rightful actions being such as to interfere with another right-holder's rightful actions cannot be a set of universal and inalienable rights. This, because one individual's exercise of his assigned right would *ex hypothesi* be alienating the similarly assigned right of another, and thus restricting its enjoyment to less than all human beings. The coherence of a set of rights is, then, the condition of their being universal and inalienable. It is their failure to satisfy this elementary logical requirement of coherence that has ruled out as non-starters many of the sets of rights proffered as human or natural, and has thereby greatly contributed to scepticism concerning the very existence of such rights. To identify the conditions under which a set of rights is coherent or well-ordered it is thus necessary, first, to identify the conditions under which an action of one individual can constitute an interference with that of another.

All actions consist in some kind of motion: the passage of some body from one place to another, the displacement of some material substance from one portion of physical space to another. Interference by one individual's action with another's occurs because some of the material or spatial components of the one action are identical with some of the material or spatial components of the other action. Let us call the material and spatial components of an action its *physical components*. It follows that one individual's action cannot interfere with another's if none of their physical components is identical.

A rule or set of rules assigning the possession or exclusive use of a particular physical object to a particular individual will, if universally adhered to, exclude the possibility of any individual's actions interfering with those of another in respect of that object. A rule or set of rules assigning the possession or exclusive use of each particular physical object to particular individuals will, if universally adhered to, exclude the possibility of any individual's actions interfering with those of another in any respect. Such a property rule would thus assign, to each individual, his legitimate sphere of personal

freedom—his rights—as constituted by the physical objects composing it. The set of rights thereby prescribed would thus satisfy the condition of being coherent or well-ordered, in the sense outlined above.[4]

Fortunately, the conceptual connections between individual inviolability, rights and property claims have already been adequately displayed, for purposes of the present paper, by Robert Nozick in *Anarchy, State and Utopia*, and do not therefore require further elaboration here.[5] But Nozick has carried his argument beyond the demonstration of these connections, to provide us with an account of what he takes to be the distributive implications of these connections. His "historical entitlement" conception of just holdings constitutes a theory of the rules which must (logically) govern the distribution of physical objects in a society whose members enjoy inviolability, that is, are possessed of rights. Other non-historical and non-entitlement rules of distributive justice—"patterned" or "end-state" rules—are shown to be incapable of assigning inviolable spheres of personal liberty to individuals, incapable of generating a (coherent) set of rights. This is because, in ostensibly determining the holdings of individuals, such rules are designed continuously to maximize some specified variable over society, or continuously to secure some specified structural relationship between (the size of) individuals' holdings. In neither case are the dispositional choices of individuals—what they have each chosen to do with the objects which were theirs—taken as determinative of what rightfully belongs to them. Such rules, as Nozick claims, thereby license interference by others with some persons' use of their own holdings including their own bodies. They create rights to interfere with the exercise of rights they have created. Indeed, it is doubtful that the claims warranted by such rules can properly be called "holdings" at all.

Does it follow from this that the claims generated by the rules of Nozick's historical entitlement conception *do* represent a set of rights which are universal and inalienable in character and are thus eligible to be human or natural rights? To answer this question we must draw a distinction. Suppose historical entitlement rules give me a claim to a manufactured or non-natural object P. There are a number of grounds, implicit in these rules, on which such a claim may be based. Perhaps I have made P or, alternatively, someone has freely given P to me either as a gift or in exchange for something else. What is important to notice is that, if my claim to P is based on either of these grounds, my right to P is *not* a natural or human right. For my justification entails that my entitlement to P is based on an action previously performed, either my own or someone else's. My right to P is a contractual or conventional one. It *presupposes* a right, either on my part to the unsynthesized ingredients of P, or on the part of someone else to P. If I or

[4]Hillel Steiner, "Individual Liberty", *PAS*, 75 (1974-75), 33-50; and "The Concept of Justice", *Ratio*, 16 (1974), 206-225.

[5]Oxford and New York, 1974 (hereafter *ASU*), pp. 28-35 and 149-174.

that other person lacked such a right, my claim to P would be void. It is, so to speak, the ownership-genealogy of P and its physical antecedents that we are to refer to in determining who is now entitled to it.

Evidently the chain of presupposed rights required to vindicate my present claim to P can only terminate in (i) the right to a person's body and thus, following Locke and Nozick, to the use or labour of that body, and (ii) the right to appropriate the original ingredients of P from their natural state. Hence, the only rights which can be non-conventional and non-contractual—the only rights which, presupposing no others, can be *human* or *natural* rights—are rights to human bodies and natural objects. (The removal of an object from its original natural state is sufficient to render it non-natural since, in Locke's phrase, labour has been mixed with it.) The rules of distributive justice, as embodied in the historical entitlement conception of just holdings, can thus be understood as rules which (i) stipulate the conditions of individuals' inviolability in the exercise of their natural rights, and (ii) define individuals' natural rights. Included under the first category are stipulations permitting the free disposition—including interpersonal transfer—of possessions by their rightful owners, and thus prohibiting the forcible interpersonal transfer of such objects (and thus permitting the forcible recovery by their rightful owner of objects forcibly transferred from his possession). What sorts of rule come under the second category?

Natural or human rights are, as was said, rights to human bodies and natural objects. The kind of rule required to prescribe the first of these in a universal and inalienable form is, uncontroversially, one prohibiting slavery. What we have now to consider is what kind of right to natural objects can be enjoyed universally and inalienably. That is, we need to identify a rule which would constitute a coherent set of appropriative rights. And it is here, I think, that Locke and Nozick and others have encountered some of the more intractable difficulties besetting any attempt to give a satisfactory account of distributive justice and natural rights. For Nozick rightly insists that our commonsense view of what is just—of what is owed to individuals by right—is inextricably bound up with what they *have done* (*ASU*, p. 154). And he therefore criticizes other (end-state and patterned) conceptions of justice, that determine individuals' entitlements by continuous reference to formulae of the form 'To each according to his . . .', for "treating objects as if they appeared from nowhere, out of nothing", as if they were not the results of applications of already-owned labour to already-owned objects, in short, as if they were not what individuals have done (*ASU*, pp. 159-60).

The problem here arises from the fact that, unlike other objects, the objects of appropriative rights *do* appear from nowhere and out of nothing and are *not* the results of individuals' past actions. It is therefore not surprising that Locke's rule for appropriation as well as Nozick's adaptation of it prove, in the event, to be structural or end-state principles rather than historical ones. Appropriative claims, and the rules governing them, can

have nothing to do with desert. And the reason why this gives rise to a problem is that the individuals who are the repositories of human or natural rights—namely, all human beings—are not all contemporaneously existing entities but rather entities the existences of some of whom co-occur with those of some others, overlap incompletely with those of some others and entirely precede or succeed those of still others. Hence the kind of rule required to prescribe to each human being his natural right of appropriation is an end-state principle which must operate continuously over time, and not on a once-for-all basis.

Consider, first, Locke's rule on appropriative right. He stipulates that an individual may appropriate only such natural resources as will ensure that "enough and as good is left in common for others" (*T* II, §§ 27, 33-8). The meaning, if not the method of application, of this proviso seems at first glance to be clear enough. It imposes an egalitarian structure on individuals' appropriative entitlements, prescribing to each a quantitatively and qualitatively similar bundle of natural objects. What complications the implementation of this would involve if, as seems reasonable, accessibility and ease of extraction must enter into an object's qualitative appraisal, need not concern us here. More worrying, perhaps, is the fact that this rule seems to require that all appropriators, from the earliest to the most recent, must know how many rights-holders (i.e., human beings) there are yet to be. (I shall return to this problem presently.) One quick way out of this difficulty —the route taken by Locke himself—is to say that this rule on appropriative rights was once valid but is not so now (*T* II, §§ 37-8, 45, 50, 51).

Nozick recognizes that this will not do if appropriative rights are to be construed as natural, that is, capable of generating subsequent titles to objects.

> . . . there appears to be an argument for the conclusion that if the proviso no longer holds, then it cannot ever have held so as to yield permanent and inheritable property rights (*ASU*, p. 176).

Consider, then, Nozick's adaptation of Locke's rule. He suggests that the "enough and as good proviso" is "meant" to ensure that no individual's appropriation *worsens* the situation of others (p. 175). This interpretation permits Nozick to abandon any "exact similarity requirement" for appropriative bundles, and to replace it with a proviso to the effect that an appropriator must compensate others from his holdings for any net loss of benefits they may incur by virtue of their loss of liberty to appropriate the object he has appropriated (*ASU*, pp. 176-82).

There are several points worth noticing about this more complex rule. First, and contrary to Nozick's denial (p. 181), this rule *is* an end-state principle. Compare it with the following two quotations (which are addressed to the relative merits of a government adopting certain economic policies):

> . . . supposing that those who are worse off were exactly compensated for their loss at the expense of those who are better off, this redistri-

> bution of incomes would leave the real income of everyone the same as before.[6]
>
> A "permitted reorganization" must . . . be taken . . . to mean a reorganization which will allow of compensation being paid, and which will yet show a net advantage.[7]

The Kaldor-Hicks criterion, expressed in these propositions, is a well-known theorem of welfare economics which, as Nozick earlier remarks (*ASU*, p. 154), is a theory of end-state principles of justice. His compensation proviso prescribes, for any would-be appropriator, a welfare "baseline" which consists in the level of well-being every other individual could reasonably expect in the absence of that person's appropriation, and which imposes structural considerations on the size of permissible holdings. No appropriator's holding may be larger than is consistent with maintaining other persons' previously expected level of well-being.

Second, there is a conceptual problem about how the compensation due is to be reckoned. Nozick suggests that reference should be made to the economic value, i.e., market prices, of appropriated natural resources (*ASU*, p. 177). But which set of market prices is to be consulted? For any particular set of prices presupposes or derives from a particular set of already-consummated resource appropriations, and reflects the interplay of valuations placed on these objects by those who—already owning them—proceed to exchange them. There is no reason to suppose that the prices formed by the interplay of these valuations would be the same if the set of individuals owning and exchanging natural objects were different.[8]

Third, even if we could get round the preceding difficulty and discover an appropriatively neutral set of prices, there is the problem posed by the fact that market valuations do not necessarily correspond to personal ones. My loss, due to someone else's appropriation, may be greater than the economic value I might have received in the market for the object in question had I been its appropriator. Consequently I would not have sold it. Nor is it my duty, correlative to the rights of others, to offer for sale what is rightfully mine. Indeed, the person whose valuations of every object are exactly equal to market prices will either never enter the market or never leave it, since he has nothing to gain or lose from any exchange. So the market price of an object cannot be taken to represent the amount of benefit which every person would associate with its possession nor, therefore, with compensation for its loss. Nor does any other standard suggest itself.

Fourth, as Nozick acknowledges, the adoption of his proviso on appropri-

[6]Nicholas Kaldor, "A Note on Tariffs and the Terms of Trade", *Economica*, 7 (1940), 377-380, p. 378.

[7]J. R. Hicks, "The Foundations of Welfare Economics", *Economic Journal*, 49 (1939), 696-712, p. 706.

[8]See, for example, Peter Newman, *The Theory of Exchange* (Englewood Cliffs, New Jersey, 1965): ". . . prices are not given exogenously in the exchange situation, from the outside so to say, but are intrinsic to the problem *embedded* in the individuals' . . . preferences and initial endowments of goods" (p. 50).

ation must entail a restriction on the freedom of individuals to dispose of their holdings as they choose. Clearly this will be so, since appropriators are required (may be justly forced) to surrender part of their holdings in compensation to others. Moreover, he indicates that an evident case of worsening the lot of others occurs when one person acquires the total supply of something necessary for life, whether by initial appropriation or by a succession of interpersonal transfers (*ASU*, pp. 179-82). In such a case, Nozick's interpretation of the Lockean proviso limits either the freedom of individuals to make transfers (including bequests) resulting in such monopolies or the freedom of monopolists to determine their own terms of trade. But what is to count as (i) monopoly, and (ii) the necessities of life, is historically a much-disputed issue, and around it revolve some of the more profound ideological controversies of the last hundred years.[9] Nor is much guidance provided on this rather crucial matter by the observation "Thus a person may not appropriate the only water hole in a desert and charge what he will" (*ASU*, p. 180). How much may he charge? May a person owning the only water hole in half a desert charge what he will? May a person owning the only grocery shop on a 500-mile stretch of highway charge what he will? Or a similarly located motel owner? Why, after all, should people not be held responsible—liable to pay the costs, whatever they may be—for putting themselves in (or failing to remove themselves from) positions of dependence on others? On the other hand, is such dependence the result of choice and, if so, how proximate a result must it be to count as deserved? These questions are central—and do not raise issues of merely peripheral detail—to the meaning of Nozick's proviso within the framework of an historical entitlement theory.

Finally, however, there is the problem which was the original reason for this proviso—the problem of how to design a natural appropriative right the exercise of which does not impair the natural rights of future individuals, and which thereby satisfies the requirement of coherence. Having acknowledged that Locke's attribution of historically limited validity to appropriative right is unacceptable, Nozick is hard put to show that his own construction is better adapted to meet this desideratum. In fact, it is worse adapted. For Locke's exact similarity proviso requires appropriators to know *only* the number of all (including future) individuals. Whereas the compensation proviso requires appropriators to know, not only the number of such individuals, but also how each one's level of well-being would be affected by their appropriations. Even ignoring the undeniably subjective or preferential elements of personal well-being, this requirement sets appropriators a logically impossible task in respect of individuals who do not yet exist. Nozick correctly remarks "Each owner's title to his holding includes the historical shadow of [Nozick's interpretation of] the Lockean proviso on appropria-

[9]For example, it is a central proposition of Marx's analysis that the means of production are monopolized in capitalist society.

tion" (*ASU*, p. 180). The shadow thrown by the compensation proviso so entirely envelops such titles as to render them indiscernible.

How then are we to construe an individual's natural appropriative right? *Some* construction of it is necessary, as was argued previously, since only such a right is eligible to generate the titles to personal holdings which alone can constitute spheres of individual inviolability, which alone can guarantee the impossibility of one person's exercise of his rights being an interference with another person's exercise of his rights. One response to the foregoing question might appear to consist in adopting Locke's exact similarity proviso. However, this would require us to postulate as knowable the number of individuals who are yet to be. I suggest that such knowledge is, in principle, unavailable.[10] Hence the impositions of the exact similarity proviso are entirely indeterminable. In what follows, I propose to sketch a formulation of the exact similarity proviso that embodies what can strictly be claimed to be only the *spirit* of Locke's stipulation, if not its meaning, which appears in any case to be uncertain.

Suppose, for a moment, that we were *not* beset by the problem of an indefinite succession of natural rights-holders. Suppose that the membership of the class of human beings were historically constant in identity and therefore in number. Keeping this constraint in mind, let us turn our attention to Locke's chapter on property where he has occasion briefly to discuss the relative values of the ingredients which enter into the production of non-natural objects (*T* II, §§ 40-43). In his estimation, natural resources account for less than 0.1% of the value of such products, while human labour accounts for the remainder. The adequacy of the labour theory of value in general, and the accuracy of this statistic in particular, need not concern us here. What is of interest, however, is the bearing of Lockean natural rights theory on the titles to these two types of ingredient which jointly constitute the basic means of production. The titles to expenditures of labour are governed by the prohibition on slavery: each individual has a natural right to his or her (physiologically) own labour. The titles to natural resources are governed by the exact similarity proviso: each individual has a natural right to an equal share of these resources. Does this mean that each individual has a natural right to an equal share of the non-human means of production? To this question we must, provisionally, return the answer no. The reason for this is that the phrase 'non-human means of production' covers not only natural resources but also *produced* means of production, or what we conventionally call "capital". Clearly, a proviso on appropriation cannot be understood to prescribe natural rights to non-

[10] I acknowledge as possible, but not relevant, the availability of such data in the circumstance of the implementation of an appropriately designed and *enforced* population control programme. This possibility is irrelevant to the present argument since any such *enforced* programme would necessarily constitute a violation of existing persons' rights of self-ownership which, along with the right of appropriation, is a presupposition of the ascription of any other right in a coherent set of rights.

natural objects. Or can it? Nozick's interpretation of Locke's proviso *does*, as we have seen, prescribe such entitlements inasmuch as it requires the compensation of non-appropriators from the holdings of appropriators. But this compensation proviso engenders the difficulties already discussed.

I suggest that the spirit of Locke's exact similarity proviso is captured in the requirement that *each individual has a right to an equal share of the basic non-human means of production.* If the membership of the class of human beings were historically constant in identity, this requirement would be satisfied by entitling each individual to "as much and as good" natural resources as every other individual is entitled to. This, indeed, appears to be the literal meaning of what Locke stipulates. Having been assigned his equal share of natural resources, each individual is entitled to dispose of it as he chooses and, in the absence of any rights-violations, the resultant set of holdings can be understood at all times to embody the Nozickian slogan "From each as they choose, to each as they are chosen" (*ASU*, p. 160).

If, however, we relax the constant identity constraint—and thereby render indeterminable the requisite natural resource shares—some other meaning must be ascribed to the requirement of equal shares of the basic non-human means of production. I do not pretend to know what this is. The conditions which would satisfy such a requirement have been a matter of long-standing historical controversy, ranging from the proposals of the late eighteenth-century land-reform radicals, through the advocacy of the "single tax" device, to the view that only equal ownership of all means of production is the appropriate solution on the grounds that historically-earlier individuals "replace" those natural resources—of which they deprive historically-later individuals—with produced means of production. In any event, it is not my purpose here to determine which of these or any other such proposals most adequately represents the impositions of the exact similarity proviso under the constant identity constraint. Nor, therefore, does this account license any institutional inferences. Rather, I have tried to show only that, if there are any human or natural rights, the right to an equal share of the basic non-human means of production must be one of them.[11]

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[11]This paper is an extended version of one read at the meeting of the Eastern Division of the APA, Boston 1976.