Rights to Natural Talents and Pure Profits: A Critique of Gauthier on Rights and Economic Rent

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David Gauthier's *Morals by Agreement,* is an impressive, indeed daunting, exercise in contractarian moral and political philosophy. The primary purpose of his treatise is to provide an explication of practical rationality as constrained maximization and of morality as compliance with these constraints. Gauthier offers an account of which constraints on straightforward utility maximization each rational individual will be prepared to accept and to comply with on the condition that other individuals also will accept and comply with them, and an explanation of why compliance with these constraints counts as morality. However, although *Morals by Agreement* is in the great tradition of Hobbesian moral and political theorizing, Gauthier's morality by agreement does not begin with the Hobbesian state of nature. Gauthier does not start by envisioning a Hobbesian war of all upon all, which has been generated by rational individuals each pursuing his own maximum utility, and then providing an account of what interpersonal constraints would, if generally abided by, lift us out of the sorry Hobbesian condition. Rather, Gauthier takes the primary domain of morality by agreement to be that which is characterizedly addressed within theories of distributive justice. His primary question is, What principles of division will it be rational for all utility maximizing individuals to adopt, when mutually advantageous cooperation is possible but only on the condition of general compliance with some principles for the division of the benefits of cooperation? It is, according to Gauthier, precisely because such principles are not needed in the "perfect market" that "the perfect market ... would constitute a morally free zone, a zone within which the constraints of morality would have no place." [84].

Gauthier, however, is not silent about the principles that seem most conspicuously absent in the Hobbesian state of nature and most conspicuously needed for the existence of a market order, namely, rights to one's person, one's powers, to the products of one's labors, and to the receipts of one's trades. According to Gauthier, these rights are presupposed by any rational agreement giving rise to morality. Rational bargainers will not agree to, will not comply with, and will not expect others' compliance with bargains that preserve past predations or free rides or prospectively tolerate any such advantage taking. The victims of predations or free rides will insist, and their beneficiaries will concede (out of fear of losing the potential gains from interaction) that their joint initial bargaining position be adjusted to negate these past forms of advantage taking. The bargainers lift themselves out of the Hobbesian condition of unlimited blameless liberty, they accept retrospectively (and prospectively) a ban on advantage taking, so that they can securely capture the gains of subsequent cooperation.

... all effects of taking advantage must be removed from the initial bargaining position. ... This constraint is part of morals by agreement, not in being the object of an agreement among rational individuals, but in being a precondition to such agreement. [192]

This constraint on advantage taking, that is, on bettering one's position by way of worsening the condition of others, is expressed by Gauthier in the form of a Lockean Proviso, a proviso which throughout this essay shall be referred to as "Gauthier's Proviso." The rights derived from this proviso are supposed to constitute the basic (Lockean) moral structure upon which the superstructure of market interaction and nonmarket cooperation is to rest. Through the defense of his proviso and his derivation of rights from it, Gauthier attempts a backward Lockeanizing of his (otherwise) Hobbesian state of nature. In this respect, Gauthier's Proviso is intended to do much more than any normal Lockean

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3. Gauthier persists in this way of speaking despite recognizing that Smith's "obvious and simple system of natural liberty" requires that each "not violate the laws of justice" [83, 85].

4. The term "Lockean Proviso" is introduced by Nozick to refer, in the tradition of Locke's requirement that private acquisition from nature leave "enough and as good" for others, to a moral restraint on people's private acquisitions and subsequent holdings to insure that, in some specified way, the institution of private property does not worsen any individual's circumstances relative to his situation in a preproperty state of nature. See Robert Nozick, *Anarchy, State and Utopia* (New York, Basic Books, 1974), pp. 174–82.
Proviso. For rather than being merely a constraint on the permissible exercise of certain independently identified rights, for example, rights of acquisition and transfer, it is supposed to serve as a scheme for the generation of people’s most basic rights.5

This chapter does not directly address Gauthier’s contention that a ban on advantage taking would arise as a by-product of an agreement by rational individuals about the division of the benefits of their social cooperation. Instead, it focuses on questions about what Gauthier’s Proviso implies, or fails to imply, about individuals’ rights—and more specifically about people’s economic rights to rents and people’s basic (Lockean) rights to their own natural endowments. In section 1 of this inquiry, I focus on Gauthier’s endorsement in principle of the confiscation of economic rent—with the proceeds of that confiscation to be distributed across all members of society in accordance with his principle of minimax relative concession.6 I draw out certain features or implications of Gauthier’s views about economic rent that are odd in themselves or coexist most uncomfortably with other aspects or aspirations of Gauthier’s doctrine. In section 2, I deal briefly with Gauthier’s positive argument for treating rents as part of the cooperative “surplus” and, hence, as subject to redistribution in accord with minimax relative concession.7 In section 3, I turn to Gauthier’s endorsement, as an implication of his proviso, of people’s rights over their respective natural endowments. Gauthier contends that the right of individuals to their respective natural endowments does not imply a right to the rents noncoercively derived from the sale of their services. Hence, he maintains, his denial of rights to rent does not conflict with his assertion of rights to natural endowments. I question these contentions, suggesting that Gauthier’s conclusions about economic rent do reflect a failure of philosophical commitment to robust rights to natural endowments. In addition, I challenge Gauthier’s claim that his proviso can generate rights of persons to their own natural endowments and, hence, to their own powers. In addition, I contend that, in practice, a no-rent policy would require the institution of forced labor and that nothing within Gauthier’s doctrine of persons’ rights over their own powers would forbid this development. I argue that the proviso’s incapacity to yield robust rights is due to Gauthier’s implicit and flawed conception of rights as claims to specified utility levels.

Economic rents are pure profits. Economic rents acquired through the exercise of one’s own distinctive talents (or knowledge) constitute a significant subclass of pure profits. It is the subclass of pure profits that is most intuitively legitimate since these pure profits derive from the exercise of our most intuitively legitimate entitlements—entitlements over our respective talents (and insights).8 Thus, Gauthier’s denial of the legitimacy of economic rents that arise through the exercise of one’s own talents (or insights) amounts to a denial of the legitimacy of the most intuitively legitimate subclass of profits. Hence, to demolish Gauthier’s case for the confiscation of economic rents that arise through exercise of people’s natural endowments is to rebut an important argument against these most intuitively legitimate pure profits. Furthermore, to show that Gauthier’s opposition to this category of economic rent does reflect

5. The constraints of Gauthier’s Proviso only apply among individuals who stand to benefit from cooperation. Gauthier often writes as though whatever ban there is on the initiation of force derives from the need for such a ban as a condition for positive cooperation.

6. It is rational for utility-maximizers to accept the proviso as constraining their natural interaction and their individual endowments, in so far as they anticipate beneficial social interaction with their fellows. . . . Without the prospect of agreement and society, there would be no morality, and the proviso would have no rationale. [193]

This suggests that there would be no rationale for the proviso among two individuals between whom a nonaggression pact would be mutually advantageous but for whom there are no other potential benefits from interaction or cooperation. Hence, there would be no ban on aggression between these individuals. But, elsewhere [115, 132] Gauthier indicates that a nonaggression pact among these two individuals would itself count as a bit of cooperation “in order to avoid mutually destructive conflict.” Thus, there is a rational basis for a ban on aggression even in this case. But note that here the ban is “the product of rational agreement” and not, as the ban within the proviso is supposed to be, “a condition that must be accepted by each person for such agreement [on positive cooperation] to be possible.” [16].

7. The term “surplus” is not normatively neutral. When part of someone’s holdings is described as a surplus, there is a strong suggestion that there is no significant moral barrier to the redistribution of that holding and, furthermore, that there is some good reason in support of that redistribution. Nevertheless, the term is ubiquitous. It cannot be avoided readily. Occasionally I allow myself to mark the someneutrality of the term by the use of scare quotes.

8. For an account of pure entrepreneurial profits as a product of the entrepreneur’s distinctive insight see Israel Kirzner’s Competition and Entrepreneurship (Chicago: University of Chicago Press, 1973), especially chaps. 2 and 3. The subclass of pure profits I focus on is more inclusive than Kirzner’s entrepreneurial profits. For, in some cases, it is not the talent holder’s distinctive awareness of his talent or desire of others for its exercise that accounts for his receipt of payments in “excess” of a perfectly competitive return. I am, in effect, proposing that Kirznerian entrepreneurial profits can be seen as rents accruing to the entrepreneur on the basis of his scarce insight.
a lack of commitment on Gauthier’s part to persons possessing robust rights over their own natural endowments and that a practical implementation of a no-rent policy would require instituting forced labor is to provide strong support for a significant claim on behalf of profits. That claim is that if one endorses persons possessing robust rights over themselves—rights robust enough morally to preclude forced labor—one must also endorse the legitimacy of the pure profits that arise through persons exercising their respective natural endowments.

1. **Gauthier on Economic Rent**

Gauthier characterizes economic rent as follows:

The recipient of rent benefits from the scarcity of the factors she controls—a scarcity which is of course entirely accidental from her standpoint, since it depends, not on the intrinsic nature of the factors, but on the relation between them and the factors controlled by others. She receives more than is needed to induce her to bring her factors to the market; rent is by definition a return over and above the cost of supply. [98]

Gauthier’s discussion focuses on rents derived from the exercise of talents and, in particular, on the rents derived by hockey player Wayne Gretzky and basketball player Wilt Chamberlain. Let us focus on the latter since we already have from Robert Nozick a hypothesized figure for the annual income of Chamberlain generated in the nonperfect market for his services, namely, $250,000 (in 1974 dollars). [11]

9. There seem to be two distinct albeit closely related conceptions of rent at work in this passage. First, there is economic rent as “by definition a return over and above the cost of supply.” Second, there is economic rent as return over cost of supply in virtue of the scarcity of the factors controlled by the recipient. Thus, later in *Morals by Agreement*, Gauthier declares, “Rent is determined by factor scarcity; it is the premium certain factor services command, over and above the full cost of supply, because there is no alternative to meet the demand.” [272] It seems that the two notions need not be extensionally equivalent. For something other than the scarcity of the item brought to market may account for a seller’s returns exceeding the costs of supply. For instance, the seller may receive rent because buyers are ignorant of how little this seller and his competitors would be willing to accept.

10. Gauthier, of course, recognizes that among the payments needed to bring certain skills to market, for example, Wilt’s basketball skills, are the payments needed to induce individuals with various natural talents to identify and cultivate those native capacities. The payments necessary to motivate individuals to develop their respective skills do not count as rent. Yet (as Ellen Paul has suggested to me), does not the very recognition that individuals develop their respective skills, that they chose to cultivate this or that natural talent—sometimes precisely because of the anticipated scarcity of the resulting skill—cast doubt on Gauthier’s idea that the scarcity of an agent’s skill will (always) be “entirely accidental from her standpoint”? [11].


According to Gauthier, whatever segment of this $250,000 exceeds the minimum that would induce Wilt to play basketball were Wilt to be certain that no higher offer would ever be forthcoming represents factor rent on Wilt’s scarce natural endowments. Gauthier favors (at least in principle) confiscatory taxation of that entire segment. Such a tax, Gauthier tells us, would have no affect on the supply of factor services. For, by hypothesis, Wilt would still be motivated—albeit only minimally motivated—to apply his talents to basketball. Nor, according to Gauthier, would such a confiscation constitute any infringement upon Wilt’s employment freedom. For Wilt remains free to choose among occupations. He is not being required to play (or not to play) basketball.

[Wilt’s] right to use his [basketball] skills as he pleases is not affected by the distribution of rent; we have just seen that a confiscatory tax on rent would not, and could not, affect his willingness to play [basketball]. Each person’s right to his basic endowment is a right to the exclusive use of that endowment in market and cooperative interaction. But market interaction is not affected by the distribution of the surplus represented by rent; each person’s exclusive use of his capacities in market interaction is left untouched if rent is confiscated. [273–74]

Furthermore, according to Gauthier, Wilt’s natural freedom is not infringed upon by forbidding his receipt of the full $250,000.

Certainly the principle [i.e., of minimax relative concession applied to the distribution of Wilt’s rent income] does interfere with a particular liberty—specifically, the freedom to collect factor rent. But this is no part of the freedom of a solitary being; the surplus represented by rent arises only through interaction. And so it is not a necessary part of market freedom conceived as an extension of the natural freedom enjoyed by Robinson Crusoe. [276]

12. More precisely, the rent is not the difference between the payment that now would induce Wilt to play and the $250,000. Rather it is the difference between the amount needed both to elicit Wilt’s development of his skills (in light of his uncertainty about whether he will really “make it”) and to draw forth his current supply of those developed skills and the $250,000.

13. Unfortunately, as Jeffrey Paul has pointed out to me, Gauthier’s discussion ignores the allocative function of rents. Wilt will play basketball for anyone for $30,001 if no greater payment is possible. But, especially at that price, lots of coalitions of fans are eager to purchase his services. How is he to determine whether to play for the fans in L.A., in Philadelphia, or in Shreveport—each coalition of which easily comes up with an offer of $30,001? Should Los Angeles be allowed to tempt Wilt away from Shreveport with its beachfront communities, or should Shreveport be allowed to add a special hardship component to its salary offer? Is the ultimate choice of employer even Wilt’s choice to make? If we allow equalization of bids by allowing, for example, Shreveport to add some extra monetary payment to compensate for the charms of Shreveport and do not allow competitive bidding among the aspiring employers, we
This argument is puzzling. Clearly, "market freedom conceived of as an extension of... natural freedom" includes some freedoms not enjoyed by "solitary beings." It certainly includes the freedom to benefit from the perfectly competitive sale of one's services. Why does it not also include the freedom to benefit from the nonperfectly competitive sale of one's services?

Market freedom does not include this because Gauthier's discussion is deeply and pervasively colored by the "perfect competition" model. Within a perfectly competitive market, any prospective sale of some good or service for more than the seller's cost of bringing that good or service to market is instantaneously met by competing sellers increasing the amount of that good or service offered and decreasing their selling price, with the effect of driving the selling price down to the cost of supply—thus eliminating any prospective "economic rent." Thus, in a perfectly competitive market, there are no gains to be had from the relative scarcity of one's productive factors or from one's special insights.14

For Gauthier, this perfect competition model functions not merely as an analytic device, but also as a norm that morally marks off gains obtained in perfectly competitive markets from gains attributable to departures from perfect competition. It is, unfortunately, not needless to say that this "idealization" of the market completely abstracts from a standard feature of actual market exchanges and the dynamic virtues of real competitive markets. The standard feature of actual exchanges is that both parties gain, and more than minimally, from them. Both parties receive more than covers their costs in bringing their supply (of, e.g., hockey sticks or money) to the exchange; both parties receive more than their costs plus that smidgen of return which would move them to make the exchange were they assured that no greater payment (in money or hockey sticks) were possible. In standard actual exchanges each payment (e.g.,

14. I am told that if perfect competition is defined in terms of all sellers being price-takers (i.e., are unable by any bargaining to affect their selling price), then profit (and rent?) are possible under perfectly competitive conditions. It is not clear to me (unversed in these matters as I am) that this is so. For it is not clear to me how, if the conditions for sellers not being price-takers to any extent are satisfied, sellers will be able to elicit more for their goods or services than the cost of their supply (plus the smidgen needed to induce them to bring those goods or services to market). In any case, Gauthier does not characterize perfect competition in terms of all sellers being price-takers.

15. Such actual, entrepreneurial, competition is, therefore, much more like the competition between diverse cultures with different perceptions of the world and different technologies, as this larger-scale competition is described by Gauthier himself. The "old ways" of the North American natives "were highly effective adaptations to an environment that the native inhabitants were unable to transform." The Europeans did not engage in incrementally better versions of those adoptions. Rather, European technology rendered these adoptions obsolete. The problems with money for hockey sticks, hockey sticks of such-and-such quantity for money) is wasteful or inefficient in the sense that some lesser payment would have called forth the same supply had the supplier known that this lesser payment was the maximum possible payment to him. But, of course, the total "surplus" from each exchange, which is divided among the traders in accord with the terms they have agreed to, is not "socially" lost. What is lost to the purchaser of hockey sticks is found in the seller's greater than minimal return, and what is lost to the seller of hockey sticks (in the form of having provided more or better sticks than he might have had to for the money received) is found in the purchaser's greater than minimal return. Those who invoke the model of perfect competition recognize, of course, that it is an "idealization." Nevertheless, the invocation characteristically suggests that there is something fishy about gains that exceed those that would exist, if any would, under the conditions of perfect competition.

The suggestion that there is something suspicious about more than perfectly competitive returns is strongly reinforced by the idea that the competition that enhances efficiency and that is appropriately envisioned in the economic justification of the competitive market is one which steadily and incrementally reduces suppliers' more than perfectly competitive returns. The more competitive the world is, the more potential competitors will sense any gap between the return to the hockey stick provider and his costs and will rush in to bid down the price of these implements. At least the tendency of unrestricted competition will be to reduce returns to the cost of supply. In actual competitive economies, however, insightful entrepreneurs will not imitatively ape the production and marketing of others. Rather they search out new ways of producing for new, or as yet unexploited, markets. The entrepreneur does not replicate the efforts of the existing supplier except for the hope of marginally undercutting his prices. She hopes instead to create a new market or a new way of producing for an existing market such that the gap between her costs and the value that her potential customers see in her product will be greater than the gap between the present supplier and his customers. She seeks not less but more in the way of imperfectly competitive returns. If she succeeds, she renders her competitor not so much undercut as obsolete.15 Even the entre-
entrepreneur who merely (!) finds a better, more cost-effective, way of providing a good or service identical to her competitor's may achieve a greater net return than the competitor while undercutting his price. This actual competition is the source of the innovative and dynamic quality of market economies—a quality which is both needed to keep pace with a world of changing technology, resource availability, information, and consumption preferences and which contributes to market societies being such worlds. This is competition as a "discovery procedure," through which portions of the knowledge that the perfect competitive model assumes to exist in superabundance first become available to economic agents. The perfectly competitive market idealization draws our attention away from the way in which actual competition enhances value and knowledge in society through a process whose participants aim at, and sometimes achieve, higher than normal imperfectly competitive returns.

The point of the last couple of paragraphs is not that, since profits and rents are essential to actual innovative competitive processes and since these competitive processes are good, individuals (typically) have a right to their entrepreneurial profits and noncoercively derived rents—although that would not be too bad an argument. Instead, the argument is that it is only the pervasive-ness of the perfect competition idealization in Morals by Agreement that gives any initial plausibility to a distinction between, on the one hand, economic rents (i.e., pure profits) and, on the other hand, the smidgen of gain, that minimally motivates trades and the benefits that derive from the division of labor. It is only this faulty idealization that suggests that economic rents (i.e., pure profits) are any less likely candidates for membership in the system of natural liberty.

Let us proceed to Gauthier's core claim that all rent should in principle be

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16. The classic reference, of course, is to Joseph Schumpeter's discussion of the "creative destructiveness" of market economies. See Capitalism, Socialism, and Democracy, 3d ed. (New York: Harper and Row, 1950), chap. 7. Schumpeter's own wary sense that the rate of technological, informational, and preference change was diminishing contributed to his conclusion that in the future a bureaucratic structure that simulated the actions of a perfectly competitive market would be feasible and adequate to that new static world. See Schumpeter, chaps. 16 and 17.

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"barriers" to entering into perfect competition with Chamberlain in the labor market. In other words, we have to identify what payment Chamberlain would receive were he only to offer for sale pure, undifferentiated universal labor. If the payment for the sale of universal labor power would be $30,000, then Chamberlain would "freely" choose to play B-Ball (or serve as the Incredible Hulk or a sanitation engineer) were he offered $30,001 for that service while no other offer over $30,000 was allowed. That $30,001 is what Wilt would receive for his performance on the court were his skills not at all scarce, for example, were there several thousand proto-Wilts. It is what he would receive were there A RESERVE INDUSTRIAL ARMY OF WILTS!

Thus, like all those who step forward from any reserve industrial army, Wilt is to receive on net nothing more than the costs of his own production as a socially useful worker—which costs equal his opportunity costs plus that one dollar needed to secure Wilt's "free" choice of the form of the employment of his talents that others most prefer. Everything above that is morally tainted rent, that is, is payment that "is determined by factor scarcity; it is the premium certain factor services command, over and above the full cost of supply, because there is no alternative to meet the demand [272]." Thus, an ironic implication of Gauthier's proposal is that sellers of services should be treated precisely as Marx charges that sellers of labor are treated under capitalism!

In what sense, if any, is Wilt left with a right to an unequal return from the market provision of his distinctive talents and powers? It seems that, with the minor addition of the minimal add-on that would motivate Wilt "freely" to opt for the socially most highly valued use of his natural assets, Wilt can only have a right to the going perfectly competitive market rate for the amount of universal labor he supplies. Only by limiting what he receives for the exercise of his talents to that rate can it be assured that he will not "extract" factor rent from society. Thus, if Wilt rightfully receives a greater than equal income, it must be because he supplies greater than equal quantity of universal labor. If Wilt's legitimate earnings exceed that of the average person, it must be because he works longer hours than the average or because somehow he produces more minutes of labor service per working minute than other workers do in the course of their work. So, neither Wilt's nor anyone else's just earnings can ever be based upon or represent return upon that person's qualitatively distinctive or even relatively rare talents and powers. To receive payment for what is special about oneself, for one's relatively distinct ways of doing things, must always amount to the unjust extraction of resources from others.

I want now to turn to several other questionable features of Gauthier's views on the just distribution of economic rent. It seems odd, at least as a matter of principle, that the economic rent that accrues to Wilt should be distributed across all members of Wilt's society. If anything, a more finely tuned distribution of the seized funds would be appropriate, namely, one which allotted these funds precisely to those whose economic demand for Wilt's performances added up to an offer of more than would minimally motivate Wilt. It certainly seems odd that someone whose only interest in sports is an inexplicable obsession with ice hockey should have a claim in justice on an equal societal share of the rents Wilt "extracts" from his fervent basketball fans.

But what exactly is the complaint that Wilt's fans have against him that would justify seizure of his rent income on their behalf? Chamberlain's play is worth (at least) $250,000 to them. Why, then, should they not be satisfied with enjoying that valued display—granted, not gratis, but for a price that each of them is quite willing, with no hint of any background coercion, to pay? We can recognize that these fans could get what they value at (at least) $250,000 for less were someone empowered to prohibit Wilt from receiving or retaining that $250,000 without being at all moved to the conclusion that they ought to get Wilt's services for less or that anyone ought to be so empowered.

If the fans who jointly pay $250,000 to see Wilt play when $30,001 would have minimally motivated Wilt can legitimately complain that Wilt has extracted rents from them, then Wilt himself will almost certainly be able to press a similar charge against his fans. For, almost certainly there is some greater sum, for example, $300,000, that Wilt's fans would have paid to see Wilt play had it been impossible for them to pay less. The difference, the $50,000 of consumer surplus, is rent extracted by the fans. The fans get $300,000 worth of pleasure and excitement from Wilt's play and slyly pay him only $250,000. This complaint against the fans on Wilt's behalf is as reasonable as their complaint against Wilt. And who can most coherently make both complaints? Neither Wilt, nor the fans, but SOCIETY. Society declares that each "receives more than is needed to induce [them] to bring [their respective] factors to the market"; each receives "rent [which] is by definition a return over and above the cost of supply" [98]. It is Gauthier's position that, to counteract this act of insidious mutual exploitation, the gains of each party that exceed what would have minimally motivated that party to supply his factors are to be confiscated and distributed across society.

18. Although it is certain that, for Gauthier, this is an unwelcome reading of his position, it accords with his statement: "Those who are able to supply more factor services to the market may expect to enjoy a preferred share of the private goods" [270; emphasis added].
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We have been proceeding with the implausible assumption that Chamberlain is indifferently disposed toward the various occupations available to him. Suppose we adopt the more plausible assumption that Wilt would rather play basketball than engage in universal labor—and by a considerable degree. Let us assume that Wilt will engage in a season of universal labor for $30,000, but would play B-Ball for the season for $25,000. If this is so, then the rent component of Wilt's gross basketball earnings is $225,000. A policy of social confiscation of Wilt's economic rent would, then, leave Wilt with less (net dollar income) than he would receive were he only capable of supplying universal labor. This is an odd consequence for Gauthier who explicates and explicitly rejects John Rawls's view that "[n]o one has any entitlement based on being the particular person he is . . ." [250], and who argues,

One's natural capacities are what one brings to society, to market and cooperative interaction. Why should they not determine, or contribute to determining, what one gets in society? [220]

2. Rent as Cooperative "Surplus"

I have been focusing on problematic assumptions within and resulting puzzles about Gauthier's denial of rights to rents and, hence, to pure profits. But something must be said about Gauthier's positive case for treating all rents as subject to redistribution under the principle of minimax relative concession.19 Since rents are a product of—indeed, I have argued, an ineliminable feature of—market interaction, it is surprising that they are supposed to be apportioned in accordance with minimax relative concession. For this principle is not a norm of market interaction but rather of nonmarket cooperation. Gauthier does, however, offer a reason for applying minimax relative concession to rents, and this reason consists in his construal of rents as cooperative surpluses which are, therefore, subject to apportionment under this rule of nonmarket cooperation.

Society may be considered as a single co-operative enterprise. The benefit represented by factor rent is part of the surplus afforded by that enterprise, for it arises only in social interaction. But then that benefit is to be distributed among the members of society on the terms established by minimax relative concession. Each person, as a contributor to social interaction, shares in the production of the benefit represented by factor rent. [274]

In this passage and those in support of it, Gauthier is no longer maintaining the largely negative thesis that, since rent plays no useful function in the operation of the free and perfectly competitive market, denying a right to rent does not clash with the operation of the market or with people's market freedom. Rather, we have here a positive doctrine reminiscent of many nineteenth-century social theorists who argued for the social confiscation of rents—though they especially had land rents in mind—on the grounds that the scarcity of the rent-generating good or service and, hence, the value of that good or service, was a product of "society." And, as the product of society, it (the good or service or its value) rightfully belonged to society.20

This sort of argument seems to rely upon a strange mixing of cost of production and subjective theories of economic value. It conflates two different senses of "contribution" to something's economic value and detaches the plausible claim to entitlement associated with one sort of contribution and misleadingly attaches that entitlement claim to contribution of the other sort. Cost of production theories of economic value are push theories; economic value gets pushed into objects or activities possessing it by their production out of factors which themselves already possess economic value. There are one or more basic factors which intrinsically possess economic value—labor is the only such basic factor in that simplest of cost of production theories, namely, the labor theory of value. Clearly, no explanation can be given for this fundamental and intrinsic possession of economic value. In contrast, the subjectivist theory of economic value is a pull theory. People's demand for goods and services, reflecting their various preferences, values, and judgments, confer economic value on those goods and services—though the value resides in people's evaluations of those goods and services, not in those objects and activities as such. Factors for the production of those goods and services, in turn, acquire value through the demand for them on the part of those prepared to use these factors in the production of those goods and services. The value of those factors of production resides not in those factors as such but in the preferences, values, and judgments of those seeking those factors for uses that

19. The need for this further discussion was pressed on me by Ken Cuss.

20. See L. T. Hobhouse's approving report of the following view:
[Site] value the land nationalizer contends is not created by the owners. It is created by society. . . . Directly or indirectly, the community creates the site value . . . . The land nationalizer . . . denies the justice of this [private ownership] arrangement, and he sees no solution except this—that the monopoly value should pass back to the community which creates it. Accordingly, he favors the taxation of site value to its full amount. [See Liberalism (Oxford: Oxford University Press, 1904), p. 53].
they believe are or will be valued. On the subjectivist view, nothing has
intrinsic economic value—least of all, the most basic factors of production
(assuming anything can be identified as being among the most basic factors).

Now, if economic value is conceived on the cost of production model, it
is quite natural and plausible to think that he who contributes some rightfully
held factor toward the production of a good or service, the value of which is
received from the value of its factors of production, has, thereby, some claim
on that product and its value. It will be quite natural and plausible to think
that the overall entitlement to that product and its value is shared among
the contributors of its value-imbuing factors. Indeed, since on this model the value
of the product can never be greater than the value of its factors of production,
for the contributors to receive less than a full claim to the product or its value
is for those contributors to be duped and/or exploited.

On the other hand, it is not the least natural or plausible to think that one’s
contribution to the value of a good or service by way of wanting it (or by way
of not oneself increasing the supply of that sort of good or service!) supports
any claim to that good or service or to the value ascribed to it. The contribution
that Wilt’s fans make to the value of his basketball services by way of being
his fans (or of Wilt’s potential competitors by way of their pursuing nonathletic
life plans) is quite unlike the contribution made, as a cost of production theorist
sees it, by Wilt’s parents, his milkman, his coaches, etc. Contributing to or
creating economic value in an X by way of manifesting economic demand for
an X (or by not supplying additional X’s) does not in the least indicate that
some wrong is done to one if one does not receive a share of the X or a share
of its economic value. The idea that contribution to a good’s or service’s
economic value by way of demand (or by way of not oneself enhancing the
supply) could establish a claim to that value requires, it seems, that we confuse
this sort of contribution with the sort of contribution envisioned within cost-of-
production theories.

One hesitates even to imagine that Gauthier is making this error. And yet,
in Gauthier’s argument, there seems to be a shift in his understanding of
“contributing” toward the creation of a cooperative surplus that parallels the
shift from “contributing” to economic value, in the sense of supplying produc
tive factors to “contributing” to economic value in the sense of registering a
demand. The principle of minimax relative concession is introduced as a prin
ciple governing the distribution of the difference between what is produced
through the agents joint activity or joint utilization of factors of production
otherwise held and used separately and what would have been produced had
the agents pursued separate strategies or separate uses of their respective re-
sources. This creation of a surplus occurs through the actual contribution and
coordinated utilization of factors of production, and it is quite different from
the type of “cooperative enterprise” that “creates” rents. In the latter case,
there is no “production of [a] benefit” which ought “to be distributed among
the members of society” [274]. Of course, the seller benefits from the ex-
change that ensues. The purchasers contribute to that benefit. But in doing so
they are not merely receiving through purchase something which, by way of
creative cooperation, they have already produced. And, although they are
receiving through purchase something toward the economic value of which
they have contributed, their sort of contribution to its economic value gives
them no claim on the item or its value such that any payment for the good or
service (above its cost of supply) wrongs the purchasers and ought to be
remitted to them. Thus, if we are clear about the senses in which the market
value of some X may be said to be created by social cooperation, we will not
be tempted to believe that those who produce economic value merely by way
of registering economic demand have, thereby, any claim upon that value.

3. GAUTHIER ON RIGHTS

We have noted that Gauthier is eager to affirm Wilt’s “right to his basic
endowment” which “is a right to the exclusive use of that endowment in
market and cooperative interaction.” This is why he insists that denying Wilt’s
rights to rents does not at all disparage Wilt’s right “to the exclusive use of
[his] endowment.” I shall argue, however, that the employment of Gauthier’s
Proviso cannot vindicate people’s possession of robust rights over their respec-
tive natural endowments. It is precisely because Gauthier does not affirm robust
rights to natural endowments that he is led to deny rights to rents; that is, to
pure profits.

The core of Gauthier’s Proviso is a prohibition on bettering one’s situation
by worsening the situation of others. About any particular use or possession
by A, two questions can be asked: (1) Does A’s use or possession worsen the
situation of any other party? (2) Would interference with A’s use or seizure of
A’s possession worsen A’s situation? If the answer to (1) is no, A is morally
at liberty to engage in that use or enjoy that holding. If, in addition, the answer
to (2) is yes, then others are not at liberty (or not unconditionally at liberty)
to interfere with that use or to seize that holding; hence, A has a right of some
sort to that use or to that holding. Through the deployment of the proviso,
Gauthier defends three successive ascriptions of rights: first, each person’s
“exclusive right to” his natural endowments and powers; second, each person’s
“right in” the fruits of his labor; and third, each person’s “exclusive
right to” the fruits of his labor and in acquired land. Throughout his discussion, Gauthier uses these two locations to distinguish between rights in terms of the form or degree of moral immunity they provide. It is clear that the "exclusive rights to," which Gauthier seeks to establish both with regard to natural endowments and extrapersonal holdings, are to be understood as significantly more robust than mere "rights in." My main claim against Gauthier is, then, that the deployment of the proviso cannot yield rights any more robust than the relatively feeble "rights in."

As the prime exhibit for my contention, we should have before us Gauthier's argument for each person's "right in" the fruits of his labors along with his explanation of why this argument does not yield an "exclusive right to" the fruits of his labors. Inspection of this argument and explanation will allow us to form some sense of what Gauthier takes these two different species of rights to be. This inspection will also reveal why, contrary to Gauthier's expectations, the application of the proviso, no matter how often repeated, will never allow us to arrive justifiably at "exclusive rights to."

After maintaining that the proviso indicates that each possesses a right to his own powers (to which contention we shall return), Gauthier redeployes the proviso to establish rights with respect to the fruits of one's own labor. First, it is pointed out that, should A cultivate some common land in the state of nature, A's benefit from the useful possession of the products of this cultivation would not be achieved through the worsening of anyone else's condition. A's cultivation and his use of those products does not violate the proviso. Second, it is asserted that B seizing A's product would benefit B through a worsening of A's position. Hence, this seizure would violate the Gauthier Proviso. Gauthier takes this nonsymmetrical relation of A and B to the proviso to "demonstrate [A's] right in the effects of [A's] labor." But he immediately denies that it establishes "an exclusive right to their possession." As Gauthier explains,

For we have not shown that the proviso would be violated were someone to seize the fruits of my labor while compensating me for my effort and intended use. . . . The proviso prohibits worsening but does not require bettering another's position, in bettering one's own. It does not then require that the person who seizes the fruits of another's labour share her gains; it requires only that she compensate for costs. Thus the proviso affords a right in the fruits of one's labor and so to full compensation, not a right to those fruits and so to market compensation. [211]

To examine how the contrast between "rights in" and "exclusive rights to" might profitably be articulated, let us draw upon the distinction between "entitlements" that are protected by "liability rules" and those that are protected by "property rules." Wilt's entitlement against Wayne to X is (merely) protected by a liability rule if Wayne may permissibly take X from Wilt as long as Wayne makes appropriate accompanying compensation to Wilt—where the appropriateness of the compensation is not established by Wilt's actually agreeing to it. Different liability rules will specify different levels of required compensation. The two familiar rules specify (a) full compensation, that is, leaving the subject indifferent to the forced exchange; and (b) market compensation, that is, providing the subject with what he could have received in a free (and perfectly competitive?) market exchange. In contrast, Wilt's entitlement against Wayne to X is protected by a property rule if and only if Wayne's permissible acquisition of X from Wilt requires Wilt's (prior) voluntary consent. Wayne must make Wilt an offer which Wilt voluntarily accepts. It is not permissible for Wayne to seize X along with compensating Wilt—even if Wayne compensates Wilt as much as would be required were Wayne to engage in the impermissible seizure of X. If the right to X is merely protected by a liability rule, the combined seizure and compensation leaves the (former) titheholder morally whole. In contrast, if the right to X is protected by a property rule, the seizure wrongs the titleholder in ways that (even) market compensation does not suffice to erase.

It is quite clear that, for Gauthier, a "right in" X is an entitlement protected by a liability rule requiring (only) full compensation. The proviso would not be violated "were someone to seize the fruits of my labor while compensating me for my effort and intended use." It is less clear whether, according to Gauthier, an "exclusive right to" X is an entitlement protected by a liability rule requiring market compensation, or is an entitlement protected by a property rule (which, if violated through the seizure of X, demands the payment of market compensation). Nevertheless, I shall generally assume that Gauthier is concerned with establishing "exclusive rights to" in the more robust, that is, property rule, sense. As we shall see, only a property rule entitlement over one's natural endowments in principle precludes forced labor. Only such an entitlement gives each a Lockean claim over "the exercise of his own powers without the hindrance from others." [210].


22. On the perfect competition model, the difference between full compensation and market compensation is vanishingly small. It is hard to credit that this is the only difference Gauthier means to mark with the contrast between "rights in" and "exclusive rights to."
But even if Gauthier only seeks to establish entitlements protected by market compensation liability rules, his argument falls short. For his account of why the application of the proviso that yields a right in the fruits of one’s labor does not generate an exclusive right to those products is a perfectly general statement of the limits of what the proviso can provide. Recall Gauthier’s remark:

The proviso prohibits worsening but does not require bettering another’s position, in bettering one’s own. It does not then require that the person who seizes the fruits of another’s labor share her gains; it requires only that she compensate for costs.

Thus, whether one’s prospective relation to some $X$ is that of temporary user or permanent possessor, one’s only claim against others with regard to that $X$ is that their seizure of $X$ not on net worsen one’s situation. And this claim can always be satisfied by the expropriator’s providing one with full compensation. This reasoning about the severe limits of the proviso’s implications points to the conclusion that no further deployment of the proviso will ever get one either to “exclusive rights to” the fruits of one’s labor or to “exclusive rights to” one’s natural endowments. This conclusion is supported by an examination of, first, Gauthier’s transition from “rights in” the fruits of one’s labor “to exclusive rights to” those fruits and to parcels of land; and, second, his argument for “exclusive rights to” one’s natural endowment.

Gauthier presents the case of Eve who has been (sporadically?) cultivating a segment of common land. Eve proposes to take a certain area of the island for her exclusive use, so that she (and her family) may benefit by maximizing its productivity. She seeks an exclusive right to a certain portion of the island [215].

Gauthier’s asks two questions: (1) Does Eve’s acquisition of exclusive use of $X$ better her condition through the worsening of the condition of others? (2) Would the annulment of Eve’s exclusive use of $X$ advance some other party’s situation through a worsening of Eve’s condition? Since, according to Gauthier, Eve’s acquisition of the exclusive use does not worsen the condition of others, and the annulment of that exclusive possession would worsen Eve’s (and possibly that of others) circumstances, Eve’s “exclusive right to” $X$ is confirmed.

We turn, then, to the reasoning behind Gauthier’s answers to questions (1) and (2). No extensive challenge will be launched against the negative answer to (1). Yet some problems deserve mention. Gauthier’s claim that Eve’s exclu-

sive use of this parcel of land does not worsen the situation of others appeals to the general and immense benefits of the privatization of land. It may well be—[the person seizing the right is bettening himself by worsening Eve’s situation]—that these improvements are such that everyone benefits (relative to . . . ?) from a system of private ownership in land. Nevertheless, this is different from claiming that everyone benefits or, at least, is not made worse off, by each particular instance of private appropriation. All those who are affected quite indirectly, via greater economic productivity, etc., may be benefited. But what of Freda who would have appropriated precisely this parcel of land had Eve not? Gauthier, at least, has to argue that Freda’s complaint against Eve, namely, that she (Freda) is wrongly precluded from appropriating this parcel, cannot be legitimate. He might do so by pointing out that, were Freda’s complaint to be assuaged by endorsing Freda’s acquisition of the parcel, others, including Eve, would be in the position to ma-

ke a complaint fully comparable to Freda’s current one.

More significant challenges can be directed against Gauthier’s affirmative answer to question (2), that is, against his assertion that interference with Eve’s claimed exclusive right would violate the proviso. Gauthier points out that there are two forms of annulment to be considered. The land acquired by Eve may nonconsensually be returned to common use, or it may be seized as the exclusive possession of another.

In the first case, the argument for the proviso being violated can focus on the losses to all those individuals who benefit, however modestly and indirectly, from the privatization of this land parcel. Since privatization is productive, its annulment must on net be costly. Its costs must fall somewhere, and its net costliness precludes even compensation for those individuals who were poised to gain indirectly through privatization. So it seems as though seizure of the parcel to return it to the commons does violate the proviso. But would Freda’s seizure of the parcel for her own private control also violate the proviso?

In this second case, the land remains privately held. Thus, there are no indirect costs from collectivization, and the argument must focus entirely on the putative direct worsening of Eve’s situation. Gauthier’s key claim here is that

[1]the person seizing the right is bettering himself by worsening Eve’s

23. The proviso, however, is not violated if the worsening is merely “incidental” to the gains for some that are achieved through recomunalization. And the worsening does seem merely to be incidental here because those who gain from recomunalization do not gain by way of worsening the situation of the indirect beneficiaries of Eve’s private ownership. See Gauthier [210–12].
situation, and may avoid this only by paying market compensation, negotiating with Eve for the right to the land on mutually acceptable terms. [215]

But what justifies the requirement of market compensation rather than (merely) full compensation? Why believe that to avoid worsening Eve’s situation it is necessary for Freda to pay market compensation? One may well endorse Gauthier’s claim that “[a] right to land or goods is a right not only to the fruits of use, but also to the fruits of exchange” [215]. And one may well allow that a right to the fruits of exchange is a right to the payment that voluntary (but only perfectly competitive?) exchange would bring. Given all this, if Eve’s claim to the land represents an “exclusive right to” it, she certainly has a right to this market level of payment should the land be taken; her situation will properly count as having been worsened should she not receive market compensation. But, as far as I can see, the only way to arrive at the crucial judgment, that less than market compensation by Freda will leave Eve’s situation worsened, is to start with the premise that Eve enjoys an “exclusive right to” that land. This, unfortunately, is precisely what the argument is supposed to demonstrate. If Gauthier’s argument succumbs to this problem, the most that he can ascribe to Eve in the way of a right with regard to that parcel is a “right in” it, that is, an entitlement protected by a full compensation liability rule.

Now let us turn to the question of whether Gauthier is correct in thinking that his proviso supports the conclusion that persons have “exclusive rights to” their own powers. The tone and idiom of Gauthier’s argument here strongly suggests a desire to establish robust property-rule rights to natural endowments. Gauthier argues, “Each person has an exclusive right to the exercise of his own powers without hinderance from others” and this is because

[1]he proviso, in prohibiting each from bettering his situation by worsening that of others, but otherwise leaving each free to do as he pleases, not only confirm[s] each in the use of his own powers, but in denying to others the use of those powers, affords to each the exclusive use of his own. The proviso thus converts the unlimited liberties of Hobbesian nature into exclusive rights and duties: Each person has an exclusive right to the exercise of his own powers without hinderance from others. [209–10; emphasis added]

Yet, for Gauthier, the base point established by the proviso must be fully captured by a person’s claim to the expected utility associated with the anticipated use of his powers. For “the base point for determining how I affect you, in terms of bettering or worsening your situation, is determined by the outcome that you would expect in my absence” [204]; and that outcome must itself be specified in terms of utility since “one situation is better for some person than another, if and only if it affords him a greater expected utility” [203].

What is up for consideration then, within Gauthier’s framework, is not prohibiting interferences as such, that is, prohibiting incursions into the respective moral domains of agents. Rather, what is up for consideration is forbidding the worsening of agents’ respective situations understood in terms of levels of expected utility. And surely the proviso does favor prohibiting worsening—which means that it favors forbidding interference with a person’s use of his own powers unless that person is fully compensated for whatever loss of (expected) utility the interference engenders. Any combination of interference and compensation should be permitted which, on net, does not lower the subject’s (expected) utility.

Notice how Gauthier’s crucial passage on behalf of “exclusive rights to” natural endowments envisions a transition directly from the Hobbesian world of unlimited liberties to the Lockean world of property in one’s powers. What has happened to, why is there no consideration of, the intermediate moral universe of entitlements protected by liability rules? Certainly it is plausible for Gauthier to maintain that, in bettering one’s situation through the use of others’ powers which “interferes with their own exercise of their powers, one worsens their situation by that interaction” [209]. But, since it is the worsening, not the interference itself, which is the focus of the negative judgment, that judgment can be forestalled without foregoing the interference. One need only fully compensate those with whom one interferes. A requirement for full compensation for those whose powers are taken fully embodies the proviso’s strictures.

This is precisely what we should expect. The proviso that is supposed to generate and define each person’s rights with respect to his own powers is the same proviso that generates and defines each person’s rights with respect to the fruits of his own labor.

It “prohibits worsening but does not require bettering another’s position, in bettering one’s own.” And, what Gauthier says in connection with the application of the proviso to the fruits of one’s labor applies as well to its application to one’s powers themselves, namely:

If the benefit I receive is no less, in terms of my utilities, than what I expected from my labour [or from my possession of my powers] in the absence of intervention, then my situation has not been worsened. [211]
Hence, the proviso yields only an entitlement in one's powers that is protected by a liability rule. And that liability rule is a rule mandating only full compensation upon the seizure of one's powers.

And that is all that poor Wilt has, namely, a "right in" his basketball playing powers. Wilt and Wayne each lack the crucial element of having a right to their powers, namely, a right against having them seized, a right against being conscripted into National Basketball (or Hockey) Service. This is the element that Gauthier insists is present in the superstar's moral situation as a mark of his right to his powers. "Wayne Gretzky has the right to his unique hockey skills; he may use them as he pleases" [273]. But as long as the fans are (or "society" is) prepared to pay Wilt (or Wayne) enough to compensate him fully for playing, Wilt (or Wayne) has an offer that he cannot refuse—an offer it is permissible to enforce upon him.

Let us suppose, however, that somehow the proviso does get us to the conclusion that Wilt has an entitlement to his basketball powers that is protected by a market compensation liability rule. Still, in neither theory nor in practice, could Wilt be said to have a right to use his natural endowment "as he pleases." In theory, Wilt's claim would merely be a claim against on net ending up below a certain utility level—the level he would arrive at were he freely to sell his services (in a perfectly competitive market). A market compensation liability rule would provide Wilt with no principled claim against interference by anyone who was prepared to thrust market compensation upon him while conscripting his services. Increasing the stringency of the liability rule that defines Wilt's entitlement of his talents makes it more costly for others to conscript Wilt permissibly, but it cannot confer upon Wilt what all of us, including Gauthier, normally mean by "an exclusive right to the exercise of his own powers without hindrance from others."

What entitlements defined by liability rules leave out is the dimension of choice. They leave out the dimension of having moral authority over a certain domain within which the rightholder may "do as he pleases." The seizure of the object of the entitlement defined by a property rule does not only move the agent down along some value dimension, for example, utility, but also denies the agent her rightful choice over the disposition of the seized item. This loss of choice survives compensating movement back up the value dimension. This element of sanctified choice, authority, or jurisdiction is what makes entitlements protected by property rules more robust (everything else being equal) than those defined by liability rules.

Nevertheless, might not an entitlement over one's natural endowment, which is defined by a market compensation liability rule, assure one, in prac-

tice, the free exercise of one's powers? The argument that it would, in practice, provide this protection goes as follows:

In a "just society" duly devoted to purging itself of factor rent, Wilt will know that the most he can receive on net for playing is no-rent market compensation. Therefore, if offered that level of payment, Wilt will, by hypothesis always accept. He will always choose to provide his basketball services for that perfectly competitive market compensation. Hence, no occasion for forcing Wilt to accept the no-rent market compensation offer will ever arise.

However, this argument ignores the fact that Wilt will sometimes have reason to reject the offer made to him by a society that is credibly committed to no greater than no-rent market compensation. For, on occasion, such rejections will lead that society to revise upward its assessment of what would minimally motivate Wilt to play were it known to him that no higher payment were possible. The society will raise its assessment when it finds it reasonable, as it sometimes must, to interpret Wilt's rejection of the offered contract, or his refusal to show up in training camp, as good evidence that the payment first offered is in fact less than what would provide Wilt with no-rent market compensation.

Since "society" sometimes will revise its proposed no-rent compensation in response to Wilt's demands for higher payment and his slowdowns or strikes, Wilt has reason to engage in these bargaining maneuvers even if he is convinced that society will never pay him more than it (finally) determines to be his no-rent market compensation. Wilt will know that if he continues to insist ever more vigorously that only some greater payment will induce him to drag his aging bones out on the court, or to insist on the profound costs to him of leaving his beachfront home merely for the sake of practice, he may well convince "society" of the inaccuracy of its current assessment. However, this reasonable willingness of society to revise upward its estimate of no-rent market compensation threatens to unravel the entire no-rent policy. For the rent-seeking Wils of the world will simply recast their unconscionable demands for gains from trade into claims about the enormous, yet intangible, opportunity costs to them of providing their services to society.

A society that is committed to a no-rent policy will, then, have to couple its willingness to revise upward its estimates of no-rent market compensations with a stern message to would-be rent seekers.

We will determine what would minimally motivate you to play ball were you to know that no greater payment was possible. In reaching this deter-
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is to affirm robust rights to one’s natural endowments that stand in sharp contrast with Rawls’s designation of natural talents as collective assets. 25

The fact that Gauthier’s position fails to achieve this contrast can be seen in the similarity between (1) Gauthier’s contention that the only legitimate return to an agent for the socially desirable exercise of his talents is a return that exceeds the cost of his supplying that talent by just enough to bring it to market; and (2) Rawls’s contention that “[t]he premiums earned by scarce natural talents . . . are to cover the costs of training and to encourage the efforts of learning, as well as to direct ability to where it best furthers the common interest.” 26 The fact that Gauthier and Rawls invoke different principles, namely, minimax relative concession and the difference principle, for governing the division of the “social surplus” which society recaptures from the predatory claws of the talented, does not amount to a philosophical difference with regard to the rights of individuals over their own natural endowments.

If Gauthier had more fundamentally distanced himself from Rawls, that is, if he had vindicated people’s possession of robust rights over their respective talents, and if he had not succumbed to the misleading perfect competition model, nothing would stand in the way of his endorsement of rights to economic rents and, hence, to pure profits.


Only by making such an announcement can the society sufficiently dampen the hopes of would-be rent seekers so that its proposals for no-rent market compensation will generally motivate acceptance. A credible, demonstrated, willingness to seize services, albeit with payment of the socially determined no-rent market compensation, is then essential in practice to sustain the no-rent policy. 24

Would such a no-nonsense no-rent policy—one that would embody direct forced labor—violate persons’ rights to their natural talents and powers? It will not violate any rights which can be generated from Gauthier’s Proviso. For while such a policy will deprive agents of choice about the disposition of their own talents and powers, by hypothesis it will not leave agents with less utility than is due them. If rights over one’s natural endowments do not include this dimension of choice, that is, of moral authority over the disposal of those endowments, then rights over one’s natural endowments are entirely consistent with the confiscation of rents on those endowments and even the implementation of this confiscation through forced deployment of one’s talents and powers. But this is hardly a consistency that will cheer Gauthier, interested as he

24. Recall the language of Calabresi and Melamed in characterizing the position of an entitlement holder under a liability rule:

Whenever someone may destroy the initial endowment if he is willing to pay an objectively determined value for it, an entitlement is protected by a liability rule.

This [socially determined] value may be what it is thought the original holder of the entitlement would have sold it for (or what he would have sold it for in a perfectly competitive market). But the holder’s complaint that he would have demanded more [or would have gotten more even in perfectly competitive exchange] will not avail him once the objectively determined value is set. [P. 1092; emphasis added]

Perhaps an entitlement protected by an actual (i.e., not perfectly competitive) market compensation liability rule would provide the rightholder with more practical protection. But to move toward such a rule one would have to reject the regulative status of the perfect competitive and, hence, the antirent program.