OWNERSHIP AND THE RIGHT OF PROPERTY

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property and defend certain core propositions of these theories. Fourth, I shall criticize the general adequacy of Act theories of private property. Fifth, I shall motivate, characterize, and defend the Practice theory of private property, including its incorporation of the truths normally resident within Act theories.¹

Act theories and the Practice theory represent alternative strategies for justifying private property within the classical liberal perspective. Act theories support the coherence of classical liberalism by depicting entitlements to private holdings as arising solely through the exercise of self-ownership or some aspect of self-ownership. The Practice theory supports the coherence of classical liberalism by founding entitlements to private holdings in part on the exercise of self-ownership but, more importantly, in part on a companion natural right of property which shares a philosophical base with self-ownership. If this essay advances the program of a rights-based classical liberal account of private property in extra-personal objects, it does so through its development of the contrast between Act and Practice theories and in its further elucidation and defense of the Practice theory.² From the point of view of high drama, therefore, it is perhaps unfortunate that the Practice theory does not make its full appearance until the fifth section of this essay.

1. Agent-Relativity and Self-Ownership

I have argued elsewhere for a version of moral individualism that displays two distinct yet interconnected facets.³ The first facet is the agent-relativity of value. What is of value, what provides individuals with goal-oriented reasons for action, is essentially personally individuated. A given end E will be valuable with regard to Alice (will provide Alice with a goal-oriented reason to maintain or promote E) only if it stands in a certain necessary indexical relation to Alice—e.g., the relation of being the fulfillment of her preference, being her pleasure, being a realization of her potential, or being the continuation of her life. Since value arises and exists within such relations of particular agents with specific ends, it is the agent within that relation for whom those ends are valuable—for whom those ends provide goal-oriented reasons of value for action. Hence, from E's being valuable with regard to Alice, from Alice having a goal-oriented reason to maintain or promote E, it does not follow in the least that E is valuable as such (i.e., is agent-neutrally valuable), or that in virtue of such agent-neutral value Alan has any reason to maintain or promote E, or even to abstain from destroying it. Any E's being of value for Alice in itself provides no reason—at least, no reason of a goal-directed sort—for Alan to maintain or promote or even not to destroy E. Of course, in special circumstances there may be some overlap in the ends—including the most basic ends—that are of value to Alice and Alan. They may each take non-rivalrous pleasure in the local band's performance of Sousa marches and have reason—even cooperatively—to promote these events.⁴ But within any large-scale pluralist society, the special sharing of goals that exists among particular individuals and groups will not even begin to provide the basis for goal-based rules or prescriptions having general interpersonal force across that society.

On the contrary, the agent-relativity of values radically undermines any idea of an overall social good to which people owe allegiance and in the name of which the behavior of individuals may legitimately be bent, molded, or constrained. For any notion of the social good, which is not merely an appeal to fantastic organicism, must be constructed by aggregating, combining, ranking, or otherwise depersonalizing the separate and variegated goods of particular individuals. But no such combinatory process makes sense among the incommensurable agent-relative values of individuals. The costs imposed on Alice to advance a human good realized in the life of Alan is not, furthermore, a cost that advances some agent-neutral goal, such as the maximization of aggregate utility or the greatest possible enhancement of the less well endowed social position, for which Alice, as a rational or moral agent, should be prepared to pay.

The denial of morally authoritative common goals which each person as a rational or moral agent has reason to promote frees individuals from the threat of the justified subordination of their lives and capacities to the promotion of such conceptions of the good. Unfortunately, the agent-relativity of value appears also to free individuals from all moral constraint on their behavior towards others in the course of their respective pursuits of personal ends. I argue, however, that this is mere appearance. For there is another, connected, facet of moral individualism. To affirm the agent-relativity of value is to acknowledge each person as having ultimate ends of his own, as possessing distinctive ends for his person to which he rationally ought to devote the elements which compose his personal constitution. But to acknowledge such distinctive ends for each person is to remove each person from the realm of (mere) things that have no rational purposes of their own and that are, therefore, morally available for exploitation by other purposeful beings. As an end-in-himself in the sense of possessing his own distinctive and separate life-purposes, each agent is also an end-in-himself in the sense of not being a means to the purposes of others.
The recognition of others as reason-bearing and value-pursuing beings on a moral par with oneself does not, then, require allegiance to their good nor to the promotion of a social good that is imagined somehow to be constructed out of everyone’s incommensurable values. The rational recognition of others takes, instead, the form of deontic constraints on one’s liberty to use others. Respect for side-constraints on one’s permissible treatment of others is the way in which, in one’s practical relations to others, one can recognize the value and importance of their projects and ends without incorporating them into one’s own plan of life or factoring them, along with all others’ projects and ends, into some unified and common end. Morally speaking, to be a self-owner is to possess moral authority over one’s personal constitution—i.e., over those features, components, or aspects of one’s personal existence the rational goal of which is the advancement of one’s life-defining purposes. The components of one’s personal constitution which one has reason to devote to one’s good defines the moral domain over which one has natural jurisdiction. Thus, the practical recognition of others as moral equals with oneself with separate ends of their own as their respective rational goals comes to the acknowledgement of each as a self-owner, as a being with a special moral jurisdiction over the person he is. This is the initial key claim of moral individualism’s theory of the right.

Alice can never provide other agents at large with reason to respect her possession and control of any extra-personal object by pointing out that this respect is conducive to her good—i.e., that she has reason to want that possession respected. The value for her of that possession may be real; however, it fails to command the compliance of others. On the other hand, were she credibly able to invoke an authoritative common end which is served by her possession, then respect for her possession would indeed be imperative. But no such invocation is credible. As things stand, then, if Alice has a claim to some extra-personal object which is good against the world, it cannot be in virtue of either the agent-relative or the agent-neutral value of her possession of it. Rather, her claim must take the form of a side-constraint right against others’ seizing or interfering with her peaceful enjoyment of that object. And this right, if there is such a right, must represent a portion of the recognition all other agents owe her as a separate reason-bearing and value-pursuing being on a moral par with themselves.

2. Rights-Based Classical Liberalism

The core of classical liberalism is the assertion of self-ownership or some kindred right protective of the individual in his life and liberty along with the idea that this right codifies at least part of the constraint on behavior that each individual may demand of others in recognition of his status as a moral end-in-himself. Moreover, the motivation that champions robust individual rights in persons also seems to support a comparable division of the extra-personal world into discrete domains each of which will lie (but not inalienably) within the moral jurisdiction of some particular person (or, perhaps, some particular coalition of persons). For such a division allows extra-personal material to be secured to serve the purposes of individual agents in the same fashion as the ascription to each of a sovereignty over himself secures for that agent his use of his natural endowments in the service of his ends. Certainly both of the philosophical giants of a natural rights classical liberalism, i.e., Locke and Kant, were firm advocates of rights-based immunities against seizure and interference with regard to both the individual person and his property. In the case of Locke, of course, private property rights are grounded in—in virtue of arising through the exercise of—each person’s right to his own labor, which itself is an aspect of each individual’s self-propriety. In Kant, the rights over one’s own person and to private property have a common grounding in a right to equal freedom.

Of course, the sovereignty of each over himself secures for individuals inventories of personal resources that may be highly unequal. Joe’s genetically-based bulging biceps may radically outclass Wilbur’s tiny triceps, while Joan’s native intense intelligence may comparably outdistance Wilma’s wandering wit. The morally protected natural endowments of each need not jointly satisfy any privileged pattern or ratio. Similarly, for the friend of individual entitlements to unpatterned personal endowments, it seems natural and inoffensive that the division of extra-personal materials among persons also need not satisfy any sanctified pattern or ratio. (We should, though, guard against the assumption that there will be any systematic correspondence between proportionate shares of personal endowments and of extra-personal endowments. Or, if there turns out to be a systematic correspondence, it may be only because what retrospectively counts as valuable shares of personal endowments are precisely those endowments which turn out to facilitate the attainment of extra-personal resources.) Just as the formal equality of self-ownership may be satisfied without each self-owner possessing a personal endowment sufficient even minimally to advance his purposes, so too the envisioned division of the world of extra-personal materials need not guarantee each individual materials sufficient even minimally to enhance his life.
Thus, rights-based classical liberalism has the following defining features:

(1) It is rights-based—i.e., the fundamental legally enforceable constraints are those demanded by individuals’ rights, and these rights themselves represent an interpersonal recognition of the separate moral importance of each individual. These rights are not reducible to or founded upon any sort of trans-individual, overall social value.

(2) It endorses a doctrine of moral self-ownership—of each person’s moral jurisdiction over himself—or some functionally equivalent (or near equivalent) right, such as a right against interference with one’s person.

(3) It takes all particular rights to extra-personal objects to arise through the performance of specific entitlement-conferring actions. It may be maintained that the entitlement-conferring actions are simply exercises of self-ownership or its functional equivalent, or some aspect of self-ownership or its functional equivalent. Or, alternatively, it may be maintained that the entitlement-conferring activities are those actions that confer titles within a practice of private property to which each individual has a right. (This corresponds to the division between Act theories and the Practice theory.)

(4) As follows from and is presupposed by (3), classical liberalism takes the world of natural extra-personal objects to be, initially, morally up for grabs—i.e., to be itself thoroughly naturally unowned. Whereas the components and powers constitutive of persons as such fall within the respective moral domains of the persons whose components and powers they are, no element of the natural world is as such morally attached to any individual. Those moral attachments are, instead, produced by specific entitlement-conferring actions.

(5) In virtue of its endorsement of self-ownership, classical liberalism operates with a strong presumption against any doctrine that asserts or implies that some people have natural rights to the products of other people’s efforts and endeavors. For it takes such a right to the products and, hence, the efforts and endeavors of others, to clash fundamentally with self-ownership.

3. Self-Ownership and Act Theories of Private Property

In the course of characterizing feature (3) of classical liberalism, I have cited two alternative conceptions of the basis of private entitlements in extra-personal objects. According to one, these entitlements arise simply through various exercises of self-ownership while, according to the other conception, these entitlements arise through actions in accordance with the rules and procedures defining a practice of private property—the natural right to which is a companion to the natural right of persons over themselves. One might, then, proceed in terms of a distinction between the Self-Ownership Exercise theory and the Self-Ownership Companion theory. But putting matters in these terms would not do much to capture and convey the differences between the structures of the two strategies and the rationale for the latter strategy. It will in the end be better to have advanced more slowly to the Act versus Practice characterization of these alternatives. I turn, therefore, to an account of Act theories of entitlements to extra-personal holdings. There are two main reasons for providing this material. One reason is to get some sense of what truths there are to be gleaned from Act theories for incorporation into any justifiable practice of private property. The second reason is to begin the case for going beyond Acts theories to the Practice theory, which asserts that there must be within classical liberalism a distinct natural right of property which supplements self-ownership.

Act theories of entitlements to extra-personal objects seek to account for each particular entitlement on the basis of the exercise (or some set of exercises) of self-ownership (or some functionally equivalent primary right) or the exercise of some aspect of self-ownership. Each present rightholder exercises his self-ownership in a certain way, and this exercise extends his moral jurisdiction over some extra-personal object. The agent’s moral jurisdiction is extended by his action, because his action extends the agent’s vulnerability to the violation of his self-ownership. Each such entitlement is subject to a separate and self-contained vindication. Did the putative rightholder exercise his self-ownership by transforming, creating, initiating the use of, etc., this extra-personal object? Does the putative rightholder’s action thereby extend his moral jurisdiction to the acted-upon object? If the answers are affirmative, interference with or seizure of the object has the quality of violating the agent’s self-ownership and, in virtue of this, the agent is entitled to the object.

The paradigmatic version of the Act approach is the Lockean labor theory of property—or, more specifically, the Lockean labor theory of just initial acquisition. A general right which is not itself a right with respect to extra-personal property is ascribed to all persons. In the Lockean case, of course, it is the right of each to his own labor, which itself is an implication of each person’s self-propriety. This internal right provides, or is supposed to provide, a conduit for individual right to enter the external world. In the Lockean paradigm, an individual may exercise his right over his own labor and thereby mix his labor with extra-personal material. Since the labor is in-
vested and not merely dissipated, the resulting transformed object now contains something, the agent’s labor, which is still morally attached to the agent. For others now to seize this object would be for them to seize the labor that has been mixed with it. Since seizing the agent’s labor would violate his general right to his own labor, seizing the transformed object now violates the laborer’s rights. Thus, original rights to such transformed segments of the extra-personal world are externalizations of persons’ basic internal rights.

The right to one’s own labor is only one among numerous candidates for this sort of bridge-building between internal rights and the extra-personal world. Another prominent candidate is the right to liberty, construed as a right against interference in the disposition of one’s body, talents, energies and so on. Under this alternative, the crucial bridging act would not be the mixing of one’s labor, but rather the deployment of one’s liberty through the use of extra-personal objects so that one’s liberty is now hostage to others’ non-seizure of those objects. The crucial bridging claim would be that the seizure of an object which one is using in ongoing purposive activities constitutes a violation of one’s right to liberty.

Much less is said by Act Theorists about non-original private property rights—i.e., about rights arising through or being conveyed by voluntary transfer. The characteristic theme of Act Theories is perhaps most fully retained in conceptions of legitimate transfer in which the prior owner, in effect, vacates ownership while at the same time the new owner’s acquisition constitutes a new instance of the same type of act whereby initial ownership is established. Thus, the prior owner Paul vacates—perhaps to begin with in a way that allows only his chosen successor Sally to commence her rights-establishing act permissibly—while Sally, by her investment of her labor or by the incorporation of the object in her ongoing purposive activity, brings about a new externalization of the internal right to her own labor or the internal right against interference with her person and activities. Rights as such are never transferred; nor does the prior owner’s transfer of the holding to his successor as such bestow a right upon the latter which is a moral descendant of the original right. Rather, the prior owner Paul’s function is merely to restore his holding to the state of nature—albeit to restore it selectively so that third parties remain morally constrained not to appropriate the object before successor Sally established a new original right to it. Any such reenactment conception of just transfers in effect closes the gap between principles of initial acquisition and of transfer, since essentially the same sorts of actions establish entitlements in both previously unowned and previously owned objects.

Any particular re-enactment principle of just transfers will, of course, be no more plausible than the corresponding principle of initial acquisition. But give, e.g., the labor or liberty principles of (initial) acquisition, the cognate reenactment principles are not terribly farfetched—at least for transfers that are exchanges. In the case of a labor reenactment doctrine, the claim will be that the labor present in the service or invested in the object that Sally offers for the purpose of exchange combined with the labor Sally invests in arranging or participating in the exchange is the labor permissibly invested by her in her newly acquired holding. Exchange transmits investment from the object surrendered to the object thereby purchased. In the case of a liberty reenactment doctrine, the claim will simply be that an exchange constitutes a permissible substitution of objects in use in ongoing projects—and that the project itself may be the achievement of advantageous, i.e., value-enhancing, substitutions. Having permissibly and purposively acquired the object from Paul, it now is part of the inventory of resources employed in the service of Sally’s plans.

In contrast, reenactment principles must handle gift transfers somewhat less well. For gift transfers, by their nature, require less action on the part of the recipient. Still, perhaps what little any recipient must do to acknowledge receipt of a gift can be construed as a minimal permissible reenactment of the property generating act. Furthermore, surely something can be said about the gift-giver’s moral power to convey to or otherwise establish in the recipient of his gift an entitlement to that object. (And, presumably, whatever can be said will also apply to the seller’s moral power to convey titles.) Suppose that Paul already has title to object O and is willing to convey O to Sally so as to establish both her possession and title to O. It seems that this must make it easier for Sally to acquire title to O, or must provide Sally with a different way of acquiring title to O, than if Paul did not have title to O and was merely prepared to render to Sally what physical assistance he could toward her acquisition of unowned O. A major point in having a right over an object is to have a determinate say not only in how one will use that object but also about who, if anyone, shall succeed one in having that determinate say. What remains puzzling, however, is precisely how that moral power, nifty as it may be to the rightholder, arises out of the acts by which property in a given object is established. The core contention of Act theorists is that through certain purposive and effective interactions with the extra-personal world, agents can project into the objects of those interactions the personal moral inviolability which otherwise seems to extend only to the outer surfaces of their bodies. If one is willing to acknowledge the personal inviolability expressed in the idea of
self-ownership, one must call forth a very determined normative skepticism to doubt the basic plausibility of this core contention. The Lockean doctrine that initial rights over previously unowned segments of nature arise through the mixing of labor with that segment of nature surely can be freed from any reliance upon the model of literal physical mixing of one stuff with another by formulating it in terms of a person’s investment of his talents, time, and energy, his human capital, in the now transformed object. And once it is, it is eminently plausible to maintain that the person who seizes the transformed material expropriates the human capital of the investor and thereby engages in an action on a moral par with the direct seizure involved in forced labor. He who seizes the transformed object simply cunningly waits until after the transformation occurs and thereby evades the dangers and difficulties of direct confrontation with and control of the productive party. It is essentially this Lockean argument which is recast by Nozick when he argues that:

Seizing the results of someone’s labor is equivalent to seizing hours from him and directing him to carry on various activities. If people force you to do certain work, or unrewarded work, for a certain period of time, they decide what you are to do and what purposes your work is to serve apart from your decisions. This process whereby they take this decision from you makes them a part-owner of you; it gives them a property right in you. Just as having such partial control and power of decision, by right, over an animal or inanimate object would be to have a property right in it.14

The argument from liberty is likewise plausible at its core. Whereas the labor argument looks backward to the investment of self in the extra-personal world, the liberty argument looks forward to the projection of self into the world. People obviously do not live by past investments alone, but also by necessarily prospective interaction with extra-personal objects—interactions which, when viewed from some later point, may count as an investment of self. These projections of self have particular trajectories which are (at least in part) defined by the extra-personal objects put to use and through the use of which the agent projects the completion of his course. Since everyone’s existence as a reason-bearing and value-seeking being has this projective dimension, a right to liberty from interference with one’s person and actions surely must require constraints on others’ interference with or seizure of the objects which already have been (permissibly) incorporated into one’s ongoing courses of action. As long as “use” within a projected and “ongoing” activity is construed cautiously and narrowly—as with the use that a hunter has for his bow even at the moment when it lies by his side, or the use that the philosopher has for his word processor even when he is busy cooking dinner—it is reasonable to say that to disrupt such use through interference or seizure of the agent’s instrument is to interfere with the liberty of his person.15 If the agent has a right to that liberty, then through his permissible initiation of that ongoing use he acquires an entitlement to the extra-personal objects therein put to use. Finally, especially insofar as transfer can be pressed into the re-enactment mold, the considerations that Act theorists bring forward also support particular holdings acquired through voluntary transfer from their previous rightful owners.

4. Internal Rights and the Limits of Act Theories

What, then, is wrong with Act theories taken either singly or in complementary union? Part of the problem is that Act theories provide us with diverse but only scattered exemplars of entitlements to extra-personal objects. We can identify a particular instance in which Paul has so acted as to extend the moral boundaries originally encompassing only his person to enclose this carefully crafted bow, and another instance in which Sally has so acted as to extend the moral boundaries originally encompassing only her person to enclose this carefully tended field. What Act theories can provide us with are certain particularly vivid instances of property rights—instances which have vivacity because these entitlements stand on their own. They need not draw their moral force from their place within any larger normative system. Each of these isolated paradigms of entitlement is self-sufficient in the sense that each contains its own justification or, more precisely, its justification is contained within the particular history of that holding. To see those particular historical facts, in the light of self-ownership, is to see the wrongfulness of depriving the possessor of his holding.

But, unfortunately, only a minority of the private holdings among those that would strike almost any ideologically untainted observer as perfectly legitimate will satisfy this standard of vivid, self-sufficing, justification. Most of us are fortunate enough to live in societies which at least minimally recognize the legitimacy of individuals’ pursuit of their own values and, connectedly, recognize individual rights in a considerable range of extra-personal objects. Any such person lives in a world densely populated with legitimate entitlements. The validity of these entitlements is not conditional upon each link in their history being a self-sufficient exemplar of entitlement generation or transfer. Rather, their legitimacy rests on their being the entitlements of peaceful and honest individuals to the possessions they have respectively acquired in accordance with their
society's generally recognized and *justifiable* rules for the rightful acquisition of the types of objects in question. For such rules to be justifiable and, thereby, to constitute formulae for the generation of legitimate entitlements, they must accommodate or, better yet, be analogical extensions of the self-sufficing modes of property acquisition. They must, e.g., require, if not a self-sufficing investment of the agent's human capital or a self-sufficing putting to use, at least some conventional counterparts to such investment or putting to use. Instead or partially instead of mixing one's labor throughout the area one intends to mine or putting to use the vein of ore by bringing to the location all the equipment which extraction will ultimately require, one may engage in the conventional counterpart of filing one's claim. It is these analogical/conventional extensions which make possible most of the specific legitimate entitlements which merit recognition. In considering these claims, we are already entering the territory of the Practice theory. But here the point is to see the shortcomings of Act theories. Act theories themselves will not account for the host of entitlements which do not measure up to the self-sufficing exemplars they provide. And Act theories do not themselves provide justification for going beyond these exemplars to the analogical/conventional extensions which would account for those further entitlements. I have characterized Act theories as seeking to invoke an "internal" right in order to vindicate entitlements to "external" objects. Kant explicitly rejected this strategy and, hence, can be viewed as a critic of Act theories of private property." A brief consideration of Kant's generally enigmatic (to me) discussion reveals the essential validity of his critique. Kant distinguished between "empirical" and "external" possession. An object is empirically mine if and only if "... I am the holder of [that] thing (that is, physically connected to it) ..." An object "... is externally mine if [and only if] it is such that any prevention of my use of it would constitute an injury to me even if it is not in my possession (that is, I am not the holder of the object)." Kant's argument is that: (a) appeals to an "internal right" can at most support entitlements to empirical possessions; (b) at least some entitlements are to external possessions—indeed, something's being "externally mine" is paradigmatic of entitlement; hence, (c) doctrines that appeal only to internal rights can never be adequate theories of entitlement. Thus, Kant summarizes the limitations of invoking any internal rights.

... if I am the holder of a thing (that is, physically connected to it), then anyone who touches it without my consent (for example, wrests an apple from my hand) affects and diminishes that which is internally mine (my freedom). Consequently, the maxim of his action stands in direct contradiction to the axiom of justice (rights). Thus, the proposition concerning empirical possession does not extend beyond the right of the person with respect to himself. If rights to external objects which are not (continually) empirically possessed are to be sustained, there must be an appeal to something other than "the right of the person with respect to himself." There must be an appeal to "intelligible possession" which, for Kant, is made possible by:

... the juridical postulate of practical reason: "It is a duty of justice to act toward others so that external objects (usable objects) can also become someone's [property]."

Kant may be wrong in arguing that appeals to an internal right will never get one beyond rights to what is literally held. That he is wrong about this is the thrust of my defense of Act theories. But his more general claim accords with my insistence on the limitations of Act theories. This is that in many, if not most, cases an agent's entitlements to an external object cannot be explained by showing that the seizure of that object would diminish that which is internally his. For the seizure would not touch on what is internally his; it would not trespass upon any "right of the person with respect to himself."

This limitation of internal rights of self-ownership (or its functional equivalents) ought, on reflection, to be no surprise. For self-ownership itself, at least as ordinarily explicated, does not reflect or embody the crucial and necessary role of extra-personal objects in all persons' value pursuits. To see this, it is instructive to have before us two recent and helpful explications of self-ownership. Jeremy Waldron nicely captures this notion as follows:

To say that I own myself is to say that nobody but me has the right to dispose of me or to direct my action. I have rights to do these things (though I must not harm others in doing so; that is, I must not exercise my self-ownership in a way which violates theirs), and those rights are exclusive of anyone else's privilege in this regard, for they are correlative to others' duties to refrain from interfering with what, in this sense, I own.

Self-ownership is the polar opposite of moral slavery, of being utterly under the moral authority of others. Thus, self-ownership is also aptly explicated by contrast with such slavery. As G. A. Cohen puts it,

[The] thought is that each person is the morally rightful owner of himself. He possesses over himself, as a matter of right, all those rights that a slaveholder has over a complete chattel slave as a matter of legal right, and he is entitled,
morally speaking, to dispose over himself in the way such a slaveholder is entitled, legally speaking to dispose over his slave. Such a slaveholder may not direct his slave to harm other people, but he is not legally obligated to place him at their disposal to the slightest degree: he owes none of his slave’s services to anyone else. So, analogously, if I am the moral owner of myself, and therefore of this right arm, then, while others are entitled [in virtue of their self-ownership] to prevent it from hitting people, no one is entitled without my consent, to press it into their own or anybody else’s service... 25

Notice, however, that both Waldron’s and Cohen’s explications of self-ownership, and perhaps my own brief explication at the outset of this essay, are entirely consistent with human beings’ requiring nothing for the feasible pursuit of their values other than materials that are internal to human beings, i.e., to some human being or other. The self-owner is morally secured in his possession of his bodily parts, faculties, talents, etc., and bound not, without their consent, to make use of the like elements of others’ personal constitutions—even if the use of others’ internal resources would advance the first self-owner’s plan of life. The personal endowments of each warrant protection because they are of potential use to both their natural possessors and others. The right of each over his own person seems, then, to take no cognizance of the equal indispensability of extra-personal objects in human goal-directed action. 26 This explains the incapacity of Act theories, with their focus on entitlement generation solely through the exercise of some internal right, to provide more than exemplars of rights to extra-personal objects.

5. The Natural Right to the Practice of Private Property

The human condition with regard to the role of extra-personal resources in the pursuit of values is radically different from what could be inferred merely from such a right of persons over themselves. For, besides being physical beings literally occupying physical space, human beings live in and through a world of physical objects which extends beyond the space occupied by their respective bodies. This extended world is the field in which almost all human values are pursued and purposes are achieved. It is the field in which each of us encounters and interacts with others. And, within that field, human goals are advanced through the employment of individuals’ abilities, insights, and energies on the material objects of the world—both the raw material and that material as it has been molded and transformed by past human purposiveness (and inadvertence).

Human life understood as ongoing, purposive, self-sustaining, and self-enhancing activity takes place mostly outside of human bodies in and through the world of extra-personal objects. Nor is the activity in which human life consists merely a matter of recurrent excursions (or raids) into the world of extra-personal objects. Extra-personal objects enter into and help define the specific goals, ambitions, and commitments through which individuals compose their respective lives. Particular extra-personal objects become deeply incorporated into the specific strategies that individuals formulate for their life pursuits. Living in and through the extra-personal world may be merely contingently connected with the pure concept of goal-oriented activity. But it is surely necessarily connected with human life and the human pursuit of ends. And, emphatically, this is true of all or nearly all human ends; not just those that might be marked off or denigrated as “economic.” The lives of the religious crusader, the political pamphleteer, the athlete, the aesthete, the pornographer, the family man and woman, the tourist, the gourmet, and the gourmand all require extra-personal vehicles and avenues.

This necessary feature of human life strongly suggests that self-ownership, at least as so far explicated by Waldron, Cohen, and myself, cannot represent the entirety, the single sturdy trunk, of persons’ fundamental (and non-contractual) rights. It makes it plausible that any story that is told about the fundamental rights of individuals which does not find significant implications in this necessary feature of human life must be an incomplete story demanding supplementation. 27 That supplementation may take the form either of the enrichment of the conception of self-ownership or the addition of another equally fundamental right corresponding to the practical recognition of other human beings as ends-in-themselves who necessarily live their lives in and through the extra-personal world. Since nothing is gained and clarity is lost by insisting that all fundamental natural rights must be part of self-ownership, I will take the strongly suggested need for supplementation to point to another equally fundamental right, a companion to natural self-ownership: namely, a natural right of property. 28

But must not any clear-thinking advocate of classical liberalism reject anything which is, strictly speaking, a natural right of property? For, it would seem that a natural right of (or at least to) property must assert that each person is born to entitlements in extra-personal objects just as he is born to a moral jurisdiction over himself. Moreover, a natural right to extra-personal products of human efforts and endeavors would clash with component (5) of classical liberalism, as well as (3) and (4). And even if such a right were restricted to natural extra-personal objects, its postulation would clash with components (3) and (4). What, then, could a natural right of property in conformity with classical liberalism be?
That right could be a right to the practice of private property. The right to the practice of private property is a natural right with regard to extra-personal objects. Nevertheless, it is not itself an entitlement to any particular extra-personal objects or any share of any such objects. Thus, endorsement of this natural right is consistent with the classical liberal view that all rights to extra-personal objects arise through the performance of entitlement-conferring actions. The significance of the right to the practice of private property is that actions which are entitlement-conferring, at least in part, enjoy this moral power in virtue of their conformity to the rules constitutive of that practice. It is this natural right to the practice of private property which, I shall argue, is part of the practical recognition rationally required by each person’s possession of a human life with an independent rational purpose of its own.

There is a strong temptation to model the contrast between Act and Practice theories of property rights on the more familiar distinction between act- and rule-utilitarianism. In choosing the Act/Practice terminology, I have succumbed to this temptation. But it is necessary to clarify precisely how the present distinction draws upon the more commonplace one, and how this temptation may lead one down misguided paths. Act-utilitarianism is, of course, characterized by its direct application of the utilitarian conception of the good to the ranking of alternative available actions. Each action’s rank depends directly on the (agent-neutral) value of the world occasioned by its performance. The available action that most promotes the (agent-neutral) good is the highest ranked and, hence, the obligatory one. In contrast, rule utilitarianism applies the utilitarian conception of the good to the ranking of alternative sets of rules or practices. One set of rules is ranked higher than another if and only if compliance with the former more promotes the (agent-neutral) good than compliance with the latter. A particular action is right or even obligatory if and only if it conforms to the best set of rules. A right action need not, then, itself have the power of more promoting the (agent-neutral) good than all other available particular action. Indeed, an action having in itself this power may nevertheless be wrong in virtue of its violation of some rule within the optimizing set of rules.

In adopting the Act/Practice terminology, I intend to draw upon the familiarity of the contrast between (i) defending a particular (act or holding) by displaying the particular’s embodiment of the justifying quality, and (ii) defending the particular (act or holding) by showing its compliance with a rule or practice which itself is the direct object of moral justification. But three divergences from the Act versus Rule utilitarian distinction must be noted. The first and relatively minor one is that Act and Practice theories of property rights aim at the vindication of assertions of rights, while act- and rule-utilitarianism typically seek to establish claims about the (value-enhancing) rightness of actions. The second and more important divergence is between the type of moral appeal represented by rule-utilitarianism and the Practice theory of entitlements in extra-personal objects. Within the former, the point is to shift the utilitarian justification from the level of acts upward to the level of rules. A central motivation for this shift is to render judgments about particular acts less directly subject to any utilitarian calculus and thereby to provide these local judgments with a greater deontic coloration. But the other side of this motivation is the desire of the rule-utilitarian to retain the fundamentally consequentialist appeal of his moral theory. In contrast, the Practice theory of property rights is not at all motivated by an interest in making or reserving room at the commanding heights of the theory for consequentialist reasoning. Instead, the practice in terms of which particular holdings are to be vindicated is itself supposed to be the object of persons’ natural moral rights; the legitimacy of particular holdings is ultimately grounded upon a deontic appeal to that right and to the normatively significant features of individual life and value that underlie that right. The third (and perhaps most important) divergence is that the Practice theory does not merely shift upward to the level of entitlement-conferring rules the same justifying aim as the Act theories employ on the level of particular holdings. The Practice theory does not seek to justify some set of entitlement-conferring rules by showing that this set of rules more protects or promotes the exercise of self-ownership than any other set of comparable rules. The Practice theory invokes a different right from that of self-proprietorship: namely, the natural right to the practice of private property—or, somewhat more precisely, the natural right to others’ compliance with a system under which each agent can secure for himself the same sort of protected control over portions of the extra-personal world as self-ownership provides for each agent over his own person.

Any such system must exhibit certain features. There must be rules specifying entitlement-conferring actions. Certain forms of activity must count as establishing titles to previously unowned objects; other forms of activity must count as dissolving existing titles or as acquiring titles to objects previously within the jurisdiction of others. But not every set of rules identifying entitlement-conferring procedures will be coherent, functional, comprehensive and justifiable. To be coherent, the specification of entitlement-conferring actions must be such that non-composite entitlements do not arise, so that compliance with the resulting entitlements will always be possible. To be functional, rules of the practice must be
readily knowable to those governed by the practice, sanctioning identifiable and predictable entitlements so that compliance with the conferred entitlements is feasible. To be comprehensive, the rules of the practice must sanction, or be subject to reasonable analogical extension so as to sanction, the acquisition of entitlements to all previously unowned objects. To be justifiable, the practice must be compatible with self-ownership. A justifiable system's entitlement-conferring rules must, in particular, incorporate the plausible claims of Act theories of private property to the effect that by means of certain exercises of one's self-ownership one exposes oneself to having that right violated by means of others' interference with or seizure of one's external holdings, and one thereby acquires entitlements to those holdings as extensions of one's self-ownership.

Let us say that a practice is fully justifiable if and only if it is coherent, functional, comprehensive, and justifiable. Still, in the abstract, many different practices may qualify as fully justifiable relative to any given society. In the abstract, the right to the practice of private property is a right to people's compliance with some one of these fully justifiable practices. Were any one of these alternative practices magically introduced at, let us imagine, an equally fanciful moment of mass entitlement amnesia in which all memory of who had entitlements to what under which specific rules was lost, each person's right to the practice of private property would consist in his right to people's compliance with that introduced practice. Compliance with that practice would be what each could reasonably expect of others in the way of respect for his natural right of property. Having been introduced, that practice would be the fully justified one. Thus, even at this level, justice is historical! One would not be justified in substituting any other practice which was equally justifiable in the abstract for the now established (and justifiable) practice. Such a substitution would undercut the coherence or functionality of the effective system of property rights for that society; if applied retroactively, it would nullify entitlements conferred under an existing justifiable practice. Even an existing practice which is not, in the abstract, fully justifiable can be justified, and thereby will be resistant to being justifiably replaced by a fully justifiable practice. It will be justified if it is, roughly speaking, about as abstractly justifiable as can reasonably be expected in actual human affairs. The case against substitutions of alternative practices which undercut a system's coherence and functionality does not, of course, rule out reform and beneficial evolution with a society's justified law of property. Such changes, aiming at or at least resulting in the enhancement of the coherence, functionality, comprehensiveness, or justifiability of the existing practice, are to be guided or evaluated in terms of the "organizing idea" of the private property system: i.e., the idea of sanctioning the expansion of personal spheres of authority so as to secure for individuals inviolability in their respective life projects.

Given the existence of a justified practice of private property, individuals do acquire titles to extra-personal objects by engaging in the specified entitlement-conferring actions. Although the specification of entitlement-conferring actions must embody the truths that may be gleaned from Act theories of entitlement, some entitlement-conferring acts under a given justified practice will not involve the sort of extension of self-ownership which is the focus of Act theories. Those acts, nevertheless, confer entitlements in virtue of their conformity to the entitlement-generating rules of a justified practice. In addition, although I am not sure what weight to give this factor, the expectations with regard to protected holdings that are generated under an existing justified system are legitimate expectations. As legitimate expectations, they provide individuals with reasonable claims against those who are bound to comply with that practice. When that compliance occurs, the entitlements generated by the actions specified by a practice's rules and corresponding to the agents' legitimate expectations (and, sometimes, further supported by Act theory considerations) are respected.

The particular constraints with which individuals must comply will depend upon which abstractly justifiable entitlement-conferring rules have in fact come into operation in the society and which actual entitlement-conferring actions individuals have in fact performed. Justice in extra-personal holdings is, as Nozick maintained in *Anarchy, State and Utopia*, historical and unpatterned. The justice of any particular holding is a matter of that holding actually arising through certain specific procedures: namely, those that confer entitlement within the existing justified practice. A set of holdings among people, i.e., a "distribution" of holdings, is just insofar as the particular holdings are independently historically legitimate. The justice of the whole follows from the justice of the parts, not the other way around. Thus, no characteristic of the whole can be the touchstone of the justice of the whole or of its constituent parts. The justice of the whole "distribution" will depend neither on its presentation of a certain profile, e.g., equality among holdings or the maximization of the smallest packet of holdings, nor on the individual holdings within that distribution mapping some other characteristic of the property holders, e.g., their virtue or social usefulness. The absence of any pre-ordained pattern to which the distribution of extra-personal material must conform parallels the absence of any such regulative pattern for the distribution of personal endowments (as was anticipated in the first paragraphs of section II).
Each individual’s status as a moral end-in-himself with a life of his own to lead, I have maintained, requires that his person not be subjected to assault, invasion, or seizure. This status requires that he not be treated as a means morally available for the purposes of others. This is to say that the elements of each person’s constitution—his body, faculties, talents, and energies—must be acknowledged as uniquely his means for the pursuit of his valued ends, acknowledged as within his distinct moral domain. Each individual’s status as a moral end-in-himself with a human life to lead in and through the world of extra-personal objects requires that others’ rational recognition of them must extend into that external world. That recognition translates, for world-interactive human beings, into rights that extend beyond the scope of self-ownership proper.

Since people live their lives in and through the external world, necessarily deeply incorporating into their plans particular external objects and contouring their lives through attachments to them, any recognition of them as moral ends-in-themselves who are owed immunity in their peaceful (i.e., immunity-respecting) pursuit of values must recognize and respect their incorporations and attachments. The status of persons as ends-in-themselves requires, then, that the use, acquisition, stocking, transformation, incorporation, and deployment of those extra-personal objects in and through which human individuals create and advance their lives not be subject to assault, invasion, or disruption. It demands that these modes of use and interaction with extra-personal objects—modes of interaction and use in which individuals enjoy exclusive, discretionary, and stable (albeit alienable) control—possess a moral immunity in the form of moral constraints on the actions of others comparable to the constraints against attacks upon the person himself. The very projects through which human beings constitute themselves as persons and achieve value in their lives necessarily involve persons’ interpenetration with the world, not for isolated instances but over lifetimes. Thus, there is an Hegelian dimension to the case for a natural right of property—a dimension which emphasizes that human life is not lived within our bodies, but rather is enacted through purposive interaction with the world. In a world of finite extra-personal resources, it is only under the auspices of such a system of immunities that persons can be free of assault upon their world-engaging and self-defining projects and, thus, upon the very core of their separate lives. Respect for the entitlements conferred by a justified practice of private property is respect for separate project pursuers as beings whose lives are necessarily engaged in and contoured to and by the extra-personal world.

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NOTES

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1. I focus entirely on material extra-personal objects even though rights to immaterial extra-personal objects, e.g., rights to ideas, are of considerable interest, especially because the creation of such objects does not draw on scarce materials. The significance of this for discounting traditional objections to private property is nicely developed by Jim Child in the “The Moral Foundations of Intangible Property,” (in this issue of The Monist).

2. My goal is not, of course, to vindicate each current private holding or even to support current private holdings at large and for the most part. One should expect that any philosophical account of the justice of private holdings will undercut rather than sustain certain actual current holdings. Those whose holdings are engorged through impermissible interferences with others’ free exercise of their property rights have no just claim on their gains.

3. Sixth, I will not defend the Practice theory against other versions of the natural right of property according to which individuals are born to entitlements in particular natural extra-personal objects or to certain shares of such objects. The rejection of such constructions of the natural right of property is crucial to the doctrine of this essay. Unfortunately, the reasons for this rejection cannot be developed within the confines of the present project. For a preliminary statement of some of these reasons, see Eric Mack, “Distributive Justice and the Tensions of Lockeanism,” Social Philosophy and Policy (Autumn 1983), 132-50.

4. Of views that I am aware of, the Practice theory developed here most closely resembles the theory sketched by Rolf Sartorius in “Persons and Property,” ed. R. G. Frey, Utility and Rights (Minneapolis, MN: University of Minnesota Press, 1984), pp. 196-214. Sartorius’s ultimate appeal is to “the moral right that each of us has to be treated as an individual with the capacity to shape and pursue his or her own conception of a meaningful life.” [p. 196] This right is said to support both “(a) the right to the fruits of one’s labor; and (b) the right to a just and efficient system of property rights . . . .” [p. 203] See 31.


6. And in yet more special circumstances of comradeship and love, Alice and Alan may share a perspective that what stands in a value-generating relation to Alice will, for that very reason, be valuable for Alan. But these sorts of sharings are of much too limited extent to sustain general interpersonal principles. And when this sharing is present, what one gets is neither principles of rights or justice nor principles of social calculation.

7. The doctrine of the agent-relativity of values does not as obviously undermine principles of general interpersonal force that represent mutual agreement among the conditions of mutually advantageous life among agents who are fundamentally oriented to their separate goals and projects. Indeed, agent-relativism may be thought naturally to issue in some form of contractarianism. This contractarianism may take the form of justifying Lockean-like natural rights, or directly justifying private property rules, or of justifying specific patterns of distribution. It is well beyond the scope of this essay to assess the value and prospects of this type of approach.


10. Fred Miller’s “The Natural Right to Private Property,” ed. T. R. Machan, *The Libertarian Reader* (Totowa, NJ: Rowman and Littlefield, 1982), pp. 275–87, is explicitly directed toward the thesis that there is such a parallelism between rights to personal and to extra-personal assets. This is expressed as the claim that “Entitlements to natural assets and entitlements to nonhuman resources should be determined by the same sorts of normative principles.” [276]

11. Of course, it does not follow that it is desirable or even morally tolerable within a community whose members can readily afford to prevent it that some individuals, through no fault of their own, lack the personal or extra-personal means to sustain their lives and goals.

12. The component of classical liberalism that clashes with conceptions of a natural right of property, according to which individuals are born to entitlements to particular extra-personal objects or to some share of such objects. This component needs to be sustained through a critique of such conceptions. But this, as indicated in n.3, is beyond the scope of the current essay.


14. Hillel Steiner maintains that, as a rightholder of O, X must have the right to employ O, for any (rights-respecting) purpose, including the purpose of making O, available to Y for Y’s unlimited use. But this requires, according to Steiner, that X have the right to transfer title of O, to Y. “If S is to perform an action informed by a purpose which requires that Y have this [unlimited] use of O, the action must consist in transferring the title to O, to Y.” [p. 744] “The Structure of a Set of Composable Rights,” *Journal of Philosophy* (1977) 767–75.


17. This liberty argument may, indeed, burst out of the bounds of Act theory and transform itself into the Practice theory. Something akin to this occurs in Antony Fressola’s outstanding presentation of the liberty argument when he asserts that:

The claim of a right to liberty is embedded within a conception of morality that accords central importance to respecting persons as persons. Yet, what is distinctive about persons is not merely that they are agents, but more that they are rational planners—that they are capable of engaging in complex projects of long duration, acting in the present to secure consequences in the future, or ordering their diverse actions into programs of activity, and ultimately, into plans of life. The right to liberty, insofar as it gives expression to a respect for persons, must be a right to carry through on such of these projects and programs of action as persons can without infringing the similar right of their fellows. [p. 320]


19. Ibid., p. 57.

20. Ibid., pp. 55–56.

21. Ibid., p. 62F.

22. Ibid., p. 57, emphasis added.

23. Ibid., p. 60. What is not clear to me is what basis, if any, this postulate is supposed to have beyond its necessity for the possibility of external possession.


26. Also favor enriching the content of self-ownership to include the liberty to bring one’s faculties and powers to bear on the world to the extent that one could were there no property rights in the extra-personal world. This liberty is denied when others’ exercise of their property rights renders one less at liberty to bring one’s faculties and powers to bear than one would be in the absence of property rights. This enrichment of self-ownership, therefore, generates a Self-Ownership Proviso—the implications of which cannot be traced here.

27. This formulation nicely skirts a complication. A given action’s rightness will depend not only on the value realized in the world it promotes but also on the availability in that world of actions that will promote valuable successor worlds. What has to be chosen is not just one action now, but a series of actions or a strategy.

28. The act vs. rule distinction can be developed for any form of consequentialism, including forms that introduce distributive elements to the ranking of worlds that adopt agent-relative conceptions of value. One could, e.g., be a rule egalitarian or a rule egoist. Regarding the latter, see John Hosaers, “Rule-Egoism,” *The Personalist* (Autumn 1973), pp. 391–95.

29. At the outset of his important presentation of a view quite similar to the Practice theory, Rolf Sartorius introduces a well-known passage from H. L. A. Hart’s “prolegomena to the Principles of Punishment.” [See H. L. A. Hart, *Punishment and Responsibility* (Oxford: Oxford University Press, 1968), pp. 1–27.] For Sartorius’s purposes, the key distinction in this passage is between: (a) “the question why and in what circumstances [property] is a good institution to maintain” and (b) “the questions in what ways individuals may become entitled to property and how much they should be allowed to acquire.” The former is the question of “General Justifying Aim,” [Hart, p. 4] Despite the consequentialist flavor of the language of the “good institution” and the “General Justifying Aim,” Sartorius insists that his
32. Such a justificatory strategy might, however, be well worth pursuing.

33. Under the internal requirement that the practice be functional may fall even more consequentialist-looking conditions, such as that the rules of the practice be subject to cost-effective enforcement. Note Sartorius's claim for each person "as a matter of moral right, putting the right to life itself, a right to participation with a just and efficient system for the exploitation of natural resources." [emphasis added to "efficient," 201]

The condition of functionality (along with, perhaps, comprehensiveness) introduces to the natural right of property reasons something like grandfather clauses with respect to holdings. That is, in the absence of known and reasonably specifiable violations in the background history of A's possession, the rationale for the right of property allows a presumption in favor of the existing holding—lest all or most holdings be thrown into doubt and the purpose of the system defeated.

34. The set of fully justifiable practices will not be identical across all societies, even all societies prepared to recognize the natural right of property. For cultural and technological differences will at least affect which practices are functional and comprehensive.

35. I imagine entitlement amnesia rather than a fanciful beginning of that society's economic life because I want to imagine the magical introduction of a well-developed, comprehensive, practice accommodating the complex and subtle forms of holdings that are not present at the birth of economic life.

36. The phrase is appropriated from Waldron who speaks of the "organizing idea of belonging." [p. 38] Compare Kant's comparable use of "having." Kant, pp. 61-62.

37. This account of the natural right to the practice of private property is the central claim of Waldron's The Right to Private Property. Waldron distinguishes between special rights to property and a general right of property. Special rights are those which arise through voluntary actions. They are entitlements that arise through the performance of particular entitlement-conferring actions. A general right of property is a right with regard to property which antecedes particular actions. It is a right which everyone is born to, if anyone is. Waldron's claim is that any coherently formulated general right of property must be a right to have property. But the right to the practice of private property goes beyond the generalization of Act theory dictates, yet is not a right to have property. It reveals what might be meant by a right to acquire property or a right to the opportunity to have property such that this right would not reduce merely to each person's being an eligible author of special rights.

38. See Waldron's very helpful account of Hegel's argument. [pp. 343-89]

The real work in the argument for private property is done by Hegel's account of the importance of property in terms of the relationship over time between an individual person and an object . . . . but this effect can be lost if others are also working on the object for purposes of their own in the meantime. That is why we need private property; a system which assigns enduring objects to the exclusive control of individuals. Otherwise embodiment and its beneficial effects on willing would not be possible. [pp. 373-74]