

Political Philosophy and Private
Property:

An evaluation of four main types
of theory concerning ownership and
distribution of property in a just
society

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Abstract

Title: Political Philosophy and Private Property:

An evaluation of four main types of theory concerning the ownership and distribution of property in a just society.

Candidate: Frances Howard

This thesis takes as its starting point the beliefs that government should be neutral between the conceptions of the good life of its citizens; that it should take as one of its foremost goals the maximization of their freedom, and with a tentative acceptance of the view that individuals have natural rights.

It attempts to answer the following questions:

1. Is there a natural right to property?
2. Can an individual acquire exclusive control over an object independently of the actions or acquiescence of others?
3. Do private property rights infringe or protect freedom?
4. Is equality a desirable goal? If so, what form of equality should a society pursue?

5. Is a free society compatible with an egalitarian society?

6. Does it make sense to speak of distributive justice?

In answer to the first two questions the author discusses and rejects John Locke's Labour Theory of Acquisition; in response to the others she discusses the theories of Karl Marx, G A Cohen, Robert Nozick, Michael Oakeshott, John Rawls, Alan Ryan and Ronald Dworkin and attempts conceptual analyses of "freedom", "equality", "justice" and "property".

Finally, it is concluded that:

1. There is no natural right to property.
2. The form of property rights adopted requires the hypothetical consent of concerned parties.
3. Private property rights in areas of everyday contact are valuable - for privacy, autonomy and individuality. Security of property rights on a large scale, on the other hand, can threaten the freedom of others.

4. Equality is desirable. Rawls's version, that no inequality be permitted unless it improves the position of the worst-off, or a variant of this, best conforms to the constraint of 2.
5. This version of equality is compatible with freedom.
6. There are deep and conflicting intuitions regarding distributive justice.

CHAPTER I

INTRODUCTION

This thesis attempts to answer the question of how material resources ought to be distributed. As it stands this formulation is ambiguous and its ambiguity obscures a major controversy. Theorists debate whether property should be distributed by means of one or other procedure or whether it should be distributed and maintained in one or other pattern. The issue is further complicated by the fact that there are different sorts of ownership (or degrees of exclusivity).

It is a question of great significance, however, since we all need these resources for life, comfort, self-expression, work and amusement. There must be some rules governing their use since without rules there would be perpetual conflict and insecurity. (To agree to have no rules is to adopt a rule of a sort). These rules are somewhat like rules of the road: it is better to have and to obey any rule (however arbitrary) than to have no rules at all, and yet some rules are better than others.

Which rules to adopt regarding property is an important and immensely controversial political issue. Peter Singer writes, "Should distribution by and large be left to the workings of a free market, in which individuals trade voluntarily, or should society as a

whole, through the agency of the government, seek to distribute goods and services in accordance with some criterion generally regarded as desirable? It is this issue which is at the centre of the political division between right and left." (Arthur and Shaw, 1978 : 207)

It is such a widely contested issue not merely because most people have deep and conflicting interests in what system is adopted, but also because it is a genuinely difficult question. It is difficult partly because of the problems of determining the rights of individuals vis-à-vis unowned things. Do they, for instance, have a right to a share, a right to use any of them, or a conditional first comes first served right that whoever finds or uses an object first is entitled to exclusive control of that object.

It is made more difficult by the fact that one system does not clearly produce more utility or protect freedom better than another. To prevent a person taking something from an unowned state is to limit his freedom. To protect him in taking and keeping it is to limit another's freedom. But plainly a responsible government must protect the action if it allows it. This is not unique in being a case where one person's freedom limits another's. It is controversial, however, in that unlike cases of assault or the expression of ideas, it does not fall clearly on one or the other side of the division between self regarding acts and acts of interference with others.

I have attempted to assess some of the major arguments in this debate. Naturally such a discussion cannot be exhaustive but I hope it is representative of the important positions.

In my first chapter I discuss Locke's Labour Theory of Acquisition. He asserts that if one labours on a previously unowned object one acquires exclusive rights over it. This theory is the most plausible account of how individuals could come to acquire property without the acquiescence of others. If he is right, rights of ownership created by the labour of the possessor or by someone who freely transferred the object to the owner ought to be respected in all circumstances. If he is wrong, property rights must have received the actual consent or be capable of receiving hypothetical consent of some or all other parties.

It is possible to distinguish three arguments in support of this. The first is that this arrangement is necessary for the consumption and productive use of things. I assert on the contrary, that while it is necessary to allow people rights to labour on, use or consume things, nothing follows from this about whether they ought to have exclusive control over the objects into perpetuity. This argument merges with two utilitarian points: that if labour gives title, land and other resources will be controlled by the most productive and such people will have an incentive to increase the general stock of resources. If these rights include the power to bequeath however, the land will very possibly pass out of the hands of the industrious and into the hands of the weak and lazy and other talented or industrious people will be

deprived of the opportunity of exercising their skills.

A second argument is that labour mingles the labourer's identity with the object and so he acquires the same rights over it as he has over his person. But the absolute inviolability of one's body seems to rest on various facts which do not apply to objects.

Locke places two limits on the amount of property one may acquire by labouring. The first is that what one acquires should not go to waste; the second, that there should be "enough and as good" left for others. There is much controversy as to how the second should be interpreted. Nozick, who advocates a slightly modified Lockean theory, says: "The crucial issue is whether others are left worse off".

If, as in conditions of abundance, others are left with more than they could possibly want or use, the labourer does them no harm in refusing them access to what he has improved. If they use or take it they are doing him an injustice since they are robbing him of the results of his honest labour. In conditions of scarcity, where each act of appropriation limits the choices of others, Becker and Nozick attempt to rescue Locke. Since the labour improves the value of the land the labourer may deserve the equivalent of what he has produced. However, it makes a difference whether what others are left is money and food (as wages) or land to develop and appropriate. If they are paid out in wages they do not have the chance to develop raw materials to their

full potential.

I conclude that "private property is not necessary, nor is it natural, nor is it harmless". Since everyone has a right to a share or a right to use unowned things, they must agree to their exclusion from use of objects or to the institutions which produce exclusive rights.

Alternatively such institutions must, in some sense, increase the general well-being. In the chapters which follow I assess the merits and demerits of a system of private property, against the criteria of justice, freedom and happiness.

In Chapter II, I discuss the Marxist claim that private property is inimical to justice and liberty.

The essence of capitalism is that the owners of the means of production are free to strike up any bargain they like and can with workers. Marx said that this was unjust since the worker received less than the value of his work and the capitalist received payment although he did no work.

This account relies on Marx's peculiar notion of value and a controversial definition of desert. Marx believed that the value of a commodity was directly proportional to the number of hours spent producing it. That is, the worker's wage is determined by the number of hours needed to produce the necessities of his life, while the value of the commodity he produced is determined by the number of

hours he spent making it. If the capitalist can induce him to work for more hours than are necessary to produce his livelihood and the capitalist creams off the value of these surplus hours, he exploits the worker.

G.A. Cohen argues convincingly that this notion of value is incorrect. It certainly seems to bear no relation to the price or wage which is obtained. Nevertheless, the capitalist makes a profit - he would not invest if he didn't - and he does not work for this profit. Although he does not labour, his entrepreneurial skill, his daring and the fact that he coordinates a large number of people and resources are causally responsible for increased productivity. Still, Marxists argue, his reward is out of proportion to his contribution. What he principally has to contribute is the means of production. If he has a right to these, he has a right to what they are worth. I conclude here that the attempt to assess the justice of capitalism seems to miscarry because one first has to establish what one is justified in bargaining with (in virtue of what one can be said to deserve a reward). That is, the question of ownership seems to be antecedent to the question of justice.

Cohen writes that liberals and libertarians emphasize the freedom of capitalism but ignore its inherent unfreedom. It is true, he writes that the worker is free to sell his labour but it is also true that he is forced to sell it. Nozick denies this. Clearly they are using different notions of freedom.

Nozick believes that behaviour toward each person ought to be constrained so that he is not used for any end except as he chooses. This, and this alone, is a legitimate restraint on other people's freedom. This is contrasted with a Marxian view of freedom, as the absence of restraint, whether human or non-human and the widening of choice. This conception allows that individual freedom may sometimes be sacrificed if necessary to produce greater freedom for all. There is also a disagreement as to what constitutes a free society: whether it is a state of affairs which has been brought about by free actions of individuals or a society which produces and protects freedoms. These two notions are not necessarily coextensive unless one has a moralized notion of freedom: that one does not force someone to do something if one acts within one's rights. I believe this definition to be untenable and question-begging. One requires a more neutral notion if freedom is to be used as a criterion for judging between systems.

It follows that one is sometimes justified in forcing someone to do something, or in making it the case that he has to choose between unpalatable alternatives, e.g. to marry someone he does not particularly like or remain single.

Property acquisition and use seems to be a slightly different case. To appropriate all available land and then to bargain with the landless is to rearrange his options in a way not unlike holding a gun at his head. To avoid the difficult question of property acquisition

Nozick attempts to show that even where original resources are distributed according to a pattern (he asks his opponent or reader to imagine his favourite pattern) liberty will upset that pattern. I argue that Nozick does not prove this assertion.

To conclude this chapter I discuss the socialist alternative of collective ownership and collective decision-making on issues of production and the distribution of jobs and rewards, and conclude that on several counts this fails to produce or protect freedom. It seems to rest on the beliefs that people can be unfree in their desires and beliefs and that it is right and possible to change them, in particular it is possible and right to make people love work and their fellow men. I find this implausible.

Nevertheless the socialist critique of capitalist unfreedom still stands.

In Chapter III, I elaborate on some of the criticisms of collective ownership hinted at at the end of Chapter II, using arguments from the Neo-Liberals', Oakeshott, Nozick and Hayek. They agree with the Marxists that common property is linked to a common hierarchy of ends but characterise this link in a different way.

For Marxists collectivization is necessary to the pursuit of major goals such as fraternity, efficiency and universal job satisfaction. Extending the prisoners' dilemma analogy, it seems to make sense that

each of a group can achieve more of what he wants by acting collectively with others and compromising some of his own ends.

Oakeshott recognises the power that would be created by such collectivization but sees the threat rather than the promise of such power. The source of his disagreement is largely empirical pessimism - but it is an attitude which has been proved reasonable.

Hayek and Nozick see collectivization as productive of less of what people want and object that although collectivization might make common goals possible it is not the case that members of large groups like nations have common goals in the way that families or churches sometimes do.

Instead of common property being useful in the pursuit of common ends, common ends may be a prerequisite for the administration of common property. But forcing people to believe in or pursue common ends robs them of liberty. It is desirable to allow the individual autonomy as far as possible, especially in matters which concern him alone.

I conclude that private property is the best guarantee of such autonomy since private property rights entail a duty on the part of others to respect as inviolable an area around one. They also render one independent of others for the necessities of life and employment.

However, insofar as this argument justifies private property it

justifies some property for all, and it argues against permitting vast accumulations of wealth since these represent dangerous power structures and extend the owners' powers to the freedom to manipulate others, which is undesirable.

In Chapter IV, I discuss possible compromises. These are utilitarianism, especially Alan Ryan's version, and the theories of Rawls and Dworkin.

Utilitarianism aims at producing the greatest happiness of the greatest number. As regards property it is torn between the subordinate principles of security and equality.

Ryan suggests promoting security by maintaining present property laws but stipulating that these will change in the future. This will have the effect of bringing about needed change without disappointing any actual expectations; taxing inherited wealth very harshly, but keeping up incentives by taxing earned wealth less harshly; and splitting property rights.

Rawls rejects utilitarianism since it seeks to maximize the net amount of happiness but is indifferent to how such happiness is to be distributed. If it were necessary to sacrifice one individual or group for the sake of raising the sum of utility, the utilitarian would do so. Rawls objects that this is unjust and involves a misguided analogy with rational behaviour for an individual. In a

community there is no-one who experiences the net gain. There are just some who benefit and some who suffer. (Unlike in the individual there is no unified will which consents to the suffering).

He believes the fairest way to decide which institutions are just, would be to imagine a group of people choosing such institutions behind a veil of ignorance, that is, ignorant of their particular circumstances, talents, tastes and other morally irrelevant contingencies. Each would be prevented from designing a social system to suit himself and forced to consider the possibility of being any kind of person. Rawls believes such persons would opt for a policy of "maximin", that is, choose the society in which the least advantaged person would be better off than he would be in any other society. Since no-one deserves his talents or good fortune, the well-off could not reasonably resent some diminution of their good luck, while the worse-off could be resentful if institutions were adopted which made them even worse-off than they might have been.

Dworkin echoes this in his notion of reasonable regret. He believes it is the role of government to treat its citizens with equal respect and concern and that this is realised if no-one can reasonably regret his life. One cannot reasonably regret not being the richest, healthiest person alive but one can regret being worse-off than the average. Nor can one reasonably regret (at least one cannot hold it against the rest of the world) the fact that one wilfully wasted what one had. He concludes that the optimum dimension of equality is

equality of resources. It is unclear whether he would abandon this if necessary to raise the welfare of the worst-off. To do so seems to be consistent with the principle of avoiding reasonable regret. Equality of resources is to be reckoned over time so that no-one has reason to envy the entire life of another, e.g. if one person chooses to spend twenty years in hard, unpleasant work, he should not be grudged the wealth he manages to accrue.

This is not the same as equality of opportunity. Dworkin would like taxation to recognise differences in effort and choice but to neutralize differences in talent. If this were possible to realise it would be a very attractive system since it would:

- (1) be neutral between conceptions of the good
- (2) treat people as free and responsible for their choices
- (3) solve the incentive/equality dilemma of utilitarianism

There are problems with this as individuals must be persuaded not only to work hard but to work effectively and to use their most useful talents.

I conclude the thesis with a qualified agreement of Rawls' and Dworkin's position and a very broad outline of how this would be put into practice.

I attempt to justify this by showing how it reconciles the ideals of

equality (the version of equality I argue it is most reasonable to want) and freedom.

Finally, I touch on the consequences this theory has for parents' and society's rights and duties vis-à-vis children, international redistribution and personal rights.

Before I begin this discussion I feel it would be valuable to attempt a necessarily cursory analysis of the concept of property.

WHAT IS PROPERTY?

Property is usually considered as some kind of right to things (or even as the thing itself: "That's my property") but it is not clear what the contrast to such a right could be. In the absence of other beings who deserve moral consideration, what constraints could there be on one's using, consuming or disposing of physical objects? The essence of property rights seems to be rights against others in regard to things. Lawrence Becker maintains that:

".. the full or liberal notion of ownership is most adequately explicated by reference to the following list of elements:

- (1) The right to possess, i.e. to exclusive physical control of the thing owned

- (2) The right to use, i.e. to personal enjoyment and use of the thing
- (3) The right to manage, i.e. to decide how and by whom a thing shall be used
- (4) The right to the income, i.e. to the benefits derived from foregoing personal use of a thing and allowing others to use it
- (5) The right to the capital, i.e. the power to alienate the thing and to consume, waste, modify or destroy it
- (6) The right to security, i.e. immunity from expropriation
- (7) The power of transmissibility, i.e. the power to devise or bequeath the thing
- (8) The absence of term, i.e. the indeterminate length of one's ownership rights"

In addition to these rights, Becker lists the following correlative liabilities:

- "(9) The prohibition of harmful use, i.e. one's duties to forbear from using the thing in certain ways harmful to others

- (10) The liability to execution, i.e. liability to having the thing taken away for repayment of a debt

- (11) Residuary characteristics, i.e. the existence of rules governing the reversion of lapsed ownership."

(Becker, 1977 : 18)

These are characteristic elements of ownership but no particular one is necessary. (1), (3), (6) and (7) refer explicitly to other parties and seem to be what distinguish private property from lawful use of unowned or common property. That is, the right to exclude others or to determine how they may use the thing, the right to pass these rights on to another (and to set the terms of this transfer) and the right to be protected in these rights by the law. By contrast, the essence of common property is the right not to be excluded from certain types of use of an object.

CHAPTER II

LOCKE'S LABOUR THEORY OF ACQUISITION

In his discussion of property (Locke: Sect. 24), Locke takes as his starting point the premiss that "God, as King David says (Psalm CXV:16) has given the earth to the children of men, given to mankind in common". He wonders how it is possible for individuals to acquire exclusive control of objects if this is the case. Using two further premisses of the Natural Law:

- (2) that man has a right and duty to do whatever is necessary to preserve his life, and that

- (3) he owns his labour;

he argues that a man can come to own whatever (previously unowned) objects he labours upon. The same Natural Law sets limits on how much he may acquire in this way: he may only acquire, "As much as any one can make use of to any advantage of life before it spoils..." (Sect 30). He is further obliged to leave "enough and as good" for others (Sect 26).¹

"Property" is the right to use an object as one pleases, to decide who else may use it and to pass these rights on to another. Secondly the

assertion that "God has given the earth to the children of men, given it to mankind in common", is imprecise. Locke presumably believed that God owned the world and handed it over to men. When an individual passes control of an object to a group, their rights regarding it can be one of the three following sorts:

- (1) That each has a right to an equal share of it and that each has no right to the share of the next; or
- (2) That all have equal rights to use all of it but not to exclude each other; or
- (3) They are to divide it up or organise use of it by some decision procedure.

(1) and (3) have interesting implications, but perhaps (2) is the best option since it makes the fewest assumptions about the existence and intentions of a giver and can be accepted as the original position of man by one who accepts only the right of each person to act as he chooses as long as he does not infringe the rights of others to do the same. Objects do not have rights so the right to free action can include the right to do whatever one likes with them.

By "labour" Locke means purposeful activity which changes the nature or position of physical objects. This includes picking up acorns and building fences. It perhaps implies making the object more useful.

It is not clear precisely how much one may acquire by a particular act of labour. For instance, does labouring on one part of a thing, give one a right to the whole of it?

I shall argue that there are three distinct arguments for the conclusion that labour entitles one to control objects. The first is that private property is necessary for productive use of objects. The second that labour necessarily mingles the labourer's identity with the object, in such a way that to take it from him against his will is akin to harming him physically. The third is that labour increases the value of the object and that the labourer deserves recompense in the form of the object itself.

At first sight the relevance of Locke's argument may seem doubtful as there are very few unowned things to which questions of just acquisition might apply. However, Locke addresses the questions of whether things can ever be owned at all, and if they can, whether appropriation can occur without the consent of others, and what sort of limits there are on appropriation.

If Locke's argument is good then, since property is a natural right, it should be respected by moral agents and protected by law irrespective of the consequences of doing so. Perhaps "irrespective" is too strong, as many rights are defeasible. However, one cannot be said to have a right unless it is guaranteed that it will not be overridden except in very extreme cases.

Further, if labour is a sufficient condition for appropriation, individuals can come to own a very great deal since what one gains by one's own labour can be supplemented by bequests or gifts from other's (they presumably had a right to give it, if they laboured on it.) More importantly, it is possible to buy the use of someone else's labour. Locke does place two restrictions on appropriation but as we shall see, these two are fairly easily transcended.

If, on the other hand, Locke cannot establish his conclusion, this will have important consequences for questions of distributive justice. Locke's argument is the strongest and most coherent example of what may be called "the independent action" theories of property appropriation. The others such as "first occupier" theory or theories which describe appropriation as effected by an act of will, are impossible to implement because of their lack of precision, and lack the intuitive force of Locke's theory. If his theory is false, the notion of a right to appropriate without the consent of others will be undermined.

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Locke writes "And the condition of human life, which requires labour and materials to work on necessarily introduces private possessions". (34).

Locke rejects the idea that private property rights were brought into being by a contract in which men consented not to interfere with the

possessions of others. Such an agreement would have been impossible since it would have involved the convening of people from all places and times. It would not have been binding upon anyone not a party to it.

It is necessary for there to be a means of appropriating individually because even to eat is to appropriate and if one cannot eat, one cannot live and if one cannot eat without the consent of others and such consent is impossible to obtain, one is forced to starve or steal: an absurd situation considering the plenty which has been provided for man (28).

Private property is necessary, not only for consumption, but also for effective use. "God gave the world to man in common but since He gave it to them for their benefit and the greatest convenience of life they were capable to draw from it, it cannot be supposed He meant it should always remain common and uncultivated. He gave it to the use of the industrious and rational (and labour was to be his title to it); not to the fancy or covetousness of the quarrelsome and contentious."

(33)

Locke seems to be implying that in order for it to be cultivated it must be appropriated. It is unclear whether this is conceptually or practically necessary. Anyway, in order for it to be most efficiently used, it must be controlled by the most intelligent and industrious and motivated person. This is best ensured if labour is a necessary

condition for appropriation. This line of argument also supports extensive appropriation by one person who employs others. Locke was able to transcend (or avoid) the restrictions of the non-spoilage proviso because "as the different degrees of industry were apt to give men possessions in different proportions, so this invention of money gave them the opportunity to continue and enlarge them" (Sect. 48).

One may exchange the useful but perishable fruits of one's labour for money. Money does not spoil so accumulations of it cannot violate the spoilage proviso. Nor can it be used except as a medium of exchange so that hoarding it up is to no-one's "prejudice". Finally, since the use and value of money are conventional, it must have been consented to by all who use it.² By extension they have agreed to the unequal distribution it facilitates. C B Macpherson (in The Political Theory of Possessive Individualism) claims that Locke believed that the accumulation of gold quickened and increased trade and that the purpose of trade was to increase the wealth and power of the nation.

This part of the argument stresses the necessity of appropriation for consumption, cultivation and rational use of resources. It is mistaken however to imagine that land cannot be cultivated or any raw materials improved without the sort of private property rights envisaged. It is conceptually possible that a person could labour on something - for the fun of it, for self-expression or in order to carry out some other project - (as when travellers hack out a path through a forest) without thought of keeping it. But is this a

practical possibility? There are two difficulties here. First, it may be thought to be impossible to carry out a long-term project on an object if one has no guarantee that at no point others will interfere. It is impossible, it is said, for people in certain rural areas to grow trees since there is no private property there and no-one can be prevented from chopping down young trees for firewood. It does not follow that the only laws insuring a chance of success to such projects will be fully-blown property rights. One may need to allow individuals exclusive control of the land or object for the duration of the project only; or rule that certain types of interference are illegitimate.

There is the further difficulty that it seems to be a rough psychological law that people work harder if they have an incentive. This is an empirical point and one I shall deal with in detail later. It is not obvious, however, that full property rights are the only possible incentive.

As regards Locke's second point, he does not seem to realise that although the rational and industrious are encouraged to appropriate, many rational and industrious people are prevented by this system, from exercising their skills to the full, and so, from receiving rewards and benefitting mankind.

The existence of rights of bequest mean that it is highly probable that control over large areas passes out of the hands of the strong and rational and into the hands of the weak and inefficient - whose

position is entrenched by the protection of the state.

3 - - - - -

Thomas Mautner (Mautner, 1982) claims that Locke's account argues from the factual integration of self and objects to the conclusion that labour creates property rights. On Pg. 261 he asks, "Why should labour give title?" and comes up with two possible alternatives as to what Locke intended. The first he calls "Fusion of self with object" (the self is extended to the object). The argument would be:

1. I own my labour.
2. I mix it with an object.

Therefore I own the object.

This presupposes the underlying principle "that something which is joined with my own thereby becomes my own" (Pg. 261) which has the consequence that I can come to own a whole lake simply by pouring back into it the water I have already drawn. Our intuitions it seems, do not support this underlying principle.³

The second version of the argument is "Incorporation". Here, by contrast, the object is drawn into the self or *sum*. Mautner quotes Locke: "He that is nourished by the acorn he picked up under an oak,

or the apples he gathered ... has certainly appropriated them to himself. Nobody can deny but the nourishment is his. I ask then, when did they begin to be his? When he digested? Or when he ate? Or when he boiled? Or when he brought them home? Or when he picked them up? And it is plain, if the first gathering made them not his, nothing else could." (Sect. 27).

Mautner interprets this as saying that appropriation is a continuous process beginning with the first gathering and ending with digestion; labour must be the appropriative stage, since it is the first in a continuous process and since it would be arbitrary to draw a line at any particular point in a continuum, no line can be drawn anywhere. There is one stage at which it is indisputably appropriated by being part of the body.

Mautner says that there is a contradiction which is caused by the fact that Locke fails to observe a proper fact/norm distinction. He establishes a fact: that there is a physical or quasi-physical merger between person and object and treats this as giving rise to a right. On Pg. 267 Mautner writes, "The same statement 'labour has appropriative effect' is presented both as a conceptually necessary truth - when he argues for it - and as a morally necessary truth". A tension results: if p is conceptually necessary then not-p is impossible, but if p is morally necessary then not-p is not impossible.

However, the traditional problem of deriving an "ought" from an "is" is that of deriving a morally obligatory conclusion from factual premisses. Locke's argument does not have wholly factual premisses. He asserts that one has a right to exclusive control of one's body. The force of the "incorporation" argument is that food becomes part of one's body and that it is arbitrary to draw a line in the process of integration except at the point where one physically removes the object from the state of nature. The idea is that there is no relevant difference between the food and the body and that, therefore the food takes on the moral status of the body. If we have natural rights to exclusive control of our bodies, we have the same rights to exclusive control of objects we own.

There is a different problem with this argument. Do I necessarily appropriate acorns if I eat them? What if I stole them? Then they are mine, in the sense of being part of my body, and not mine, since someone else's rights to them excluded mine. Presumably one must presuppose as well the right to eat acorns that no-one owns. This is fairly uncontroversial. It is not uncontroversial morally or factually that one can set in motion any "incorporative process". If one's ownership of acorns rests on the fact that one will at some stage eat them, what sort of incorporative process does one's right to appropriate an oil-well rest upon? There are other kinds of incorporation. One can make oneself a wooden leg over which one may have the same rights as one has over one's natural legs. Does the same apply to a kidney machine? One can perhaps claim that ownership

of books rests on the fact that one incorporates the information contained in them.

Samuel Wheeler in "Natural property rights as body rights" has contributed some specular examples. He writes (Wheeler, 1980: 173) "Intuitively, our special rights with respect to our bodies are independent of several contingencies". These are: It does not depend "on the relative equality or efficacy of our bodies". If one person were ten times as strong as any other, that would not give others a right to his aid. Nor does it depend on the difficulty of transfer of parts; nor on the fact that "parts of the body are standardly attached at all or even have sensation and agent-type control; nor is it relevant whether we actually need a part". He says in most cases a second kidney is far less useful than a second car. So he says, if wooden legs have the same status as natural ones, why shouldn't the clothes "we genetically defective" humans make to replace the fur we lack, or the shelters we make to compensate the fact that, unlike turtles we do not have homes on our backs, or the pretty jewels and make-up we wear to make us as attractive as peacocks, have the same status also.⁴ This is all fairly bizarre, but Mautner does make the interesting point that one can suffer as much physical and emotional damage at the loss of one's ancestral home as one does at the loss of a finger.

A fundamental tenet of his argument is that having a right is not a matter of degree. One either has the right or one doesn't; and if

there is no point at which one can draw a line between a situation in which one clearly has the right and a situation about which there is some uncertainty - then one has the right in the latter case as well. This is not obvious. Rights seem to have different degrees of importance. It may never be justified to kill one innocent person to save a number of others, but it may be justified to slap him. Similarly one has different rights over the different parts of one's body which have different degrees of importance corresponding to the number of the so-called contingent factors involved. For instance, if I am asleep and someone cuts off a lock of my hair I will be less damaged, angry or justified in taking legal action than if he takes a pint of my blood, and much less so than if he takes a kidney and still less so than if he takes part of my brain. There are different degrees of importance and defeasibility amongst different rights; and different strengths of claims to a particular right.

It remains a question whether we have a right to carry out the sorts of incorporation Wheeler describes. We saw, in the case of the acorns, that one's right to the acorns one picked up rested on the right to eat those acorns; but if one had stolen them - even in order to eat them - one would have no claim. It is not intuitively obvious that we have unlimited rights to self-aggrandizement. It is clear, therefore, that the argument which says that labour is de facto incorporation in the sum, and as such produces a de jure right to the object laboured on, is unsound.

4 - - - - -

There is another argument to support the claim that labour gives title. I believe it is another argument and not an alternative interpretation, because Locke writes "Nor is it so strange as perhaps before consideration it may appear, that the property of labour should be able to overbalance the community of land" (70), which suggests a conjunction of arguments. He continues, "for it is labour indeed that puts the difference of value on everything..." and "I think it will be but a very modest computation to say, that of the products of the earth useful to the life of man, nine-tenths are the effects of labour".

It would be unfair to take away this added value especially since labour is usually unpleasant. Strictly speaking this argument supports a man's right to receive only the value he added and not the extra value of the raw materials he used. However, Locke would probably reply that they were of such minimal value and are so bound up with the labour that it would be pointless or impossible to separate them.

Lawrence Becker (Becker, 1977 : 35) points out that neither of these considerations applies to land, which is the subject of great controversy in property rights debates. Becker (Pg. 41) quotes an argument by Proudhon and a counter argument from Mill which are relevant here.⁵ Proudhon writes, "The rich have the arrogance to

say 'I built this wall. I earned this land with my labour.' Who set you the task we may reply and by what right do you demand payment from us for labour we did not impose on you?"

Mill responds, "It is no hardship to anyone to be excluded from what others have produced: the producers were not bound to produce it for his use, and he loses nothing by not sharing in what otherwise would not have existed at all". Can this give title to what otherwise would have existed such as land? Locke writes "... he that leaves as much as another can make use of does as good as take nothing at all".

(Sect 32) and "he that had as good left for his improvement as was already taken up needed not complain, ought not meddle with what was already improved by another's labour; if he did, it is plain he desired the benefit of another's pains, which he had no right to..."

(Sect 33).

In effect, the appropriator violates no-one's rights, but his rights are violated if he is deprived of something he has laboured on.

Locke imagines a situation of abundance where there is far more than the population of the earth could use or reasonably desire - and defends property rights there. Such a situation is very far from our world, and from Locke's own. How does he move from a defence of private property rights in the face of abundance to defence of such rights in the face of scarcity? There are several different interpretations.

C B Macpherson (Macpherson, 1962) writes that Locke believes a man is not entitled to appropriate more than would leave "enough and as good" for others, i.e. that this is a necessary condition of just appropriation. This he calls the "sufficiency limitation". He claims that Locke manages to transcend it as follows: In Section 37, Locke writes "To which let me add that he who appropriates land to himself by his labour does not lessen but increase the common stock of mankind". He says that even the worst-off landless labourer eats and dresses better than a king in a country where there is no appropriation.

Macpherson constructs a plausible interpretation: That (Pg 212) "even if there isn't enough and as good land left for others, there is a good living". And although the original proviso implied that there ought to be enough raw materials and land left over, this can be overridden as it is based on a more fundamental right (to the means for the preservation of life) which is not violated by the revised proviso. "A living was what the original right guaranteed. And not only does appropriation leave this living - it provides it". All that is needed to bolster this right is the legal guarantee of the right to work or to be paid unemployment benefits if it is impossible to work.

This is a plausible reconstruction but it seems to distort the picture which "enough and as good" suggests when it is first used. There it seems to mean that so much should be left that it would make no difference to the others whether one had appropriated or not i.e. that

as much should be left as others could reasonably want or use. With this meaning, the inclusion of the proviso makes appropriation seem harmless and the argument for it very forceful. In Macpherson's reconstruction, it means only that no-one should be left so little that he starve. And there are no restraints on the amount of work he can be forced to do to earn this.

It is implausible to say that he would be worse off in the wilds of America since although he would have no more food he would certainly have to work less intensively (as Locke says it is labour which makes the difference between the two countries). Anyway, if the labourer were to go to America and put in a comparable amount of work, he would be vastly better off.

Jeremy Waldron (Waldron, 1979) rejects Macpherson's reconstruction. He believes that Locke did not intend the clause "enough and as good..." to be taken as a restriction or a necessary condition on appropriation, and that Locke intended "other more stringent restrictions". He cites Section 31, where the spoilage proviso is introduced and discussed as if it were the only restriction. In Section 26 Locke writes "For this 'labour' being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough and as good left over", he seems to introduce a sufficient rather than a necessary condition.

i.e. P at least where Q suggests, if Q then P rather than: if P then Q.

By analogy "abortion is justified at least where the woman has been raped" does not entail that it is justified only in the case of rape. Locke knew he had a strong argument for labour's title where there was abundance, but that does not mean he did not intend it to create a title under other circumstances. Waldron says that "enough and as good" is not a restriction which has to be removed. Its disappearance is the natural consequence of the operation of justice in acquisition without the spoilage proviso.

It seems that Locke did not explicitly say that the "enough and as good" clause should function as a proviso, but did he imply it? Waldron shows that his interpretation is not inconsistent with Locke's fundamental premisses and that, to impose such a proviso would have been irrational. Locke believed that a man's first duty was to preserve himself. "If at the dawn of time there hadn't been enough for the survival of all and if the 'enough and as good' clause applied, no-one would have survived. (Waldron, 1979 : 325). So, Waldron says the "enough and as good proviso" applied under all circumstances, would be incompatible with the Natural Law.

Waldron then denies that we are committed to reading Locke as permitting accumulation of great wealth in the face of starvation. Locke says that the second duty of the Natural Law is to do all

reasonable things one can do to assist the survival of others (Locke, First Treatise 88-89) and (I 42) "As justice gives every man a title to the product of his honest industry, and the fair acquisitions of his ancestors descended to him, so charity gives every man a title to so much out of another's plenty as will keep him from extreme want where he had no means to subsist."

He claims that this is a more stringent proviso since it applies to property which is already owned and does not just restrict initial acquisition of property. It comes into operation, however, only in cases of "extreme want" and although it seems likely that this is what Locke meant, it remains true that the plausibility of the first part of Locke's argument rests on the idea that no-one is made worse off by property rights; and that in the situations described by both Macpherson and Waldron, people are decidedly worse-off than they would otherwise have been.

5 - - - - -

Lawrence Becker suggests that perhaps the claim "labour has an appropriative effect" is supposed to be taken as axiomatic - a ground-floor moral claim. (Becker, 1977 : 49) He shows that this is unreasonable, but that there is another, closely related notion which does have this ground-floor quality. This is the notion of desert, or the claim that people deserve something for their labour. Becker writes "To ask whether desert is intelligible is to call into question

the whole enterprise of passing moral judgment" (49) and to do this in turn, would be to call into question the notion that people are responsible for their actions, and that some actions are good and others are bad: assumptions without which there can be no morality.

He says the basis for the desert is

1. One's own deeds or character.
2. Something which is not morally impermissible.
3. Something which is over and above what it is one's duty to do.
4. Something which adds value to the lives of others.

Of course, the principle is double-edged so that any action which is done freely which detracts value from others' lives can be said to be subject to a penalty. One deserves a reward or a penalty which is in proportion to the amount of good or bad one has produced and in the case of reward, it should be something the agent wants.

When applied to the question of property rights, this principle would yield the following consequences. Since labour is a purposeful activity, often directed at taking an object from the state of nature, the appropriate reward for the value added, may be the object concerned. However it need not be. The labourer may not care whether

he gets that particular object but only that he gets food, security, status. In which case a system of common ownership can easily fulfill the requirement of the desert principle. Even if he does want the object, this argument does not provide an unequivocal defence of private property rights.

Secondly, if labouring is to be rewarded with appropriation, where appropriation is to the prejudice of others a penalty in the form of taxes, is to be exacted. It is difficult to estimate the amount of harm done to others by appropriation. Appropriation of vast territories in 1700 may have done little harm, but the continuation of those territories in the control of one person may do a great deal of harm now. When was the evil perpetrated (if ever)? When, and how, should it be penalized?

Furthermore, Proudhon's criticism still has force. Why should I pay for a benefit I didn't ask for? In a system where labour does give title, people labour in order to appropriate, but it remains an open question whether there should be such a system. If there were not, either people would not labour - so they wouldn't be hard done by in not receiving rewards - or if they did, and did without first making a particular contract, they would lose the fruits of their labour. Just as, if I came around and painted your house and then demanded payment, you would be justified in refusing.

Inheritance poses problems for the notion of desert. One baby cannot

be said to deserve one million times as much as another. On the other hand, someone who makes a significant contribution to mankind seems to deserve payment and his right to keep that payment seems to include the right to give it away to anyone he chooses - his own child, for instance. We have strong intuitions pulling each way.

There is a further suggestion that people don't deserve their talents, since these are as much a matter of chance as is a wealthy family - and that therefore they don't deserve the fruits of those talents either. This is partially reflected in our intuitive notion of desert when we reward people not only for their achievement or contribution but also for their (unsuccessful) attempts and sacrifices.

6 - - - - -

Running through Becker and Mill's interpretation of Locke is the idea that appropriation is justified if it leave others exactly as they were - either by doing nothing to them or by a complicated mixture of harm and benefit. This, as we saw, seems to be the essential intuition which makes the argument plausible. Nozick sums this up as "The crucial point is whether appropriation of an unowned object worsens the situation of others". (Nozick, 1974 : 175). Nozick points out that one may make someone worse-off by one's appropriation in two different ways and so there are two possible ways of interpreting the restriction. These he calls, the strong and the weak versions of the proviso. His conclusions concerning property rights derive from the

fact that he believes that it is the weaker version which is the correct one.

He writes "Consider the first person Z for whom there is not enough and as good left to appropriate. The last person Y to appropriate left Z without his previous liberty to act on an object, and so worsened Z's situation. So Y's appropriation is not allowed under Locke's proviso. Therefore the next to last person X to appropriate left Y in a worse position, for X's act ended permissible appropriation. Therefore X's appropriation wasn't permissible.....And so on back to the first person A to appropriate a permanent property right". (176). The fact that there now or in the future, is not enough for all to appropriate means that there never were rights to full inheritable ownership.

Or one can worsen a person's situation by not leaving him enough to use. In this case, Y's appropriation would not violate the proviso. Which form of the proviso ought to be imposed? Nozick asks "Is the situation of persons who are unable to appropriate (there being no more accessible and useful unowned things) worsened by a system allowing appropriation and permanent property?" (Nozick, 1974 : 177).

A strange question. Does Nozick mean that if Z cannot appropriate it makes no difference to him whether others have done so - since in a system which allowed no property, he would not be able to appropriate either?

He certainly would be worse off in other ways: he would have less to use; he would be in the power of the owners; he would feel himself at a disadvantage in competitive situations and as a result, he may lose all self-esteem. Nozick says that there are various facts about a system of private property which make everyone, including the propertyless, better off. These are that such a system is more productive, allows more scope for individuality and provides an incentive for people to hold back for future generations.

In deciding whether a person is made worse-off, Nozick says one must compare his present holdings with his share of "all the income that is based upon untransformed raw materials and given resources" which for the United States, is estimated at about five percent of the national income (Pg. 177). On Pg. 181 he writes, "The results, however, may be co-extensive with some conditions about catastrophe, since the baseline for comparison is so low as compared to the productiveness of a society with private appropriation that the question of the Lockean proviso being violated arises only in the case of catastrophe". Why should Nozick compare the welfare of a landless person in a capitalist society with the welfare of a hunter-gatherer. Surely such a person is worse off in not being able to develop his share to the full. For instance, if my father left a piece of land to my sister and me without dividing it, and I took nine-tenths of it before she was old enough to stop me and increased the value of that area ten-fold. If, on coming of age she increased the value of the remaining land to its full extent (also ten-fold) and demanded her share from me, and I gave

her four units (out of my ninety) claiming that that was all I had deprived her of - would she be content? Should she be expected to be content?

Mankind's relationship to the earth and its fruits does not necessarily follow this model. But Locke does start with the assumption that God gave the earth to all men in common. The example shows that if people can make any valid claim to a share of the earth's resources, their claim is not satisfied if they receive the equivalent of that share in money or food because what they receive does not have the same capacity to be exploited as their original share would have done. They are worse-off in that they are deprived of the opportunity of increasing the value of their holding to an extent determined by their industry. It is not obvious that the weaker version of the proviso is the one we should adopt.

7 - - - - -

It appears that there are three different arguments for Locke's conclusion that if one mixes one's labour with an object one comes to own it. These are: that appropriation is

1. Necessary for the consumption and efficient exploitation of resources;
2. That labouring makes an object part of oneself and as such

protected by the same rights as one's body;

3. And one deserves to receive the object if one has improved the world, by labouring on it.

The first appears to be untrue or inconclusive as raw materials and land can be exploited without a system of private property and such a system can protect the rights of the inefficient and weak to property while excluding some rational and industrious people from exercising their abilities.

The second and third each rest on an assumption which remains to be proved. Although if one incorporates a physical object into one's sum one may come to own it, when is one entitled to so incorporate it? Granted that one deserves the fruit of one's labour if one has the right to labour in order to acquire the fruits in the first place, but does one have the right to labour on these terms?

There are two distinct rights

1. The right to keep the product of one's labour.
2. The right to have something to labour on in order to acquire the product.

Locke does not believe anyone has 2.; therefore it would be no

violation of anyone's rights if from the beginning or in a new area, land was appropriated in common and no-one was allowed to fence off any for his exclusive use. What are Locke's arguments for saying that a system of private property rather than of public property should exist?

He says that a system of private property can develop spontaneously, whereas systems of common property are possible only where groups have agreed to treat something as common property.

However, Gibbard questions whether a hard libertarian position would support the development of property rights in the manner Locke describes. Such a position would suppose that all people have equal freedom of action and that they lose these rights only if they give them up voluntarily or if they violate the rights of others in a way which puts them into a state of war with them. (Gibbard, 1976 : 77-88).

Such rights would allow one to use, consume and transform things (to an extent) since it is not a violation of a man's rights to change his physical environment. They would not allow one to appropriate, however, since appropriation entails the curtailment of others' rights and this can only happen with their consent. Gibbard makes the reverse claim from Locke. Locke says that private property is natural and common property requires convention, while Gibbard says that common property is natural and private property requires convention.

Locke shows that the sort of convention necessary could not possibly occur (since it would require people from different generations to meet). He also tries to show that private property is necessary for life and happiness - but it is not obvious that this is so. He also tries to show that property rights were an extension of other natural (relatively undisputed) rights. He has not done so.

If private property is not necessary, nor is it natural, nor is it harmless, it remains an open question whether one should have the right to appropriate things and exclude others. This remains, in fact a question for collective human choice.

FOOTNOTES

1. By "property", "own", "appropriate", I understand not physical relations of people to objects but legal or moral relations.
2. Locke seems to ignore the possibility that people may have been forced to accept the convention.
3. Locke believed that if one's servant mixes his labour with an object, one would come to own the product. The foregoing argument, if it were successful, would seem to suggest that the servant had acquired the product.
4. Marx writes in a similar vein but with less enthusiasm, "That

which exists for me through the medium of money, that which I can pay for... that I am, the possessor of the money. My own power is as great as the power of my money... What I am and can do is, therefore, not at all determined by my individuality... As an individual I am lame, but money provides me with twenty-four legs, therefore, I am not lame, I am a detestable, dishonourable, unscrupulous and stupid man, but money is honoured and so also is its possession. Money is the highest good, and so its possessor is good. Besides, money saves me the trouble of being dishonest; therefore, I am presumed honest, I am stupid, but since money is the real mind of all things, how should its possessor be stupid? (Marx, 1844).

5. From P J Proudhon What is Property?
and J S Mill Principles of Political Economy

CHAPTER III

MARX'S CRITICISM OF PRIVATE PROPERTY

In this chapter I assess the claim that private property is inimical to justice and to freedom. My answer to the question of whether it is inimical to justice is ambivalent. I reject Marx's labour theory of value which if true, would have shown capitalism to be thoroughly unjust.¹ If justice depends on the notion of desert then there is a sense in which capitalists deserve their property (in cases where they have obtained it by hard work or as a gift from others). I claim that our notion of desert is fundamentally ambiguous and that our intuitions support both interpretations and their consequences. For this reason I believe the question of the justice of private property to be one which is impossible to answer. As regards private property's consequences for freedom, I believe that the libertarian claim that a free market means a free society and the socialist claim that it is the enemy of freedom, rests on another conceptual divergence but am more optimistic about arbitrating between the two concepts. Marx writes that capitalism is "a very Eden of the innate rights of man, which satisfies the rights of freedom, equality and property" (Capital 1:176). This, of course is intended as heavily ironical but many people believe these claims in all seriousness: man is free in a capitalist society because no master forces the labourer to work. He agrees to work and may opt out of the contract when he chooses. Worker and capitalist face each other as equals, since both are owners of commodities the other needs. If the capitalist has more

than the worker it is because he has worked harder. Property rights are respected, since each party owns a commodity and has exclusive control over it, which includes the right to alienate it.²

It is Marx's aim to expose this apparently free and fair contract as the very opposite of that. It is a point of controversy whether Marx condemned capitalism on the grounds that it was unjust.

Allen W. Wood writes, "an economic transaction is just if it harmonizes with the prevailing mode of production. Because 'justice' is a legalistic term, it is dependent on a particular legal system"; and continues "The fact that transactions are just is no defence of capitalism. The justice of capitalist transactions consists merely in their being essentially capitalist". (Wood, 1979:267-269).

Others claim that Marx was being ironical when he called capitalism just; or that he was using an "inverted comma" sense of justice in an attempt to explain why capitalism is believed so persistently to be just. Arneson (1980) for instance, believes that he had a different objective notion of justice. On Pg. 205 he argues that "Marx adheres to an austere notion of desert according to which people are responsible (at most) for their intentions and not for the actual results of acting on their intentions, for those results are causally influenced by a wide variety of moral contingencies. One is responsible only for what is within one's control" and therefore the just society is the one which rewards equally those who make equal

productive sacrifices. Arneson claims that this notion is at the bottom of Marx's prescription for an ideal society embodied in The Critique of the Gotha Programme: "From each according to his ability, to each according to his need". Since it is assumed that each will try equally hard, and it would be unjust to prevent anyone from developing his full capacities by ignoring his needs.

Whether or not Marx thought capitalism unjust, it may be that we reject his idea that morality is dependent on the mode of production and have an objective criterion of justice. It may be that his description of capitalist relations provides us with the material for saying capitalism is unjust. On the other hand, it may be that capitalism is just although it produces other evils. In which case these evils may not be reason enough to abolish it. I shall consider what an attack on capitalism as unjust, would be, assess it and discuss the other, more important attack which Marx did endorse - from liberty.

If capitalism can be said to be unjust it is because it is exploitative. Marx shows that capitalism is exploitative but it remains uncertain whether exploitation is a purely technical term or whether it has normative connotations. The definition of exploitation is: the extraction of the surplus value of the labour of one class by another. According to Marx in Capital, the worker produces a

commodity such as cotton. Part of the value of this is needed to replace the raw materials and maintain the machinery; part is needed to keep the worker alive and fit. The former portion Marx calls constant capital; the latter, variable capital because while a given amount of yarn will produce a constant amount of cotton however quickly it is used, a worker can work a six hour or a twelve hour day on approximately the same amount of food. If he produces value greater than that needed for his maintenance etc. he produces surplus value which is appropriated by the capitalist. This appropriation constitutes capitalist exploitation: The worker works harder than he need but receives no extra reward and the capitalist does no work but receives the profit.

Marx believed that capitalists purchase labour power at its exchange-value and gain its use-value which enables them to produce a product whose exchange-value is greater than that of the labour-power. The difference between the two is surplus value. Marx says use-value is the value one enjoys in using a commodity. Exchange-value is "determined by the socially necessary labour contained in it. Socially necessary time is the time required under normal conditions with average degree of skill, using modern industry ..." (Capital 1:1).

G A Cohen [Cohen, 1978(B)] argues that the claim "labour creates value" is false and that even if it were true it would not justify the moral indignation at the fact that labourers do not receive all the

value they create.

He says Marxists argue:

- (1) Labour and labour alone creates value.
- (2) The labourer receives the value of his labour power.
- (3) The value of the product is greater than the value of his labour-power.
- (4) The labourer receives less value than he creates.
- (5) The capitalist receives the remaining value.
- (6) The labourer is exploited by the capitalist.

[Cohen, 1978(B):342]

He says that the labour theory of value does not entail (1) and that (1) is in fact false.

He writes "Suppose a commodity has a certain value at b , then that value, says the labour theory is determined by the socially necessary labour time required to produce a commodity of that kind. Let us now ask: required to produce it when? The answer is: at b , the time when

its value is to be explained. The amount of time needed to produce it in the past, and a fortiori the amount of time actually spent producing it are magnitudes irrelevant to its value".

Advances in technology can reduce the socially necessary labour time required for the production of a kind of commodity. Natural occurrences, such as drought, can increase the necessary time. Fashion can create or reduce the demand for a product and hence its value since Marx says "... nothing can have value without being an object of utility. If the thing is useless, so is the value contained in it..."

Value, therefore, is not proportional to the labour in fact incorporated in the object, but to the labour which would be necessary to produce a similar object. Such counterfactual labour explains value but obviously does not create it. For instance, if I happen to store a canister of fresh air today - it takes me a few seconds. If, however, air pollution becomes so bad that fresh air is extremely rare and it takes an hour for scientists to extract and bottle a comparable amount, then my air is valued at the equivalent of one hour's labour. The labour which 'created' it, did not determine its value.

Cohen notes that the doctrine that says that labour creates value is popular because it seems to support the condemnation of exploitation. He doubts whether it could do so even if it were true, if that is, it rests on the notion that the creators of value deserve what is

valuable. If, for instance the value of a commodity were wholly determined by the extent and intensity of desire for it, then it could be said that the desirers created the value. But this would be no reason to claim that they deserved the valuable object.

The labour theory of value seems to allow Marx to say that it is a conceptual necessity that workers be paid no more than is necessary for their survival. If the value of a commodity is determined by the amount of labour necessary to produce it, it follows that the value of labour power must be equivalent to the value of the hours spent producing the workers' sustenance.

Marx claims that

- (1) Socially necessary labour creates value;

Ricardo that

- (2) Value determines equilibrium price.

For each the claim is true by definition. If both were true, it would follow that

- (3) Socially necessary labour determines equilibrium price.

This is untrue, because other factors such as distribution of means of

production affect equilibrium price.

We are faced with two possibilities. Either price is independent of value. So that whatever the value of labour-power the wages (the price) of a worker are determined by some other mechanism. Trade Union pressure, for instance, has an effect on wages. Value has no bearing on the price of the commodity either, so that nothing can be said about the differences in value between labour and product.

Alternatively, value determines equilibrium price. Equilibrium price reflects the only sort of value there is - the extent and intensity of desire as against the supply of the desired commodity. In which case the intensity of workers' desire for work is balanced against the capitalist's desire for profit and a price is fixed (a just price?).

Cohen adapts the Marxian argument to expose what he sees as the real basis for the charge of exploitation. He says "the workers create the product. They do not create value, but they create what has value. The small difference of phrasing covers an enormous difference of conception. What raises a charge of exploitation is not that the capitalist gets some of the value the worker produces, but that he gets some of the value of what the worker produces." [Cohen, 1978(B):354].

This bypasses the question of what creates value. Whatever the value of the object capitalism is exploitative since the labourer receives

less than the value of what he creates.

The capitalist does not produce and yet he receives payment. That is, although individual capitalists may work alongside their employees, in their role as capitalists they do not labour and they do receive payment in this rôle which is distinct from the wages they might pay themselves.

It is not necessarily the case that surplus value is the difference between the value of the product and the amount necessary to resupply raw materials, maintain machinery and feed the workers. We have seen that workers can and do bargain for a higher wage. However, the capitalist only undertakes the enterprise in order to make a profit. So it is necessary that he receives some of the surplus value. The question is: does he deserve that profit? Although he does not labour he is to some extent causally responsible for the existence of surplus value.

Imagine a man who invents and makes a tractor. No-one else has a tractor or the skill to build one although the raw materials to do so are available. Such a man can produce in three hours sufficient food to feed himself for a day. Everyone else has to work seven hours. It is conceivable that the others could strike up a bargain with the tractor owner whereby they labour for six hours, receive what they need for life and give him the produce of three hours labour. They would be better off. It is unclear that they would have been

exploited in any perjorative sense. Similarly a dress designer or writer can employ people to produce his clothes or books. If these are popular the workers may be better paid than they would have been had they worked for themselves or for someone else. There is a clear incentive for both parties to continue the contract. Similarly, an astute entrepreneur might recognise markets and more efficient means of production. It is not obvious that the capitalist can benefit only at the expense of the worker. The worker's productivity is not a constant sum which must be shared between worker and capitalist. A Marxist might reply that the examples I have given are cases of innovation making the difference and as such must be exceptional cases. They would concede that a designer or inventor has a rôle to play but claim that it follows only that he should receive a wage, not that he should be allowed the full powers of the capitalist.

A more common contribution the capitalist makes is in the unification of a large amount of resources under the control of one co-ordinating body. This enables raw materials to be exploited to their maximum efficiency. A craftsman might be able to work shorter periods for the same pay at a factory than for himself even when the capitalist's share is taken into account. A Marxist would undoubtedly respond that this may be true but unified control of vast and diverse means of production does not require a capitalist.

The essential factor is that the capitalist in fact owns the means of production and that labour is of no use without tools and raw

materials. The capitalist provides the means of production and the worker the labour. Both are necessary and each receives recompense for his contribution. If the capitalist gains the means of production by force or fraud he has no right to such earnings. If he makes them or otherwise works for them, he may. It becomes apparent that capitalism is only unjust if private property is unjust. One cannot, therefore, condemn the institution of private property because of the injustice of capitalism.

It is perhaps this which underlies the unreadiness to call capitalism unjust. In a very natural understanding of desert one deserves the equivalent in value of what one contributes. If people come to own things because they increase the value of those things and so deserve them (as Locke says they do) then they deserve payment if they sell them and rent if they hire them out.

A different account of desert might have different consequences. In a case of A giving X to B, X often has a different value to A and to B. On the account of desert mentioned here A would deserve recompense equivalent to the value of what B received. On the different account A would deserve recompense equivalent to the value of what he gave up.

One may need to take into account other considerations in choosing between these two conceptions of just payments for contribution.³

The other attack on private property contends that it removes people's freedom or fails to produce the maximum amount of freedom.

G A Cohen (in Mephan & D H Ruben, 1981) criticizes a belief accepted by libertarians and liberals alike, that capitalism involves a "complete lack of restraint on individual freedom". Libertarians take this as justifying an unqualified free market economy. Liberals believe that there are other social values such as happiness and equality, and that there must be a compromise.

Cohen's "central contention is that liberals and libertarians see the freedom intrinsic to capitalism, but do not give proper notice to the unfreedom which necessarily accompanies it" (1981:226). He claims that the state places a constraint on one's freedom by preventing one from using other people's property which may amount to a constraint on using any object at all. The capitalist claims that the worker is free to sell his labour. The socialist that the worker is forced to sell his labour. Cohen believes these claims are compatible: to be forced to do something entails that one is free to do it. If the socialist claim is true, however workers are importantly unfree. They are not free not to sell their labour.

It is clear that to some extent we are working with different notions of freedom, or at least with a very unclear notion.

I think it is of fundamental importance when confronted by two

theories each claiming to protect or increase, say, freedom to establish whether they are talking about the same thing. If they are, at least one must be very wrong about the facts and it is of use to draw up a criterion acceptable to both for assessing the freedom of a society. When this is done, the question becomes an empirical matter. If they are not talking about the same thing, they probably have some common ground. If one could establish where they differ one could perhaps see which is most consistent with the essential features they agree upon. If neither side is especially inconsistent one can take the points of divergence as points at which to assess precisely why we value freedom so highly. "Freedom" is an emotive word. It is difficult to say one does not want a society which is free. A conceptual analysis should perhaps focus on this value (and what is distinctive about it as opposed to the value of justice and happiness) and try to formulate a definition which picks out those actions and societies which best exemplify this desirable quality whether or not they are co-extensive with those conventionally called "free".

A rough preliminary definition might argue that

A: one is free if one is not restrained from doing what one wants.

How then does one quantify freedom? An individual is more free the less he is restrained, and a society is more free the fewer restraints it imposes? Such definitions are enormously vague. They raise further questions. Is a person free if he is unrestrained by human

beings although constrained by natural forces? In the light of this possibility the definition of a free society begs the question. Perhaps a society which fails to remove natural restraints is no more free than one which imposes restrictions.

Further questions raised include: if one is free if nothing prevents one from doing what one wants, is one free if one wants to do only what one is allowed to do? Is the happy slave free? If he is, then Brave New World style genetic engineering of happy slaves, indoctrination, and lobotomies render people free.

Accepting that this conclusion is counter-intuitive we are faced with two options:

either B: one is more free the fewer restraints there are on one's actions absolutely: or

C: one is more free if one is less restrained with respect to desired actions where one's desires are themselves free.

I think there is something to be said for B. A society which prevents drug-abuse, free trade and suicide is to some extent unfree whether or not people want to do these things, but I believe that a restriction on the performance of an action one does not want to do is less important than one on something one does want to do. The intensity of the desire for an action must have a bearing on the importance of the

freedom which makes it possible. If it did not the freedom to murder would have to be counted as equal to the freedom to live. There are practical difficulties in measuring desires but perhaps a rough guide would be; a society which prevents people doing X which they want to do very much is less free than one which prevents people doing Y which they don't particularly want to do.

Again we are faced with the spectre of the Hegelian happy slave. If, as a result of indoctrination I don't much mind being your slave and having a slave would considerably enhance your freedom, ought you to be allowed to enslave me? Clearly one requires the notion of a free desire. Perhaps one desires freely when no-one has interfered with one's desires.

D. Is one most free where there are least restrictions on doing what one wants where others have not caused one's desires?

But it is not uncontroversial that the untutored savage is more free than the educated man. One can influence another in a way which makes him more free.

One can for instance

- (1) Cause someone to realise that he is in the grip of self deception.

- (2) One can teach him reason which will enable him to see through propaganda..
- (3) One can introduce him to new pleasures and possibilities which will widen the scope of his choice.
- (4) One can forcibly break someone of an addiction so as to enable him to view his situation from an objective, non-compulsive position.

Perhaps E: one is most free where there are the fewest restrictions on doing what one wants where one has been influenced to have the freest desires. There are difficulties in comparing the weights of the different variables. A more fundamental difficulty is that an educator or parent has the capacity to create or destroy desires themselves as well as the capacity to provide optimum conditions for choosing between desires. Some desires prevent one from taking steps which will widen one's future scope of choice and will otherwise be detrimental. This perhaps has the consequence that E reduces to F: one is most free if one chooses and can do what it is most in one's interest to do? I prefer E, since F has a flavour of totalitarianism. To be free seems to entail that there is more than one line of action one could choose.

Non-human restraints such as ignorance and poverty do appear to limit one's freedom. Active interference can sometimes render a person more

free. I believe, however, that the morality of manipulation of desires has primary interest for philosophy of education. To form and act upon the belief that another's desires are not in his best interest smacks of paternalism. It suggests that one believes one is a wiser person or that one has reached a superior position. This is appropriate in dealing with children and the insane but is an insulting and dangerous attitude to adopt towards most people.

A further question is how to formulate a standard for the optimally free society. Is such a society the one with the largest amount of individual freedom? Does the distribution make a difference? Robert Nozick (1974) says that behaviour toward each person ought to be constrained so that he is not to be used for any end except as he chooses. He believes this is a direct consequence of Kant's categorical imperative: "Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end". This is in contrast to the view that the maximization of freedom is to be set up as a goal to be pursued even at the expense of violation of some individual rights.

Brenkert writes that it is "the development of man, his capacities and abilities, through his productive forces and relations towards a conscious mastery and control over these forces and relations (particularly those of his own creation) which constitutes freedom". (Brenkert, 1978 : 138). To be free is "not to be susceptible to external, irrational and non-rational forces". (Ibid).

Under capitalism, people "come to consider the conditions and forces which determine their lives to be simply natural aspects of their environment, manifestations of fate or chance rather than objects of possible, rational direction". (Brenkert, 1978 : 139).

It is an interesting fact that if each member of a group acts rationally, independently and unrestrainedly, it is often the case that none of them will do as well as each would if the group decided collectively. This is typically the case in the face of large natural forces. Concerted action by the group can achieve more than individual action but there is little incentive to co-operate. For example, a large wild beast is chasing two people. If both run each will have a fifty percent chance of surviving. If they both stay and fight they have a ninety percent chance of overcoming the creature and living. But each individual (call him A), considering the odds will realize that if the other, B, stays to fight he will be killed and A will have one hundred percent chance of escaping. If on the other hand B runs away, A would be a fool to stay as he would have no chance of surviving. Co-operation is irrational for A in all circumstances (assuming A's non-cooperation does not cause B's non-cooperation) but rational for A and B taken as a pair.⁴

Brenkert would claim that this is the model for much social and individual choice. Under capitalism one has every incentive to accumulate and invest wealth rather than to enjoy it. Both proletarians and capitalists try to live lives which are as abstemious

as possible in order to sacrifice to the "Money God". The possession of money means security and power. Expenditure undermines this. Not only do people fail to use their money for pleasure and enrichment, they discourage desires other than the strictly necessary. As a result they become cynical and impoverished as people.

Production is the other great goal but production is not aimed at the satisfaction of needs but is an end in itself, and if anything causes artificial needs which are unnecessary, and even debilitating in order to fulfil its real function of producing more capital. Labour, itself, which should be a means of self-expression and the achievement of mastery over the environment, becomes something dreaded by all members of society. For the worker it represents the loss of freedom of action and for the capitalist it represents a socially inferior rôle.

Like expenditure, charity endangers one's power-base. Capitalists are forced to be ruthless if they are to survive - and to extract as much as possible from their workers and to undercut competitors where they can. The workers themselves have to compete ruthlessly with each other since there are not enough jobs for all. (This is based loosely on Marx's account in the 1844 manuscripts). This antagonism is an evil in itself but it also prevents most, if not all people, from realizing their individual ends. If freedom consists in being able to do what one wants (or to achieve the ends one desires) it may be that the capitalist system is unfree in consistently producing less of what

people want than an alternative system would. People are forced to make choices which harm or restrict others, in order to maximize their own welfare. A co-operative venture - whereby each could be assured that the others would not make selfish, socially harmful choices - could considerably increase everyone's well-being.

Small scale examples of the phenomenon of increasing individuals' options by limiting their free action would be - forbidding anyone to carry a gun; forbidding the destruction of young, communally-owned trees; or the killing of more than a fixed quota of fish; forbidding private vehicles in central business districts. Enforced poolings of books, magazines, records, toys or tools supplemented by a well-organized loan system might be vastly preferable to a system where each person hoards a small supply of these. If the option of buying a house one didn't intend to inhabit were unavailable one would spend the money on self-improvement (an alternative investment) or simply on pleasure. In such circumstances these would not be dangerous options as one would not have to fear others' acquiring power over one by speculation.

If this model really applied to capitalist societies, the envisaged restrictions on freedom need not appear as the use of some as a means to the ends of others.

However, it is very unlikely that everyone is trapped. It is more likely that the rich (or the very rich) in a capitalist society are

much more free than they would be in a socialist society. Although one of them may be forced to build a factory rather than take a world tour on a luxury liner this year, neither option would be available to him under socialism. It is not obvious that saving is not a good thing for the community and that a system which encourages it is degenerate. It is more likely that what is wrong with capitalism (if anything) is that some people have more freedom than they could possibly have otherwise but that this is at the expense of an excessive amount of unfreedom on the part of others.

Nozick has an argument to show that "liberty upsets the patterns", that is, that free action must result in a distribution of wealth which does not conform to any ideal pattern; and hence that any attempt to maintain such a pattern must interfere with people's freedom.

On Pg. 160 he invites his opponent to imagine any distribution (call it D1) of resources such as a distribution in which each has an equal share. In this society there is a basketball player called Wilt Chamberlain whom everyone is keen to watch. He contracts to play with a team in return for twenty-five cents of the price of each ticket. The spectators know about this contract and one million people pay to watch him. At the end of the season he has \$250 000 which is far more than anyone else has. Nozick asks "Is he entitled to this income? Is

the new distribution D2 unjust? If so, why? There is no question about whether each of the people was entitled to the control over the resources they had in D1, ... if D1 was a just distribution and people voluntarily moved from it to D2, transferring parts of their shares they were given under D1 (what was it for if not to do something with?) isn't D2 also just?" (Nozick, 1974 : 161).

G A Cohen [Cohen, 1978(C)] criticizes Nozick's argument. Nozick claims that third parties are left exactly as they were. They "still have their legitimate shares; their shares are not changed".

Cohen denies that this is so "For a person's effective share depends not only on what he has but on what he can do with what he has, and that depends on what others have and on how what others have is distributed". [Cohen, 1978(C):252]. Chamberlain for instance, can buy a set of houses and leave them unoccupied with speculative interest. His fans, acting independently, could not do so.

More importantly, the interests of the yet unborn are affected by such exchanges. Nozick believes a man may sell himself into slavery but that he cannot thereby sell his offspring as well. Similarly, Cohen argues, he ought not to be able to render them destitute by his extravagance.

Nozick makes no provision for people entering the community as children. Either they would be dependent upon their parents' goodwill

and competence for their shares. This would not sit well with the idea of the original "fair" distribution: why should merely being born later give one less right to a fair and secure share? Alternatively, the resources might be periodically confiscated and redivided or continually taxed or repossessed on the death of each individual to provide a pool out of which each newcomer could be given his share. These latter options which seem logical extensions of Nozick's offer to his opponent, undermine the almost inviolability of property rights.

Cohen says that Nozick's claim "If people were entitled to dispose of the resources of which they were entitled (under D1) didn't this include their being entitled to give it to, or exchange it with, Wilt Chamberlain?" [Cohen, 1978(C):261] either begs the question if it is an assertion or is inconclusive if it is an argument. Their original entitlement would include the right to give or contract as they choose only if the original entitlements were of "the absolute Nozickian sort and this cannot be assumed". Alternatively one can interpret Nozick as claiming that to exclude such rights would involve restraints on important freedoms. Cohen says such an appeal would be inconclusive as Nozick fails to consider all the reasons one might have for preventing the exchanges, such as the power which might accrue to Chamberlain.

Cohen writes "Nozick forbids any act which restricts freedom. This means that if it were true that certain exercises of freedom would

market, similarly if individuals acted and contracted legitimately in such a way that left worker X with no option but to take some particularly unpleasant job or starve, he is not forced to make the choice.

Cohen, attempting to explain the strange fact that libertarians and liberals believe that capitalism involves no unfreedom, writes (Pg. 228) "There is a definition of freedom which is implicit in much libertarian writing - that interference is not a sufficient condition for unfreedom - one is unfree only when someone unjustifiably interferes with one".

This has counterintuitive consequences for it means that a properly convicted murderer is not deprived of his freedom by being imprisoned. This definition of freedom can also undermine a typical libertarian argument against taxation or nationalization of industries. They cannot argue that interference with private property is wrong because it reduces freedom "for one can no longer take for granted, what is evident on a morally neutral account of freedom, that interference with private property does reduce freedom." (Cohen, 1978(C)). They can escape this paradox by arguing that such interference is wrong on other grounds such as injustice and that therefore it renders people unfree. But they are still operating with an inadequate notion of freedom.

As we have seen justice is itself a highly controversial term and to some extent relative to the system of property relations of the

lead to totalitarianism, Nozick would still protect them. Market freedom itself would be sacrificed if the only way to preserve it were by limiting it". [Cohen, 1978(C):256].

There seem to be two questions to be asked in assessing a distribution pattern. The first is whether it is brought about by free actions; the second whether it produces and protects freedoms.

It seems unlikely that societies which satisfy one standard necessarily satisfy the other. Nozick, however, believes they do because of his peculiar notion of freedom. On Pg. 262 he writes "whether a person's actions are voluntary depends on what it is that limits his alternatives. If facts of nature do so, the actions are voluntary" and Pg. 263 "Other people's actions place limits on one's available opportunities. Whether this makes one's resulting action non-voluntary depends on whether these others had a right to act as they did". For instance, someone who works on a desert island in order not to starve is not forced to work; nor are any of the agents in the following example forced. Imagine twenty-six men A-Z and twenty-six women A1-Z1. Each would rather marry someone than not marry at all. All the women rank all the men in the same order of desirability and vice-versa, i.e. all women would prefer to marry A to any of the others etc. If A and A1 marry they reduce everyone else's options. B and B1 would prefer to marry A1 and A respectively but take each other as second best. The pairing off continues until Z and Z1 are left with no choice but to marry each other. In the labour

moment. To act within one's rights or justifiably is to do what one likes with what one has. To act unjustifiably is to interfere or to use what belongs to another without permission. This begs questions about whether people have rights to appropriate originally and if they do, whether such rights include the right of absolute, exclusive control into perpetuity. An objective criterion is required to judge between these systems. There exists a relatively clear intuitive notion of freedom as a non-moral good, the extent to which one can control one's life, and the range of choices one has.

Nozick's ideally free society is one where agents act completely independently. Their actions affect themselves only, so interference with these is a dramatic violation of their freedom. Of course, they sometimes co-operate or exchange things but this is always a clear-cut case of using a person or something which belongs to a person. In these cases, the other's consent is required before one may use him or his property. If one has his consent the use is legitimate. If one does not, it is a violation of his rights.

However, one may question the clear distinction between self-regarding and other-regarding acts. What about action on inanimate objects? Most action requires raw materials and changing one's physical environment must affect others. Consider a world where no-one owns anything. If I exercise my freedom of action by burning all the available food or building a trench around you and filling it with acid, I affect you although these are not cases of using you or your

property. Do I require your consent? If I act thus without your consent do I not, according to Nozick, act justifiably?

If I appropriate or inherit the greater part of the land others are morally obliged (and perhaps physically forced) not to live there, work there or eat the produce. Their options are reduced by my action. Perhaps they simply have to choose a new picnic site or a new route. More disturbingly, they may find it impossible to survive without my assistance. They are then at my mercy. Their choice is to do what I demand or starve. My choice is to offer them charity, reject them or make a bargain with them. If we decide to make a contract, in a sense neither party is using the other without his consent, just as if I built a trench around him and filled it with acid and then offered to build him a bridge at a high price. However it seems arbitrary to insist that this exchange is voluntary when the original action (the building of the ditch, the appropriating) was not accepted by both parties although it affected both. With regard to property acquisition it seems unlikely that there are genuinely self-regarding acts.

The Wilt Chamberlain argument may seem to offer a solution. Each individual is given a share. He is self-sufficient. He does not require use of others' shares. It is clear which inanimate objects he is justified in acting upon and which he is not. If he spoils his share that is his look-out. The fault with the model however is that it entirely ignores newcomers.

If we accept as mistaken the notion of a sphere in which the actions of an individual affect himself alone and which are therefore, properly an object of his choice, the question remains: what is the optimally free organization of a community?

If we reject the moralized notion of freedom, and hold that the murderer is forced to go to prison and that the last couple Z and Z1 are forced to marry, we are no longer able to say that there is something wrong with someone forcing, or having the capacity to force someone else to do something. If B cannot live unless he has sex with A, A has power over him which is on a par with the power the capitalist is said to have over the worker. Is A not entitled to this power? I think she is.

A more controversial case would be one where A was drowning and B made A promise to pay a large sum (or work for a long period) in exchange for saving his life.

Sometimes forcing is wrong, sometimes it is not. The examples involving sex or marriage seem to differ from the others in that what one wants in desiring to marry or have sex with X is use of his body, some control over his actions and access to his privacy. Rights to one's person and privacy are important and not in dispute as are property rights. My right to my piece of land is not necessarily a stronger claim than your right to a piece of land to live on. X's right over his body is always a stronger claim than Y's desire or need

to use X's body.

Another consideration is that what Y wants is not so much X's body as X's affection, desire and willingness to share his body and private life. Forced sex and forced marriage are objectionable to the person forced, and unsatisfactory to the recipient in a way forced taxation is not. That is, to abolish the power X has over Y, or to allow Y freedom of action in this case would involve far greater violations of freedom. But this example is sufficiently and relevantly different from cases concerning property to have very different consequences.

We want a society in which people have as much control over important aspects of their lives as is possible considering the natural resources available and the level of technology; in which individuals or groups are not at the mercy of others and so in their power.

But, a sick man is at the mercy of a doctor, a suicidal lover is at the mercy of his beloved, someone who has just destroyed his share of the food supply is at the mercy of others. These powers differ in that

- (1) greater violations of freedom would be required to remove them.
- (2) The unpleasant choices faced by the victims were not brought about directly or indirectly by the actions of the powerful.

- (3) They are isolated and peculiar cases whereas private property systematically creates and aggravates situations of inequality, of power and dependence.

A society in which such power structures cannot develop may be more free than one in which they inevitably do, in spite of the unfreedom involved in prohibiting "capitalist acts between consenting adults".

On the socialist alternative "Universal dependence, this natural form of the world-historical co-operation of individuals will be transformed by this communist revolution into the control and conscious mastery of these powers". (Marx, The German Ideology: (Feuerbach 16).

It is interesting to examine the envisaged administration of these powers and to compare the degree of freedom likely in such a society with the degree of freedom in capitalist societies.

"Society will ensure that the amount of social labour expended on a product is equivalent to the demand for the product". (III, 16.)

"Society distributes labour-power, and means of production to the different lines of occupation. The producers may eventually receive paper checks, by means of which they withdraw from the social supply of means of consumption a share ... These checks are not money; they do not circulate." (II, 18:2).

Strict division of labour will be abolished. From the social product will be deducted what is necessary to maintain and expand the means of production; what is necessary for social services and the costs of administration. The remainder will be distributed. During the first stage, the labourer will receive amounts relative to the number of hours he has laboured. Later, however, they won't receive rewards in proportion to the amount of work they do since this recognises differences in mental and physical capacity, which is merely another form of privilege. At the same time it ignores differences of needs. One worker has more children, or a capacity for more training, or a need for more medical treatment than another. In such a society work and wealth will be distributed "From each according to his ability, to each according to his needs". (A critique of the Gotha Programme quoted in Marx on Economics).

This picture is idyllic but it makes assumptions about the possibilities of human nature which seem to have no basis in fact. These are:

- (A) That most people will want to work i.e. they will work for the love of it rather than for gain. Some people do enjoy their work, most people do not. Would it be possible so to change the nature of work that most people did? Possible changes are:
- (1) If work could come to be regarded as a means of self-expression, people would choose to work as artists do;

- (2) If one had reason to care deeply for the rest of the community, people would work as priests work - to improve the general well-being of the community and even be prepared to spend some of their time doing distasteful but necessary tasks.
- (3) If physical labour ceased to be stigmatized, manual labourers might come to take a pride in their work.
- (4) If work were varied to prevent boredom and there were a sharing of pleasant and unpleasant tasks.
- (5) If individuals had sufficient influence over projects they were involved in that their accomplishment gave them a sense of achievement.

It is a further assumption that people will be contented with relatively circumscribed possessions since there is no scope in such a society for a worker to work overtime for extra payment. It is possible that one will receive one's pleasures communally - and that one will see the enjoyment of objects in a new light, so that one will not have to possess physically books, artworks, houses etc. in order to enjoy them.

Another assumption is that the enormous powers given to an administrative body will not be abused or used mistakenly. There seem

to be no safeguards against corruption.⁵

Even if people do not want to do the things the communist society would forbid, individuals would still be unfree in not being allowed to do them. In this case the restrictions would not be important. It is more likely however that people will not naturally develop a genuine love of society, and of work and an indifference to possessions. In this case a socialist society will have to use force to make people act in ideal ways; and/or that it will use various forms of indoctrination to make them want the good of the community. Further, the administrative body which will of necessity develop to distribute jobs and food will have great power over the rest of the community.

On each of the several criteria of freedom such a society is likely to fail.

- (1) In the absolute number of restrictions it imposes.
- (2) In preventing people from doing what they (almost inevitably) will want.
- (3) In manipulating their desires.
- (4) And in allowing the existence of a group which has power over important aspects of others' lives.

It is a moot point whether the lack of freedom in this picture exceeds the lack of freedom in the capitalist one but perhaps an irrelevant question. Although collectivization seems likely to fail in this respect (and seems to have done so where it has been attempted), the Marxian critique of capitalism as unfree still has force. Fortunately these are not the only two alternatives.

Footnotes

1. Private property is not, of course, equivalent to capitalism. But capitalism entrenches the right of the owner to use his property as he pleases and to strike up any bargain regarding it that he can with others. It is this right which, when the owner has amassed more than he can possibly use, and others are compelled by poverty to ask his assistance, facilitates "capitalist exploitation".
2. It is a simplification and perhaps irrelevant to talk of the worker/capitalist dichotomy at this stage, J K Galbraith has argued convincingly that power has moved out of the hands of the capitalists and into the hands of managers. He writes "In the past three decades there has been steady accumulation of evidence on the shift of power from owners to managers within the modern large corporation. The power of the stockholders ... has seemed increasingly tenuous" (Galbraith, 1967:49) and "It will now be clear what accords power to a factor of production or to those

who own or control it. Power goes to the factor which is hardest to obtain or replace ... In the industrial system, while capital is used in large amounts, it is, at least in peacetime, even more abundantly supplied ... At the same time the requirement of technology and planning have greatly increased the need of the industrial enterprise for specialized talent and for its organization. The industrial system must rely, in the main, on external sources for this talent ... One should expect, from past experience, to find a new shift of power in the industrial enterprise, this one from capital to organized intelligence ..."
(Galbraith, 1967:56-57).

Marx's arguments, however, are seminal and I shall discuss them in his terms. I believe they still have relevance for the questions of whether the law of supply and demand should determine distribution of resources and power entirely; and whether the possession and use of capital (as shares for example) entitles one to enjoy the income.

- (3) These conflicting intuitions are reflected in our legal system. Attempted murder is punished - but more lightly than successful murder - drunken driving is punished less harshly if it results in no damage than if it causes an accident.
- (4) A more popular model for this situation is "The Prisoners' Dilemma".

- (5) Alan Ryan writes on this point "Marx's claim that 'administration' would replace 'politics' roused Bakunin to accuse him of proposing a 'pedantocracy', a tyranny of professors of economics and industrial relations, and the idea that the communist party would, uniquely be uncorrupted by power now looks like a bad joke ... Which is why Marx's notes on Bakunin's Statism and Anarchy, in The First International and After (Pg. 333-8) look too much like an attempt to answer real doubts with definitional answers - that is, by reiterating that what people will have under socialism will not be political power, to which the only reply is, 'so what?'. " (Ryan, 1984(B):172).

CHAPTER IV

THE NEO-LIBERALS' CASE FOR PRIVATE PROPERTY

In this chapter I examine arguments advanced by the neo-liberals¹ to the effect that collective ownership of property and the agreement on particular ends and their relative priority which this property is to be used, which follow of necessity, is inimical to freedom, dignity and economic efficiency. I first assess the claim that collectivization of resources is invariably linked to a hierarchy or purposes held in common by the community and examine the nature of this link. In the next section I shall discuss Michael Oakeshott's claim that the concentration of power brought about by collectivization is a great threat to freedom. Thereafter I shall examine the claims made by Oakeshott, Nozick and Hayek that such a system cannot tolerate opinions or behaviour which differ from those of the planners - whether these be a small group or a majority: and that as a result it is impossible to maintain such a system without coercion; that such a system is totally unnecessary for harmony and economic efficiency and that it is inimical to autonomy and variety.

It seems clear that proponents of collectivization such as Marx and his followers, accept this characterization. Marx believed that a free market system was unjust, restrictive and psychologically unhealthy. (I have discussed this in detail in an earlier chapter). In order to realize justice and maximize happiness,

- (1) Production must be organized to satisfy people's needs (Capital III, 10).
- (2) Jobs must be distributed according to capacity (II 18:12).
- (3) Products must be distributed according to need. (Critique of the Gotha Programme).

The natural interactions between consumer and producer, employer and labourer must be prevented from occurring. They must be mediated by the state. The only way this is possible is if a single united body takes decisions and there is no scope for selfish individuals to drive hard bargains.

G A Cohen says "The rule of things is the price of bourgeois freedom". [Cohen, 1978(A):125]. Only concerted action will produce the power to overcome natural barriers. An analogy with the prisoner's dilemma situation, it seems that the power of individuals acting as a group is often greater than the sum of the power of each of the individuals acting independently. This became evident in the industrial revolution when production became enormously more efficient, not merely because of improved technology, but also because workers and means of production were organized in far larger units than they had previously been. Taking this to its seemingly logical conclusion, if an entire nation can collaborate in the pursuit of a goal, its power will be increased still further.

Furthermore, it is believed that the pursuit of separate, often conflicting ends produces competition and antagonism and is inimical to fraternity, which is a good in itself.

Marxists therefore consider it desirable that a nation (or the whole world) unites in collective action towards a common set of goals and see collectivization of property as the first step toward this. The neo-liberals realize the close link between the two but do not describe it in the same way. Oakeshott believes that collectivization creates great power but focuses on the danger rather than the promise that this power represents. (Oakeshott ; 1962). Nozick and Hayek believe that collectivization of property and the collective use of property require uniformity of goals, and such a requirement actually weakens the combined power of the economy as well as involving brutal and unnecessary interferences with people's minds and actions. (Nozick , 1974 ; Hayek, 1973).

3. Oakeshott writes: "From one point of view, property is a form of power, and an institution of property is a particular way of organizing the exercise of this form of power in a society" and since he says freedom requires "the absence from our society of overwhelming concentrations of power" (Oakeshott, 1962:40) he naturally believes that the system of property most likely to protect freedom is one in which control over property is most widely distributed and this means private property.

Oakeshott agrees that property is power and that collectivization

would create a great deal of power but he differs from the Marxists, in part in his conception of freedom.² He believes it to be the absence of powers which can threaten one's existing liberties rather than the existence of powers to fulfil needs, create stimulating jobs and remove antagonism between people. He is bothered less by the fact that we are unable to overcome some of the imperfections in our society such as hunger and exploitation than by the spectre of a body which has the physical and legal power to interfere in men's lives. It is not merely a disagreement concerning definition, it is also in large part an empirical disagreement. He does not consider the imperfections to be nearly as appalling as do the Marxists; he does not believe that many of them could be changed and, unlike Marx and Plato, he is deeply pessimistic about the likelihood of government remaining in the hands of the selfless, patriotic and enlightened.

Private property is only one of the institutions which diffuse power. Families and private schools inculcate a variety of values, beliefs and tendencies and undermine the attempts of any group to control and motivate a nation to united action. Independent religious and cultural groups have the same effect. In the political arena, Oakeshott speaks of a division of power between the past, present and future. By the "past" he means the existence of a constitution which limits the freedom of any legislative body but which is not completely inflexible. As regards "future" he is referring to constitutional checks which prevent any current ruler from making his laws or his power binding for all time. These legal checks would be without force

however if they were not combined with a similar diffusion of real power. Real power rests with the military, but as Nozick has convincingly argued in the first part of Anarchy, State and Utopia,³ it is desirable that the state has a monopoly on military power. The other, more important kind of real power is economic power which rests with the controllers of property.

It would appear to follow from Oakeshott's principles that he would favour interference in the market to prevent the appearance of monopolies or other naturally occurring concentrations of power. However, he writes "The institution of property most favourable to liberty is unquestionably, a right to private property least qualified by arbitrary limits and exclusions, for it is by this means only that the maximum diffusion of the power that springs from ownership may be achieved". (Oakeshott, 1962:46).

He believes that any mechanism sufficiently powerful to dissolve monopolies has the potential to be harmful. He seems merely to wish to fragment large power-structures rather than to protect individuals or prevent small groups exercising and abusing small-scale power over others.

This stems from his pessimism: for he believes that anyone who possesses any sort of power is likely at some stage to use that power to its maximum ill effect and the best one can do is to guard against the worst of such uses.

Robert Nozick advocates a similar fragmentation of power and seems to place great stress on the protection of the individual. He writes, "The reason rights come to be so central to political philosophy, although they are not the central moral phenomena, is that the state is demarcated as the organ monopolising the (legitimate) use of force. It is in this domain of the exertion of force, interpersonally as well as politically, that rights play the central moral rôle, and talk of rights comes most easily. There are higher and more refined moral notions. To complain as some do at the crudity and bluntness of rights and of their centrality in political philosophy, ignores the fact that the use of force itself, the political differentia with which rights deal, is no less crude and blunt." (Nozick, 1981:503).

And later, he defines a person's rights as "a function of how he ought to be treated and how others ought to be treated with regard to their behaviour towards him." (Nozick, 1981:563).

My rights are not merely another way of describing what others ought to do to me. My right is: what I am justified in forcing others to do or not to do to me. It is part of my moral duty say, not to interfere with others to cause them to provide me with what I need or want or to prevent them behaving in ways which displease me e.g. criticizing or parodying my most firmly held beliefs, although it is perhaps the case they ought or ought not do those things. Rights are, according to Nozick, spheres of action within which one may not be forced - even to do the morally correct thing.

The state's action is restricted to the protection of rights for two reasons. First, since the only morally justifiable use of force is in the enforcement of rights and the state has a monopoly of force and characteristically uses this force when it acts. Furthermore, this fact about it means that it is dangerous, easily turned to evil or misguided purposes. Its activity, therefore, must be limited in scope, well-advertised and rule-governed. Although it is important to bear in mind the logical distinction between the dichotomies "strong/weak" government and "limited/extensive" government; and ineffectual government is never desirable, it is nevertheless the case as Oakeshott says that limited government will best be maintained if it is not given too much power and if there are clearly determined spheres in which it has no influence. Oakeshott avoids talk of rights but his prescription is otherwise strikingly similar to Nozick's belief that the state's action should be limited to preventing interferences with individuals' rights. It would not need to be particularly powerful or sophisticated to do this and only wrongdoers would be vulnerable to its mistakes.

This is to assume that people's actions can be separated into non-conflicting spheres.

Reich writes "One of the functions of property is to draw a boundary between public and private power. Property draws a circle around the activities of each private individual or organization. Within that circle, the owner has a greater freedom than without ... he is the master, and the state must explain and justify any interference, ...

Thus property performs the function of maintaining independence, dignity and pluralism in society by creating zones within which the majority has to yield to the owner. Whim, caprices, irrationality and anti-social activities are given the protection of the law".
(Macpherson, 1978:180).

This brings us to the more fundamental of the neo-liberals' objections to the link between collectivization of property and unification of purposes. They say that uniformity of purposes is the goal of collectivization of property and a pre-requisite for the harmonious functioning of a unified economy but that it is not possible, not necessary for harmony and freedom, and not desirable.

Concerning its possibility, Nozick writes "We may distinguish among the following theses:

- I. For each person there is a kind of life that objectively is the best for him.
 - (a) People are similar enough, so that there is one kind of life which objectively is the best for each of them.
 - (b) People are different, so that there is not one kind of life which objectively is the best for everyone, and
 - (i) The different kinds of life are similar enough so that

there is one kind of community (meeting certain constraints) which objectively is the best for everyone.

(ii) The different kinds of life are so different that there is not one kind of community (meeting certain constraints) which objectively is the best for everyone.

II. For each person, so far as objective criteria of goodness can tell (in so far as these exist), there is a wide range of very different kinds of life that tie as best: no one is objectively better for him than any other in the range, and no one within the range is objectively better than any other. And there is not one community which objectively is the best for the living of each selection set from the family of sets of not objectively inferior lives." (Nozick, 1974:310)

Nozick asserts that either I.(b) (ii) or II is true, because people are very different in their temperament, abilities and values. He asks one to imagine a range of people including Elizabeth Taylor, Wittgenstein, Gandhi, Freud, Ayn Rand, Einstein, Lenny Bruce, Bobby Fischer and oneself. He stresses the implausibility of finding one set of utopian goals which will be the best for each of these people.

Utopias differ and when one considers with horror how badly off one

would be in the utopias of say - Plato, Marx, Buddha and Barbara Cartland, one ought to consider the possibility that they and their followers would not be happy in one's own utopia. Therefore it seems impossible that there could be one consistent set of goals with which everyone could identify (or even with which a majority could identify), and that a system which requires such cohesion could never get off the ground or if it did, it could only do so with a great deal of psychological and physical coercion. ⁴

Two questions arise: it is possible that many people, including some of those mentioned above, would not be happy if Nozick's principles of justice were put into practice. What makes his system different from other utopias? He describes his "utopia" as "a framework for utopias, a place where people are at liberty to join voluntarily to pursue and attempt to realize their own vision of the good life in the ideal community but where no-one can impose his utopian vision upon others." (P. 312.)

Leaving aside for a moment the question of whether this could be realized in practice, it is difficult to see how anyone except a monomaniac could object to it as an ideal. Nozick's objection to other utopias, on the other hand, is that even if realized, they are unlikely to suit more than a small minority. In this I believe he misjudges several utopias. In contrast to his image of utopias as monochrome scenarios where everyone has the same life-style and values many utopias - such as Voltaire's Eldorado and Marx's "pure communism"

focus on liberation. There citizens are provided with the training and means to realize any or all of their talents and to pursue a variety of interests. They, of course, are expected to agree that such "liberation" and "self-fulfilment" are valuable but these could be seen as meta-ideals in the way that Nozick's approval of non-interference is a meta-ideal.

Secondly, while it may be conceded that people as they are now, would be unhappy in a particular utopia, even that such a utopia would be objectively bad for them, it may be objected that part of the utopian programme would be to create people with the right sort of desires. This sort of objection has often been condemned as opening the way to nightmarish totalitarianism: for instance in Aldous Huxley's Brave New World and it is indeed dangerous but desires are to some extent determined by education and parental influence. In Nozick's framework for utopia, are parents entitled to bring their children up with inclinations which make them choose their own utopia? For instance, to choose a commune in which drug-abuse and perversion are rife; in an Amish community which ignores the twentieth century; in a traditional Japanese community in which it is good to die for one's emperor? Such influences are likely to limit the children's choices. Why not have an education system which is likely to produce the freest and happiest people? It is not inconceivable that the criteria for choosing such an education system would be

- (1) the one which caused them to value things which brought them

least into conflict with other people and, if possible meant that they helped others in helping themselves. (I recognise that these might in certain circumstances be incompatible injunctions. A more detailed version would include a priority principle.)

- (2) the one which caused people to value what would best realize their true natures; or (if they do not have "natures") given their potentialities, which would cause them to pursue the goals which would give the greatest satisfaction.

Insofar as character is moulded by outside forces, it seems reasonable to do this. However, anyone taking part in this argument must believe that there is an important element of free choice - and to try to control this is to decrease a person's freedom. Further, there are purely practical problems in designing the optimum society or education system and discovering the best means to bring these about.

Nozick writes "Even if one kind of society is best for all, how are we to find out what this society is like?" [Nozick, 1974 : 312]

Considering the enormous complexity of persons and interpersonal relations it is unlikely that a blueprint could ever be drawn up. Furthermore, it would be irrational to put one's faith in any blueprint considering the degree of certainty that it is the right one which is necessary to outweigh the danger of its going wrong and the awfulness of the means necessary to bring it about.

Hayek writes that there is a common confusion which treats a national economy on the model of a household or farm economy, as "a complex of activities by which a given set of means is allocated in accordance with a unitary plan among the competing ends according to their relative importance ... What is commonly called a social or national economy is in this sense not a single economy but a network of many interlaced economies ... its activities are not governed by a single scale or hierarchy of ends." [Hayek, 1973 : 107]

His contention is that a common hierarchy of ends is not necessary for, nor even favourable to a harmonious and happy society. He continues, "The great society arose through the discovery that men can live together in peace and mutually benefitting each other without agreeing on the particular aims which they severally pursue. The discovery that by substituting abstract rules of conduct for obligatory concrete ends made it possible to extend the order of peace beyond the small groups pursuing the same ends ... It was the simple recognition that different persons had different uses for the same things, and that often each of these two individuals would benefit if he obtained something the other had, in return for his giving the other what he needed." [Hayek, 1973 : 109]

Far from different interests causing clashes, "The parties are in fact the more likely to benefit from exchange the more their needs differ." It is the collective system which causes conflict, since "so long as collaboration presupposes common purposes, people with different aims

are necessarily enemies, who may fight each other for the same means, only the introduction of barter made it possible for the different individuals to be of use to each other without agreeing on the ultimate ends." (Hayek, 1973:110)

Nor need they know much about the ideals of the others. All they need to know is the nature and intensity of other people's desires and what they have produced. This information is conveyed to them via the market, they do not rely on an omniscient and ideally just individual or group measuring needs and deciding on means to satisfy them.

Hayek's rules of just conduct can be likened to Nozick's side-constraints. Both place clear limits on what an individual may do (i.e. not use another as a means without his consent) but leave him free to choose his own goals, to do as he likes with himself and his property and to contract as he likes with other free agents. There is no conflict of interests because each has a sphere in which he is the final arbiter of what happens. Although different people may want to achieve different things as long as they act only on their own property these goals will be compatible. Of course, their ends will usually be incompatible if they focus on the same physical means.

The strongest attacks on collectivization of means and ends maintain that far from being necessary to freedom, it is the deadly enemy of freedom. Oakeshott writes "a man is not free unless he enjoys a proprietary right over his personal capacities and labour. And yet no

such right exists unless there are many potential employers of his labour. The freedom which separates a man from slavery is nothing but a freedom to choose and to move among autonomous, independent organisations." [Oakeshott, 1962 : 46]

Oakeshott recognises that ownership of means of production gives one power but he thinks a worker is freer if he can boycott an organisation which doesn't please him than if he has to accept the terms of a single employer, whether this be the state or a private person.

Nozick expresses a similar but slightly more general point, when he writes, "If there is a diverse range of communities, then (putting it roughly) more persons will be able to come closer to how they wish to live, than if there is only one kind of community."

[Nozick, 1974 : 309]

This is so for several reasons. One is freer if one can choose amongst several possible courses of action. And one is more likely to be happy since there is a higher probability that one's absolute favourite will be among one's actual choices. Furthermore, as seems to be the case, different things make different people happy. Lastly, diversity is enriching since it means people pursue and use different kinds of things so there is less pressure on particular resources.

Nozick points out that this is an environment in which experimentation occurs which is valuable from the individual's point of view - since

he can change if his project fails or bores him - and from society's point of view - since the chances increase that someone will hit upon a still more satisfying way of life.

However such diversity only brings freedom if it is easy to move from one role to another. A society in which individuals were trapped in a variety of positions might give the impression of enriching diversity but would be diagnosed by a Marxist as one oppressed by division of labour and inequality and would, in fact, be no less restrictive than its less colourful alternative.

Nozick describes a fanciful situation in which a fashion emerges of selling or giving away rights in oneself - such as the right to decide what drugs one can take; the right to determine one's permitted mode of sexual activity; the right to decide how much of one's income is used for purposes one does not choose; the right to decide whether and whom to fight and kill. The administration of these interpersonal possessions becomes unwieldy. There is a vast convention at which people buy and sell and each person winds up with exactly one share in each right in each person, including himself.

He writes, "People view the exchange as an absolutely even trade. Before the exchange a person has one full share in himself, and not a partial share in any other person ... In exchange for this he gets a $1/S + nth$ share in each of the other $S+n-1$ persons in the society,

plus the same share in himself ... People say, and think that when everybody owns everybody, nobody owns anybody." [Nozick, 1974 : 286]

This society - Nozick seems to be saying - is more or less like the actual societies of today where majority decisions can interfere with personal rights. Oddly enough, the situation as Nozick describes it is one which he cannot call illegitimate as it has been brought into being by a series of just transfers. However, he derives a very similar situation along a very different route: not by voluntary exchange of rights but starting from a slave-owner's absolute control over his slaves, one of which is you. The slave-owner gives his ten thousand slaves, except you, the vote on important issues such as how all are to behave, dress, work and so on. Later you are allowed to vote in cases of deadlock. Eventually you have the same status as the others but your vote still makes a difference only in cases of deadlock. At what point, he asks rhetorically, do you cease to be a slave?

Nozick's point seems to be that:

- (1) The right to have a say in how others behave is far less valuable than the right to behave as you choose. As became clear in the last chapter one is not necessarily more free the more questions one can choose about. The importance of the choice also counts in assessing its contribution to one's freedom. Freedoms are more important the bigger difference they make to one's life.

Since it is a matter of relative indifference to me what other people do behind the closed doors of their bedrooms or churches - influence in these matters is of little use to one.

- (2) You have a very little influence if you vote in a large group.
- (3) It is completely unnecessary and unpleasant. People end up being forced to do what they don't want to do when it would be perfectly possible for them to do as they please (with certain limitations).

If (1) and (3) are true and (4) being free is to be able to do what one wants, then the exchange in Nozick's story is not an absolutely even trade.

As regards (4), it is usually the case that what one wants to do is closer to what is objectively in one's best interest, than are the decisions of the majority since one is usually in the best position to judge what will make one happy, and one certainly cares more about finding out. Even when the two come apart, when what one wants to do is clearly not in one's best interest, many writers consider it an insult to treat one as if this were the case. Isaiah Berlin writes "To threaten a man with persecution unless he submits to a life in which he exercises no choices of his goals, to block before him every door but one, no matter how noble the prospect upon which it opens, or how benevolent the motives of those who arrange this, is to sin

against the truth that he is a man, a being with a life of his own to live." [Berlin, 1969 : 127]

It seems then, that to maximize happiness, freedom and dignity we must give people as much autonomy as possible. Private property is the best guarantee of such autonomy since private property rights entail a duty on the part of others to respect as inviolable a physical area around one. They also render one independent of others for the necessities of life and employment. Private property is private means which can be put to private ends.

However the arguments in support of private property in this chapter (that it is necessary for the protection of important freedoms) seem to have two further consequences:

- (1) That if possible everyone should have such a sphere of inviolability.
- (2) That any individual's sphere should not be too large since beyond a certain point the power property brings is not merely the power to carry out purposes central to one's own development, but to manipulate other people. One is secured in freedom of choice in matters which are trivial to one's interests at the expense of the loss of important freedoms on the part of others.

This seems to argue for a more egalitarian distribution than the

writers considered here would accept. I imagine there are two main objections they would raise. The first is that the state would have to be very powerful if it were to maintain say, an upper and lower limit on how much may be owned, and that this power would pose a threat. However it would be far less powerful than a state which actually owned all the property. Its activity could remain rule-governed so that one would not have to rely entirely on the discretion of one fallible individual or group.

Although it would be a risk it would be rational to take such a risk since the likelihood of private individuals acquiring and abusing great power is higher. At least, public officials would be bound by the constitution, the press, the polls, and their sense of duty not to abuse their power. This may sound foolishly optimistic but there must be a difference between private and public people. Milton Friedman says "When we talk of a political market, we talk of public servants and this suggests that they are serving the public. That is an utterly false distinction. We are human beings and we all pursue our own interests." [Friedman, 1976 : 7] However there is a great difference between what it is in the self-interest of a private person and a public servant to do. Furthermore, the law restricts the activities of the latter to a far greater extent, and to be legal, if not to be moral - cuts a lot of ice with most people.

A second objection is that maintenance of a pattern (even as crude a one as I have envisaged) involves interference with people's rights.

If someone is allowed to keep some property to ensure his inviolability, this project is defeated if he is forbidden to improve it or give it away or sell it, which, Nozick says, is what taxation amounts to.

However, it is important to note the nature of the justification for private property given here. It is not justified because it is a natural right or because it is the result of free and fair actions. It is justified as an instrument to protecting autonomy. That it does so is not a necessary truth. In fact it is unlikely that the haphazard workings of a completely laissez-faire economy could always protect freedom, and when it fails to do so, the system must be adjusted. The neo-liberals recognise that control over things is equivalent to power over people. They cannot at the same time maintain that use of one's private property is harmless and self-regarding and that therefore any regulation is a violation of their rights.

FOOTNOTES

1. I understand there to be a great and confusing variety of usage of the term "Liberal". Peter Collins has pointed out to me that roughly "American conservative" means "Classical English liberal" and American "Liberal" means European "socialist but not communist". That there has been a shift in the connotation of "liberalism" where it once suggested protection of negative

liberties including a free-market economy, it has (in some people's minds) come to be associated with welfare state. The writers I deal with in this chapter have been called conservative and libertarian. My choice of "neo-liberal", therefore, is fairly arbitrary. Liberals of the other sort, Dworkin, Rawls etc. I shall call, following C B Macpherson, "revisionist liberals".

2. Oakeshott seems to be operating with the notion of freedom Berlin called "negative" which he defined as "simply the area with which a man can do what he wants. If I am prevented by other persons from doing what I want I am to that degree unfree".

[Berlin, 1969]

3. By "utopia" I mean a society or a description of a society which is perfect and stable and is taken as the collective historical goal of a group. Karl Popper demonstrates the plausibility of the utopian attitude to politics. "All politics consists of actions; and these actions will be rational only if they pursue some end ... Thus it appears that as a preliminary to any rational political action we must first attempt to become as clear as possible about our ultimate political ends; e.g. the kind of state which we should consider best; and only afterwards can we begin to determine the means which may best help us to realize this state or, to move slowly towards it, taking it as the aim of the historical process which we may to some extent

influence and steer towards the goal selected."

[Popper, 1947 : 358]

4. Essentially, this is the same point as Oakeshott makes in "On Being Conservative" when he says "... if it is boring to have to listen to dreams of others being recounted, it is insufferable to be forced to re-enact them." [Oakeshott,1962 : 187]

CHAPTER V

THE HYBRID THEORISTS: SUGGESTED COMPROMISES

In this chapter I discuss three "hybrid" views of property: Alan Ryan's utilitarianism and the theories of John Rawls and Ronald Dworkin. In spite of the fact that Rawls and Dworkin seek to distance themselves from utilitarianism by emphasizing rights which cannot be overridden in the name of utility, I have grouped the three together because they all attempt to avoid the counter-intuitive features of libertarianism and Marxism. They have as a common ground the belief that there is no natural right to own property; and that what property rights there ought to be is a matter to be decided by assessing their usefulness in producing happiness or conditions of freedom. They agree, further, that it is not unequivocally or in all circumstances the case that one system will produce these better than another. They share the aim of respecting individual choice, in particular by making government neutral between the goals of its citizens. They also accept various empirical assumptions such as diminishing marginal utility, and that incentives of material gain and security are conducive to productivity. They conclude, tentatively, that the best system is probably one in which private property is allowed but where government retains the power to tax, to redistribute and to counter harmful tendencies in the market. Utilitarianism takes as its single guiding principle: "that action is best, which procures the greatest happiness for the greatest numbers, and that worst, which, in like manner, occasions misery."¹

Utilitarianism has been reproached for neglecting rights or for

treating them as merely instrumental to utility and hence dispensable. However, this sort of objection may have no force in the case of property rights. [Alan Ryan, 1984 : 1] writes: "the sort of rights which it seems necessary to accord people to accommodate liberal and humanitarian intuitions are not best seen as property rights, and if we reject utilitarianism because of its inability to ground rights we want to accord people either for no reason, or out of a principle of respect for persons, or whatever - this is no great weakness in a utilitarian account of property rights since property rights are not basic rights." He continues: "Any notion of a right over things which is rich enough to be the concept of a property right seems to require the owner to have powers over things which nothing but an artificial construction or convention can produce." [Ryan, 1984 : 4] By this, Ryan appears to be referring to the fact that while "property" involves some notion of exclusive use, we are not connected to things in any obvious or equal way which could be used to argue that there is a natural or human right to control an object and exclude others in the way that it might be said that we have natural or human rights over our persons.

If property rights are conventional devices justified by their utilitarian consequences, they can be changed whenever utility demands it. The non-existence, abolition or adaption of legal property rights is not, therefore, an infringement of natural rights.

The characteristic dilemma of utilitarianism is between the

subordinate principles of equality and security. Since utilitarians accept the principle that "each is to count for one and no-one for more than one", and the empirical assumption that most goods yield a diminishing marginal utility, it follows that the distribution which produces most utility is likely to be an equal one. On the other hand, "The essence of property is security; the whole point of inventing property rights is to secure people in the use and enjoyment of things." [Ryan, 1984 : 5] This assurance is the best encouragement to productivity. "But the process of production and distribution left to itself will probably produce great inequalities of ownership." [Ryan, 1984 : 5]

Justice, on this view, places no constraints on what the government may do in maximizing utility. In principle, it may tax or expropriate as it sees fit. However there are several practical considerations. Bentham stresses the point that the disappointment of actual expectations can produce greater unhappiness than the failure to improve conditions in unexpected ways.² People expect to keep their earnings and children to inherit their parents' wealth and these expectations ought to be taken into account. However, the appropriate response to this situation may be: to allow current expectations to be fulfilled but to ensure that similar expectations do not develop in the future. For instance, one might pass a law now to the effect that people who are already parents may bequeath their wealth to their children but that children may not pass their wealth on. Secondly, just as people have expectations of keeping their property, tenants

have expectations of staying in their houses for a reasonable rent and employees of keeping their jobs and receiving reasonable increases. If expectations are important, these too should be respected. It is difficult to determine how much weight such considerations should be given, but in the interests of preventing a sense of resentment and injustice, if it becomes necessary to abolish a kind of property right, some effort should be made to compensate those who lose out.

Another consideration is the need to maintain incentives for general prosperity. Alan Ryan suggests taxing inherited wealth harshly and earned wealth less harshly. This would give people an incentive to work and a disincentive to give money to the wealthy. It also means that productive resources are less likely to pass out of the hands of the efficient and energetic and into the hands of the lazy and incompetent.

Lastly, Ryan writes, "If the utilitarian point of inventing property rights is to enlarge the range of choice and to create security, it may be that we ought to break up the property rights characteristic of a capitalist economy on much the same grounds as those rights were initially justified." [Ryan, 1984 (A) : 12] He suggests, for example, separating ownership of capital assets from the right to choose the managers of those assets or the right to receive dividends from the right to share in the capital gains.

Perhaps, the most influential and comprehensive work in political theory to appear in recent years is John Rawls' Theory of Justice. He

rejects utilitarianism. In fact, he sets out to produce an alternative moral and political theory to utilitarianism which has a similar simplicity, efficiency and moral force as the latter without what he sees as its objectionable feature: that of failing to take seriously the difference between persons. [Rawls, 1972 : 27]

Rawls says that part of the appeal of utilitarianism stems from the simplicity of the link it established between the two most crucial moral notions: the right and the good. It defines the good independently of the right, as happiness or satisfaction of desire and then defines the right action as the one which produces the most happiness. As a result, it claims, it is never ambivalent. There is no room for genuine moral dilemmas. There may be empirical disagreements about what will, in fact, produce the most happiness but there is a clear moral framework into which empirical details can be slotted.

Furthermore, on the analogy of prudential behaviour for an individual, since it is often rational to sacrifice a small amount of well-being today for a great deal of happiness tomorrow, and indeed it is considered irrational to attach much weight to a particular date, so it seems to be just not to prefer the well-being of one person to that of another and so to cause a small amount of suffering to one if this is necessary to bring about a great deal of well-being in another. Utilitarians, says Rawls, often use the model of rational choice for one person such as an impartial God-like observer. However, as Rawls

writes: "There is no reason to suppose that the principles which should regulate an association of men is simply an extension of the principle of choice for one man. On the contrary, if we assume that the correct regulative principle for anything depends on the nature of that thing, and the plurality of distinct persons with separate systems of ends is an essential feature of human societies, we should not expect the principles of social choice to be utilitarian."

[Rawls, 1972 : 26]

The death, suffering or loss of liberty of one individual cannot be compensated for by the well-being of any number of others because there is no single consciousness which experiences the net gain and so could agree to undergo the suffering: there is one who suffers and others who gain. Justice prohibits the sacrifice of one for another. This guides Rawls in his choice of a Kantian procedural model from which to derive his principles. Although utilitarianism is one of the theories considered it is less likely to be chosen than it would be in the rejected Ideal Observer model.

Rawls chooses a contractual model since he sees society as an association of men and women for their mutual benefit. It best commands their support and treats them with respect if it restricts their liberty only where they have agreed (or would have agreed if they could have been asked) to the restriction. Hobbes and Locke justified the power of the state as the result of rights surrendered by men in an original social contract. It was unclear whether this

contract was supposed to have been an historical event. Rawls' contract is explicitly hypothetical. As I argued in my first chapter, it is impossible for an actual contract which is universally binding to occur because it would require the convening of people from all places and especially, all times. Even contracts between contemporaries in a circumscribed area (renewed with each newcomer perhaps) are invariably unfair as some start with great advantages from which to bargain.

It is reasonable to ask of Rawls' hypothetical contract, why one should feel bound by an agreement which no-one, let alone oneself, ever entered into? Rawls' response is that it is a powerful heuristic device whose point "is simply to make vivid to ourselves the restrictions that it seems reasonable to impose on arguments for principles of justice and therefore on those principles themselves."

[Rawls, 1972 : 18]

The parties to this contract are in the "Original Position", behind "a veil of ignorance". They do not know what generation or social circumstances they will be born into; nor do they know their class or race or level of intelligence; their talents; their psychological propensities or even their conception of the good. They do not know particular details about the society they will be born into, but they are aware of general psychological, sociological and economic data. They are mutually disinterested and rational. That is, they are not envious or especially generous (behind the veil, that is, although

they know they may develop these traits later). Each wishes to maximize his own prospects but knows he could be anyone.

Although they are primarily concerned with looking after their own interests, they are just. They understand the implications of making a commitment and are prepared to stand by it. However they recognise that certain agreements may be well-nigh impossible to keep and others may only be kept at the cost of great psychological strain.

Rawls believes that if such people could reach a clear consensus, the principles they chose as the most rational, would be principles of justice for us, since they are what each of us would accept if we were not prejudiced by morally irrelevant information such as: that being stupid or lazy we were likely to benefit from a welfare state; or that being brilliant, anti-social and energetic we were more likely to benefit from a system of free enterprise. This information is irrelevant as universalizability is generally considered to be the essence of morality: the rightness of a moral law should be equally apparent from all points of view. Who the people are and how many is irrelevant since each person is equally rational and equally ignorant. Anyone can, in a thought experiment, step behind the veil. If one accepts that the veil of ignorance does reflect deeply held moral principles, the question of justice is greatly simplified. It is easier to make a rational choice with conviction and sincerity than to make a moral choice where one can never be sure whether selfish biases are not masquerading as pious principles.

The principles Rawls believes will be chosen are:

"First Principle: Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

Second Principle: Social and economic inequalities are to be arranged so that they are both (a) to the greatest benefit of the least advantaged (the difference principle) and (b) attached to offices and positions open to all under conditions of fair equality of opportunity.

The Priority Rule: The principles of justice are to be ranked in lexical order and therefore liberty can be restricted only for the sake of liberty ... fair opportunity is prior to the difference principle." [Rawls, 1972 : 302]

The priority of liberty, however, only comes into effect once a certain (fairly low) level of welfare has been reached. I shall discuss the details and justification of the two principles and the priority rule.

It is important to note what Rawls means here by "basic liberties". Naturally if the maximization of liberty is to take priority and the second principle is to be of any relevance at all, the liberties to be maximized must leave time and room for other factors.

Although he recognises the freedom to own property as a genuine liberty, it is not among those which he wishes to maximise. The "basic liberties" are freedom of conscience, freedom of the person, political freedom and protection by the rule of law.

Furthermore he makes an interesting and significant distinction. He writes, "The inability to take advantage of one's rights and opportunities as a result of poverty and ignorance, and a lack of means generally, is sometimes counted among the constraints definitive of liberty. I shall not however, say this, but rather I shall think of these things as affecting the worth of liberty, the value to the individual of the rights that the first principle defines.

[Rawls, 1972 : 204]³

This seems a valid distinction to make if it is true, as it seems to be, that if you maximise liberty, it will be equally distributed. (At least, the "basic liberties" mentioned above). However, it is quite possible that his liberty is worth more to the worst-off person if wealth is distributed unequally.

The second principle deals with the distribution of wealth. Rawls believes that the representative citizen behind the veil will choose a policy of maximin". That is, he will choose to ensure that if he is the worst-off member of society, his circumstances will be least bad. Rawls thinks he will take this option for three reasons:

"(1) There must be some reason for sharply discounting estimates of ... probabilities.

(2) The person choosing has a conception of the good such that he cares very little, if anything, for what he might gain above the minimum stipend that he can, in fact, be sure of by following the maximin rule.

(3) The rejected alternatives have outcomes that one can hardly accept." [Rawls, 1972 : 154]

I would object to this that the parties are concerned to do the best for themselves and not relative to the rest of society and therefore, should apply these principles directly. I agree that they would be irrational to gamble with the necessities of life, ignorant as they are of the odds. However, if there is a point up to which it matters very much how much one has, and beyond which it matters very little, why imagine that this point should coincide exactly with the minimum ensured by the difference principle. If the point is lower, the rational strategy may be to ensure that minimum and gamble as regards the remainder. Although the people behind the veil are aware of no other desires than the desire to be healthy and comfortable, they know that there is a good chance that their life projects will require substantial amounts of resources: for a lengthy education programme, to buy a business or a house; or to travel extensively. The chance of achieving this (however small) may be worth more to them than the

certainty of a little extra comfort.

On the other hand, if the point is above the minimum insured by the difference principle it may be worth risking one's life on the chance of securing the minimum needed for a bearable life. Of course, the parties do not know the nature of the particular society they will be born into. There seems to be nothing, however, stopping them from including conditional clauses in their formulation of the principles of justice. Although it would be less elegant, it may be more rational to stipulate say that different conditions are to apply depending on the degree of affluence of the society.

Nor does this jar with our direct intuitions of justice. In a society where a majority of people are severely malnourished and many starve to death, it may not be appropriate to continue raising the position of the worst-off. It may be better to concentrate resources on a few. Conversely, in a very rich society, there may be other ideals which take precedence over the continual improvement of the lot of the worst-off.

Rawls compares the difference principle with our moral intuitions and claims that it reflects our commitment to regard all natural talents as collective assets. [Rawls, 1972 : 178] Since, he says, no one deserves his natural advantages or the income that he earns with them, he cannot object to having them partially taxed for another's welfare. The worst-off could object to being made even worse-off for the

benefit of those who are already advantaged.

The difference principle is preferred to more egalitarian positions since the parties are not envious and so would consider it irrational to accept a lower degree of welfare than necessary just in order to level everyone off.

It is preferred to other principles such as ensuring a minimum of welfare or weighting equality and utility against each other since, Rawls says, it is precise and it matches our vague intuitions as well as they, but is more useful in producing definite guidelines for action. [Rawls, 1972 : 317]

An essentially similar concern underlies Rawls' insistence on the priority rule. He wishes to avoid the snags of intuitionism or the belief that there are a group of first principles which cannot be ordered or reconciled and which do not provide clear guidelines.

His reason for stressing liberty or believing that parties in the original position would give it priority is that beyond a minimum needed for life and comfort, increase in material resources is not to be preferred to liberty since resources are of little value if they cannot be used to carry out one's chosen life plan.

Recognising their equality and plurality they opt for institutions which are neutral as regards the good life and which leave the

individual the maximum liberty to live his own life without interfering with others.

Rawls' principles of justice do not favour a socialist or a private property economy. He writes "Which of these systems and the many intermediate forms most fully answers to the requirements of justice cannot, I think, be determined in advance. There is presumably no general answer to this question, since it depends in large part upon the traditions, institutions, and social forces of each country and its particular historical circumstances. The theory of justice does not include these matters." [Rawls, 1972 : 274]

In this, he echoes the consequentialist aspect of utilitarianism. The question of whether property should be private or common is not a question of justice or morality but an empirical question of which system in particular circumstances comes closest to realizing a more fundamental ideal. For Rawls, the ideals are liberty and equality as expressed in the difference principle.

He believes that "perfect competition is a perfect procedure with respect to efficiency" and "a further and more significant advantage of a market system is that, given the requisite background institutions, it is consistent with equal liberties and fair equality of opportunity." [Rawls, 1972 : 272] He also believes that the market is an excellent medium of information (like Hayek) and that it provides incentives to increase productivity.

On the other hand, "There is with reason strong objection to the competitive determination of total income, since this ignores the claims of need and an appropriate standard of life. From the standpoint of the legislative stage it is rational to insure oneself and one's descendants against these contingencies of the market."

[Rawls 1972 : 271]

He sees the government as having four functions in correcting the effects of the market: (a) The allocative function which keeps the price system workably competitive and prevents formation of unreasonable market power and identifies and collects suitable taxes; (b) The stabilization function maintains reasonably full employment and choice of occupations; (c) The transfer function maintains the social minimum; and (d) The distributive function ensures justice in distributive shares by means of taxation and necessary adjustments in the rights of property - not so much to raise revenue as to correct gross inequalities and prevent concentrations of power detrimental to liberty.

Rawls' book has precipitated an enormous amount of critical literature, to which it is impossible to do justice. Much of this criticism concerns the constitution of the original position. However I consider his conception to be profound and illuminating. It captures the objectivity essential to morality and appears to be a genuine improvement on utilitarianism.

Probably the most controversial aspect of his theory and the one most

relevant to this discussion, is the difference principle. I shall discuss criticism of his theory of distributive justice from Nozick's libertarian position and then I shall compare it with a similarly hybrid theory, namely, that of Dworkin.

Nozick imagines ten Robinson Crusoes working in isolation each on his own island. By chance, they happen to make contact by radio and discover that some are doing well and others doing badly. He says it would be ridiculous for the disadvantaged ones to declare that the situation was unfair and to demand assistance from those who are better off. He then asks why the fact of productive cooperation should make a difference. If the Robinson Crusoes freely decide to exchange particular natural or ready-made objects, there seems to be no reason to imagine that the inequality should suddenly become unjust if it has not been so before. If instead of objects they decided to exchange services, there seems to be no difference either. Even in cases of fuller cooperation, it is not the case that it is impossible to distinguish anyone's contribution; nor does Rawls think it is, since he suggests paying the most productive individuals extra as an incentive.

But the objection to inequality is not so much that people receive more than they contribute (especially when the value of the contribution is determined by how much others want it), but that people start out with unequal opportunities, that the differences in the contributions are more often the result of luck than anything

else. The objection questions their right exclusively to use and profit from this good fortune. The difference between the isolated Crusoe and the cooperating group is not one of kind but of degree. People working and living together are constantly reminded of their inequalities and this is often a source of distress. Close contact also requires force to protect holdings which may give a more vivid impression of the absence of liberties, but the wealthy Crusoes have no more genuine claim to exclusive rights over their holdings than do their counterparts.

Secondly, Nozick objects that it does not seem to follow from the facts that G has X and F has Y and Y is more than X, when there is a situation which could be brought into being in which there is a different distribution - that G is badly off because F is well-off, or that G suffers in order to maintain F's well-being.

Peter Singer writes: "In the view of the laissez-faire theorists and some other philosophers as well, freedom is not restricted and rights are not infringed by circumstances but only by deliberate human acts. This position makes, in my view, an untenable moral distinction between an overt act and an omission of an act. If we can act to alter circumstances but decide not to do so, then we must take responsibility for our omission just as we must take responsibility for our overt act. Therefore circumstances which it is within our power to alter may limit our freedom as much as deliberate human acts." [Arthur and Shaw, 1978 : 216]

Whether or not F's situation causes G's situation (because it is prior and causally correlated) the fact that if, and only if, F's situation were changed G's would be changed means that those who fail to bring about this change are responsible for the status quo.

Nozick agrees with Rawls that if objects and actions were as a whole like some pie to be divided up, if the government were the official guardian of these resources, it might be that the fairest way for it to distribute them would be in accordance with the difference principle, but is this an accurate analogy? Nozick denies that it is appropriate to regard talent as manna which falls from heaven and to treat where it falls as irrelevant.

Although he seems to agree that people do not deserve their talents he asks: "How might the point that differences in natural endowments are arbitrary from a moral point of view function in an argument meant to establish that differences in holdings stemming from differences in natural assets ought to be nullified?" [Nozick, 1974 : 216]

Michael Sandel writes on this point that even if Rawls could show that individuals do not deserve their talents : "...it might still be that people were entitled to them, and to what follows from them. To show that individuals as individuals do not deserve to possess "their" assets is not necessarily to show that society as a whole does deserve or possess them." [Sandel, 1982 : 96] and "For Nozick, the absence of

desert creates a presumption in favour of letting assets lie where they fall, at least once it is accepted things do not come into the world like manna from heaven but come into being already attached to particular persons. For Rawls, on the other hand, the absence of individual desert creates a presumption in favour of regarding the distribution of talents as a common asset ... there is no reason to let assets and the benefits that flow from them lie where they fall. This would be simply to incorporate and affirm the arbitrariness of nature." [Sandel, 1982 : 98]

A final, disturbing objection from Nozick is to Rawls' statement that if we regard talents as collective assets, inequalities need not be eliminated as there is another way of dealing with them. Nozick asks: "What if there wasn't?" Regarding features of persons as collective resources seems to allow one to steer dangerously close to using persons as means to others' ends.

These objections bring to light deep and genuine intuitions. They do not fully support Nozick's conclusions as these also have counter-intuitive features but they make Rawls' position far less secure. I do not intend to discuss them immediately but to deal with them together with similar objections raised in response to Dworkin's theory.

"Rawls most basic assumption is not that men have a right to certain liberties that Locke or Mill thought important, but they have a right

to equal respect and concern in the design of political institutions."

[Dworkin, 1977 : 182]

This right determines the constitution and use of the original position as a procedure for discovering principles of justice. It is not itself justified because it would be chosen by parties behind the veil. It is what justifies placing them there.

Dworkin says that "a responsible government must be ready to justify anything it does. But normally it is sufficient justification, even for an act that limits liberty, that the act calculated to increase the general utility be calculated to produce more overall benefit than harm." [Dworkin, 1977 : 191] But when individual citizens are said to have rights against the government it must mean that this sort of justification is not enough. "A right against the government must be a right to do something even when the majority thinks it would be wrong to do it, and even when the majority would be worse off for having it done."

The institution of rights is costly, therefore, in terms of efficiency and utility, and requires a firm foundation (we cannot simply assert, as Nozick does, that we have certain rights). Dworkin says that rights rest on the vague but powerful idea of human dignity or - which he seems to prefer - the idea of political equality: "... to violate an important right is a serious matter. It means treating a man as less than a man or as less worthy of concern than other men".

[Dworkin, 1977 : 198] But this is not obviously so. To be treated as utilitarian calculations dictate can be to be treated as an equal. It is certainly not the case that one's interests have any less weight with the government than those of another.

Is there not perhaps a possible conflict between the right to equal concern - which may or may not be satisfied by utilitarianism, and the right to equal respect - which suggests bowing to vague notions like dignity and autonomy even when "concern" prompts one to interfere?

Dworkin writes that: "It has become common to describe the great social issues of domestic politics as presenting a conflict between the demands of liberty and equality." (11) This conflict has been responsible for a great deal of indeterminacy and inaction on the part of liberals and Dworkin's attempt to avoid it is creditable. He does so by denying as absurd the idea of a general right to liberty, saying that the liberties we ought to have can be shown to be fundamentally something else (something more compatible with equality) and that other liberties are not intrinsically desirable and so should be given no special weight in utility calculations.

He defines liberty as the absence of constraints placed by a government upon what a man might do if he wants to. He stresses that this is a non-moral definition - neutral between the liberty to steal and the liberty to say what one wishes.

There seems to be no general right to liberty as such in the sense that if utility requires it, the government is justified in limiting someone's liberty say, to drive in both directions on Lexington Avenue. He imagines his opponent responding that what matters are not all liberties but important liberties. What makes them more important, he asks? It cannot be simply that their loss causes more frustration or limits future choice more, because traffic rules do the former and criminal laws the latter at least as much as restrictions on freedom of speech would.

If it is the character rather than the degree of liberty which makes the difference: "... then the notion of a general right to liberty as such has been entirely abandoned. If we have a right to basic liberties, not because they are cases in which the commodity of liberty is somehow especially at stake, but because an assault on basic liberties injures or demeans us in some way that goes beyond its impact on liberty, then what we have a right to is not liberty at all, but to the values or interests or standing that this particular constraint defeats." [Dworkin, 1977 : 271]

His dismissal of liberty is too brief. Of course there is no general right to complete liberty, just as there is no general right to complete happiness, but what of the familiar idea of a right to the greatest liberty compatible with a like system of liberty for all?

In choosing between liberties one does not weigh the right to drive where one likes or live a life of crime against the right to free

speech. One weighs the freedom to steal against the freedom to use one's possessions in security; the freedom to speak against the right not to be spoken about; and in each case one chooses the liberty which offers the widest choice. The Lexington Avenue example is misguided. The power of the traffic department to make rules of the road which are largely arbitrary so increases one's freedom of movement that it is a small sacrifice. Such rules certainly cause less frustration than would their absence.

The idea then, of a right to equal concern and respect is central to Dworkin's theory. This he interprets as the right to be treated as an equal in the political decision about how goods and opportunities are to be distributed. Utilitarian calculations seem to do this: "to embody the fundamental right of equal concern and because they treat the wishes of each member of the community on a par with the wishes of any other, with no bonus or discount reflecting the view that that member is more or less worthy of concern, or his views more or less worthy of respect than any other." [Dworkin, 1977 274]

To avoid imposing some non-neutral standard, utility maximizers take the aim of giving citizens more of what they want. Utilitarian arguments fix on the fact that a particular constraint on liberty will make people happier. But people's overall preferences for one policy rather than another may be seen to include both preferences that are personal because they state a preference for the assignment of one set of goods or opportunities to him, and preferences that are external,

because they state a preference for one assignment of goods and opportunities to others." [Dworkin, 1977 : 275]

To allow external preferences to count, Dworkin says, will not respect the right of everyone to be treated with equal concern and respect. For instance, if many racists think blacks' preferences should count for less than whites' and this desire is taken into account and the blacks suffer: "then their own assignment of goods and opportunities will depend, not simply on competition among personal preferences that abstract statements of utilitarianism suggest, but precisely on the fact that they are thought less worthy of concern and respect than others." [Dworkin, 1977 : 275]

The best way of determining and realizing people's wants is to allow them equal say in a democratic forum. The democratic process, however, makes no distinction between personal and external preferences. Therefore, Dworkin suggests rights to protect those choices of a person in which external preferences are antecedently likely to be influential.

H L A Hart doubts whether what is objectionable about counting external preferences is that it fails to treat people as equals [Ryan, 1979 : 92]. He denies that it does in fact treat people as unequal. Each person's preferences on any issue are taken to have equal weight. If one person does not stand directly to lose or gain from a particular decision, is it wrong to consider his desire, to prevent him from casting his vote in favour of a friend? On issues of

sexual freedom, if everyone's external, as well as everyone's personal preferences are counted, nothing analogous to double counting occurs.

Hart says that principles such as "Treat everyone as an equal" are indeterminate as they are satisfied both by "impose no scheme of values on anyone" and by "impose this particular scheme of values on everyone" (for argument's sake, one that no one wants). The objection seems to be rather that if hostile preferences are allowed to tip the balance, people may suffer or be deprived of liberty, not to bring about more good somewhere else but simply out of contempt or spite. "But this is a vice not of the mere externality of the preferences that have tipped the balance but of their content, i.e. their liberty-denying and respect-denying content." [Ryan, 1979 : 93]

He continues, "It is fantastic to suppose that what, for example, those denied freedom of worship have chiefly to complain about is not the restriction of their liberty with all its grave impact on personal life or development and happiness, but that they are not accorded equal concern and respect." [Ryan, 1979 : 92]

Dworkin seems to be missing the mark in stressing quality here. The concern and respect themselves, are what are important and these can be maximized with no more or less inequality if people are guaranteed exclusive control over aspects of their lives which are important to them but of little significance to others.

A further objection raised by Hart is that to link rights so closely

to what decisions are antecedently likely to be affected by external preferences is to make rights depend on what prejudices are current in a particular society. This is a strange and contingent foundation for rights.

There seem to be some liberties which are too precious to be placed at the mercy of utilitarian calculation even purified of external preferences. For instance, if there were no antecedent likelihood of external preferences affecting freedom of speech, should a person's right to speak freely be restrained because his speech is likely to jeopardize someone's personal preference for money and security from punishment?

Dworkin's project is to give rights a foundation which is not at odds with equal concern and respect. He writes: "I do wish to mention one alleged right that might be called into question by my general argument, which is the supposed individual right to the free use of property ... it is sometimes held that it is inconsistent for liberals to defend liberty of speech ... and not also concede a parallel right of some sort of property and its use. There might be force in that argument if the claim that we have a right of free speech depended on a right to something called liberty as such. But that general idea is untenable and incoherent; there is no such thing as any general right to liberty. The argument for one liberty may therefore be entirely independent of the argument for any other. I cannot think of any argument that a political decision to limit such a right in the way in

which minimum wage laws limited it, is antecedently likely to give effect to external preferences, and in that way offend the right of those whose liberty is curtailed to equal concern and respect. If, as I think, no such argument can be made out, then the alleged right does not exist." [Dworkin, 1977 : 277]

One must assume then that Dworkin would favour a thorough-going utilitarianism with regard to property. However, I would disagree with two points in the quoted passage (which perhaps cancel each other out). As we have seen Dworkin's basis for rights is perverse and the lack of such a basis for property rights does not necessarily mean they do not exist.

On the other hand, even if one does affirm a general right to the maximum liberty possible, this does not uncontroversially support the right to own and dispose of property as one chooses. Such ownership and its protection limit the freedom of others.

In the absence of a presupposition in favour of the right to own property, however, the appropriate calculation may not be wholly utilitarian. There may be other rights to be taken into account. Private property may be the best means of protecting other rights such as rights to privacy and liberty of the person. A utility calculation may require a completely laissez-faire economy in which some members of society suffer appalling hardships in order that others may prosper. Dworkin does not deal with these problems here.

In two articles written in 1981 for Philosophy and Public Affairs, Dworkin appears to have changed or clarified his position. He comes up with a picture of social justice which cannot be equivalent simply to maximizing overall utility.

Again he starts with the premise of equal concern and respect but concludes that it is the business of government to make its citizens equal in some fundamental and neutral respect. He considers first the possibility of equality of welfare - either of conscious states or of satisfaction of desire, but finds it impossible to establish a neutral criterion of welfare since some people place less value on happiness than others do - preferring perhaps the realization of goals such as renown after death. The realization of goals - neutral between the goal of happiness and goals of bringing about some state of affairs, cannot be used since to ensure people chances of achieving their desires treats people unequally since some prefer a great goal that they may never reach, while others are less ambitious. He writes: "Differences in people's judgements about how their lives are going overall are differences in their lives, rather than simply differences in their beliefs, only when they are differences, not in fantasy or conviction, but in fulfilment which is, I take it, a matter of measuring personal success or failure against some standard of what should have been, not what conceivably might have been." The important comparison seems to me to be this. People have lives of less overall success if they have more reasonably to regret that they do not have or have not done." [Dworkin, 1981A : 216]

One cannot reasonably regret that one is not the richest, strongest, tallest person on earth but one can reasonably regret that one is worse-off than average. This notion of reasonable regret seems to produce results very similar to Rawls' difference principle. Although the principle advocates taking from the rich to give to the poor, the rich cannot reasonably object whereas the worse-off could object to a system which made them worse-off than they might otherwise have been.

One cannot reasonably regret, furthermore, if one starts out no worse-off than others and one wilfully destroys what one has or cultivates expensive tastes which mean one is less happy with one's share than are others. It seems unfair (an object for reasonable regret by others) if they are forced to give up part of their shares to compensate for one's wastefulness.

Dworkin concludes that the appropriate dimension of equality is equality of resources. As a model procedure for reckoning the justice of a distribution Dworkin asks one to imagine that a number of shipwreck survivors are washed up on a desert island which has abundant resources and no native population and any likely rescue is many years away "These immigrants accept the principle that no one is antecedently entitled to any of these resources but that they shall be divided equally among them." [Dworkin, 1981B : 285]

To facilitate this division they hold an auction. Each immigrant receives an equal number of clamshells and they bid for each separate

item on the island. The crucial features of this process are: that the immigrants start from a position of equal bargaining power and that the value of resources is determined by how much other people want them. The resulting distribution meets the envy test: no immigrant would prefer anyone else's bundle to his own.

In the first point he agrees with Rawls. This is a model for an original structuring of principles of economic justice: all individuals meet, assert their claims and have a chance to bargain, e.g. to agree to make concessions in other people's favour in exchange for reciprocal concessions. Such a marketplace is a valuable device for determining what people want, how much they want it and ensuring that in some sense, they agree to what happens to them. If their bargaining power were unequal, as it must be in a real marketplace, then how much one is prepared to pay will cease to be an indicator of how much one wants something; and relatively trivial desires of the more fortunate will count for more than the urgent needs of others. This is to treat one individual as more valuable than another.

Dworkin's model is more modest than that of Rawls. He recognises that equality is a presupposition of his model and not a conclusion and, I think rightly, criticises Rawls for believing he can use the veil of ignorance to support equality. The immigrants distribute only resources and not rights and duties although they do discuss rules governing production, exchange and taxation. Dworkin's picture is less elegant than Rawls', as he first imagines his immigrants as

penniless but fully aware of their talents, handicaps and inclinations and then has to introduce ad hoc devices to deal with questions like compensation for congenital blindness. He imagines the immigrants adopting an insurance scheme. Whoever chose would contribute to a fund and would be paid out in case of accidents. Such an insurance scheme is the foundation for taxation. "Taxation should be designed to match the situation in which everyone were as likely to develop a handicap and bought the average amount of insurance against that possibility." [Dworkin, 1981B : 298]

Even if the immigrants started with equal shares, hard work, skill and luck would soon mean that shares became unequal. The way to deal with this Dworkin suggests, is to treat being stupid or weak on a par with being handicapped and develop an insurance scheme which would compensate those who by chance failed to find remunerative work. How much people should contribute to such a scheme would be determined by calculating what people who had the same chance of being badly off would decide to contribute. The device is very similar to the original position but Dworkin's conclusions are less precise. He believes people would not insure themselves against not earning a high salary since that would mean they would have a high chance of being enslaved to their jobs to pay the premiums. On the other hand, they would be almost certain to insure themselves against falling below a certain minimum since that possibility, however unlikely, would be intolerable.

The envy test should be applied over time, however, so that no one prefers another's whole life. This means that if one person chooses to gamble his resources on a risky venture and wins or loses, or one person chooses to work hard for high gain and another to work very little but have a frugal life-style, these choices ought not to be penalized or rewarded.

Taxation, he says, should attempt to neutralize the differential benefit brought about by unequal talents but should be ambition-sensitive, i.e. allow those who are prepared to work harder at less popular tasks or to take risks, to benefit.

This reflects important underlying convictions that have long been associated with liberalism. The first is that government should be neutral between conceptions of the good life, that it should not bias its citizens in favour of or against lives of leisure or possessiveness or risk-aversion. Further it appears to make a distinction between choice and effort, on the one hand, for which one can be held responsible, and talents, and so on, which one cannot be said to deserve and from which one does not deserve to reap the benefits. In this latter point he differs from Rawls who denies that one is responsible for how hard one tries. I feel it is an improvement since Rawls' line taken to its logical conclusion, leads to determinism.

Dworkin's idea, if it could be realized, would resolve the

incentive/equality dilemma which disturbs utilitarians. People would be encouraged to try hard and to use their skills effectively but their rewards would differ as widely as their industriousness and not as widely as their abilities.

The idea produces a society which is superior to Marx's in that it recognises that there must be some trade-off between pleasant work and socially useful work; and between using one's time doing what one likes and using it getting what one wants. (By this I do not mean to suggest that all work is unpleasant or that all leisure is fun). Marx appears to believe that all these desirable properties will coincide in each person's work - one day, after the revolution and that therefore, there is no point in offering incentive to encourage people to do what is necessary. It is implausible to believe that in such circumstances if they are given the choice, people will opt to do unpleasant, hard work for no extra reward. It is more likely that they will be given no choice.

It is doubtful, however, whether Dworkin's idea can be realized. He advocates simply some form of progressive income tax which does not level people off completely but reduces the differences between them. (Income tax, he says, is preferable to consumption-tax or wealth-tax since it is not biased in favour either of those who spend or those who save.) However, it completely fails to recognise industry while neutralizing the effects of talent since the doctor who works fourteen hours a day saving lives and earns the same as a singer who has two

performances a month is also taxed the same. A possible partial solution would be to tax earnings per hours worked rather than net income. This might be slightly unfair to fast workers - or it could be combined with taxing net income so that workers were not encouraged to work slowly although they were encouraged to work for longer hours. Another suggestion is to tax useful or unpleasant jobs such as rubbish collecting less than say, playing basketball. The trouble with this is that it is difficult to formulate criteria of "useful" without appearing to be non-neutral about the worthiness of activities and choices. It would be inadequate to define "useful" in terms of how much people want it, and "unpleasant" in terms of how many people are prepared to do it and allow the law of supply and demand to take care of the issue because the supply of rubbish collectors is more likely to meet the demand than is the supply of nuclear physicists and there is no reason to believe that the latter is less pleasant than the former.

Furthermore, talent and ambition are closely intertwined. Most talents are developed at the expense of hard work and long and expensive training. Natural talents often provide the incentive in the form of praise and intrinsic satisfaction, for one to work harder. Talent and social usefulness are even more closely intertwined. Society must provide incentives, not only for people to work hard, but to use their most valuable talents. As a result, those who are fortunate enough to possess these talents are likely to benefit because of them.

Jan Narveson contends that special features of the island example prejudice the case. For instance:

- (1) Resources are fairly abundant on the island, so each share will be relatively attractive. This does not compare well with the real world where an equal share may be less than an individual needs for a fulfilled life. The significance of this fact is unclear since a similar criticism is levelled against Locke, to the opposite effect: that in a situation of scarcity, one cannot allow uncontrolled individual appropriation but the community as a whole must regulate resources for their mutual advantage.

- (2) The island is relatively small and accessible. Narveson denies that we would feel the same way if the territory the immigrants arrived at were vast and difficult to tame like Tasmania. He says the strong and fearless would be unlikely to accept an equal division of all potential land. Again, the force of this is difficult to determine. If Narveson is imagining a territory so vast that if the adventurous immigrants were to strike out into the hinterland and carve out large territories for themselves, the weak and timid would be relatively unharmed, then his own first criticism cancels this out. If the weak and timid would be left with less than they needed to survive because the strong were able to take and keep the lion's share, then he is merely asserting that might is right.

(3) The fact that the parties are immigrants biases the case in favour of an equal division since a shipload of immigrants is typically united in some sort of co-operative enterprise. Narveson is equivocating here. The people on the island are only "immigrants" in the sense that they have come from another country and will live on the island. There was no suggestion that they originally set out as a cohesive pioneering group. There is no necessity to suppose that they even knew each other before the wreck.

(4) The auction takes place at a particular time with a particular set of resources. The results of the auction are somehow to be measured against current distributions in the real world to assess the justice of the latter. But can we ask at what time might the auction have been held and what would constitute the set of initial resources for the auction in question? It is not only not obvious that answers to either of those questions would not typically be non-arbitrarily available, but more nearly obvious that they would not be typically so. [Narveson, 1983 : 15]

The island and the objects the immigrants find on it represent all natural resources to which no one has any particular antecedent right. The fairest procedure is to divide these resources equally. But Dworkin himself denies that one should continue redistributing and equalizing. Each individual is entitled to any extra he can make for

himself by working and saving. Narveson's objection is that it is impossible to separate in a non-arbitrary way, natural resources from the contribution people make to them.

Further, the sort of redistributive measures Dworkin envisions being set up would be those which would be equivalent to the workings of an insurance scheme chosen by a group of islanders who did not know whether they would be handicapped or not or whether their talents would be of any value. "Does this really ensure equality of resources anyway? Does the poor, unemployed, untalented Smith who receives insurance benefits possess equal resources as Jones who is rich and talented even though taxed. One thing we must bear in mind, for instance, is that the opportunity to participate in the insurance auction which underpins all this is purely hypothetical. The fact is that Smith is, in every measure that matters, way behind Jones in the actual world. On Dworkin's programme, it looks as though equality only holds good in the hypothetical starting point rather than in the real world." [Narveson, 1983 : 18]

For both Rawls and Dworkin, government must concern itself with creating as far as possible, conditions in which each can realize his conception of the good life, and it must be impartial in its dealings with these citizens.

Equality is a slippery notion. Nozick would advocate treating citizens equally by demanding an equal (small) amount of tax from each

and acting impartially to ensure that no one interfered with anyone else's natural or contracted rights. Other writers demand equal opportunity so that all equally gifted persons have an equal chance of getting certain positions and their reward. Both Rawls and Dworkin reject such a meritocracy since it seeks to reward people for qualities they deserve no more than they deserve their skin colour or inheritance.

If it is true that one does not deserve whatever holdings or abilities one happens to have (Nozick concedes this but asserts,) it does not follow that society as a whole owns and has a right to distribute or use these resources. It does mean, however, that the fact of one's physical possession cannot be an immovable barrier to the realization of morally desirable states of affairs such as the relief of need, the diffusion of power, the abolition of degrading inequalities, the improvement of opportunities. Of course, there might be similar considerations in particular cases, weighing in favour of leaving holdings where they fall, such as the need for security and incentives. The point is that it cannot be sufficient justification for not redistributing a resource that the person happened to be born with it (at least where there are factors favouring redistribution).

In virtue of what does one deserve something? In virtue, presumably, of one's character or conduct, at least those aspects of one's character or conduct for which one is responsible. One does not seem to deserve anything for one's beauty, but one may deserve something

for one's courage. Nor does one seem to deserve a reward for saving someone's life by unintentionally emptying the cup of poison he would have drunk. If one is similarly fortunate in inheriting a million one does not deserve this either. If one is successful as a result of having used one's brains, one does not seem to deserve the full reward. Here Rawls and Dworkin agree. Where they disagree is over the question of whether one deserves a reward for success which is purely the result of hard work.

I think it is misguided to deny that one is responsible for the choices one makes unless one is prepared to deny autonomy and morality altogether and this is a dangerous line to take if one's theory rests largely on the belief in the freedom and rationality of individuals. It is not misguided to deny that one is responsible for the influence of arbitrary factors on how one's intentions turn out.

Rawls says that: "The two principles are equivalent to an undertaking to regard the distribution of natural abilities as a collective asset so that the more fortunate are to benefit only in ways that help those who have lost out...By arranging inequalities for reciprocal advantage the exploitation of the contingencies of natural and social circumstances within a framework of equal liberty, persons express their respect for one another in the very constitution of their society." [179]

Phrases like "the more fortunate", "those who have lost out", "persons

express their respect for one another", suggest that Rawls has a conception of the individual as a colourless moral agent to which characteristics are added like possessions. Dworkin drives a similar wedge between the person and his properties although he doesn't imagine persons meeting without their properties. In discussing how one ought to regard expensive tastes, he explicitly draws a line between the person with his conception of the good, and the various facts about him which facilitate or impede his success.

Nozick and Narveson are nervous of making this distinction. If one takes this line, they believe, it is only squeamishness and technical difficulties which prevent one transplanting limbs and forcing people to work. In principle there seems to be no reason why their argument shouldn't allow this. Both Rawls and Dworkin invoke rights of inviolability of the person, but are one's organs really part of one's person on this 'thin' conception of the individual? Of course, one cannot remove organs or force someone to work without also interfering with the person (in whatever sense) but it may be replied that people who do not give their body parts or time voluntarily are behaving as unjustly as those who evade paying taxes and, as such, can justly be punished. Nozick thinks there is little difference but draws opposite conclusions.

Hart describes his position: "Nozick thinks that taxing earnings or profits for the relief of poverty or the general welfare such as public education is on this view morally indefensible; it is said to

be on a par with forced labour or making the government imposing such taxes into part owners of the persons taxed." [Ryan, 1979 : 82]

The idea seems to be: if my talents (labour) are mine and I exchange them for X, then X becomes mine in the same sense. Only if my talents are not mine can I be said not to deserve or own (in the moral sense) my payment. But if my talents are not mine then others are not obliged to refrain from using them as a common resource.

It is an unpleasant dilemma as it appears to force one to choose between a ruthless laissez-faire economy and an appallingly totalitarian society. The response is perhaps to take a utilitarian line that redistribution is justified when it improves people's well-being (perhaps with a special weighting for equality) and that persons are relatively protected against forced organ transplants since:

- (1) it seems usually to be the case that people get better use out of their own body parts than others would.
- (2) the disutility of being operated upon is so great.
- (3) the anxiety created by the existence of such a system produces further disutility

so that it is probably best to adopt a convention ensuring the

inviolability of persons, in the same way that, the institution of the family, although preventing equality of opportunity, is an institution of such value that it is worth keeping in spite of the cost. It may, however, be the case, that sometimes the inviolability of persons is outweighed by other claims. This will be unpleasant but presumably the alternative will be even more so.

Some notion of equality would be agreed to by most people. "Equality before the law", for instance. This is the assertion that governments or other public institutions should treat citizens impartially, should distribute equally what they have to distribute. But this notion of equality has no obvious consequences as to what distributions should be realized since there is no clarity or agreement on what the government ought to have to distribute, to whom and in virtue of what (i.e. a university distributes places and degrees to students in virtue of their different degrees of intelligence and industry).

Should a government treat its citizens' talents as something for which to reward them or as something for which to compensate the others? If there is a blanket assumption that individuals as they really are, are the same then their different talents etc will be treated as different amounts of good luck. If there is a further assumption that they are equally valuable to the community, the difference principle or some more egalitarian distribution will result.

If we adopt as a starting point something like "Each is to count for

one" or "the government ought to treat citizens as equals" we then have to agree on what persons are and what they all consider of fundamental importance, since to treat persons as equals in one dimension will involve treating them unequally in another. In a simple, obvious example, ensuring equal opportunity for all requires resources and taxation may take an equal amount of each's earnings or may leave each with the same amount.

Equality therefore is an ambivalent ideal. If it is valuable, perhaps the underlying basis of its value may indicate which dimension would be the most appropriate.

Some theorists use the terminology of a race. The government must ensure fair competition. On this conception of human activity the standard for assessing one's life is how it compares with the lives of others. This is the only conception which could justify absolute equality as an end in itself. But this seems to be a bad model. Firstly, there are other criteria for assessing one's life: whether one is healthy, well-nourished, comfortable, stimulated, satisfied by the nature of one's work, loved, unburdened by guilt. Although one does sometimes measure one's well-being against that of others:

- (1) relative well-being arguably might and perhaps ought to be less significant than real well-being
- (2) there are too many dimensions, many of which are incommensurable

for life to be described as a single race

- (3) the most deeply felt source of envy is usually another's intelligence, beauty, moral superiority, loveableness, rather than his superior wealth, which can be redistributed, and money cannot compensate for a sense of inferiority based upon the fact of inferiority.

Of course, people do compete for things such as possessions and power and if these are what are ultimately valuable and there is an invariable amount of these, it may be appropriate to share them out equally. If, however, the sum of these resources varies with the nature of their distribution, other strategies may be appropriate. It is undoubtedly the case that distribution affects the net amount of material goods. If the more efficient control most means of production, for instance, they will be most productive. "Control" does not mean "own" however, and it is perhaps possible to separate the useful from the harmful aspects of control. But incentives of material gain play an important rôle in generating extra resources. This is of course an empirical point, but, I think, a very plausible one. Utilitarianism recognises that inequality can increase the amount of material goods. On the other hand, since most goods produce a diminishing marginal utility, inequality decreases their value. The two considerations have to be finely balanced.

It is objected against utilitarianism that it treats persons simply as

measure of utility. What average utilitarianism does is give each person an equal chance of getting the greatest amount of welfare. But the fact that before one entered life one had a good and equal chance of getting something does not in any way compensate one for not having it in real life; the equality of antecedent or hypothetical probability does not reconcile one to actual inequality which has unpleasant real (as opposed to relative) consequences.

If Rawls' Difference Principle is realized no-one has less than each would have had if everything was divided equally amongst them. This means that no-one is sacrificed for anyone else which captures the notion of the separateness of persons. At the same time it recognises that what people want is not so much to be equal as to be as well-off as possible.

The emphasis on equal opportunity is very valuable not merely as an equal chance to be well paid but as an equal chance to develop to one's full potential. To have an education which brings out one's talents and a career which uses them is satisfying whatever one's talents are. It is also the best way of discovering and utilizing all skill available to the community.

CONCLUSION

I have grouped together Ryan's utilitarianism and the theories of two revisionist liberals, Rawls and Dworkin and called them hybrid

theorists because they all seem to recognise the pitfalls of extreme libertarian and socialist positions. Their theories are roughly neutral between systems of private and common property and suggest incorporating features of both but remaining sensitive to conditions and they are prepared to opt for whatever will raise the general standard of living while protecting individuals.

Footnotes to Chapter V

1. From Hutchinson, An Inquiry Concerning Moral Good and Evil (1925), Chapter 3, paragraph 8 - said to be the earliest formulation of the utilitarianism principle.

2. Alan Ryan elaborates on this (1984 : 98)

"... if the pleasures of anticipation are sweet, the pains of disappointed expectations are particularly severe. There are many things which we should not much miss if we never had them, which we should very much miss if we had had them and had lost them.

... One of the things on which almost all utilitarians, other than utopians like Godwin, agree is that there is an asymmetry between gains and losses; losses do not simply leave us where we were before, but make us much worse off."

3. Isaiah Berlin writes in a similar vein:

"To avoid glaring inequality or widespread misery I am ready to sacrifice some, or all of my freedom: I may do so willingly and freely: but it is freedom that I am giving up for the sake of justice or equality or the love of my fellow men. I should be guilt-stricken, and rightly so, if I were not, in some circumstances, ready to make this sacrifice. But a sacrifice is not an increase in what is being sacrificed, namely freedom, however great the moral need or the compensation for it. Everything is what it is: not equated on fairness or justice or culture, or human happiness or a quiet conscience ... it is a confusion of values to say that although my 'liberal', individual freedom may go by the board, some other kind of freedom - 'social' or 'economic' - is increased." (Berlin, 1969 : 125-6)

4. It is interesting to note the effects of different models. Nozick talks of Robinson Crusoes on separate islands.

CHAPTER VI

CONCLUSION

Full ownership is distinguished from mere physical possession. The concept of "ownership" entails some or all of the following: the right to exclude others, the right to decide how and by whom one's property may be used, the right to set conditions on how it may be used after one's death and to demand whatever price one likes in exchange for those rights. The essential complement to this is the absence of rights in others to use the thing without one's consent.

One way to justify my right to exclude, say Jones from a patch land he previously had a right to use, is to say that he gave up that right to me. For instance, he gave me the patch or his share in it.

In this case Jones either owned or part owned the patch. In giving it to me, he transferred not only the right to exclude him but also the right to exclude others. How does this exclusivity come about in the first place? Does the right to exclude the rest of humanity from something require their consent either to a particular case or to some general procedure of acquisition? Actual consent is impossible to obtain and it seems to be the case that some system of exclusive rights is necessary (if only rights to exclusive use for a short period). However, although most people, except anarchists, accept that any rules are better than none, of the possible schemata for property rights and procedures of acquisition which we might adopt it is a matter of very great significance which we do adopt.

It is therefore inadequate to adopt a laissez-faire acceptance of current distribution and allow current holders to do as they wish with what they own. (This appears to be Nozick's solution although he adds the proviso that where any current holder has gained his possessions by force or fraud, the situation should be rectified). Although this would provide a set of rules regarding property - so avoiding anarchy - and would do so with as little trouble as possible - it would not necessarily be the best principle from an objective point of view (the most likely to maximize utility or to recognise people's rights) and it would certainly not receive the willing cooperation of all individuals involved.

Since property entails the absence of rights of access in individuals who, in a state of nature or in another system, would have had these rights, the institution of property which is adopted must be such that it is to their mutual advantage so that they would have given up their rights if they could have been asked. This form of justification for limitations of natural rights by the state was established by Classical Social Contract theorists.

In a putative state of nature persons must have had equal rights to use all things since:

1. They were free to act as they pleased.
2. Physical objects had no rights.

3. If they were to have the future right to own, they must first have had the rights to use, to work on, and to occupy the land and natural resources they encountered.

If the imposition of property rights was to obtain the consent of such persons it had to ensure each an acceptable compensation. At first glance, it appears that each of such persons should accept no less than an equal share.

However, much research in the empirical social sciences suggests that the sum of all there is varies according to how it is distributed. If an individual can improve his lot by accepting that others are even better off than he, it seems rational for him to do so. It is just, therefore, for a society to adopt as a priority the maintenance of the worst off at a certain level. Theoretically, this level should be: no less than they would have under a more egalitarian system - which may, in practice, best be instituted by ensuring that they have the food, health care, housing that they need and access to educational facilities where the society is sufficiently affluent. Beyond this, it seems just to allow inequalities which are necessary to induce people to work to increase the average standard of living. Hayek, Rawls, Dworkin and Marx all claim that their systems will secure a minimum standard of living for all. They disagree as to how this will be best promoted and, if it turns out, that in fact their system does not secure it they disagree in whether this counts as a reason for abandoning their system. For Rawls and Dworkin this seems to be one

of the foremost criteria for assessing an economy.

One of the ways in which it might be possible to increase the sum, and so each share, of resources, is to allow these resources to be controlled by the most astute and motivated people. Democratic control of productive enterprises is far less likely to be efficient and there is substantial evidence to support the belief that workers do not want it - especially at the cost of material hardship [Ryan, 1984: Chap 7].

Furthermore, people tend to work harder if they have reason to believe that their extra effort will make a difference to themselves and their families. Of course, they may also work hard under threat of punishment but the "carrot" approach seems more conducive to goodwill and freedom since it is easier to refuse a reward (as long as one is ensured a minimum wage) than to ignore a punishment.

The negative effects of these institutions can be counteracted by placing strict checks on the control managers have. For instance, by minimum wage laws and other laws governing employment and monopoly laws, by making managers liable to owners and trade unions and by separating the rights to own and receive income on shares from the right to manage. The adverse effects of differential income (as incentive) can be partially counteracted by instituting a harsh death tax and a steeply graduated income tax. Most of these measure are the subjects of controversy. I suggest them here as a means of treating

individuals with equal concern and respect, on the conception of equality I consider most reasonable: that of maximizing the chances of each to have as many resources as possible without making the worst off worse off than they need be.

Increasing economic efficiency and productivity is sometimes accused of being a materialistic goal which merely attempts to make palatable an essentially unjust and unfree system. This seems to me to be mistaken. Although work can or should be in part a means of self expression, development and pleasure, it is first and foremost a means of providing oneself with food, shelter and whatever else one considers necessary. For any state which concerns itself with the welfare of its citizens, provision of such necessities must take priority. There is no reason to believe that work done to provide these will be stimulating or pleasurable. If they can be produced with ease, individuals will be left free to pursue activities which are intrinsically satisfying: such as learning new skills, collaborating with others in projects to improve the environment, hobbies, sport, reading or experimentation. Some of these options may be available within the context of work but they will only be certain and numerous if there exists an efficient economy producing the necessities of life. This freedom from physical necessity is desired by both liberals and socialists.

A different criticism is that such a system necessarily involves continual interference with liberty; that people are not free to do

what they like with what they own or to make contracts as it suits them. However there is no reason to suppose that people ought to "own" things in this sense. It may be a restriction on my freedom that I cannot destroy the home I have on 99-year lease or sell an official position I hold or plant turnips in a park but these are legitimate restrictions. It may be objected that these particular restrictions are established by the terms of a contract to which I have agreed but any system of property requires some sort of underlying contract and the most just contract may be one which places restrictions on harmful uses or accumulations of property. It is invariably the case that some freedoms have to be restricted in order that others may be protected. If one is free to do as one wishes with certain things it means that others are forbidden to use these things. Alternatively, if everyone is permitted to use something, everyone is severely restricted in the kinds of use they may make of that thing.

The freedom to accumulate territory the size of Natal, or ten houses one leaves unoccupied seems to be a less valuable freedom to protect than independence or the chance to make a choice between reasonable careers and lifestyles. Where these freedoms are mutually exclusive it seems appropriate to opt for the latter group.

On the other hand private property rights, which give one the freedom to do as one likes with one's possessions become extremely valuable in areas where it is important that things reflect one's personality: for instance one's home, clothes, garden. They ensure that one may

modify these as one desires without compromise (except where one directly harms others) and so encourage individuality. They create a sense of security in that they protect one against the whims of others and increase the certainty one has regarding one's future and how one may affect it: one knows for instance that one will be allowed to enjoy the farm one cultivates. One also knows that no matter how eccentric one is, no one else can use political or economic power to induce one to change.

However, if private property is justified on the grounds of protection of individual rights, it cannot simply be the full liberal notion of property. As far as possible everyone should have some property and no one person or group should be allowed to monopolize too much property and the power it represents. C.B. Macpherson makes the distinction between self developmental and extractive powers. The first is the freedom and opportunity to develop and use one's talents; the second the capacity forcibly to transfer another's powers [C.B. Macpherson, 1973:10]. The first is desirable, the second is not.

A legal system should maximize the freedom of its citizens but should not be indifferent to its distribution - citizens should not be allowed the freedom to abuse or exploit each other. This goal can be approached by insuring a minimum standard of living for all. If people have the necessities of life, they are less vulnerable to the abuse of economic power than they are in a completely laissez-faire economy. For instance, they cannot be forced to work for long hours

in appalling conditions for survival wages.

Such aid requires resources. A graduated income tax supplies such resources at the same time as it makes it extremely difficult for any individual to accumulate vast sums (the means perhaps, to buy people or to manipulate the economy). Individuals are further prevented from accumulating excessive amounts of money and market freedoms are protected if the state prevents certain transactions such as price fixing and bequeathal.

I have tried to show that a free society is one which attempts to prevent individual holdings falling below a certain minimum or rising above a certain maximum that in each case where an economic freedom is restricted in this system, it is restricted for the sake of greater freedom; and that these conclusions are roughly co-extensive with the requirements of equality as I have described them.

It may be objected that this is unjust, since in practice it will maintain a pattern which is indifferent to the worthiness of individuals.

To treat people justly is, on a very natural conception, to give them what they deserve. Desert involves a peculiar mixture of worthiness of the recipient and consent of all concerned parties. For instance, if I paint someone's house without his consent, I do not deserve payment. The winner of a tennis or poker game deserves his winnings

because he has met the conditions agreed to by the participants.

Both aspects presuppose antecedent property rights and so have little to contribute to determining the justices of the original establishment of rights. If I deserve something because its previous owner decided I was worthy, the question remains: on what was his ownership based? If I deserve it in a more objective sense (i.e. I have done the most good) it may still be asked, what part of my contribution was due to me and what part to my good luck in the resources I had available?

If property rights are antecedent to desert one should either abandon justice as a criterion or adopt a different conception of justice. John Rawls rejects justice as desert for similar reasons. He says what one deserves depends largely on the society's basic structure of values and principles for distributing rights and duties. To assess the justice of basic structures themselves he suggests justice as fairness. He writes "the principles of justice are the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association". (Rawls, 1972:11).

I am uncertain whether this is the only possible alternative to the rejected notion of justice, or whether it is the best. However it has become apparent that justice does not clearly indicate one form of property rather than another. Property rights are not natural rights.

They are instrumental to the protection of other rights or the maximization of utility. They are thus contingent on circumstances. However, it may be unjust to confiscate a man's property or suddenly to disappoint his expectations regarding it. Justice, on any conception, appears to involve an element of constancy of treating people according to the terms they have actually or tacitly agreed to and have been promised. Changes in structures of rights should occur slowly and with advance warning. If this is impossible, every effort should be made to compensate those who lose out.

Compensation could perhaps be paid out of a compulsory insurance scheme.

These principles appear relatively innocuous, but if they are taken to their logical conclusions they produce some seemingly counter-intuitive consequences.

If a particular distribution and set of rules regarding property is justified because of the hypothetical consent it would receive, it must be the case that each person receives an equal share or something more than an equal share if things are divided unequally. If persons have an equal claim on resources, then the fact of having been born earlier should not be allowed to give someone an unfair advantage. That is, children have the same right to some share of resources as members of earlier generations. There is no guarantee that this right will be fulfilled by parents. Some parents are incompetent, some are

indifferent and so on. These parents, if they have been lazy, wasteful, reckless or feckless, may be said to deserve their unfortunate position, but the children do not deserve theirs. It may also be said that hardworking parents or parents who have chosen to have small families deserve the chance to benefit their children (this is often their main purpose in working) but if a son's right to his land is based entirely on his father's rights and a great-grandson's rights on his great-grandfather's rights, then the rights created by the original acquisition imply the rights to control into perpetuity. This is implausible. If Dworkin's immigrants arriving on the island discovered that someone had lived and died there three hundred years before and that that person had left a will stating that nine-tenths of the island be maintained as a shrine uninhabited and uncultivated forever, the immigrants would seem to be justified in disregarding the claim. I am not denying that the living ever have duties to the dead - just that the example suggests that earning or finding something does not seem to entitle one to control what happens to it much after one's death - if the son does not deserve his disproportionately large inheritance and his father does not have a right to control what happens to his possessions after he is dead, this suggests that much of his property ought to be redistributed after his death. Especially since the responsibility for children rests with the state if parents fail to fulfil it. If such parents have numerous children, the state is faced with a dilemma: to provide extra medical and educational and other resources to large families - which seems unfair to other families; or to allot an equal share to each family: which is unfair

to the children of the large families who are not responsible for their parents' excesses. It seems right, therefore, that the state should have some rights or authority in the matter of children: such as limiting the number of children a couple may have or instituting a licence for parents.

Secondly, if redistribution is justified on the grounds that all people have an equal claim on resources based on their natural rights, it is implausible that such redistribution should be confined to the citizens of a single country. The rights of nations to exclusive control of their territories rest on similar grounds to the claims of individuals; de facto physical control, length of original occupancy or development by labour, which do not seem sufficiently powerful to override need. Narveson (1983) uses this as almost a *reductio ad absurdum* of redistribution within countries. His argument proves only that it is inconsistent to propose such redistribution while maintaining national selfishness.

Thirdly, and most significantly, it has become apparent in the course of this discussion that it is almost impossible to draw a clear line between a person and his property or between personal and property rights, some writers see property as an extension of one's self. If one has made it, one has "mixed in" some of one's labour and individuality. If one has bought it, one has exchanged it for a service or something one made. Many objects extend one's powers in the way improved limbs or intelligence would. Education is a good

example. One acquires it from the external world (often at the expense of others) and yet it cannot physically or descriptively be separated from one's natural talents. One cannot be said to deserve the superior education one received or the high salary it enables one to command. One does not seem to deserve one's natural abilities any more. Again one is faced with a dilemma: to allow people full freedom in their use of their time and abilities and to allow them rights over whatever they create with these abilities or whatever others are prepared to pay for their services. Alternatively, we can abandon the absolute inviolability of the self. This is not to say that we must treat property and persons with the same (as much or as little) respect. It may be more appropriate to adopt a sliding scale of defeasibility to match the sliding scale of distance the object or faculty stands from one's identity.

These dilemmas illustrate and underline a fundamental difficulty one encounters in drawing up principles of social justice. People have objects, abilities and territories, which have been given to them by their parents, by chance, in exchange for hard work, or in accordance with principles of social justice. Justice, security and freedom require that at least some of these holdings be protected and that owners have the right to decide what happens to them. At the same time, people have needs which are often legitimate claims on the state. To satisfy these needs the state must confiscate part of others' holdings or interfere with their use. To respect and protect the rights of owners is to ignore and often actively to thwart, the

claims of the needy. The necessary trade-off between these two goals means that it is impossible to draw up a fully satisfactory programme of economic justice. Some compromises are better than others. I have attempted to give a broad outline of a system which avoids the pitfalls of either extreme.

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