4. A Contractual Justification of Redistributive Capitalism
A CONTRACTUAL JUSTIFICATION OF REDISTRIBUTIVE CAPITALISM

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1. Contractualism, Property, and the State of Nature

Contractualist political theory reveals two competing accounts of the relation between property, the state of nature and the social contract. Locke and contemporary Lockians such as Robert Nozick maintain that exclusionary property rights characterize the state of nature, and the main end of government is to secure them. “The great and chief end . . . of Men’s uniting into Commonwealths, and putting themselves under government, is the Preservation of their Property.”¹ Although some recent interpreters would have us believe that Locke did not uphold private property rights in the state of nature and saw private property in civil society as conventional or based on consent,² I think this is to miss the real contribution of Locke to the natural law tradition; in contrast to the earlier theories of Grotius and Pufendorf, Locke justifies exclusionary property rights without any appeal to consent or compact.³ In Lockean theory property rights are morally prior to the social contract that justifies government. Indeed, the main end of government is to secure these rights; consequently, Lockean governments clearly are in no position to attack private property. Although Lockean govern-

¹ See John Locke, Two Treatises of Government (1690), 1: 288.
ments will recognize a right to charity, they will not be strongly redistributive.  

Rousseau presents a different picture. In the state of nature one can possess but not own. Genuine property, not simply occupation but a right of ownership, characterizes our departure from the state of nature, and can only be justified by the social contract. For Rousseau, then, property cannot be antecedent to political society; indeed, "the State, in relation to its members, is master of all their goods by the social contract."  

Whereas Lockeans insist that property rights are morally prior to the social contract and so place limits on the contractual agreement, for Rousseau no such limits exist. Consequently, those who are critical of capitalism and favor extensive redistribution are apt to adopt the Rousseauian view; people are free to organize production and define ownership in any way they deem appropriate without being constrained by natural rights to property.  

I aim to show in this chapter that we need not, indeed cannot, simply choose Locke or Rousseau. The Lockean case is partially successful: we do possess a right to property in the state of nature that the social contract must respect. But, properly understood, this right also presupposes that the state, through the social contract, has extensive authority to redistribute property. The justification of exclusionary property rights and the market presupposes the justification of the redistributive state.  

I make extensive appeal to the idea of the state of nature. Many may find this implausible. Contractual arguments are, to be sure, in vogue again, but state of nature accounts are more suspect. "'Tis often asked as a mighty Objection, Where are, or ever were, there any Men in such a State of Nature?" One of my aims is to demonstrate that the classical contractualists, as well as contemporary theorists like James Buchanan and David Gauthier, rightly see the state of nature as an essential part of contractual justification. Unlike Locke or Rousseau, however, I do not see it as an historical state, and unlike Buchanan, I do not depict it as a condition of moral anarchy. Rather, my claim is that the state of nature is a necessary phase in moral justification, what I will call the deontological basis. Upon this deontological basis contractual theory develops a constrained teleological argument.
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I begin in sections 2 and 3 by showing why contractual justification must employ both these phases. Section 4 then argues that the deontological basis includes a quasi-Lockean account of property rights, while section 5 shows how the full justification of these property rights requires a contractual argument justifying redistribution.

2. CONTRACTUALISM AND PUBLIC JUSTIFICATION

Contractualist political theory can be understood as advancing two theses: (1) individuals are devoted to their own valuings, projects, etc., and these only provide what Derek Parfit and Thomas Nagel call agent-relative reasons for action, and (2) political institutions are justified by appealing to the agent-relative values of each member of the public.

2.1. The Agent-Relativity of Value

The agent-relativity of value-based reasons to act is well illustrated by Hobbes's theory. Hobbes's individuals are moved solely by self-interest, and self-interest is a paradigm of an agent-relative reason to act. For a reason to be agent-relative, it must necessarily refer to the agent for whom it is a reason, that is, "R is a reason for person P." So, in Hobbes's state of nature, each pursues his own interest, and his interests do not necessarily provide anyone but himself with a reason to do anything. But self-interest is by no means the only sort of agent-relative reason. Indeed, what are often called "subjectivist" theories of value typically assert that all values, ends, goals, projects, etc. generate only agent-relative reasons for action. If, then, Alf loves Betty, this provides him with reasons to act in various loving ways toward Betty; but the mere fact that Alf loves Betty does not in itself provide Charlie with any reason at all to act in such ways or to help Alf secure Betty's love. So (roughly) thoroughlygoingly agent-relative accounts of value-based reasons assert that V (be it love or money) provides a reason for Alf to act only if Alf values V.

So the task of a contractual theory is to show that this agent-relativity of value-based reasons to act somehow provides the basis for a set of rules that can regulate the actions of all. Notice how this problem evaporates if value-based reasons are agent-
neutral. An agent-neutral reason is a reason for anyone (although some may be so situated as to be unable to act on it). If, then, Alf’s pain provides an agent-neutral reason to alleviate it, everyone has a reason to alleviate Alf’s pain. According to Nagel, agent-neutral reasons “represent the values of occurrences, acts, and states of affairs themselves, not their values for anyone.”

Now if all values provide agent-neutral rather than agent-relative reasons to act, then if Alf rightly values V, not only Alf, but everyone else, has a reason to promote V, assist Alf in procuring it, or whatever. But this means that, essentially, we all are aiming at the same goal: that is, the maximization of agent-neutral value. So the core contractualist problem—how to generate a common set of rules from the diversity of individual goals—is replaced by a very different problem—how best to organize social life so that our common end—maximizing agent-neutral value—is best achieved.

### 2.2. Public Justification

Contractualist theory posits a situation in which individuals, aware of their diverse ends, agree on a set of social and moral principles. But more than that, one accepts the terms of the contract because it advances one’s ends. That is, given one’s agent-relative (but not necessarily self-interested) values, one has good reason to embrace the terms of the contract. So understood, the contractualist’s proposal is striking: rather than seeing the diversity of individual ends and their essential agent-relativity as obstacles to a social and political morality, the contractualist insists that this diverse set of values can generate a common morality.

A contractual justification can be described as a constrained teleology. Michael J. Sandel suggests that we understand teleology as “a form of justification” in which first principles are derived in a manner that presupposes “final human purposes or ends.” Now our usual understanding of teleological justification—call it unconstrained teleology—assumes agent-neutral values. The unconstrained teleologist justifies basic principles of right by showing that they best advance what each and every person has reason to value. But when teleological justification is conjoined with agent-relative value, the result is rather different. For each has different values generating a different set of
reasons to act: the teleological justification endeavors to show that the values of each can be advanced by a proposed arrangement. Alf’s arguments in favor of an arrangement will be teleological (e.g., “Arrangement A advances value”), but his arguments will be constrained by the need to show that A promotes the agent-relative valuings of others, valuings that he may not share.

The justificatory force of a social contract argument is the claim that, given their agent-relative values, everyone is provided with good reasons for accepting the proposed social and political arrangement. We can say, then, that the contract asserts that the arrangement is *publicly justified* in so far as everyone has good reasons for embracing it. Consequently, the role of the consent device in contractualist theory need not be to show that, somehow, political obligation is voluntaristic. Rather, consent seems best understood as a heuristic device for demonstrating that the proposed arrangement is publicly justified: all rational agents would accept it.

This suggests an alternative interpretation of contractualism, one that leads away from fixation on consent and toward a notion of the common good. A social and political arrangement is publicly justified if from each and every valuational perspective the arrangement promotes what is rationally seen to be of value. Given the agent-relative concerns of each, a social and political arrangement is justified on the grounds that it advances a common good. By a “common good” I mean simply that a publicly justified arrangement will be one that works to the advantage of all in the sense that it promotes what each values. 18 A set of principles sanctioned by such a good (1) promotes some good (thought not necessarily the same good) from every valuational perspective and (2) takes everyone into account, and does not sacrifice any individuals to an aggregate or collective welfare.

3. Value and Deontology

3.1. The Incompleteness of Teleology

It is difficult to overestimate the attraction of teleology. To most philosophers, it is obviously the only sensible approach to ethics. “It is certainly a doubtful compliment to the right,” said Ralph
Barton Perry, "to deny that it does not of itself do good."\textsuperscript{19} Even contractual justification is at bottom teleological, although it is a constrained form of teleology demanded by the agent-relativity of value reasons. I now want to advance a crucial, and I suppose controversial, claim: The existence of a deontological morality is presupposed by our values. This being so, the philosophically popular project of a thoroughlygoingly teleological justification of morality—be it constrained or unconstrained—is implausible.

All teleological justification presupposes that value is prior in justificatory argument to principles of right. Teleology, that is, requires that we can (1) identify the set of things that are of value and then (2) apply the maximization function that (3) generates moral judgments/principles of rightness and wrongness. For this project to succeed, the set of valued things identified in (1) cannot logically presuppose the validity of judgments of rightness or wrongness. That is, if some value $V$ is only rationally sound given the validity of moral principle $M$, the teleologist cannot know whether $V$ should be included in the set of values to be maximized until he knows whether principle $M$ is sound. But if that is so, the teleologist cannot apply the maximization function until he has determined on some other grounds whether principle $M$ is sound. Before the pure teleological project can begin, the validity of $M$ must be determined on nonteleological grounds; and that seems to mean that the project fails before it can begin.

Many of our most important valuings are morality-based in this way. Consider, for instance, friendship. What Kant called “moral friendship” is “the confidence of two persons in revealing their secret thoughts and feelings to each other.”\textsuperscript{20} And, as Kant realized, this requires that one must be able to trust one's friend not to reveal these confidences to others. More generally, a friend must be confident that the other will take his view into account; Alf supposes that Betty will treat him with due consideration and respect and will resist any temptation to use or exploit the friendship to promote her aims and projects. Moreover, friends must trust each other in these ways even though they realize that the other has various projects and aims, some of which may be more important to the friend than the friendship. Unlike lovers, who may be able to suppose that the other
values nothing so much as the beloved, and so no other values or aims could be more weighty in practical deliberation, friendship does not rest on such intensity. Yet friends do trust each other; if they are friends, Alf knows that Betty will not sacrifice him even if *all things considered*, Betty could advance her cherished projects by doing so. This is possible because friendship is informed—so deeply informed that it is easily overlooked—by notions of respect and fairness.

I have focused on perhaps a less than obvious example of a morality-grounded valuing. But more straightforward examples can be proffered: indignation at having one's body violated, resentment at having one's property taken without one's consent, outrage at the unjust treatment of minorities. All these reactions seem to constitute disvaluings of states of affairs premised on the assumption that they are wrong. But if they are not wrong, or if we have no good reason to trust friends to be fair regardless of the benefits of duplicity, then the corresponding valuing or disvaluing is unsound. It is based on a false belief about rightness or wrongness. If these valuings and disvaluings are irrational, it seems that they cannot be included in the value maximization calculation. The teleologist somehow needs to filter his value inputs, but it would seem that to filter his value inputs he needs to be able to determine the rationality of their moral basis; but how can he do that until he has received the output of his calculations?

One way he can do so is to allow everything through the filter, that is, not filter at all. The teleologist may claim that the problem of the rationality of values grounded on moral principles can be put aside: if Alf values Betty's friendship, then it is a value to be taken account of in the maximization function even if it turns out that Alf's valuing is based on false beliefs. This apparently was R.B. Perry's view. So it will make no difference that Alf's valuing Betty's friendship is based on his belief that she is a kind and considerate person who wouldn't hurt a flea, even though she is really a sadistic murderess, and if Alf knew this the friendship would quickly die. But as long as the friendship (or Alf) is not yet dead, the value is to be included in the maximization function. This goes far beyond the claim that value-based reasons are agent-relative to endorse, at least in the context of ethical justification, a strong sort of "subjectivism."
If Alf values \( V \) (or “prefers” it), no matter how irrationally, it is to be included in the maximization calculation. But if, as contractualists do, we understand justification as a reason-giving activity, then whatever he may think, if it is irrational for Alf to value Betty’s friendship, then he has no more good reason to endorse a social system that promotes this friendship than does a paranoid to endorse a social system that responds to his fantasies.\(^{24}\)

A second, more typical, maneuver among constrained teleologists is to restrict the common good argument to a set of values that do not presuppose moral principles. Kurt Baier, for example, recognizes a wide range of value judgments as reasons for action, yet his justification of the moral enterprise focuses on advancing self-interest. That is, although Baier explicitly rejects egoism and its claim that self-interest alone moves agents,\(^ {25}\) he nevertheless concludes that “Hobbes’ argument is sound. Moralities are systems of principles whose acceptance by everyone as overruling the dictates of self-interest is in the interest of everyone alike. . . .”\(^ {26}\) So for Baier the range of values that enter into the justification of morality is properly limited to self-regarding considerations. Baier is not at all unique in this regard. Gauthier appeals to only non-tuistic valuings,\(^ {27}\) while James Fishkin tells us that a personal plan of life—which he takes as fundamental in justification—is a “constellation of private-regarding wants and courses of action,” that is, it concerns getting and doing things for oneself rather than others.\(^ {28}\)

Examples could be multiplied.\(^ {29}\) Basic to all these approaches is the aim of limiting the relevant values in justification to those that concern the agent’s own welfare or interest. Under the influence of this way of thinking liberal ethics and political philosophy becomes based on a sort of self-centeredness, and indeed of a fairly radical sort. If all appeal to moralized values is to be avoided, then friendship, and I think some sorts of love, our moral outrage at being treated as mere things, our indignation at cruelty, all must apparently be excluded. And if, as seems likely indeed, these values ground yet others, affecting what jobs we prefer, our social life, and even our valuing of leisure activities, the set of values upon which justification focuses may be limited and not very significant as far as some of us are concerned. To be sure, such limitation makes the justification of
liberal institutions more straightforward, but it is no less objectionable for that.\textsuperscript{30}

3.2. Deontological Justification

If our value systems presuppose moral principles, an adequate contractual justification will not be simply a constrained teleology. The right cannot be simply defined as that which advances the good of all, for conceptions of right inform conceptions of the good. Teleological justification presupposes deontological justification. Before we can propose institutional arrangements that advance the values of all we must determine whether the fundamental moral principles upon which our value systems rest are justified.

Contractualism is a doctrine about what can be publicly justified: It seeks to show how the agent-relativity of values gives rise to agent-neutral moral principles. So it is not enough for Alf to show that some principle \(M\) is the bedrock of his value system. If it is not the bedrock of anyone else's value system, Alf has not shown others that they too are committed to \(M\). Consequently, the deontological phase of contractualist justification will consist of an analysis of the contractors' value systems with the aim of uncovering those shared, deep moral commitments upon which all their valuational perspectives depend. If such common moral commitments are uncovered, a foundation is provided for subsequent teleological argument. Those valuings that presuppose these shared commitments, as well as those that have no moral presuppositions, can reasonably provide the basis for teleological justification.

4. The State of Nature

4.1. Natural Rights and Duties

A description of the state of nature can be interpreted as articulating the deontological foundation on which the constrained teleological argument, that is, the social contract, builds. An alternative would be to allow two sorts of argument in contractual "negotiation," arguments as to the basic moral principles we all agree upon, and arguments about what social arrangements advance the values of everyone. But this would obscure the logical priority of the deontological foundation. The claim
isn't simply that deontological and teleological arguments are distinct, but that the former sets the stage for the latter by grounding some values and not others, as well as by constraining the set of possible outcomes.

In Lockean theory natural rights and natural law provide the deontological foundation; they are not justified by the social contract, but possess independent moral justification and, indeed, provide the basis for contractual negotiation. Locke, of course, essentially restricts the contract to establishing a mechanism for protecting these morally prior rights; nevertheless, we must remember that the Lockean legislature is empowered to advance the public good, subject to the constraint that it does not violate natural rights, that is, rights that are morally prior to the social contract. In any event, the point is that an adequate contractual theory will include two types of justificatory argument: (1) a deontological argument articulating the shared moral presuppositions of the contractors' value systems and (2) a constrained teleological argument that describes a set of moral and social principles (or a type of social arrangement) that advances the values of everyone. The first argument constitutes a description of the state of nature. It is far beyond the scope of this chapter to defend any complete description of the state of nature; very plausible, I think, are the duties of truthfulness, promise-keeping and fidelity to friends. For our concerns, however, three rights are of particular interest: (1) the right to liberty; (2) the right to property, and (3) the right to exchange holdings.

4.2. The Basis of the Right to Natural Liberty

Consider what Locke called man's "Natural Freedom." An agent is not by nature subject "to the Will or Authority of any other Man." Locke says that all men are naturally in "a State of perfect Freedom to order their Actions . . . as they see fit . . . without asking leave, or depending upon the Will of any other Man." This starting point embodies the moral supposition that each of us is free to do as he wishes unless a justification can be advanced for restricting that freedom. That is, the claim to natural liberty provides a point of departure for all further ethical and political justification, providing a presumption against interference and placing the onus of justification squarely on those who would limit liberty. Once established, it follows that all further
justificatory ethics and political philosophy becomes a defense of liberty-limiting principles, duties, etc.\textsuperscript{37}

The right to natural liberty articulates a basic moral assumption of all self-directed agents, an assumption that can be denied only by a sort of self-destructive act. To see what a self-directed agent is, consider a contrasting sort of agent. Clifford Geertz has described Balinese social life as “at once a solemn game and a studied drama.”\textsuperscript{38} What is especially fascinating is that the main emotion helping to induce compliance with the demands of this drama isn’t guilt or shame, but lek—a worry that one will not be able to play one’s parts “with the required finesse.”\textsuperscript{39} Writes Geertz: “What is feared—mildly in most cases, intensely in a few—is that the public performance that is etiquette will be botched, that the social distance that etiquette maintains will consequently collapse, and that the personality of the individual will then break through to dissolve his standardized public identity.”\textsuperscript{40} The worry is that one may end up revealing an individuated self rather than stereotyped social role. The social roles that define personality are designed to prevent the emergence of individuated selves. As Geertz notes, this leads to an illuminating paradox: “Balinese conceptions of personhood . . . are—in our terms anyway—depersonalizing.”\textsuperscript{41}

Those acquainted with Western analyses of personality will no doubt note the basic contrast: Western analyses typically identify the person with the individuated self. This reaches an extreme in the work of Carl R. Rogers, where achievement of personhood is identified with removal of masks and roles that prevent the emergence of “the real self underneath.”\textsuperscript{42} But the focus on the self or the autonomous ego as the core of personality is hardly unique to Rogers; indeed, it is central to a large body of personality theory.\textsuperscript{43} It even informs Erving Goffman’s work. Like Geertz, Goffman employs the dramaturgical method, depicting social interactions as a series of performances. But despite the surface similarity in method, Goffman’s analysis is different. Roles and performances allow us to direct and shape our self-images and plans, but they are not stereotyped scripts designed to prevent the possibility of self-revelations.\textsuperscript{44} We might say that in Western pluralistic societies, personhood is expressed through the available cultural resources, but it is not itself conceived as a cultural artifact.

Let us use this contrast to develop two ideal types. For a role-
directed conception of the person agency is directed by culturally defined roles that are not devices or expressions of the self. In contrast, a self-directed person conceives of agency as expressing the self, whether this requires overcoming roles (Rogers) or employing them (Goffman). I now proceed to my main claim: while a role-directed person can reject the right to natural liberty, a self-directed person cannot.

Consider the role-directed person. Prima facie, it seems plausible that role-directed persons might all be committed to the principle:

RD1: All interferences with the performances of another must be justified.

This would seem akin to the right to natural liberty: just as self-directed persons would object to any interferences with their self-directed activity, role-directed persons would object to any interferences with the performance of their roles. Of course, even RD1 falls significantly short of the right to natural liberty, as it only concerns interferences with one’s role; however, it seems at least roughly analogous. But RD1 incorporates a presumption that action should reflect the intentions of the agent unless it interferes with others. Are role-directed agents committed to that presumption? Consider:

RD2: All action must be justified by reference to the appropriate script.

This principle is free of the asymmetry of the right to natural liberty: not only interferences, but all action, must be justified by the relevant script. This principle embodies no presumption that activity should rightly flow from the self. Yet it seems appropriate for role-directed personalities; if the danger is that individuated selves may emerge, it is no less important that noninterfering action be justified by reference to the appropriate stereotyped script. Activity is not to reflect the self but must conform to the self-containing scripts presented by the culture. Given this view of the relation between the self and action, the right to natural liberty seems out of place.

The right to natural liberty articulates the basic moral outlook of self-directed agents: activity rightly expresses the self. A self-directed agent who rejected the right would be committed to allowing that another may take control of his activity, and this would be no cause of indignation. The self as director of action
would be replaced by another self: one's activity becomes, strictly speaking, the expression of an alien self. Without complaint of wrongdoing, and in the absence of any justification, the self would allow another to supplant it as the source of action. But a self-directed agent will resist this: The foundation of his conception of himself is that his activity is properly at his beck and call. For another self to subvert this tie and interpose itself between an agent's self and activity threatens self-direction, hence one's status as a person. The fundamental demand of self-directing contractors will be that no one intervene in this intimate relation between the self and its activity without justifying the intervention to the self.

4.3. Quasi-Lockean Property Rights

If we focus on the right to natural liberty, Rousseau's position seems vindicated: Possession, but not exclusionary property rights, characterize the state of nature. To see this, say Alf picks up an acorn in the state of nature. Is it his? It seems plausible to maintain that the right to natural liberty would—in some circumstances at any rate—protect Alf in his possession of the acorn. At least in some cases it is certain that objects are an intrinsic part of one's ongoing activity; to wrest possession of them surely constitutes an interference with the agent's activity. And, according to the right to natural liberty, it is incumbent upon Betty to justify interventions to Alf. So the right to natural liberty can secure Alf in his possession of the acorn.

But this reasoning cannot be extended from possession to ownership. Quite the contrary: The right to natural liberty is an obstacle to justifying ownership. Let us assume that Alf is cultivating, and constantly occupying a small piece of land, such that it is reasonable to depict him as in possession of it. He then makes the proclamation that Rousseau saw as momentous: Alf asserts that the land is his, even when he is not in physical possession of it. He owns it. But this is to assert that others are excluded and cannot enter, and that implies interference with their actions. The essence of ownership is to restrict the liberty of others vis-à-vis that which is owned; and, according to the right to natural liberty, any such exclusionary claim must be justified to those others. So the argument for the right to natural liberty does not lend itself to a transition from possession to
ownership. The right provides a foundation for continued possession but an obstacle to claims to ownership.

If the right to natural liberty were the sole moral constraint in the state of nature, Rousseau's position would be unassailable: turning possession into property could occur only through the social contract. But I have emphasized that the description of the state of nature is determined by those shared moral convictions that underlie our diverse value systems, and so can include a range of rights and duties. Here Lawrence Becker's reconstruction of the Lockean argument is relevant. Becker alters the labor theory of property in a way that makes claims of desert fundamental. The "notion of desert," Becker claims, "is a constituent of morality per se."46 The crux of Becker's thesis is that the concept of deservingness is a deep presupposition of the moral enterprise itself. People who act wrongly deserve blame, those who act in a worthy manner deserve praise. "To ask whether desert is an intelligible concept," says Becker, "is to call into question the whole enterprise of passing moral judgment on people for their conduct."47 Notice that Becker's argument is precisely of the sort required if principles of desert are to be included in the description of the state of nature: that is, that the moral enterprise itself—hence all our morality-groundedvaluings—presupposes the validity of desert claims.

Some have charged that, at best, all Becker shows is that reward or praise, punishment or blame, can be deserved for moral or immoral acts.48 But I think this is to miss the point. Becker's point—and it seems to me reasonable—is that our morality presupposes the sensibility of moral statements of the sort:

D: Alf deserves X because of some act A that Alf has performed.49

That is, the notion of classifying people as deserving or undeserving because of some previous act of theirs is not a notion we are free to accept or reject: our morally-informed outlook commits us to it.

The question then becomes in what ways the variables X and A are filled out. Becker believes that one deserves benefit (X) for adding value (A) to the lives of others. Hence, he says, the "following principle must be sound by definition: A person who, in some morally permissible way, and without being mor-
ally required to do so, 'adds value' to others' lives deserves some benefit for it." Becker insists that it is necessary that benefit accrue to others: "Deserving a benefit for producing something which only you profit from is a strange notion." Becker thus advocates grounding desert on *contribution* rather than *effort*; given the difficulties with accounts of desert based on effort this seems advisable. But care needs to be exercised. Consider the following two principles of desert:

D1: Alf deserves X because Alf has produced X.

D2: Alf deserves X because Alf has contributed to the productive process and X is a suitable reward.

Becker—and this is probably the dominant position—sees D2 as the fundamental desert principle of economic systems and economic justice. Alf deserves X as a reward for contributing to the collective productive effort. But the intuition behind D1 is rather different, although the two are typically confused. David Miller, for instance, writes: "If we consider a state of nature, such as that constructed by Locke, we shall see how plausible is the view that when men produce in isolation from one another, and with land and raw materials in plentiful supply, they each deserve to retain whatever they can make by their own labor." Miller depicts this desert claim as an instance of D2 (contribution); but if *contribution* to the *social productive process* is the ground of the intuition, why (as Miller rightly points out) is the intuition strongest under the assumption of isolated asocial production? The Becker-Miller account of the state of nature, I venture, is not really tapping D2 at all, but the different intuition that a person deserves what he produces or, as it used to be put, "the fruits of his labor." It seems to me misguided to suppose that this intuition is to be reduced to a reward for contributing to the lives of others. The point is different and more basic: production of X constitutes the grounds for deserving X. Pace Becker, you undoubtedly deserve what you have produced for yourself without benefiting anyone else, and it would be wrong to take it from you without justification.

That the two desert principles are typically confused is readily understandable. When people are engaged in joint productive enterprises, both D1 and D2 may sanction distribution to each according to his marginal product. According to D2 Alf should get a reward commensurate with his marginal product because...
this is a fitting reward for his contribution to the joint endeav­
our; according to D1 it is an effort to arrive at some determina­
tion of what Alf has produced. Miller is right that in joint enter­
prises determining what Alf deserves is far more difficult than in Locke’s state of nature, since what constitutes the “whole product of his labour” is far more difficult to determine.54 But this in itself testifies that it is really D1 (production) rather than D2 (contribution) that he has in mind, for contribution requires proportionate rewards but not necessarily the “whole product of one’s labor.”

A quasi-Lockean property right exists in the state of nature if three things are true: It must be the case that the concept of desert is universally embraced in the state of nature. If, as I think is reasonable, the notion of desert is indeed basic to the moral endeavor, desert claims would be acknowledged prior to the social contract (that is, they are part of the deontological foundation). Secondly, it must be the case that valid desert claims provide moral reasons to act. If Alf can show Betty he deserves X, he has provided Betty with (say) a reason to refrain from taking X, even if taking X would better promote Betty’s values.55 Additionally, it must be true that a self-evidently sound desert claim is that someone who produces something deserves to use and control it (within, to be sure, specific limits). Put simply, a worker deserves (in some sense) the fruits of his labor.

As Becker is well aware, justifying property rights via deserv­ing the fruits of one’s labor is very much in the spirit of John Stuart Mill. “Private property, in every defence of it,” said Mill, “is supposed to mean the guarantee to individuals of the fruits of their own labour and abstinence.”56 But, Mill added:

When the “sacredness of property” is talked of, it should always be remembered, that any such sacredness does not belong in the same degree to landed property. No man made the land. It is the original inheritance of the whole species. . . . It is no hardship to anyone to be excluded from what others have produced: they 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. But it is some hardship to be born into the world and to find all nature’s gifts previously engrossed, and no place left for the new­comer.57
If we embrace Mill's reasonable claim that no one deserves the land—or any natural resource—the desert/labor theory of property seems undermined. For if the original appropriation of a natural resource—that is, exclusionary rights over it—cannot be justified via desert, it would seem almost all subsequent desert-based property claims are undermined. Say Alf takes possession of a tree, cuts it up and claims desert-based exclusionary rights over the chair he produces. But Betty objects that he has no exclusionary rights over the tree in the first place; he never justified to her a restriction of her liberty vis-à-vis the tree. To this Alf may perhaps reply that he has mixed his labor with the tree, and if he deserves the fruits of his labor, he also has claims over that in which his labor is embodied. But as far as I can see, Betty need not accept this. Alf's labor on the tree may be very much like Nozick's tomato juice in the ocean: by dumping it in what was not his, he loses his labor/tomato juice, rather than gaining exclusionary rights over the tree/ocean.58

The intuitive appeal of desert-based theories of property begins to evaporate when we squarely face the problem of exclusionary rights over natural resources.59 The typical response of Lockean-inspired theories is some sort of quasi-Lockean "proviso" that justifies taking resources out of the "common pool" when this does not worsen the position of others.60 And this in turn leads to complicated compensation proposals or unconvincing arguments that Alf's extensive exclusionary right over natural resources is never to the disadvantage of Betty, who has no such rights.61 These problems arise because whatever the stated intentions of later theorists, they follow Locke in conceiving of the state of nature as, somehow, a condition in which people can exist, if only in our imagination. As Locke said of the fruits of the earth, "there must of necessity be a means to appropriate them some way or other before they can be of use, or at all beneficial to any particular Man."62 If desert grounds property rights, then we need some account of how these desert-based rights could function in the state of nature. After all, if they could not, the inhabitants would starve! But the state of nature is but a phase in justificatory argument. The proper response to the problem of "original acquisition" is indicated by Mill: "The essential principle of property being to assure all persons what they have produced by their labour and accumu-
lated by their abstinence, this principle cannot apply to what is not the product of labour, the raw material of the earth." Desert-based property rights, then, cannot (to any significant extent at any rate) come into being until the problem of acquisition or distribution of natural resources has been solved, and for us that will require appeal to the social contract. In the state of nature, then, people have a right to a system of private property that recognizes labor/desert as a grounding of title. But because acquisition of natural resources requires contractual justification, no significant particular property rights yet emerge.

4.4. The Market in the State of Nature

Mill believed that “all the reasons that recommend that private property should exist” also recommend that one should be able to alienate it, including free gifts and bequests. But this isn’t obvious. If one gives away property that you deserve to another, it doesn’t follow that he deserves it. And even market transactions—which involve a trade of goods rather than free gifts—are not necessarily sanctioned by desert-based arguments for property. If Alf deserves X, and so it is his property, and Betty deserves Y, and so it is hers, nothing follows as to the justifiability of exchange. Can voluntary exchange somehow transform the situation such that Alf now deserves Y and Betty X? It seems fairly obvious that a system of free exchange does not necessarily assure to each person just what he or she deserves.

The problem is that market transactions pass on exclusionary rights. But it is by no means obvious that they pass on deservingness. If Alf had exclusionary rights over X because he produced X, and so deserved to own it, how can he pass on these rights to Betty, who did not produce it, and so, according to DJ, does not deserve to own it? And it will not do to reply that Alf’s desert-based right conjoined with his natural liberty is sufficient to justify exchange; at issue is not simply Alf’s right to engage in an act with Betty, but his power to pass on exclusionary rights. The problem seems to illustrate Nozick’s point that a pattern such as “to each according to his deserts” will be upset by free exchange. To see our way clear of this difficulty we must first distinguish two economic desert claims:

DJ: Alf has a property right over X if and only if he deserves X.
PR: Alf's production of X grounds his desert-based exclusionary right over X.
The first is a desert-based conception of distributive justice; it insists on a pattern according to which each gets what he deserves. So Betty's possession of exclusionary rights over something she does not, *ex hypothesi*, deserve is excluded by DJ. But I haven't endorsed this principle of distributive justice; I have argued for a desert-based property right (PR) according to which Alf deserves X because he produced it. So I have not endorsed any pattern that must be maintained in the interests of justice.

Now there is certainly no logical bar to holding both (1) that Alf rightly possesses X because he has performed act A, and (2) he can engage in some relation with Betty that passes on to her X even though she has never A-ed. For instance, Alf might be warranted in believing in Tasmanian tigers because he (and he alone) has seen one; but he may engage in a relation with Betty whereby she comes to have a warrant for believing in the existence of Tasmanian tigers, even though she has never seen one. So there is nothing crazy in thinking that desert-based property rights might be transferred without their grounds being transferred as well. But is there any reason to think that such a right of transfer is justified by the desert-based account of property rights? Of three plausible bases for property rights in the state on nature, I want to argue, the desert-based account alone presupposes the intuitive notion of "ownership," including rights of transfer.

Consider first contribution-based justifications (D2) à la Becker. On this view property rights are a reward for contribution to the social productive process. Leaving aside the tendency of this to collapse into a theory of distributive justice (DJ), it at best only contingently sanctions a right to transfer holdings. A reward or honor is not intrinsically transferable; although a down-and-out actor may sell his Oscar he cannot sell his award for the best actor of 1926. To be sure, in order to render rewards more beneficial to the recipient we may allow them to be exchanged for other goods, but nothing intrinsic to the concept of reward for contribution demands that this should be so. Loyal members of the Party may be awarded a dacha, but it may well be counterproductive to allow them to transfer it to others.

The second contrast is to a needs-based account of property. Say, following Locke, one of the arguments for property is that
God created mankind to flourish, and this means that men need private property.

This can easily lead to pretty severe limits on alienation. If people's needs are not always better advanced by alienation, then rights of transfer will not always be justified. Such considerations often lie behind provision in kind, rather than in cash, of welfare.

The argument I advanced in section 4.3 supports a more direct intuition that people deserve to own what they have produced. Ownership is not a reward for contribution or a way to satisfy needs; ownership of what one has produced is, in a very basic sense, fitting and appropriate. And because my account points to this more direct tie, it supports appeal to something akin to what has been called "full ownership"—certainly it supports rights to possess, use, manage, consume, transfer, and destroy. Conjoined with the argument for natural liberty in section 4.2, this constitutes a defense of market relations. For, given (1) that Alf has exclusionary rights over X such that it is his, and (2) Betty has exclusionary rights over Y such that it is hers, (3) that each has rights of transfer in relation to their property, as well as (4) their intention to exchange X and Y, then (5) Charlie's refusal to recognize their post-exchange property rights constitutes a violation of Alf's and Betty's property rights and (6) Charlie's demand that they refrain from engaging in the exchange constitutes an interference with their natural liberty and, so, must be justified to them. This isn't to say that Charlie can never provide justification: the social contract may no doubt protect Charlie against externalities arising from Alf and Betty's activities that impose costs on him. Nevertheless, the rights to own and transfer private property, conjoined with the right to natural liberty, yields a justification of market relations.

5. THE SOCIAL CONTRACT

5.1. Compromise and the Common Good
Let us assume that we have fully specified the rights and duties characterizing the state of nature. Now since, ex hypothesi, these articulate the moral foundations of our value systems, they articulate the limits of the contract. The contract must respect them.
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For a teleological argument to ignore these rights and duties would be to advance value considerations while undermining the rationality of those values. But it does not follow that the contract is confined simply to protecting or institutionalizing these rights and duties. Once the deontological foundation of our value system is appropriately recognized, constrained teleological arguments for principles of right may commence.

Now I have said that these arguments must articulate a common good. But this seems either too weak or too strong. If it means an institution is justified if it advances everyone’s values (no matter how little) vis-à-vis the state of nature, then it seems far too weak a requirement. For nearly any social arrangement would improve upon the state of nature; as long as a person wasn’t positively exploited, he would have to acknowledge the claim that the system advances his values. On the other hand, if to justify moral principles and social institutions by appeal to the common good is to claim that they advance the values of everyone to greatest degree, that is, a system is justified only if it is best from everyone’s perspective, then it seems that no successful constrained teleological justifications will be forthcoming.72

Between these extremes lie compromise justifications: All gain, but each must give up something to elicit agreement of the others. Compromise, as Martin Golding has noted, presupposes conflict in so far as none of the parties get all that they want. But compromise also requires some coincidence of interests or valuations: Each, after all, does gain something from a compromise.73 Compromise can take place when harmony does not obtain, yet some common good exists. J. L. Mackie recognized the importance of compromise in the justification of moral principles. “We must,” he said, “lower our sights a little and look not for principles which can be wholeheartedly endorsed from every point of view; but for ones which represent an acceptable compromise between different actual points of view.”74 And indeed some such compromise seems to be at the heart of contractualist justification.75 As Rawls says, the outcome of the contract is “a pact of reconciliation”76 that, we can add, articulates a common good.
5.2. Distributive Shares and Economic Systems

Much more could be said explicating the idea of a compromise solution. Gauthier's recent work in particular has demonstrated how the idea of a rational bargain, with the state of nature as the initial position, can be made more precise. However, for present purposes the intuitive idea of a compromise solution will suffice.

I argued that, in the state of nature we have a right to a system of private property that ensures one of the fruits of one's labor. But before actual holdings can arise, people must also have exclusionary claims over natural resources. But the natural liberty of each is limited by exclusionary claims over resources. If, then, resource claims are to be justified, it must be argued that a system of property rights works to the benefit of everyone. Betty is committed to acknowledging that Alf has a right to a system of property rights that recognizes production as a ground of title, but she is not committed to accepting Alf's exclusionary claims over resources. For Alf to gain these rights he must justify to Betty limiting her right to act by granting him right to exclude her from some resource; to do this, Alf must show Betty that she has reason to embrace the restraint, that is, that she too benefits. Rawls's difference principle is a possible candidate (its first formulation is a principle about inequalities working to everyone's advantage). On the other hand, Nozick could well be right; perhaps the difference principle isn't a reasonable compromise since it is the best possible option from the perspective of the least well off. In any event, it seems that some principle ensuring that everyone significantly benefits from the system of property rights is essential. The failure of the Lockeans to justify a complete account of property rights in the state of nature leaves the way open for followers of Rousseau to regulate holdings, through the social contract, to promote the common good.

It might seem that the partial success of the Lockeans provides no real constraint on the justifiability of economic systems. As I indicated earlier, David Miller argues at some length that desert does not provide a practical criterion for overall judgments of social justice. Once we consider the complexities involved in joint products, accidents and luck, and the impor-
tance of skills and techniques one has not discovered for oneself, it may seem that the aim of giving each the whole product of his labor becomes an unsalvagable muddle. But we should be wary of rejecting a fundamental claim of justice because we cannot ever hope to apply it precisely, especially when it seems (as Miller admits) so widely accepted. If we cannot make sense of giving each the full fruits of his labor, we may still pose grave objections to economic systems that entirely fail to take cognizance of the justified claims to the fruits of one's labor.

Consider, for example, Oliver Williamson's "Peer Group" system. In this system of collective ownership all the work stations in a production process are collectively owned by the workers, and reward is based on a non-marginal product principle, e.g., the workers are paid the average of the group product. Now in an economy in which Peer Ownership was the only option, it is plausible that some would have significant grounds for complaint that it violates their natural right to a system that gives one exclusionary rights over the fruits of one's labor. Mandatory participation in work organizations that reward on the basis of average performance very plausibly give others control over the fruits of the labors of those who contribute well above the mean.

The argument also casts doubt on the justifiability of market socialism (Yugoslav style), a form of work organization and ownership much in vogue today. Worker-managed market socialist firms certainly can reward workers differentially, recognizing the differential claims to the fruits of labor, but market socialism in effect expropriates the savings of workers invested in their firms. If, as Mill said, one has a claim to the fruits of abstinence, market socialism tends systematically to ignore this. Workers who have heavily invested, especially older workers, have no exclusionary rights to these funds, entirely losing them on leaving the firm.

Non-market, that is, command economies, are also challenged by the argument from the state of nature. Many socialists have aspired to reward all according to the fruits of their labor, and we can at least imagine a command economy that sought to distribute income with this in mind (e.g., according to marginal product). But even if this desert-based claim informing quasi-Lockean property rights could be met in non-market systems,
prohibition on market exchanges would infringe the right of transfer and constitute an interference with natural liberty.

The argument points to a market system where people have exclusionary rights over the fruits of their labor. But must the system be capitalist? Robert Dahl thinks not; indeed he indicates that “corporate capitalism” cannot be justified. “Whatever one many think of the validity of Locke’s notion of labor as justifying private property . . . ,” he says, “it cannot justify the ownership of a corporation by stockholders. For on Locke’s justification only those who labor to produce goods and services, the workers and employees, would be entitled to own the goods and services produced by the firm.”88 Thus it might seem that a system of worker cooperatives—which was Mill’s dream—is required by the argument.89 Now certainly a cooperative system is consistent with my argument, but it is not at all clear that corporate capitalism is precluded. Because we have rejected the desert-based conception of distributive justice (DJ) in favor of a desert-based theory of property rights including the power to transfer title (section 4.4), Dahl’s main claim—that those who do not labor cannot have justified title—can also be rejected. Although I certainly have not demonstrated that it is impossible to show that in some way corporate capitalism is inherently immoral, my argument does demonstrate (1) that any prohibition of capitalist acts between consenting adults is a violation of natural liberty and so stands in need of justification and (2) abolishing the right to transfer justified holdings is a violation of the right to property and the social contract cannot legitimately ignore this natural right. But the capitalism that is justified is a distinctly redistributive sort, ensuring that all gain to the extent required by the principle of fair compromise.90 Moreover, nothing in the quasi-Lockean argument precludes public regulation of the private sector. The quasi-Lockean argument from the state of nature provides parameters for the social contract, but within these a variety of economic systems might be justified.

6. Conclusion

I have sketched a contractual justification of an economic system characterized by the market, private property, and significant
redistribution of income and wealth by the state. The combination of market, private property, and redistribution, of course, is not at all novel. It was the heart of the program of the “new liberalism” that arose around the turn of this century, and it has recently been defended by a number of liberal political philosophers. But it has long been doubted whether this widely accepted triad of institutions can be justified from a single coherent moral perspective. Beginning with an individualist liberal theory that provides solid grounding for private property and the market, redistributive capitalism (it is said) then overlays a collectivist theory that asserts existence of a state empowered to distribute a pool of social assets. This leads to the charge of incoherence. If society is essentially a system of mutual advantage among individuals entertaining diverse and often competing ends, from where does the pool of collective assets come? How can the liberal state, devoted to the protection of individual freedom of choice, be transformed into a collectivist enterprise pursuing social goals? I have tried to show here that redistributive capitalism articulates a morally unified outlook: The contractual argument that justifies private property also justifies redistribution.

NOTES

3. I am following here Stephen Buckle, “The Natural History of Property: Natural Law Theories from Grotius to Hume” (Ph.D. diss., Australian National University, 1987), chap. 3, sec. 3. My thinking on these matters was spurred by Buckle’s work. It might be argued that until the invention of money, Locke’s theory does not justify extensive holdings, and, of course, Locke maintains that the use of money presupposes a “tacit Agreement” (Second Treatise, 311, sec. 36). I cannot pause to consider such problems here, but note that the use of money does not presuppose the social contract; the “tacit Agreement” to which Locke
refers does not in any way lead him toward the Rousseauean argument
that I describe in the next paragraph.

4. “Charity,” said Locke, “gives every Man a Title to so much out of
another’s Plenty, as will keep him from extreme want, where he has no
other means to subsist otherwise.” (First Treatise of Government, in Two
Treatises of Government, ed. Laslett, 188, sec. 42). See also Alan Ryan,
Property and Political Theory (Oxford: Basic Blackwell, 1984), 34; Buckle,
“Natural History of Property,” chap. 3, sec. 3.

5. See Ryan, Property and Political Theory, 54ff.

1, chap. 9, 179. See Ryan, Property and Political Theory, chap. 2. Locke
held that “in Governments the Laws regulate the right to private prop­
erty”; but he also insisted that the “Fundamental Law of Property” was that
government could not take property without the consent of the people
(Second Treatise, 320, sec. 50; 380, sec. 140).

7. Not that Rousseau favored collective ownership. “It is”, he said,
certain that the right of property is the most sacred of all the rights of
citizenship, even more important in some respects than liberty itself. . . .”
See A Discourse on Political Economy, in The Social Contract and Discourses,

8. This is essentially the view of Robert A. Dahl, A Preface to Economic
have characterized as Rousseau’s view Dahl associates with Jefferson; he
too describes the alternative as a Lockean conception.


10. James M. Buchanan, The Limits of Liberty (Chicago: University of
Chicago Press, 1975), chap. 2; David Gauthier, Morals by Agreement (Ox­
ford: Oxford University Press, 1986), chap. 7. Robert Nozick, of course,
employs the idea of the state of nature, but he is not a contract theorist.
See his Anarchy, State and Utopia (New York: Basic Books, 1974), chaps. 1
and 2.

11. In this section I am summarizing arguments more fully developed
elsewhere. See my “On Community and Justice: A Reply to Professor
197–204; “Subjective Value and Justificatory Political Theory,” in Justi­
fication, ed. J. Roland Pennock and John W. Chapman, NOMOS 27 (New
Gaus, “Practical Rationality and Commitment,” American Philosophical
Quarterly 23 (July 1986): 255–66; “The Commitment to the Common
Good,” paper presented at the 1986 Annual Meeting of the American
Political Science Association, in New Essays on Political Obligation ed. Paul

13. We have to be cautious about hidden indexicals. Everyone may value money, and so everyone may have reason to obtain it. But this would not mean that the value implies agent-neutral reasons. For, more exactly, Alf values *his* possession of money, which provides *him* with a reason to obtain money for *himself*; Betty values her own possession of money, which provides *her* with a reason to obtain it for *herself*, etc. Compare this to the example of Alf’s pain in the next paragraph. Thomas Nagel has argued that this provides a truly agent-neutral reason; I have disputed this. See my “Subjective Value and Justificatory Political Theory,” 252–55.

14. This term also derives from Parfit. See the references to Parfit and Nagel in note 12 above.


16. For simplicity’s sake, I will not distinguish between (1) agent-neutral value-based reasons for acting and (2) agent-neutral value. Strictly speaking, my interest is (1), but often the point can be put more simply in terms of (2). Mutatis mutandis, the same applies to agent-relative value/reasons for action.


18. B. J. Diggs is, I think, one of the few to notice that the idea of the common good is central to contractualism. See “The Common Good as Reason for Political Action,” *Ethics* 83 (July 1973): 283–93, esp. 293. For analyses that would tend to dispute this, see Bruce Douglass, “The Common Good and the Public Interest,” *Political Theory* 8 (Feb. 1980): 103–17; Baier, *The Moral Point of View* 106–9.


23. I have argued that a subjective theory of value need not make such a radical claim. See my “Subjective Value and Justificatory Political Theory.”

24. This points out the implausibility of Bruce A. Ackerman’s neutrality principle. Pace Ackerman, if citizen Alf has a paranoid conception of the good founded on an irrational belief system, then Betty can provide Alf with good reasons that his conception of the good is inferior, and that social institutions can rightly view it as such. See his *Social Justice in the Liberal State* (New Haven: Yale University Press, 1980), 11.


27. “Morals by agreement,” Gauthier writes, “have a non-tuistic rationale” (328). Indeed, as he sees it, to allow altruistic considerations to enter into the justification of morality would pave the way for exploitation. “[T]he contractarian sees sociability as enriching human life; for him, it becomes a source of exploitation if it induces persons to acquiesce in institutions and practices that but for their fellow-feeling would be costly to them. Feminist thought has surely made this, perhaps the core form of exploitation, clear to us.” See *Morals by Agreement*, 11 (the claim is repeated on 351). This, I must confess, strikes me as bizarre. How could we arrive at an adequate justification of friendship without considering the value friends place on each others’ welfare? Cf. Kant’s remark that “friendship cannot be a union aimed at mutual advantage,” in *The Doctrine of Virtue*, 142, sec. 46.

28. James S. Fishkin, *Tyranny and Legitimacy* (Baltimore: The Johns Hopkins Press, 1979), 29. Wheras Baier is willing to affirm that “generally speaking, self-regarding reasons are better than other-regarding ones” (*The Moral Point of View*, 146), Fishkin denies that “the personal part of a life is necessarily the most important part. A person may be so devoted to altruistic causes that it is his public-regarding wants that are
most important to him. Nevertheless, since it is his plan, he must figure in it somewhere" (29). It isn’t clear how this last sentence supports his characterization of life plans in terms of private-regarding wants.


32. In another context Stanley Benn and I have argued that, regardless of what one values or desires, one has a reason to tell the truth. This points the way toward a justification of this duty. See our “Practical Rationality and Commitment,” 256–57.

33. Joseph Raz argues that some conceptions of promising “present promises as creating a relation between promisor and promisee—which is taken out of the general competition of conflicting reasons. It creates a special bond, binding the promisor to be, in the matter of the promise, partial to the promisee. . . . Hence [such conceptions of promising] . . . can only be justified if the creation of such special relationships between people is held to be valuable.” This seems essentially right, but we want to be careful about suggesting that the promise is a means to such relations. More accurate is that the value of such special relations informs our way of looking at the world, and obligatory nature of promising is a presupposition of this valuing. See Raz’s “Promises and Obligations,” in Law, Morality and Society, ed. P. M. S. Hacker and J. Raz (Oxford: Clarendon Press, 1977), 210–28, 228. If the duty to keep promises characterizes the state of nature, one of Hume’s main criticisms of contractualism is undermined. See “Of the Original Contract” in his Essays Moral, Political and Literary (Oxford: Oxford University Press, 1963), 452–73, 468.

34. This, of course, is suggested by the argument in sec. 3.1 above. See “Commitment to the Common Good” for a more detailed argument.

35. Locke, Second Treatise, 322, sec. 54.

36. Ibid., 287, sec. 4.


39. Ibid., 402.

40. Ibid.

41. Ibid., 390.


45. “The first man who, having enclosed a piece of ground, to whom it occurred to say this is mine and found people sufficiently simple enough to believe him, was the true founder of civil society.” See Jean-Jacques Rousseau, *Discourse on the Origin and the Foundations of Inequality among Men*, in *The First and Second Discourses*, ed. Victor Gourevitch (New York: Harper and Row, 1986), 170 (first sentence of second part).


47. Ibid.


49. “Desert, then denotes a relationship between an individual and his conduct, and modes of treatment which are liked or disliked.” See David Miller, *Social Justice* (Oxford: Clarendon Press, 1976), 92.


51. Ibid., 55.


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54. Ibid.

55. As Joel Feinberg says, “This is simply another way of saying that person’s desert of X is always a reason for giving X to him, but not always a conclusive reason.” See “Justice and Personal Desert,” in his Doing and Deserving (Princeton: Princeton University Press, 1970) 55–87, 60.


57. Ibid., 233 (book 2, chap. 2, sec. 6).


59. John Christman apparently disagrees; he argues that Lockean provisos do not cohere well with desert-based accounts of property rights since desert claims are not “limited by the distribution of benefits generally.” If one deserves it, one deserves it, whether or not it leaves enough for others. But my argument is that the desert claim is undermined because one had no exclusionary rights over the resource, not because honoring the desert claim results in a certain sort of distribution. See “Can Ownership be Justified by Natural Rights?” 168.

60. See, for example, Locke, Second Treatise, chap. 5; Nozick, Anarchy, State and Utopia, 178ff; Gauthier, Morals By Agreement, chap. 8. See also John Bogart, “Lockean Provisos and State of Nature Theories,” Ethics 95 (July 1985): 828–36.

61. Cf. Locke’s remark that “a King of a large and fruitful Territory there [i.e., in America where land has still not been appropriated] feeds, lodges, and is clad worse than a day Labourer in England [who has no exclusionary rights over land in a state where all the land has been removed from the state of nature].” Hence even those left out are better off then they would be in the state of nature. See Second Treatise, 315, sec. 41. Compare the very similar argument given by Adam Smith in The Wealth of Nations, ed. Edwin Cannon (Chicago: University of Chicago Press, 1976), vol. 1, 14. (book 1, chap. 1).


64. This is a modification of a suggestion made by Alan Ryan. See his “Public and Private Property,” in Public and Private in Social Life, ed. Benn and Gaus, 223–45, 226ff.


68. Nozick, Anarchy, State and Utopia, 155ff.
69. Locke, *Second Treatise*, 288, sec. 6, 301–3, 305–6, sec. 27. I have greatly benefited here from Steven Buckle, “The Natural History of Property,” chap. 3, sec. 3.


71. See Becker, *Property Rights*, 18ff.

72. Gauthier suggests in *Morals by Agreement* that the market can fulfill this strong condition. The idea of a perfectly competitive market, he tells us, reveals “a structure in which the divergent and seemingly opposed interests of different individuals fully harmonize” (83). But market transactions include bargains, and within a range of possible mutual gains, the gains can be distributed differently. Witness the phenomenon of consumer’s surplus: some consumers would pay more than the marginal price, but they don’t, and so they receive a surplus.


75. This is shown by Arthur Kuflik, “Morality and Compromise,” in *Compromise*, ed. Pennock and Chapman, 38–65, 55–64.

76. Rawls, *A Theory of Justice*, 221. Cf. Rawls’s remark that “the principles of justice are the result of a fair agreement or bargain” (p. 12).

77. Gauthier persuasively argues that a rational bargain is one that minimizes the maximum relative concession. See *Morals by Agreement*, chap. 5.


79. Nozick, *Anarchy, State and Utopia*, 192ff. It should be pointed out, however, that minimax relative concession (see note 77 above) is concerned only with minimizing the maximum concession; it is thus possible that under minimax relative concession some parties make no concession at all. Nevertheless, it may be argued that the difference principle requires overly large concessions from the advantaged.

80. See also Christman, “Can Ownership be Justified by Natural Rights?”


82. Miller, *Social Justice*: “There is in any case no doubt that most people in present-day Britain, say, hold a view of social justice which gives a large place to making incomes correspond to personal deserts” (p. 120).


84. See, for example, Charles Lindblom, *Politics and Markets* (New
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85. It might be possible to create a bond scheme that could overcome this difficulty. See P. J. D. Wiles, *Economic Institutions Compared* (New York: Wiley, 1977), 348–49.


87. See Wiles, *Economic Institutions Compared*, chap. 11.

88. Dahl, *Preface to Economic Democracy*, 78. Dahl rejects the Lockean treatment of property in favor of a more Rousseauian approach; that is, he rejects natural property rights, which put moral constraints on what economic system the people may choose.

89. On Mill and cooperatives, see *Principles of Political Economy*, 764–94 (book 4, chap. 7, secs. 5–7). Dahl too looks forward to a cooperative organization. See *A Preface to Economy Democracy*, esp. 148ff. Perhaps the most successful current cooperative is the Mondragon group in Spain, a case on which Dahl draws. However, in an important study—which Dahl does not cite—it has been shown that it generates adequate levels of investment only because of its very special circumstances, in particular its nonmobile labor force. See Keith Bradley and Alan Gelb, "The Replication and Sustainability of the Mondragon Experiment," *British Journal of Industrial Relations* 20 (1982): 20–33.

90. This, I think, constitutes a response to Dahl's claim that "corporate property [does not] fare any better on Mill's justification, for . . . Mill's justification not only excludes property in land but, like Locke, limits initial acquisition to producers." See *A Preface to Economic Democracy*, 78.
