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Projects and Property<sup>1</sup>

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“Individuals have rights.” These opening words of the preface to Robert Nozick’s *Anarchy, State, and Utopia* are the first indication of the boldness of his work to readers destined to become fans, and the first indication of an annoying shallowness to those destined to become critics.<sup>2</sup> “Of course people have rights,” say some. “How can this be denied without abandoning morality?” Others ask: “How can a serious analysis of the political realm begin with a declaration that individuals have rights? This is one of the main disputed claims!”

Rights talk brings out the worst among political philosophers. How one speaks about rights draws a line in the sand, identifying the speaker as being with us or against us. Once that line has been drawn, everything else one says is likely to be viewed through the prisms devised in response by the members of one’s audience.

To speak approvingly about private property rights, in particular, may be to nail down the lid on the box others construct for you. That seems to have happened to Nozick, anyway. “Individuals have rights,” he said, “and there are things no person or group may do to them (without violating their rights).”<sup>3</sup> Among these rights, it later emerges, are private property rights.<sup>4</sup> Critics from all sides have decried the absence of “foundations.”

It is tempting, given the likelihood of reactions of this kind, to avoid talk of private property rights altogether. Perhaps one can make progress in understanding the pros and cons of different arrangements for allocating and distributing resources without deploying rights talk.<sup>5</sup>

One can’t avoid such talk forever, though, if for no other reason than that it is in terms of rights that most philosophical debate about property arrangements has been formulated for several centuries. Thus, the question is not so much whether to talk about rights but, rather, how to begin.

I am not one of those who had trouble with Nozick’s opening lines. I thought at the time that to deny that individuals have rights would be to assert that there are no limits to what others may legitimately do to individuals. Surely there are lots of circumstances in which that’s exactly

how “rights” jargon gets deployed. It’s this understanding of rights, I think, that makes it plausible to say that animals have rights. To say this is just to indicate that there are certain things that shouldn’t be done to animals. Why not use the word “right” in this natural way? And if we accept this usage, isn’t it simply uncontroversial that individuals have rights? What’s wrong, then, with making that our starting point?

What is likely to be held to be wrong with this is that it deploys jargon carelessly. While it might seem harmless enough to start off by saying that individuals have rights, where one means only that there are some things that it is wrong to do to people, the implications of this way of putting things might be much more far-reaching. The history of rights talk licenses a reading of these words that makes them less harmless, since that way of talking seems to favor certain political ideologies and to rule out others.

How, then, should one begin? Unless one hopes to reduce political thought to indefeasible first foundations of some kind, a goal not widely sought in contemporary political analysis and certainly not sought by me, one has to begin with assertions that are at least to some degree fallible. Here I take it that one such assertion is that there are things that shouldn’t be done to people. I don’t mean by this that there is any list of things that may never rightly be done to anyone, in any circumstances (although neither do I mean to rule out the possibility that such a list may exist). Rather, I mean that it is possible to do things to people that it is wrong to do, and that, further, we should avoid doing these things if possible. In what follows, I hope to develop a way of talking about a certain area of moral behavior that expresses facts of this kind. I will use rights jargon in this effort, reexamining themes explored by Nozick throughout his career thus far.

I shall here try to accomplish two things. First I’ll try, in a Nozickian vein, to offer some first thoughts toward a clarification of the ethical foundations of private property rights that avoids pitfalls common to more strictly Lockean theories, and is thus better prepared to address arguments posed by critics of standard private property arrangements. Second, I’ll address one critical argument that has become pretty common over the years. While versions of the argument can be traced back at least to Pierre Joseph Proudhon, I’ll focus on a formulation given it by Jeremy Waldron. The basic idea is that the only sound arguments for private property rights lead to the conclusion that society has an obligation to insure that every citizen possess private property. In Waldron’s formulation, what is justifiable is a *general*, rather than a *special*, right to private property. I shall try to suggest that this conclusion is unwarranted.

While my own conclusions do not always agree with Robert Nozick's, the influence of his work is pervasive throughout. Furthermore, I will be discussing in passing the work of several thinkers whose works have acquired their several characteristic forms in part because of Nozick's influence. This is the case as much for those who are critical of Nozick's work as for those who agree with him. Part of the underlying message, therefore, involves the huge extent of Nozick's influence.

## 1. RESPECT FOR PERSONS

I begin with a principle that, as indicated above, is inevitably controversial, at least under some interpretations. But, as also indicated, one must begin somewhere. I intend its reference to "rights" to be quite broad, such that sentences like "if people don't have rights, then it is alright to do anything to them" come out true. I think it's that understanding of rights that makes the principle plausible:

RESPECT PRINCIPLE: Even if respect for persons may not be entirely equivalent to respect for the rights of persons, the two things are very close. There can be no respect for people – or, more grandly, for humanity itself, if such a thing has any meaning at all – absent the respect for rights.

I mean to make it clear, in this formulation of the Respect Principle, that the following discussion of rights is, in the first instance, other-regarding. This is important, given a traditional inclination on the part of critics of rights theory, along with many contemporary proponents, to conceive of such theory as fundamentally egoistical and divisive. I reject that view. While there is plenty of room to criticize any particular version of human rights theory, the most fundamental motivation for all such theories involves – or at least it ought to involve – concern for fair and reasonable rules for human interaction.

Now, to say that the point of rights theory is to concoct "fair and reasonable rules for human interaction" may seem innocent at first glance. But a second glance shows that the formulation is tricky, given contemporary discussions of rights, in at least two ways.

In the first place, if rights theory is held to involve, first and foremost, rules for *human* interaction, then the idea that other animals have rights may seem to be imperiled, at least, at the outset. It seems to me, though, that this consequence may be avoided, at least for present purposes, by considering that even if a primary (or even *the* primary) role of rights theory is to

produce rules for human interaction, that doesn't preclude its having other roles that might allow for talk of animal rights. If, for example, there being some things that it is wrong to do to people is sufficient to justify saying that people have rights (and that's certainly the way the Respect Principle was motivated a few paragraphs ago), then that same consideration would seem to yield the conclusion that animals too have rights. For surely there are things that can be done to animals that shouldn't be done.<sup>6</sup>

If, though, one has scruples about talking about animal rights because of the very different sorts of interaction that are possible among humans, on the one hand, and between humans and other animals, on the other, then perhaps one should be more careful about ascriptions of rights even if one acknowledges that there are things that morally shouldn't be done to members of those other species. Nozick, early in ASU, made an admittedly "too minimal" suggestion that he labeled "utilitarianism for animals, Kantianism for people."<sup>7</sup> Under this proposal, one would be obliged to maximize the total happiness of all living beings, but only humans would be understood as protected by the kind of stringent side constraints Nozick took rights to represent. Perhaps a suitably enriched version of this approach would be attractive to some.

My own view, however one resolves disputes of this kind, is that the moral and ethical reasons for not mistreating nonhuman animals do not derive from specifically human interests.<sup>8</sup> They derive, ultimately, from facts about those other animals and from considerations about morality that may or may not involve an appropriate deployment of rights jargon. Rights need not – and probably do not – exhaust morality, in my view.

Beyond the question of whether specifically human interaction exhausts the scope of rights theory, though, there is a second feature of my claim about the domain of rights theory that is worth examining. I claim that rights theory involves "fair and reasonable" rules for human interaction. Much recent work by more or less Hobbesian social contractarians would imply, I think, that this formulation is either redundant or wrong. Either what is fair just *is* what is reasonable, or else fairness just isn't a legitimate part of rights theory. That is, either fairness simply reduces to what is reasonable for contracting parties to agree to, or it plays no role in rights theory, since rights are thought by Hobbesians to arise out of rational agreement, whether actual or hypothetical.<sup>9</sup>

I don't agree with this. It seems to me that two parties might find themselves in positions where it is quite possible that what is rational for them to agree to, on a Hobbesian construal, might very well violate the rights of one of them. I have in mind first and foremost cases where the power

difference between the two parties is simply overwhelming. As the weaker party, I might argue that my stronger interlocutor should consider the possibility of my later gaining power, perhaps through collusion with others, and so forth. But if the prospects of this are sufficiently slim, then it is simply not rational (on this Hobbesian construal) for the stronger party to take my arguments seriously, no matter how clever my rhetoric might be. And in those circumstances, where I as the weaker party realize that I have no genuine power, it is simply not rational for me to risk the consequences by resisting the will of the stronger party.

For Hobbes, compact by conquest was every bit as legitimate as compact by coincidence of ends, in the state of nature. For me, that's wrong. Some agreements that are rational from a Hobbesian standpoint violate rights.

Thus, again, my claim is that the most fundamental motivation for human rights theory involves concern for fair and reasonable rules for human interaction, and that "fairness" and "reasonableness" are independent (at least so long as "reasonableness" is understood in a Hobbesian way). And, finally, it seems to me to follow from the centrality of "interaction" in this formulation that all general criticism of rights theory must be prepared to address questions about where we would be left *socially* if we failed to acknowledge the rights of others.

An important upshot of this way of looking at rights is that it is not particularly isolationist or, even, individualistic. Nozick writes, "The libertarian position I once propounded now seems to me seriously inadequate, in part because it did not fully knit the humane considerations and joint cooperative activities it left room for more closely into its fabric."<sup>10</sup> If the problem to which he alludes is a matter of emphasis, I suspect Nozick is right. But Nozick also says that his position "neglected the symbolic importance of an official political concern with issues or problems, as a way of marking their importance or urgency, and hence of expressing, intensifying, channeling, encouraging, and validating our private actions and concerns toward them."<sup>11</sup> It seems to me that, while humane considerations offer all kinds of good reasons to be cautious about one's eagerness to do away with state coercion in one fell swoop, Nozick nevertheless (in EL) overestimates the importance of expressions of "official political concern" and underestimates the dangers of state power, even in the hands of democratic majorities.<sup>12</sup>

Whether or not I am right to worry about Nozick's more recent emphasis on the symbolic importance of official expression of political concern, though, we are certainly in agreement about the importance of knitting humane considerations more fully into the fabric of rights theory. Far from

cutting us off from one another, acknowledgment of rights serves to establish our most fundamental connection with one another: Rights establish the lines of interpersonal obligation.

These general considerations about rights now set the stage for an examination of property rights, in particular. While it is in part because strict Lockean approaches to property rights do seem isolationist that they are to be rejected, there are other reasons to be suspicious of them. Indeed, Locke's work has exerted enough influence on all sides of the discussion that it deserves for that reason alone a short critical discussion before I move on to more positive considerations. The critique offered in the next section will then serve as a stepping-off point for what follows.

## 2. THE FAILURE OF A STRICT LOCKEAN APPROACH

In an earlier essay,<sup>13</sup> I argued that the grounds provided for property theory by John Locke's arguments<sup>14</sup> are inadequate for a number of reasons. In the first place, the famous Lockean proviso – which states that previously unowned resources may be propertized provided that enough and as good be left for others – is both conceptually incoherent and self-defeating.

Since the publication of that piece, David Schmidtz has developed the argument even further.<sup>15</sup> Especially noteworthy (and persuasive, it seems to me) is Schmidtz's argument that one must *save* resources from the "common" if one is to fulfill the goal of preserving them for the use of others, and that initial acquisition does precisely this.

Surely, though, this yields the conclusion that "as long as one leaves enough and as good for others" cannot function as a qualification or proviso on whatever principle is chosen as the acquisition principle. Something like it becomes, instead, (at least part of) the justification for acquisition, and the "leaving" part must be entirely dropped. Since this part is the very heart of Locke's proviso, it seems plain that the proviso should, as I have argued, simply be abandoned.

Schmidtz, by contrast, thinks that one can accommodate his argument by reinterpreting the proviso in some way. What way would that be? Something like "one may appropriate as much as one can, provided only that one leaves as little as possible unappropriated"? Erasmus Darwin once described Unitarianism as a "featherbed to catch a falling Christian."<sup>16</sup> Perhaps Schmidtz intends his "reinterpretation" of the Lockean Proviso to be a featherbed to catch a falling Lockean.<sup>17</sup>

It still seems to me that there are extremely good grounds for simply dropping the proviso from the rules for just initial acquisition of property,

and these grounds are primarily other-regarding. The proviso simply doesn't protect the interests of others in the way Locke intended. In fact, it aggravates the very problems of scarcity that Locke meant to ameliorate. Nozick's discussion of various alternative versions of Lockean-like provisos shows clearly that such problems – such as Hastings Rashdall's case of the person who appropriates the only water in the desert – were very much at the forefront of his own thinking.<sup>18</sup>

But abandoning Locke's proviso leaves Locke's doctrine of labor-mixing; this principle, as I have insisted along with a chorus of other traditional and contemporary analysts, can lead to counterintuitive – if not downright crazy – results. Nozick has been notoriously eloquent among such analysts:

Locke views property rights in an unowned object as originating through someone's mixing his labor with it. This gives rise to many questions. What are the boundaries of what labor is mixed with? If a private astronaut clears a place on Mars, has he mixed his labor with (so that he comes to own) the whole planet, the whole uninhabited universe, or just a particular plot? Which plot does an act bring under ownership? The minimal (possibly disconnected) area such that an act decreases entropy in that area, and not elsewhere? Can virgin land (for the purposes of ecological investigation by high-flying airplane) come under ownership by a Lockean process? Building a fence around a territory presumably would make one the owner of only the fence (and the land immediately underneath it).

Why does mixing one's labor with something make one the owner of it? Perhaps because one owns one's labor, and so one comes to own a previously unowned thing that becomes permeated with what one owns. Ownership seeps over into the rest. But why isn't mixing what I own with what I don't own a way of losing what I own rather than a way of gaining what I don't? If I own a can of tomato juice and spill it in the sea so that its molecules (made radioactive, so I can check this) mingle evenly throughout the sea, do I thereby come to own the sea, or have I foolishly dissipated my tomato juice?<sup>19</sup>

The quest is for a principle of just acquisition of previously unowned resources that captures the benign features of labor-mixing, while getting around its apparent arbitrariness. The benign features that I have in mind include the feature that surely must have suggested it to Locke in the first place: the investment of labor almost always indicates an intent to do something or produce something that is important to the laborer. We must find a principle that hangs on to this feature without having the arbitrary and potentially destructive consequences that follow from the labor-mixing principle. It is this quest that I hope to further in the present essay. My plan is to

revisit the issue of the original acquisition of previously unowned resources, and to offer an approach that avoids a variety of Lockean and non-Lockean pitfalls. In the course of this discussion, I'll address the idea that people have a "general" right to private property.

The arbitrariness of labor-mixing as a criterion for just initial acquisition of previously unowned resources is not merely theoretical. It shows up in contemporary and historical arguments that have been deployed by committed labor-mixers in ways that deprive less inveterate alterers of their rights. A glaring example is the justification occasionally offered for the European colonial expropriation of nearly the whole of North America, and large parts of other continents, on grounds involving the relative absence of tilled fields, fences, and other manifestations of labor-mixing when they got there. Other examples involve schemes that have been proposed for the reallocation of resources in countries where attempts are being made to achieve privatization of national economies. Such arguments and schemes miss an important part of the point of property rights, I hold, and reveal a serious defect in the labor-mixing criterion.

The right to acquire private property involves the centrality of personal undertakings or projects – whether conducted individually or collectively – in human life. Whether resources are altered or not by such projects, it is the projects and their importance to persons that must be respected, and for which room must be made, provided that they do not interfere with the similarly justifiable projects of others. This is vital if more than lip service is to be paid to the idea of respect for people.

### 3. PROJECTS AND RIGHTS

Joel Feinberg once suggested that "respect for persons . . . may simply be respect for their rights, so that there cannot be the one without the other."<sup>20</sup> One might well go considerably farther than this in assessing the importance to ethics of people's projects. There is an important sense in which understanding persons is impossible without understanding their projects. People are living, breathing actors, not passive things with merely static characteristics.

An interesting corollary involves questions about what makes for a desirable human life. In the course of discussing such questions with students, I have sometimes raised the following standard late-twentieth-century analytically inclined philosopher's question: if contemporary "virtual reality" technologies were improved to the extent that experiences were 100 percent convincing – a situation that has been represented in far too much

recent fiction – and if one could program one's experiences in precisely the way one would like, would it be desirable to simply plug into the machine for life, instead of going through the agony and frustration of real life? Add the proviso that there is no danger whatsoever, even that life expectancy might be increased (perhaps one is laid out in a germ-free setting and nourished intravenously, thus decreasing the risk of disease – or perhaps one just agrees to become a brain in a vat, cared for by trustworthy scientists).

The machine envisioned is plainly the one Nozick has called the "experience machine."<sup>21</sup> It won't do to say that what is wrong with virtual reality is that it is not challenging, or that one needs frustration sometimes in order to enjoy successes, for one can surely program such things into one's virtual life. But since one can ensure, in virtual reality, that the challenges will never become overwhelming, and that the successes will always outnumber the frustrations, wouldn't that be a better life on all counts?

Once the virtual experience has begun, one wouldn't have any way of knowing that the experiences were only virtual, since they are (by hypothesis) 100 percent convincing. My experience of posing this question to students has been that, with only the rarest exceptions (and these are almost always due to a misunderstanding of some of the provisions of the situation), people reject the option out of hand. Such a virtual reality machine would be terrific fun for Friday and Saturday nights, students largely agree, but the idea of choosing virtual reality as a substitute for "real life" is simply out of the question.

Why might this be? The students say that it's because virtual reality is not real, but that plainly doesn't help at all. Perhaps their judgments involve a conception of a person that resembles the one sketched a minute ago: persons are not to be understood as mere passive recipients of experiences but, rather, as actors. It is not the *experience* of acting that matters, it is the fact of acting. The postulated virtual world is deeply lonely in its characterization, as well. The suggestion I'm offering here is that people do not understand themselves primarily as passive receivers of experiences of the world but as active participants in a world shared with other actors like them.<sup>22</sup>

This is certainly Nozick's view. Not only do we want to *do* certain things, rather than just have the experience of doing them, we want also to *be* a certain way. As he puts it, "There is no answer to the question of what a person is like who has long been in the tank. Is he courageous, kind, intelligent, witty, loving? It's not merely that it's difficult to tell; there's no way he is."<sup>23</sup>

I'm not sure that this helps to resolve many "big questions" about the good life, but it may go a long way toward unpacking the reaction of those who reject a life of virtual experience, however perfect, in favor of real life.

And such a conception of worthwhile human life certainly underlies my present contention that to care about a person, to respect a person, is to care about and respect at least the bare fact that she has goals, ambitions, and projects. Respecting people means respecting them as agents, as co-inhabitants of a shared world, not just as objects with properties or neural tissue with afferent nerves.

It is not necessary to applaud or otherwise appreciate the particular details of any person's projects. A society of actors, pursuing a wide array of individual and cooperative projects, will need to place limits on acceptable activity, if only to fulfill the general principle that liberty to pursue projects is to be maximally supported. But to facilitate – even barely to allow – human life, one must address the human need to act in behalf of goals that are personally motivating. To care about others only in regard to their capacity to contribute to society in general – which should be read, in all honesty, as a capacity to contribute to us and *our* projects – is to betray a deep contempt for them as persons, as well as a self-centeredness that thoroughly trashes all pretense of humanity.

Perhaps it is true that people have debts to society. Perhaps, indeed, these debts may be fairly extensive. Without some end, though, to the debt that individuals may be held to have to society, one wonders not only what room is left for respect for persons but also what value society could possibly have in the lives of persons. One also wonders what conception of society is at work in such a view. An illuminating way of understanding rights highlights the way they express the limits of the social debt borne by individuals, although this is clearly but one side of the issue.

There are important precedents for the suggestion that personal projects play a vital role in delineating human rights. Something like it may be found, in a notoriously thin form, in John Rawls's *Theory of Justice*,<sup>24</sup> although it is seriously undermined by the Rawlsian contention that not only unowned resources but even the talents of persons should be regarded as community property. Bernard Williams developed the "projects" theme further through the 1970s,<sup>25</sup> and the issues that I want to focus on have been provocatively addressed by Loren Lomasky.<sup>26</sup>

Without going into great detail, I wish to offer hearty endorsement to the general approach taken by Lomasky, while calling attention to certain features of his argument that appear to me either to be damaging distractions to the key idea or, in some cases, plain mistakes. For one thing, Lomasky offers a technical definition of the term "project" that is more restrictive than is necessary in his attempt to provide a grounding for rights. "Projects," in his book, are not just any old undertakings that would be covered by that term in ordinary English:

Some ends are not once-and-for-all acknowledged and then realized through the successful completion of one particular action. Rather, they persist throughout large stretches of an individual's life and continue to elicit actions that establish a pattern coherent in virtue of the ends subserved. Those which reach indefinitely into the future, play a central role within the on-going endeavors of the individual, and provide a significant degree of structural stability to an individual's life I call *projects*.<sup>27</sup>

Suffice it to say here that, in my view, projects need not be as grand as this in order to justify rights in general, or property rights in particular. That some such projects as these play important roles in normal human lives is undoubtedly true, and this is certainly an important consideration in what Lomasky calls "philosophical anthropology." But I do not believe this fact to be as essential to rights theory as Lomasky indicates.

Beyond this unnecessarily technical definition of "projects," it must be remarked that Lomasky argues – mistakenly, in my view – that an appreciation of the importance of personal projects in human lives leads to a renunciation of several related traditional philosophical doctrines: (1) the doctrine of the impartiality of the moral point of view; (2) the doctrine of the interchangeability of persons within utilitarianism; (3) the utilitarian doctrine that the goal of moral reflection is the maximization of general happiness; and (4) the Rawlsian doctrine that questions of justice should be settled behind an appropriately situated veil of ignorance. Any or all of these doctrines may be false, but Lomasky is mistaken, I think, in holding that their falsity follows from a full appreciation of the importance of projects – even the very grand projects that he intends – in human life. If Lomasky is right about the importance of projects, each of the doctrines listed above has well-known theoretical facility to acknowledge and incorporate this philosophically anthropological fact.

Having briefly indicated where I part company from Lomasky, I must reemphasize the importance of his effort to secure for projects their fundamental place in the justification of rights, and especially of property rights.

#### 4. RIGHTS OF NONINTERFERENCE

I thus come to the second key principle involved in my projects-based argument for private property rights:

**NONINTERFERENCE PRINCIPLE:** Claims against external interference should be generally respected out of a concern that people ought not

to be interfered with in projects they undertake, so long as these projects do not themselves interfere with the just projects of others.

The notion of property (and of rights in general), and the rules that adhere to property (and rights), are best understood in terms of an attempt to capture and explicate the above principle of justice. This is at least consistent with the "expressivism" of Nozick's EL: "... Our concern for individual autonomy and liberty... is itself in part an expressive concern. We believe these valuable not simply because of the particular actions they enable someone to choose to perform, or the goods they enable him to acquire, but because of the ways they enable him to engage in pointed and elaborate self-expressive and self-symbolizing activity that further elaborate and develop the person."<sup>28</sup>

What is required is a means of carving out, for each person, a realm in which activity is just and proper, a realm in which noninterference may reasonably be expected, or even demanded. Such assurance also must give some specification to the limits of the realm thus defined. With specific reference to property rights, Charles Reich has put the point well: "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."<sup>29</sup>

Some rights may be held to be innate (the right to life?). Some other rights may be held to be maturational – they apply upon reaching some appropriate developmental stage (the right to full liberty?). Finally, some rights may be held to be acquired, perhaps on the basis of earlier rights (the right to some particular thing?). All of these "rights," though, are derivative from considerations of justice. It is unjust to interfere with others in projects that interfere with none of our just projects. What we are trying to do, in building up a taxonomy of rights, is to give system to this general principle of justice.

Those who argue that rights restrict freedom are certainly correct. Indeed, this is the entire point of rights: to enunciate restrictions on the "freedom" of others to interfere with morally privileged activity, whether individual or collective. The question about rights then becomes a question about how freedom ought to be restricted, and on the basis of what considerations.

So: Are there any rights that we may have that are additional to our right to life (as explicated briefly above)? I shall argue in behalf of a right that I claim is a direct descendent of the Noninterference Principle.

If there were a range of activities that could not possibly interfere with the activities of others, because no activity in that range affects

others in ways that violate previously established just claims of theirs, then there would be possible, should someone undertake an activity in this new range, a direct application of the Noninterference Principle.<sup>30</sup> Since new activity in this area impinges nowhere on activity over which others can make just claims, activity in this area could not interfere with anyone's just claims.

I take it that it is something like this character that many people like about John Locke's rule for just acquisition of previously unowned resources. I have argued, though, that Locke's argument fails in most respects. It fails, to summarize those earlier arguments, because (1) it rests on "labor-mixing," and the labor-mixing argument is suspicious; (2) it includes a proviso or qualification that appears to be at least conceptually problematic and at worst self-defeating; and (3) it is couched in theological terms that are dubious (although these may be purged with no substantial loss of strength to the argument).<sup>31</sup>

But are there any untapped realms of activity? Surely there are indefinitely many, in fact. That this may seem surprising is due, I think, to a well-entrenched tendency to assume that all possible activity that does not yet have rights attached to it is somehow rightfully within the scope of community or state decision. The assumption, when stripped of obfuscation, is that whatever activity does not yet have rights assigned in and around it may rightfully *get* rights assigned by state or community apportionment. In the case of things that might be thought of as property, this comes to the peculiar (but widely accepted) assumption that whatever is not yet owned by anyone is at least quasi-owned by the state or community, since state or community is deemed to have the right to determine its disposition. But this assumption begs the question at issue, since it assumes a prior solution to the problem of property, which just *is* the problem of how things may rightly be disposed of. Unfortunately, this kind of question begging is not uncommon in the history of discourse about property rights.

## 5. A GENERAL RIGHT TO PRIVATE PROPERTY?

A particularly subtle version of the presumption in question (the presumption, that is, that whatever is not yet owned by anyone is quasi-owned by the state or community) is to be found in the contention that, if property rights are so important to people, then society should ensure that everyone gets some property. Jeremy Waldron entertains this possibility with

considerable sympathy in his influential 1988 book, *The Right to Private Property*,<sup>32</sup> after arguing that the prospects for justifying private property as what he calls a "special right," in the way that both Locke and Nozick attempt to do, are bleak.<sup>33</sup>

Waldron's discussion depends on two distinctions among types of possible rights, one of which derives from the work of H. L. A. Hart and the other of which is Waldron's own. Hart distinguished between "special rights," which arise out of some special event or relationship, and "general rights," which don't.<sup>34</sup> A clear example of a special right would be one that is created by a promise. Common examples of putative general rights would be rights to life, liberty, and the pursuit of happiness.

When Hart first suggested distinguishing among rights in this way, he indicated no distinction between special rights that bind only those who were involved in the special transaction that gave rise to them, on the one hand, and special rights that don't, on the other. Waldron argues that, especially in considering property rights, this is an important distinction to make. He suggests, further, that the question of how rights arise ought to be kept conceptually clear of the question of who is bound by the rights.

Thus, for Waldron, the distinction between special and general rights focuses only on the question of origin. A second distinction, between rights *in personam*, which bind only those who are involved in the special transaction that creates the rights, and rights *in rem*, which are not so limited, is proposed. Waldron then examines the several possible combinations of these categories as represented in the following diagram:

	<i>in personam</i>	<i>in rem</i>
Special	I	II
General	III	IV

Two of these four categories are clearly instantiated in the moral world, Waldron argues, while two are problematic. Category I is the class of special rights *in personam*, an example of which is the standard promise. Category IV, the class of general rights *in rem*, collects things like the standard rights to life, liberty, and the pursuit of happiness.

Category III, though – the class of general rights *in personam* – which Waldron seems to think might have some instances in the moral world – looks pretty incoherent. He suggests that items in this category would have to be “limited in an *in personam* kind of way,” but given his definition of “rights *in personam*,” it would have to be limited, in particular, by a transaction that, by hypothesis (in the case of general rights), hasn’t taken place. In any case, I will follow Waldron in ignoring Category III.

The interesting category for present purposes is Category II: the class of special rights *in rem*, since this is where Waldron takes on an entire class of property theories that includes both Locke’s and Nozick’s:

On the view usually associated with John Locke and Robert Nozick, the right of an appropriator is a special right *in rem*, that is, a special right against the world. Consider the right of a Lockean farmer to the field he has enclosed and cultivated. That right (to exclude others from the field, to control it for his own benefit, etc.) is a special right inasmuch as it is not a right he is supposed to have *ab initio* or as a matter of course: it arises out of a particular contingent event in which he was involved – namely, the event of his labouring on the field. Not everyone gets around to labouring on a field, and certainly only one person can be the *first* to labour on any particular field; so the right in question is, in Hart’s terms, peculiar to him who has it. But the right so acquired is nevertheless a right against all the world, and thus a right *in rem*, because, on Locke’s account, once the field has been laboured on, *anyone* who interferes with it without the labourer’s consent will be in violation of his duty. Similarly, on Locke’s account and particularly on Nozick’s, rights arising out of the sale and purchase of fields and other appropriated resources are special rights *in rem*.<sup>35</sup>

Waldron argues, in the end, not only that Locke’s and Nozick’s particular defenses of property rights as special rights *in rem* fail, but that it is simply implausible that there is anything anyone could do with as yet unowned resources that could bind the world in the way that private property rights are supposed to do. Thus, any effort to replace Locke’s labor-mixing argument with some other relevantly similar argument is doomed.

Waldron is not necessarily an opponent of private property rights, however, since he thinks many of the traditional arguments in behalf of private property are rather persuasive. These persuasive arguments, though, all have a tendency to place private property rights in Category IV: They are binding on the world, all right, but no special event or relationship creates them. Like the rights to life, liberty, and the pursuit of happiness, general rights to private property *in rem* belong to everyone. We have them from

birth. And like those other more familiar general rights *in rem*, they should be protected by a just society.

In short, Waldron finds it at least plausible that society is obliged to see to it that everyone gets the benefits of owning private property. What are those benefits? Waldron discusses several possibilities, among which are (1) the possibility that owning property of one’s own is valuable or necessary for autonomy, with autonomy acknowledged as a vital human value; (2) the possibility that owning property is valuable or necessary for ensuring one’s security; (3) the possibility that owning property is good for building character; and so forth. It is reasonable to presume that Waldron would place the argument offered in this essay, to the effect that private property will find its justification in connection with its importance in the pursuit of personal projects, on this list. If projects are so important to people, and if private property is vital to the pursuit of projects, then we ought to see to it that everybody gets some.

Now, there is no doubt in my mind that it would be a good thing if everyone had the benefits of private property that could be deployed in the pursuit of projects of theirs that didn’t interfere with the just projects of others. This is an admirable goal, and it is hard to argue with the idea that institutions that effectively accomplish this goal would be good ones. The story isn’t all one-sided; I would have to agree with the critics of private property that there are lots of bad things that can come from it. Nevertheless, on balance, institutions that promote ownership of private property are, in my view, good institutions. The difficulties arise in designing institutions that can do this effectively, and those problems are largely empirical.

It might be, for example, that an arrangement like the one proposed by Locke, where private property rights in previously unowned resources can be acquired by first-comers through some special act like labor-mixing, in fact makes it more likely that third parties will be able to acquire property rights over things they value than does any other halfway manageable scheme. The domain of things propertized is thus expanded, after all, and the resources that now may be purchased or acquired through exchange by people who for whatever reason weren’t out there rooting among the previously unowned stuff should make more property, and perhaps improved property, available to everyone.<sup>36</sup> As Nozick points out, arguments like these need not simply be part of a utilitarian justification of property – they might instead be deployed only to support the claim that appropriation of private property satisfies the intent of some version of the Lockean proviso – but they *might* be.<sup>37</sup>



It would be a mistake to confuse rules like labor-mixing, which are intended as rules for bringing unowned resources into the general scheme of private ownership, for rules of ownership *simpliciter*. It's not hard to imagine someone reading Locke or Nozick and thinking that, once the race for first acquisition of a finite supply of previously unowned resources is over, then anyone who didn't manage to acquire property in that race is out of luck. But that's by now a well-known mistake. Most of those resources are now *more* readily available to others, since people don't now have to follow the rules for *first* acquisition to acquire them. They can buy or trade for the resources, for example.

But still: it must be admitted that lots of very different schemes of propertization might accomplish this same end without exactly mirroring full-blown private property schemes. If our objective is to ensure that everyone has private property, there would appear to be leeway for different institutional arrangements that would maximize the opportunities for personal projects (say) through the control of resources.

There is much less than meets the eye, however, in the idea that people may have a general right to private property. Unless the idea of a "general right to private property" presumes some prior holding of property on the part of those who are to fulfill or enforce this right, the right is empty. On the presumption that it is society in general that is to enforce this right, then unless society is in control of those resources that are to be bestowed on newborns (perhaps to be held in trust until maturity) in fulfillment of their general right to own private property, the right in question is no more than deceptive rhetoric.

Now, societies can and do control resources. But the question that was addressed by Locke and Nozick had to do with how property claims arise in the first place. What is it that justifies property claims? Especially when considering which claims may justly be made over activities and resources that have hitherto been beyond the bounds of all rights claims: What justifies making the *first* such claim?

Proponents of the general rights approach too often seem to be presupposing that the very toughest justificatory questions to be found in property theory have been resolved already. They presume to know that control of the resources they plan to deploy already justly rests in some hands or other – usually in the hands of the state. But that presumption comes down to a presumption that questions of ownership have already been settled.

It may well be that state control (i.e., ownership) of all previously unowned resources is precisely what is just. But that's just the kind of claim that is supposed to be established by a thoughtfully worked out property

theory, and it's the kind of issue addressed directly by attempts, like Locke's or Nozick's, at establishing what it is that must happen in order to generate rights – that is, at specifying what generates special rights. The justifiable property rights might be private, and they might not be. It won't do at all, though, to presume the solution as the basis of the analysis.

Saying that there is a general right to private property hangs on to its moral content even if it is bereft of material substance. As justified by the kinds of arguments offered by Waldron, it would still provide support to the idea that we should arrange institutions in such a way that, other things being equal, opportunities for acquiring private property are maximized. But unless there is some argument – whether this same "general rights" argument or another – supporting the contention that society itself has a right to claim as property resources that have never yet been held by anyone, then the "general rights" argument must stop there: It must stop at the point where it recommends institutional arrangements that maximize people's ability to acquire private property.<sup>38</sup> Since both Locke's and Nozick's work can easily be seen as attempting to outline such arrangements, they don't run afoul of legitimate "general rights" concerns.

## 6. PROJECTS AND APPROPRIATION

In general, then, a coherent solution to our effort to build a system of rights must not assume some prior solution. In particular, it must not assume rights on the part of the state, or on the part of the community as a whole, or on the part of any majority or minority or individual. If such groups or persons are to be acknowledged as holding rights, then this acknowledgment must emerge from the analysis. It must not be presupposed.

Carefully avoiding the assumption that the community or state has rights over all activity in advance, then, are there any realms of activity that could not possibly interfere with the just activities of others? That will be a matter of considerable controversy. How about ranges of activity that *could* in principle interfere with the just activities of others, but certainly won't as a matter of fact? Or probably won't? How should the criterion for invoking the Noninterference Principle be worded?

I doubt whether there is one answer that will suffice in considering all proposed activities. A great deal will plainly depend on the degree of risk and on the seriousness of possible rights violations. The fine print of the rules regarding activity in new areas will, in many cases, have to depend upon standard consequentialist lines of reasoning. What these lines

of argument will be refining, though, is something like the idea of a basic right to noninterference, and whether the aptness of acknowledging such right need itself be a function of bringing about consequences of one kind or another is not clear. All the traditional arguments among deontologists and consequentialists about the ultimate foundation of this basic right can clearly be reconstructed in these new terms. What I hope to establish in the present discussion is simply that something like it ought to be understood as a basic right.

How does the Noninterference Principle yield property rights, in particular? It yields them via the standard observation that activity characteristically requires objects, tools, and stability of expectation in regard to their use. I have nothing new to add here. The standard, though, for deciding which objects and which tools one comes to have property rights over, and what the extent of these property rights may be, ought itself to involve the Noninterference Principle.

To take the standard Lockean situation as an example: Previously unappropriated resources may justly be appropriated for use, by individuals and (perhaps) by groups or communities, provided only that such appropriation not interfere with the justly undertaken projects of others (delineated by rights, in most cases), and that any other rules that apply to such just appropriation be followed. It is important to reemphasize that the entire set of appropriation rules will be designed to maximize scope for projects in an effective way.

Let me hasten to add that (1) this does not give any specification as to what must be done in the way of appropriating; mixing labor seems at the same time too strong a requirement (because surely the projects of native hunters and gatherers should be respected) and too weak (because indiscriminate despoliation of the land may count as labor-mixing).<sup>39</sup> What we want is a principle that considers these problems;<sup>40</sup> (2) this account does not give any answer to the question of which “bundles” of rights get assigned to the appropriator. Thus, many of the questions that have animated critics of property rights, from Proudhon to G. A. Cohen, are not yet resolved by this account. But it must be insisted that decisions about what exactly one gets when one acquires property rights are matters of justice, and not simply matters of convenience to the state, to the majority, or to anyone else; (3) the extent of just appropriation is also undetermined by this account. Interestingly, though, the projects approach may, given its characteristic logic, offer some clues about how to resolve this last problem.

Among the things contributed to the discussion of property rights by the projects approach is the emphasis on mutual respect, on the obligations

placed on me by the projects of others, as opposed to apparently selfish claims of my own against the world. It is not that traditional justifications of private property rights could not take this same perspective, it is rather a question of what is emphasized.

A remaining problem for the projects approach, as it is for other approaches, is this: Given any principle of just acquisition of previously unowned resources (suitably defined to include such spooky issues as acquisition of rights over “intellectual property” and the like), what exactly is it that one gains right over? The classical problem for property theory is clearly exemplified in arguments, such as Proudhon’s, that concluded that while a farmer who plants and tends a crop is surely entitled to the produce, and even to the use of the land as long as the farmer continues to work it, nothing like ownership in perpetuity comes to be deserved.

The “projects” approach offered here suggests that what gets owned is a function of the definition of the project that is alleged to justify any given acquisition claim. Which project claims are justified, in turn, will be in large part a function of potential conflict – or, more precisely, the lack of conflict – with previously justified property claims, themselves defined and characterized in terms of projects.

The approach offered here thus suggests not so much a wholesale resolution of particular property claims but a language and method to be used in the consideration of such claims. This language and method is in no way morally neutral, depending as it does at least on the two principles that I have set out and discussed here. But my hope is that many apparent critiques of private property can actually be accommodated within property theory by choosing this language and this method.

For all this qualification, however, I think we do have, in this approach, the basis for a general right to act (a right, at least, to noninterference) in all areas that have been as yet untouched, in which no rights have been, as yet, established. Where the security of the project makes it wise, appropriation proper of previously unowned resources may well be justified.

Perhaps it is simplest to describe the matter in this way: Systems of rights aim at coordinating the just claims of members of some community, broadly understood. The content of such claims depends, in part, on the possibility of this kind of coordination. But if someone wishes to take his business outside the existing community of rights and rights-holders – or outside all communities, where no coordination problem as yet, by hypothesis, exists – he must, in justice, be allowed to do this without interference. Such extensions of the moral realm into as yet external domains are themselves formative of the new moral terrain.

## 7. CONCLUSION

In commenting on an earlier version of this essay, G. A. Cohen took issue with what he perceived as a too-easy slide from the right to noninterference to the right to appropriate. He is right in thinking that the inference is not immediate. In support of his complaint, Cohen quoted Judith Jarvis Thomson, as follows:

... it is not at all plausible to think that if something is unowned, then each of us has claims against others to noninterference with our uses of it. Having a claim to noninterference is very different from having a privilege; and it is not at all clear what I could do to an unowned thing that would generate in me a claim to noninterference with my uses of it.

Ownership includes not merely privileges, not merely claims, but powers as well, such as the power to make other people have powers. What could I do to an unowned thing that would generate in me the power to make other people have powers in respect of it?<sup>41</sup>

Cohen might as well have quoted any one of an entire tradition of thinkers, from at least Proudhon to Waldron.

What I have tried to show here, however, is precisely how to argue for the move from noninterference to appropriation. Your right to my noninterference is to be based on an understanding of the importance of projects to persons. What I am to refrain from interfering with – that is, what you acquire a right to when you acquire a right to my noninterference – will be defined in terms of the requirements of your project, on the one hand, and the previously established rights of others, on the other.

The Noninterference Principle yields also a right of transfer of alienable rights, among them rights to transfer property. Wherever people severally agree to exchange or otherwise transfer rights that they have, and wherever such exchange or transfer violates no previously established rights or just claims of others, then the principle demands that this cooperative activity be free of interference from others.

Finally: Many who have written about property rights<sup>42</sup> have argued that acquisitions and transfers, where they improve the positions of the people who engage in them, may frequently violate the principle of Noninterference mentioned earlier in this essay. They are alleged by some authors to do this in all “competitive” situations, since they leave others at a competitive disadvantage. They also may “deprive others of opportunity.”<sup>43</sup>

This criticism is hard to fathom for two reasons that I shall simply mention, rather than discuss. First, the rights of first acquisition and transfer discussed here derive directly from the Noninterference Principle, quite independent of any reference to competition. Perhaps, if “competitive situations” are special, consideration of their special character will lead to special rules of application in those situations. I have no intuitions whatsoever about how one might propose to do this, short of simply abolishing all competition. Indeed, it is not even clear to me that capitalism, which some of those who offer this critique seem to think of as a near paradigm of this kind of situation, is really “competitive” at all in the required sense. Much depends, I think, on how one understands the term “capitalism.”<sup>44</sup>

Second, it is hard to understand why it would be unfair or unjust, given that one is in a competitive situation, to gain advantages over others as part of the competition. Imagine a chess game, in which both parties have been playing by the rules, and in which one party objected that the seizure of his queen was “unfair.” What could be meant by that in such a situation, beyond a mere expression of frustration (or, perhaps, a joke)? Again, the argument seems to amount to a claim against competition as such, if it has any force at all. Yet no argument against competition, in general, is characteristically offered by those who take this approach. Perhaps it is a supposed necessary character of competing in capitalist economies that makes the situation different from chess, and which allows entry for accusations of unfairness. But, again: No defense of the alleged necessity of the relevant kind of competition under capitalist regimes is typically offered, anyway, against the claim that people are perfectly free to cooperate with one another, and no defense is offered for the claim that there is any unfairness involved at all.

Let me summarize, in any case, the small progress that I hope to have made in this essay. We have not yet arrived at a full-fledged substitute for the labor-mixing principle, but I have suggested that consideration of the role of personal projects in human life (a role emphasized in all of Robert Nozick’s work) will play a central justificatory role in establishing whatever principle of first acquisition emerges. Focusing on the importance of projects to human life and to human personality will preserve much of the intent of Locke’s labor-mixing principle, while giving full consideration as well to the projects of nonlabor-mixers, both historical and current. The insistence on alteration of things is eliminated altogether.

I have not provided a foolproof criterion of acquisition, transfer, or anything else, any more than Nozick has so far been able to do. I am convinced,

in fact, that any rule is bound to have loopholes.<sup>45</sup> But the approach to property taken here avoids, I think, some of the more glaring problems of earlier approaches.

### Notes

- <sup>1</sup>Various versions of this essay were read and discussed at West Virginia University, Bowling Green State University, SUNY at Buffalo, and the University of Waterloo. Earlier versions were delivered at the meetings of the Ockham Society, Oxford University, the International Society for Value Inquiry in Moscow, the Tenth International Social Philosophy Conference in Helsinki, and at a meeting of the Rochester Area Political Thought Forum, University of Rochester. While I am grateful to all of the participants in these various sessions for their comments and criticisms, I owe special debts to G. A. Cohen, who was my commenter at Oxford, and to Roger Crisp, Jan Narveson, Sharon Ryan, David Schmidtz, Danny Shapiro, David Suits, and Naomi Zack.
- <sup>2</sup>Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. ix.
- <sup>3</sup>Ibid.
- <sup>4</sup>ASU, especially pp. 167–82 and 268–71.
- <sup>5</sup>This is the strategy adopted in John T. Sanders, “Justice and the Initial Acquisition of Property,” *Harvard Journal of Law and Public Policy*, 10 (1987). See especially pp. 367–68, where this issue is discussed, and footnote 2 at the bottom of p. 368.
- <sup>6</sup>Sharon Ryan’s comments on an earlier version of this essay were instrumental in helping me sort out a plain inconsistency in my thinking. I confess, though, that I’m still not sure whether or not it’s best to extend rights jargon to other animal species.
- <sup>7</sup>ASU, p. 39.
- <sup>8</sup>I am opposing here a line of thought that has been worked out by Jan Narveson, among others. See especially Narveson, “Animal Rights Revisited,” in H. Miller and W. Williams (eds.), *Ethics and Animals* (Humana Press, 1983), pp. 45–60; Narveson, “A Case Against Animal Rights,” *Advances in Animal Welfare Science* (The Humane Society of the United States, 1986); and Jan Narveson, “Morals and Animals,” *Moral Matters* (2nd edition), pp. 133–42 (Peterborough, Ont.: Broadview Press, 1999).
- <sup>9</sup>Such an approach would seem to settle the question of whether nonhuman animals can have rights for Hobbesians. They don’t, unless some sense can be made of hypothetical agreements between humans and members of other species.
- <sup>10</sup>*The Examined Life: Philosophical Meditations* (New York: Simon and Schuster, 1989), pp. 286–87.
- <sup>11</sup>EL, p. 287.
- <sup>12</sup>See also John T. Sanders, “The State of Statelessness,” in John T. Sanders and Jan Narveson (eds.), *For and Against the State: New Philosophical Readings*

- (Lanham, Md.: Rowman and Littlefield, 1996), pp. 255–88, and Gerald F. Gaus, “Goals, Symbols, Principles: Nozick on Practical Rationality,” this volume.
- <sup>13</sup>“Justice and the Initial Acquisition of Property,” op. cit.
- <sup>14</sup>The arguments in question are to be found not only in Locke’s *Second Treatise* but also in the *First Treatise*. See Peter Laslett (ed.), *Locke’s Two Treatises of Government* (Cambridge: Cambridge University Press, 1960).
- <sup>15</sup>See Schmidtz, “When Is Original Appropriation Required?,” *The Monist* (October 1990): 504–18, and Schmidtz, *The Limits of Government: An Essay on the Public Goods Argument* (Boulder, Col.: Westview Press, 1991), pp. 15–32.
- <sup>16</sup>See Charles Darwin’s introduction to Ernst Krause, *Erasmus Darwin* (London: J. Murray, 1879), p. 45.
- <sup>17</sup>In “The Institution of Property” (*Social Philosophy and Policy*, 1994), Schmidtz elaborates his discussion of these matters considerably, suggesting (roughly) that the proviso *allows* appropriation when demand does not exceed the carrying capacity of the commons, then *requires* appropriation when demand exceeds carrying capacity. The “proviso” is plainly not functioning as a proviso if (as seems plausible) it works like that.
- <sup>18</sup>ASU, pp. 178–9.
- <sup>19</sup>ASU, pp. 174–5.
- <sup>20</sup>“The Nature and Value of Rights,” *Journal of Value Inquiry*, 4 (1970), p. 252.
- <sup>21</sup>ASU, pp. 42–5. See also David Schmidtz, “The Meanings of Life,” this volume.
- <sup>22</sup>Roger Crisp has suggested in personal correspondence that, since one can imagine an experience machine on which one could still make autonomous choices, the case made in the text might be stronger if one imagined that a chip – one that makes all your decisions for you in such a way as to maximize pleasure, success, or whatever – is implanted in your head.
- <sup>23</sup>ASU, p. 43.
- <sup>24</sup>Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971).
- <sup>25</sup>See especially “Persons, Character and Morality,” in Williams, *Moral Luck* (London: Cambridge University Press, 1981). See also “A Critique of Utilitarianism,” in J. J. C. Smart and Bernard Williams (eds.), *Utilitarianism: For and Against* (London: Cambridge University Press, 1973).
- <sup>26</sup>Especially *Persons, Rights, and the Moral Community* (New York: Oxford University Press, 1987).
- <sup>27</sup>Lomasky, op. cit., p. 26.
- <sup>28</sup>EL, p. 287.
- <sup>29</sup>See Reich, “The New Property,” *The Yale Law Journal*, 73 (1964). As Gerald Gaus and Loren Lomasky observe, this in no way distinguishes property rights from any others. See Gaus and Lomasky, “Are Property Rights Problematic?,” *The Monist*, 73 (1990), pp. 492–3.
- <sup>30</sup>This formulation is an idealization. Application in the real world will have to interpret it in light of claims made about interference. I shall address some such claims, briefly, in Section 6.

<sup>31</sup>See Sanders, "Justice and the Initial Acquisition of Property."

<sup>32</sup>Jeremy Waldron, *The Right to Private Property* (Oxford: Clarendon Press, 1988), pp. 106ff.

<sup>33</sup>Waldron's argument against the possibility of "special rights" justifications of private property is ably countered, I think, by A. John Simmons, "Original Acquisition Justifications of Private Property," in Ellen Frankel Paul et al. (eds.), *Property Rights* (Cambridge: Cambridge University Press, 1994), pp. 63–84. As Simmons argues, what Waldron calls "special rights *in rem*" (and what will be referred to below as "Category II rights") are in general far more familiar and considerably less repugnant than Waldron suggests. The conventional way in which pick-up softball games acquire playing space is an excellent example (Simmons, p. 83). In what follows, my own aim is to address the positive reasons advanced by Waldron for thinking that there might be a general right to property.

<sup>34</sup>H. L. A. Hart, "Are There Any Natural Rights," in Jeremy Waldron (ed.), *Theories of Rights* (Oxford: Oxford University Press, 1984).

<sup>35</sup>Waldron, *The Right to Private Property*, pp. 108–09.

<sup>36</sup>Schmidtz's arguments in "The Institution of Property" are especially useful here.

<sup>37</sup>ASU, p. 177.

<sup>38</sup>I am indebted to Danny Shapiro for an annoyingly reasonable argument that helped me see that my earlier line of thought on this point was incomplete.

<sup>39</sup>See "Justice and the Initial Acquisition of Property," pp. 388–9.

<sup>40</sup>And others – such as the fact that labor-mixing is just incoherent as a means of acquiring some of the rights that are now regarded as property rights.

<sup>41</sup>Judith Jarvis Thomson, *The Realm of Rights* (Cambridge, Mass.: Harvard University Press, 1990), p. 325.

<sup>42</sup>See, for example, Lawrence C. Becker, *Property Rights: Philosophic Foundations* (Boston: Routledge and Kegan Paul, 1977), p. 43.

<sup>43</sup>Becker, *op. cit.*, p. 43.

<sup>44</sup>For more on this, see John T. Sanders, "The State of Statelessness," pp. 276–8.

<sup>45</sup>For further discussion of such problems, see Sanders, "Justice and the Initial Acquisition of Property," pp. 397–8.