Intrinsic Limitations of Property Rights

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ABSTRACT. Many people take for granted an absolute conception of property rights. According to this conception, if I own a piece of property I have a moral right to do with it as I please, irrespective of the needs of others.

This paper articulates an argument against this conception of property rights. First, it shows that there are many possible conceptions of property rights, and that there are significant differences among the models of ownership which have prevailed in different societies. Then, it argues that there are decisive grounds to refuse to grant that property owners have a moral right to exercise absolute control over their property, and that ownership implies not only rights but also duties and limits.

Introduction

During the last fifty years economic libertarians have endeavoured to restate and strengthen the case for confining the State to a set of minimum functions. An important element of that case is an absolute conception of property rights. According to this conception if I own a piece of property I have a moral right (which should receive legal recognition and protection) to do whatever I please with it irrespective of the pattern of distribution of property in my society. That some or many other people in that society may have some basic needs unsatisfied while I own much more than I need would also be irrelevant to my having a right to do as I wish with my property.

The object of this paper is to articulate an argument which shows some essential weaknesses in this conception. While considerations of space and audience preclude doing this in a fully rigorous way, an attempt is made to set out clearly its essential steps.

The effort to set out such an argument is justified by the fact that even many people who are politically very far from the libertarians share their concept of ownership. They uncritically assume that there is only one possible conception of property rights and that according to it the owner has absolute faculties over what he or she owns; any limitations on these faculties would be extrinsic to the right of property and would demand special justification. But if the issue of justifying the existence of limits in the powers of an owner and of onerous duties concurrent with his or her rights is approached in this way, too much has been granted already to libertarians.

Let us take, for instance, the question of State powers to regulate economic activities. If we are trying to determine how extensive these powers should be and approach the question having taken for granted that it is the very meaning of "owning" something that one can do as one pleases with it, we may still, after taking into account some other factors, come to the conclusion that a degree of State intervention is justified, but it will be an uphill task, and the overall trend of our thought will be in the direction of constraining State activity. If, through the concept of ownership we use, we uncritically build into our argument from the start a strong presumption in favour of property-holders, it

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should come as no surprise that our conclusions are skewed in their favour and neglect the demands of the common good and the needs of less privileged members of the society.

Our concept of ownership can affect in a similar way our approach to issues like the duties of property holders in relation to care for the environment, public welfare programs, redistributive taxation, charitable donations by companies and remuneration of employees, among many others. This list, incomplete as it is, should be sufficient to indicate the importance of the question for business ethics. Obviously, one's conception of property rights influences in many important ways one's views on how economic activities should be carried out.

The argument we are going to present goes through two main stages. The first shows that as a matter of fact different societies have had different models of property rights. It follows that if libertarians want to defend an absolute conception of ownership they will have to provide arguments for it; assuming that it is the only possible one is not good enough.

In the second stage of our argument we will try to show that there are decisive grounds to refuse to grant that property owners have a moral right to exercise absolute control over their property. If our argument is successful it follows that a property system which generally allows absolute property rights provides an unreasonable solution to the problem of allocating control over material resources among the members of a society.

The diversity of property systems

As a matter of fact, history shows us a great variety of conceptions of property rights. Ownership is not an ultimate concept; it is rather a complex notion which can be analyzed into simpler elements. Using Hohfeld's terminology it is a congeries of claims, liberties, powers and immunities. The specific claims, liberties, etc which are enjoyed by an owner change from one legal system to another, and within each legal system they also change from time to time and differ in respect of different subject matters. Thus, for instance, under a given legal system the owner of a piece of land may be free to build as high as she pleases while under another system she might not have that liberty if she thereby would deprive her neighbour of light. For so long as we are not seeking accuracy we can say that under the two systems she is an "owner," but it is evident that the concrete content of that ownership is different in each of the two cases.

At a general level it is possible to see how two conceptions of property can differ by contrasting the following two examples. The Declaration of the Rights of Man and Citizen (1789) states that "since property is a sacred and inviolable right, no one may be deprived thereof unless a legally established public necessity obviously requires it . . ." The Basic Law of the Federal Republic of Germany (1949) on its part provides that "[property's] content and limits shall be determined by law . . . property imposes duties. Its use should also serve the commonwealth."

It seems clear that we are in the presence of two different conceptions of property rights. This impression would be confirmed by comparing the specific provisions of the two legal systems which the above two documents inspired in respect of issues like building rights, servitudes, expropriation, prescription, entailments, etc.

But the differences to be found between two modern property systems are relatively small. More obvious differences can be detected when the temporal distance between the systems compared is greater. Thus, for instance, we can compare the legal position of a modern landowner in an European country to that of an Englishman who was "seised" of a piece of land in the thirteenth century.

Nowadays if A owns a piece of land and B unlawfully gains control of it, A has the right to seek the aid of the law to recover possession of her land. But beyond this, A retains ownership in the land even while she has lost physical possession of it. She can still sell it and if she dies it will pass to her successors in title. By contrast under the early common law if somebody was disseised of his land he was left with nothing and accordingly he could not convey the land to another nor dispose of it by will for so long as he had not recovered physical