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Source: *ARSP: Archiv für Rechts- und Sozialphilosophie / Archives for Philosophy of Law and Social Philosophy*, 1978, Vol. 64, No. 3 (1978), pp. 333-356

Published by: Franz Steiner Verlag

Stable URL: <https://www.jstor.org/stable/23679243>

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Prolegomenon to a Political Theory of Ownership*

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The fact of who owns what profoundly affects our lives, fortunes and futures. And, perhaps because of this, we are reluctant to find in favor of one system of ownership as opposed to another until we are clear about what is entailed by these respective systems. Further, it is pointless to prescribe one system of ownership (as against another) if there is a considerable absence of clarity with respect to just what the notion of ownership involves when used in discussions about different systems of ownership.

On the assumption that this lack of clarity abounds, what follows is an attempt to do the clarificatory work for a political theory of ownership. This paper has a double point: first, to offer an account of a basic, evaluatively neutral notion of ownership and related concepts; and second, to construct two distinct systems (or models) of ownership. As will be obvious, the latter of these efforts will exploit the conclusions of the former. The point of offering these alternative systems will be to make clear just what kind of decision we are to make if we opt for one system of ownership as opposed to another. Since the eventual task of a theory of ownership (a task which I will be unable to take up here) is to rationally prescribe one system of ownership against competitors, what is offered here is indispensable to that goal.

Possession and Ownership

Kant knew that a person's interest in and intention to use some thing count jointly as a necessary condition of possession when possession is understood as a rule-governed (i.e., institutional) as opposed to a brute

* Several persons made helpful suggestions at various stages of the writing of this paper. I am grateful to Donald C. Hubin, Laurie Urbseite and Lawrence Scaff for their comments, and especially indebted to Jeffrey G. Murphy and Ronald D. Milo for extensive and profitable suggestions and criticisms.

ARSP (Archiv für Rechts- und Sozialphilosophie), Bd. LXIV/3 (1978)
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fact¹. However, *Kant* believed falsely that the rules presupposed by possession were moral rules and thus that possession was *ipso facto* a phenomenon of moral significance. Now while *Kant*'s complete view can be shown to be morally overzealous, as shall be argued below, it remains that his analysis can be appealed to in order that the conditions central to an idea of possession (which is equivalent to the basic idea of ownership) may be isolated.

Kant began his analysis, correctly I think, by claiming that the brute fact of possession (which *Kant* calls "empirical possession" and can be understood as a simple spatio-temporal contiguity between person and thing) is neither necessary nor sufficient for saying that some thing is mine; i.e., that I possess it in any full institutional sense. Yet he realized that this brute fact of possession is intimately connected to the institutional fact – having some thing usually constitutes *prima facie* evidence that someone has interest in what he has; it *might* exhibit that the "haver" has or intends some priority over the thing. It is this idea of priority or preference over the thing or object that must be accounted for without (apart from) appeal merely to the brute fact of detention. As *Kant* claimed, "... I do not call an apple mine simply because I hold it in my hand (possess it physically), but only if I can say: 'I possess it even when I let it out of the hand that is holding'"². Now the idea of priority or preference which *Kant* has in mind here is a moral notion and can be understood as a moral right over things and against persons (in *Kant*'s language, rights *in rem* over persons)³ which is attributed to persons who have a particular rule-assigned status in a relationship between themselves, others, and things. Our ability to possess something which is beyond our actual grasp, then, is accounted for by *Kant* in virtue of the ascribed priority (rights) which a person has given his

¹ It should not be thought that this view originates with *Kant*, or that he alone held it. For discussions concerning the legal origins and influence of this view, cf. D. R. Harris, "The Concept of Possession in English Law", in *Oxford Essays in Jurisprudence*, ed. by A. G. Guest, Oxford 1961, pp. 69–106; B. Nicolas, *Roman Law*, London 1962, p. 113.

² Immanuel *Kant*, *The Metaphysical Elements of Justice*, Trans. John Ladd, New York 1965, p. 54.

³ For a good discussion of the Roman distinction between rights *in rem* and *in persona*, consult Nicolas pp. 99–105. For a discussion of *Kant*'s consideration of this distinction and his contribution to it, see John Ladd's introduction to *Kant's The Metaphysical Elements of Justice*.

unique rule-established station or role. Metaphorically, the rule-governed nature of an institutional fact of possession extends our grasp; it allows us to meaningfully lay claim to some thing which we do not touch. This possessing is intelligible only given our role in an institutional context delineated by a set of constitutive rules.

On *Kant's* view, then, possession presupposes that one thinks of himself, and is thought of by others, as being in possession of something – independent of whether or not the possessor literally *has* that thing. But, *Kant* adds, being “. . . able to think of myself as having possession of this object. . .” presupposes that I am in a particular (moral) position such that “. . . any interference with using it as I please could constitute an injury to me (a violation of my freedom, a freedom that can coexist with the freedom of everyone in accordance with a universal law)”⁴. *Kant's* final (and most tidy) definition is as follows: *A thing is externally mine if it is such that any prevention of my use of it would constitute an injury to me even if it is not in my possession (that is, I am not the holder of the object)*⁵.

It is, of course, with the notion of moral injury in the very conditions of possession that *Kant* has attempted a bigger job than is presently of concern. And in so doing he has glossed over the important possibility that an account of possession equal to the basic notion of ownership could be given which is evaluatively neutral; i.e., where the “priority” or preference which one has over objects and others in virtue of certain constitutive rules need not be a moral priority at all, i.e., it need not be a role defined in terms of rules which are necessarily moral rules. It should be stressed that this is not to say that *Kant's* suggestion, roughly that someone's possessing something is morally justified only if it does not infringe on the freedom of others, is wrong. However, *Kant's* assumption that the transition from the brute fact of “empirical possession” to the rule-governed context of possession presupposes the existence of a set of *moral* rules, is excessive. For surely, it does not follow from the fact that one possesses a thing in accord with a set of constitutive rules (establishing the parameters of an institution of possession) that that possession is (morally) rightful. That claim would depend on an argument which *Kant* does not offer.

⁴ *Kant*, p. 55.

⁵ *Ibid.*

What we need do is strip *Kant's* account of possession of its moral elements and consider an alternative definition. Let us consider the following: *A person possesses some thing if, and only if, that person can reasonably expect⁶, in virtue of a set of constitutive rules which so specify, that his interests in that thing count as grounds for his having a priority over others with regard to the detention and/or use of that thing.*

This definition is intended to capture the spirit of *Kant's* view while leaving open the issue of whether or not the rules which establish the expectations of persons in their assigned positions are moral rules, and thus that these expectations and their accompanying claims are ones to which persons have a moral right. The suggestion here is that this idea of possession, as will be claimed to be equivalent to the most basic idea of ownership, can be analyzed in a non-question-begging way; i.e., in a way which does not entail that in having an ownership right, one has a moral right as well. Thus while *Kant's* view implies that possessing something is a condition such that an infringement on one's being in possession (say for the purpose of use) is a moral infringement, my view sees such an infringement as one which — though we can reasonably expect and justifiably claim otherwise — is evaluatively neutral. We thus might think of being in possession in terms analogous to being a player in a game, the moral significance of which has yet to be considered. Thus in a game like checkers, one can reasonably expect and thus request that one's opponent will move when his turn comes due, but if he did not do so, for example, if one's opponent fails to take his turn, or takes two consecutive turns, etc., one could not say that one had been *morally* wronged. The view that such a violation of rules constitutes a moral wrongdoing would depend, as *Ronald Milo* has correctly suggested⁷, on showing that breaking a rule in this context has a significant bearing on the institution of

⁶ What a person can reasonably expect in a rule-governed context is a function of what persons know of the relevant constitutive rules which are presupposed by his expectations. A person's reasonable expectations depend on his knowing both the relevant rules which set out and define his position in the conventional context, *and* that others know these rules as well. Thus, a reasonable expectation is of epistemic significance, but not necessarily of moral significance. For a considered analysis of the notion of "mutual knowledge," see Stephen R. Schiffer, *Meaning*, London 1972, pp. 30–36, 148–9.

⁷ Ronald D. Milo, "Morality and Convention", *ARSP* LVIII (1972), pp. 535–553.

morality (or that the game itself was a morally significant game), but without any arguments for this judgment on the moral import of either not moving when it is one's turn, or inadvertently moving out of turn in a game must be suspended.

A few more points about the above definition need to be made before we consider ownership and related terms, and eventually go on to specific models of ownership. Though the account of possession is based on our thinking of what is involved in one person's possessing some thing, it should *not* be thought that I am assuming that the phrase "a person" in the definiendum can not be substituted for by a phrase like "the persons" or "the communities," etc. (and that the definiens can thus be modified as grammatically necessary). While it is convenient given our own socio-economic arrangements to think in terms of one person, one thing owned or controlled, it is important that we do not limit our thinking about possession (or about ownership) to these individualistic terms. The definition of possession, then, is *not* intended to give either conceptual or historical precedence to individual possession as opposed to, say, common or community possession or ownership. On the contrary, as we shall see, a basic model of ownership will be one where, on most counts, community or common possession and ownership will be assumed as the predominant form of possession and ownership.

Furthermore, the above-offered definition of possession is intended to give us a simple and basic idea of possession consistent with seeing "possession" as a name for the rule-governed context presupposed by the relationship in which possessors, objects possessed and others (non-possessors) are members. Thus possession can be understood as a most general notion, and "possession" can thus function as a generic name for any institution (or set of institutions) constituted by sets of similar rules which specify stations and institutional facts of a certain sort (for example, inheritance of land in a sophisticated legal system of ownership). Thus as "cards" can name any (or all) of a number of games in which there are specific stations (e.g., bidding), "possession" can be thought of as a general name for institutions in which there are possessors and things possessed. Just as there are different games of cards (bridge, poker, old maid), there are different instances, forms or institutions of possession and, as we shall see, of ownership. The analysis given so far, then, allows us to think of possession both as naming a general institutional context which is presupposed by specific kinds or instances of possession, and those institutional facts *per se*. The word "possession" (as with the word

“ownership”) can and will be used as delineating the role or station which one need be in if one is to be considered as the “possessing” member of a possession relation. “Possession” thus can function to designate an institutional fact, as well as naming the context in which that fact is intelligible.

It is, in part, the above-noted linguistic fact that allows us to equate possession (as defined) with a most general and basic idea of ownership – a notion upon which more sophisticated ideas of possession (e.g., legal and political notions) can be developed. Let me explain this remark by considering, albeit briefly, how legal ownership would be understood against this general analysis of possession when understood as a conceptually simple notion of ownership.

The possibility of an institutional fact of legal ownership presupposes laws which, as Ross has claimed⁸, establishes the connection between there being certain things true about a person (i.e., there being certain legally conditioning facts and there being legally specified consequences of those facts). But our ability to recognize these institutional facts in the law as institutional facts of *legal* ownership depends on our having a general, non-legal, conception of ownership which transcends legal contexts, yet grants the intelligibility of ownership discourse in those contexts. My proposal is that the general conception to which we appeal here is that which was defined above as possession. I want to claim that possession as defined can work as that basic non-legal and non-moral concept of ownership presupposed by a particular system or case thereof; i.e., that possession is theoretically the most fundamental form of ownership. There are two reasons for thinking this, the first of which is that the notion of possession involves all the basic elements needed for some particular (say legal) system of ownership: a possessor (or owner) and certain rule-governed expectations (which would be sanctioned by law in legal contexts) with regard to that object or thing in which one might have interest (legal interest in legal contexts). Second, these elements supply the criteria necessary for distinguishing and identifying a set of facts and related consequences as those which are relevant to some specific case of ownership – be it legal (in terms of positive law) or just customary. Hence, the criterion needed to isolate those sets of conditioning facts and consequences is provided in terms of the elements of posses-

⁸ Alf Ross, *On Law and Justice*, Berkeley and Los Angeles 1959, Chapter 6.

sion⁹. When we want to know what facts and conditions are relevant to some specific, e.g., legal system of ownership, we look to find those instances which presuppose a legally established role of owner and his legal interests with regard to some legal thing. The legitimate expectations of the owner are to be understood in the context of legal prescriptions which establish legal rights and legally correct (legal) behavior with regard to owners, things owned and others.

On this way of thinking, then, the fact of possession counts as the simplest (theoretically) case of ownership, where the rules which govern correct behavior in this context need not be either legal or moral rules. A legal system of ownership, then, would be based on the same basic set of ideas as possession, except here the rules which govern legally proper behavior are in fact laws. Possession is thus to be understood as proto-ownership, which may be lacking in some instances which one legal or social system or other might provide, but having, nonetheless, all the ingredients necessary for ownership *simpliciter*. So long as we are only considering possession, we are considering the legitimate expectations which persons have with regard to each other in virtue of things and their (the persons') respective interests as manifested in intentions to use. But in terms of legally conditioning facts, which might not be limited by the fact of an intention to use, the relevant expectations could be cashed-out in terms of other legally conditioning facts and consequences. In social and political contexts, as we shall see, they should be cashed-out in terms of social and political facts and consequences.

General Forms of Ownership from a Political Perspective

It has been argued that there is a basic non-legal, non-moral notion of possession or ownership presupposed by particular (say legal) institutions thereof. Now just as this basic notion of possession or ownership could be expanded into a specifically legal notion via a set of constitutive rules

⁹ While I shall not be able to develop this remark here, it is at precisely this point that the legal realist's account of ownership offered by Alf Ross can be faulted; for without a general, non-legal conception of ownership, we would never be able to distinguish legal facts of ownership from other legal phenomena such as contract or consent and yet, one would believe, the ability to distinguish between such relationships is crucial to any overall legal theory.

which are laws, it is theoretically possible to expand this basic notion to include some additional concepts which are central to understanding ownership from an overall political point of view. The idea here is to exploit the basic notion of possession or ownership discussed above so as to get a handle on a set of phrases which are indispensable for the construction of political models of ownership. What this entails is a modest specification of the rules which allow a person or persons to be owners. These specifications, then, are intended to give us more precise ideas of what ownership involves while avoiding the unnecessary details of various legal systems and facts.

With this theoretical interest in mind, we can make the following terminological distinctions:

Common Ownership: A case of ownership is one of common ownership if, and only if, the legitimate expectations of an individual (or group of individuals)¹⁰ with regard to some thing are in accord with a set of constitutive rules (often laws) such that: (a) An individual can legitimately expect that if he has an interest in or use for some thing this claim will be considered, along with the claims of others (if such claims exist), as grounds sufficient for his having (so as to use) that thing. (b) If more than one such legitimate claim exists, then an individual can expect to *either* share in the use of thing where sharing is possible, *or* if sharing is not possible, to take his turn on a fair first come, first served basis. (c) If an individual ceases to have an interest or use for that thing which he has had an interest or use for, others can legitimately expect to have that thing so as to use it in accord with the conditions of (a) and (b) above.

It is important to note here, as *Macpherson* points out¹¹, that common ownership is *not* social ownership if what is meant by this latter

¹⁰ The ideas of "legitimate expectations" or "claims" with regard to social phenomena like institutions of ownership involve some general idea, as C. B. Macpherson claims (*Democratic Theory: Essays in Retrieval*, London 1973, pp. 123–4), of enforcement. What should be noted is that such a notion of enforcement should be taken in a most general sense; i.e., it is not necessarily limited to a notion of enforcement where some specific, legally designated agency (say the police) exists so as to enforce the claims of persons. Enforcement, then, in the context of our present concerns could simply involve the pressures which might be exerted on persons in virtue of certain mores, folkways and social habits extant in a linguistic community.

¹¹ Macpherson, *ibid.*

phrase is some idea of the society *per se* functioning as a private owner. Following *Macpherson* and *Noyes*¹² and in a tradition as old as Roman Law, the idea of common ownership is seen as involving a basic idea of social trusteeship such that what is socially protected are the rights of individuals *not* to be excluded from owning some thing if they fulfill the above requisite conditions. Thus common ownership is *not* equivalent to state, municipal, or public ownership when the latter are understood as involving rights and controls over things which exclude individuals from ownership, whether or not there exists an interest in or use for that thing. As we shall now see, these forms of ownership are in fact forms of private ownership. Further, a point worth noting and to be considered again below: the degree to which common ownership is prevalent in a society will have an effect on how we are to understand what sort of political model of ownership is applicable to that society. We shall return to this point when we consider two basic models of ownership.

Private Ownership: An instance of ownership is one of private ownership if, and only if, an individual or group of individuals can legitimately expect, in accord with a set of constitutive rules which so specify, full control over what is owned regardless of the interests and intentions to use of others.

Private ownership, as distinguished from common ownership, involves an exclusivity — it gives an owner rights or controls over things and against the interests and intentions to use of others. Thus it does not follow that all owning is private ownership. An individual can own something and not have the rights of exclusivity required to make it a case of private ownership — as in a case of common ownership. And again, we do not want to limit the concept of private ownership to cases where the owner is a single person. Groups, communities, states, cities can count as owners, or rather, can be in a position of ownership which is a form of private ownership.

One final remark which regard to the relationship between common ownership and *individual* (as distinguished from private) ownership. The above definitions do not entail that these two general notions of ownership are inconsistent, as might be thought given some usual uses of these terms. On the contrary, in the context of common ownership a person can be an owner (an individual owner) when that person satisfies the

¹² C. Reinhold Noyes, *The Institution of Property*, London 1936, pp. 292–298.

conditions noted above. Nevertheless, if individual ownership is of a private, exclusive sort — as implying individual control which is for all intents and purposes independent of the interests of others in the community — then individual ownership of this private, exclusive sort is *prima facie* inconsistent with common ownership. Thus for our purposes, common ownership and private ownership can be seen as inconsistent if the property at issue is one and the same property. Related to this point, we should keep in mind that within a society there can be both common ownership and private ownership of some things, e.g., fire places in a national park, along side of individual private ownership of many other things.

As noted above, the degree to which common ownership predominates in a society will be an important concern in constructing political models of ownership. For purposes of political theory, we need to go beyond the facts which are deemed legally relevant to control of things owned, and inquire into the basic conditions and social relations which a legal system is intended to reinforce. A political model of ownership is a legal model then, only insofar as a legal system encapsulates and structures the patterns of a particular *social* set of individual interests and relationships. But a political model of ownership is intended to go beyond legal (super) structures and give insights into the political nature of various conditions of social life *per se*. On the basis of these definitions, we are now in a position to offer two models of ownership which will function, from the perspective of a political point of view, to set out the problem to which a political theory of ownership must be addressed.

Two Models of Ownership

The discussion of ownership has been, to this point, a discussion in terms of facts which are as yet not fully related to the most basic of political concerns. But, as I said earlier, this analysis becomes of importance to political theorists when it can be expanded into a basis for thinking about human affairs from a much broader perspective. The construction of two general models of ownership is intended, in part, to fulfill this aim and will allow us, I think, to get a more complete idea of the impact of various forms of ownership on social facts of human life.

The tactic is to construct a general, what shall be called a *possessor* model of ownership, which is felt to be a theoretically basic model because of its connection to the idea of common ownership which, in

turn, is a fundamental form or idea of ownership. From this point we shall proceed to construct a second basic model of ownership, what shall be called a *proprietor* model, which differs from the *possessor* model in some crucial respects. The “crucial respects” will consist of those elements or characteristics that need to be added or changed in order to yield a model of ownership typical of the modern market societies which classical liberals have either assumed, or attempted to justify. The idea, at the outset, will be to try to delineate those elements which distinguish each respective model so that we have a clear idea of just how the basic, *possessor* model of ownership differs from the *proprietor* model. An additional result of this will be a more clear distinction between a liberal and a non-liberal model of ownership. And thus, when we consider the desirability of a model of ownership, we will be clearer about the general options available to us.

The Possessor Model of Ownership

The most simple way to think of the *possessor* model of ownership is in terms of individual ownership as functioning in a context where common ownership is the predominant form of ownership extant in a specific social context. Yet there are some initial difficulties with this way of constructing a political model of ownership. It could be argued that while these notions may be useful as concepts necessary for understanding ownership, nevertheless, to combine them for the purpose of constructing a model useful for political theory is pointless because it will not capture the relevant sorts of facts.

This worry could stem from the following reasons. Possession as defined early on involves the idea of a rule-governed context in which a person can legitimately expect that his interests with regard to some thing will have priority over the interests of others with regard to that same thing. Similarly, in the definition of common ownership, the conditions individually necessary and jointly sufficient for being an individual owner depend on the fact of an individual’s having an interest in, and thus having a justified claim to, some thing. Now while individual ownership in a common ownership context disallows exclusivity where the interests of present and prospective owners are not being taken into account, nevertheless, without some criterion, some basic principle, for defining and ordering the interests of persons, the social and political significance of a model of ownership so constructed is minimal. What is

missing, then, is some way of delineating individual interests in a way so that political and economic facts are going to be taken into a fuller account. Without unpacking the idea of interest here, the crucial task is left unperformed.

This first difficulty which calls for a specification of the idea of interest involved in the concept of common ownership can be coupled with a second difficulty; i.e., the problem which arises when we ask the question of just what “predominant” is taken meaning when we say that a *possessor* model of ownership is one where common ownership is predominant. Does “predominant” mean something like “more than half” of what is owned is in a social trusteeship, or does it mean that some things are common property, yet other things are not, and if the latter, which are which? At any rate, it certainly seems that these difficulties need to be spoken to.

I believe that these two difficulties can be handled together. Let us consider the following as a provisional solution: A *possessor* model of ownership is applicable to a set of socio-political affairs, or thinking about such affairs, just in case a system of common ownership is predominant with regard to those things necessary for or instrumental to the fulfillment of basic needs. And common ownership is “predominant” when that property necessary to the fulfillment of these particular interests is in trusteeship in accord with the conditions necessary and sufficient for common ownership. In short, the *possessor* model can be applied to situations where common ownership rules over that which is necessary for the fulfillment of individual basic needs. But, of course, the question which arises immediately here is how we understand the idea of a basic need. Have we not bought a solution to our difficulties at the price of appealing to a difficult and obscure concept? I think not. While the concept of a need and of a basic need is psychologically and philosophically complex, we can understand the notion of a basic need in a way which is fairly non-controversial. Following in part the suggestion of *Benn and Peters*, we can understand the basic needs as those which must be fulfilled if a person is to live “what seems the bare minimum for a ‘decent’ sort of life; and this varies from time to time and place to place”¹³. For our purposes here, the following should be sufficient as explanation for this claim.

¹³ S. I. Benn, and R. S. Peters, *The Principles of Political Thought*, New York 1959, p. 166.

What is important to keep in mind is that included in the idea of a basic need, or of basic needs in general, are those needs which must be fulfilled if a person is to function in accord with the average standard of living afforded by a particular set of productive conditions at a given point in the development of that society¹⁴. Thus those things which are necessary for one's livelihood, one's happiness, etc., could be argued to be suitable objects of basic needs. A basic need in a society like our own would go well beyond things like food, shelter, clothing and the rest of what might be considered the basic needs for just any form of civilized life, and would involve things like food, shelter and clothing of a certain quality, a means of attaining what is necessary to live at a certain level (i.e., access to labor), health care of a reasonable quality given the development of medical science, etc. Thus while a basic need will vary from one socio-historical or socioeconomic context to another, and in this sense the idea of a basic need is a relative one, nonetheless, when we look at a particular context and inquire what counts as a basic need there, we would be able to give a non-relativistic, determinate answer in accord with the ability of a society to produce and distribute certain goods, advantages and services.

On the above lines, we can also note that while the idea of common ownership has been traditionally associated with a primitive historical context typified by scarcity, a scarcity seen as justification for limiting control of some kinds of property; nonetheless, there is no *a priori* reason for us to limit the applicability of the *possessor* model of ownership in such a way. So long as there is preservation and protection of

¹⁴ There are difficulties here with regard to the notion of an "average" standard of living. It could be argued that what a basic need is is inseparably related to the distributive arrangements of a society, and thus that in some cases at any rate, what constitutes a basic need will be a reflection of the sorts of ownership arrangements found in a particular society. Thus what constitutes an "average" standard of living may well be hooked into a specific set of ownership relations. But this possibility should concern us only insofar as we may eventually ask questions about the effects of rearrangements of ownership institutions and the effect that would have on individual basic needs. For while some alteration in ownership relations could be argued to have an effect on what we consider an "average" standard of living and thus on what we are willing to call a basic need, it does not follow from that that before such a rearrangement we would *not* know what an average standard of living is, and thus what constitutes a basic need.

individual access to what is necessary for the fulfillment of basic needs and this is the criterion which establishes the parameters (limitations) of individual exclusive (private) ownership, then there is no reason why the *possessor* model and modern productive and social affairs are incompatible. The idea, then, is this. There is a central (and general) criterion focusing on the idea of the protection of individual access and use which can be appealed to so as to delineate the theoretical limits of individual ownership in a context predominated by common ownership. If common or social trusteeship is understood as establishing the priority of the fulfillment of the basic needs and interests of all members of a society, and if we understand this in terms of use or intention to use so as to fulfill basic needs, then a *possessor* model of ownership can be preserved so long as private ownership is limited from infringement upon the ability or access of others to attain what is necessary for the fulfillment of their own basic needs.

Thus a *possessor* model of ownership and property could well appear in societies with highly developed productive and technological capacities. There seem no obvious reasons for ruling this out, even though advanced societies could allow increased latitude in terms of what an individual can (is allowed to) own exclusively, and what powers and controls he has over that which he owns. There would seem to be no theoretical reason why a modern state of affairs with regard to ownership could not exist and still be within the scope of a *possessor* model of ownership. And while private ownership is not excluded from such a context, it does rule out such instances of ownership when the property at issue is necessary for the fulfillment of basic needs.

The above remarks are intended to clarify the *possessor* model of ownership and in so doing to get us to think about such a model in terms not limited to primitive socioeconomic circumstances. But this should *not* be taken to imply that this model is consistent with just any set of socioeconomic arrangements. The opposite is true. Consider, for a moment, what can well count as a paradigm instance of a *possessor* model of ownership and the general consequences of it. Consider how ownership functions *within* a nuclear family, forgetting for the moment that legally all such property may be in the exclusive control of one or both parents. Here we have the idea that all things necessary for basic needs (and some which may not seem so basic, but perhaps could be argued to be so, e.g., the use of a television set or family automobile) are commonly owned in accord with the definition given earlier. We use the facilities of our home

which provide benefits (satisfactions) for individual basic needs. When we use something – a couch for rest, for instance, we exercise our right to have that thing for as long as it is of use to us. We do not have the right to sell or misuse (destroy, vandalize) that thing, but we do have the right of exclusive use for as long as such exclusive control of what is possessed is necessary for the relevant personal benefit. When we are no longer on the family couch (we have had our nap), we leave it open for the possession of others. Now this is not to say that as a member of a family I might not own certain things in a private exclusive way. For example, I might have private ownership of my cigars or various and sundry personal effects which serve no one else's purposes and needs except my own. However, while private ownership might exist in such a context, it does not follow that an unlimited range of economic conditions are thus possible. Insofar as the above is an effective paradigm, certain economic (and thus social) states of affairs are precluded from social contexts which can correctly be characterized as having *possessor* models of ownership.

The crucial case in point is that of full market societies which cannot function in a context where *possessor* models exist¹⁵. The exclusion of full market societies depends on the general fact that the existence of such societies depends on ownership (of one's labor, the conditions of production, etc.) which is not conditional upon, but rather transcends, individual use to fulfill basic needs. Since full market societies assume consequences (controls) of ownership which allow some individuals (owners) to extend their rights of control beyond what is of immediate use to them for their basic needs, then such consequences are incompatible with *possessor* models, first, because the condition of the relevant individual interest is not present, and, second, because such controls can, in some significant ways, infringe upon the successful individual use of property by others. Thus a *possessor* model of ownership is inconsistent with classical liberal economic arrangements.

In societies dominated by *possessor* models of ownership, there are, on the face of it, no conditions which imply a class structure (where class is defined off ownership of the conditions of production); in fact, it

¹⁵ This is *not* to say, of course, that in full market societies there will be no cases or institutions of *possessor* ownership, but rather, that such instances will not be predominant.

would seem to be precluded; but, of course, such a structure is a necessary condition of full market societies. In full market societies, alienation of property (for example, sale) is allowed without any assumption that what was owned by individuals is to be understood as returned to a condition of social trusteeship (where, of course, the thing owned is of a reusable nature) and individual use and interest of the relevant sort is ended. In this way, then, a *possessor* model of ownership is consistent with classical socialist commitments. Ownership in full-market contexts assumes the priority of individual control; thus when an owner alienates property, he is not understood as having returned that property to a condition of *res communis*; but rather, the rights of ownership are understood as directly transferred to another owner. As we shall soon see, this way of understanding ownership is typical of social contexts in which there are *proprietor*, and not *possessor*, models of ownership predominant.

In accord with the above, then we can develop the *possessor* model of ownership in terms of the following general characteristics:

(1) *An individual can own property which is necessary for the fulfillment of basic needs only if he does so in accord with the conditions necessary for the preservation of common property with regard to those things. In other cases, individual exclusive (or private) ownership may be allowed just so long as it conforms to the conditions of (3) below.* The point here, of course, is that appropriating and maintaining property necessary to basic needs on a *possessor* model depend first and foremost on the preservation of common property. We might say that the fact of individual use to fulfill basic needs is a necessary (though not sufficient)¹⁶ condition for owning; i.e., for having the controls afforded by the specific consequences tied to ownership.

(2) *If property is not owned by some individual(s), that is, no specific person(s) bears an ownership relation to it, then that property is to be understood as held in a community trusteeship, and thus is susceptible to appropriation and ownership by others on the conditions afforded by common ownership.* On a *possessor* model, then, alienation of property necessary for the fulfillment of basic needs consists in returning that

¹⁶ It is not sufficient because there may well be cases where one's intending to use will not override the interests or needs of others which might be greater in the sense of being more deserving.

property (again, if it is the sort of thing which is reusable) to a condition where it is understood as available for use by others. This does not mean, however, that one person could not alienate property to another (directly) who had the relevant sort of need for it, or, more importantly, that persons could not share in cases where the property was sharable. In a general way, the idea of sharing and of public concern for property is intimately connected with the *possessor* model. Rather, it assumes that if one no longer is using something to fulfill a basic need, for example, and another needs to use that property, then the property is available for use by the latter person. This is consistent, I think, with the idea that common ownership presupposes a kind of trusteeship. A good example of what I am getting at here is a public library. Here one borrower can remove a book for his own use, or to be shared by his friends and colleagues, or read to his children, etc., and then might return to the library and borrow the book for a friend. Thus direct alienation is possible, but only on the assumption that we clear such transferals with the community. We check with the library *before* we remove the book for a friend or renew it for our own use to see if the book is on call by someone else. The idea is that the interests of other potential users are considered and protected.

(3) *Individual ownership can be exclusive or private just so long as that which is owned and that exclusive way of owning it do not restrict or limit access by non-owners in the pursuit of fulfilling their basic needs.* In our family couch example, ownership in the context of a *possessor* model was seen to allow a degree of exclusivity which was a consequence of a couch's being of benefit to the possessor, and the fact that such benefits (to anyone), in virtue of its being a couch which holds but one reclining person, depends on exclusive control.

In some cases the property will be such that exclusive control is not necessary, and in such cases the general idea of sharing should be thought of as directly linked to individual ownership in a *possessor* context. But, of course, it should not be thought that because sharing is possible in some cases, that it will be in all cases — clearly this is false. More importantly, it should be clear by now, that ownership in the context of a *possessor* model is *not* inconsistent with individual control of an exclusive sort. As noted, what is inconsistent with the *possessor* model is private control which transcends, i.e., does not respect, basic individual needs and thus inhibits or prohibits the use and access to the property necessary for the fulfillment of these needs by non-owners.

Through all of this it should be most apparent that individual use for fulfilling basic needs is of utmost importance, *and* that such use is to be limited in consideration of the same sort of use of others given a context of relevant socioeconomic facts, and the nature of the thing owned. In examining and setting out basic characteristics of a *proprietor* model, however, these limitations will be so greatly relaxed as that they will hardly appear to be limitations at all.

The Proprietor Model of Ownership

One basic way to understand the differences between the *possessor* and *proprietor* models is by drawing attention to the fact that while in the former the fundamental and predominant form of ownership is common (presupposing a trusteeship), the latter is characterized by the centrality of private ownership. The way to understand this difference is in terms of the respective relationships between an individual and society (or others) with regard to what is owned as is assumed by each model. On a *possessor* model it was noted that this relationship presupposes the priority of the fulfillment of basic human needs which is in turn tied to the idea of the primacy of common ownership as a social trusteeship. Individual ownership allows persons to appropriate and maintain what they need, given the fact that the interests of others are to be considered and protected. This consideration and protection, viewed as a social concern, can be seen as composing part of the idea of common ownership and the *possessor* model. But in thinking about a *proprietor* model, social ownership, the idea of common property, takes a back seat to exclusive private property¹⁷. Thus while on a *possessor* model individuals make their ownership claims against a social trust, on a *proprietor* model claims are made predominantly against other individual owners. Individual ownership which is private is thus central and, for most purposes with regard to ownership and property, is established as a social power.

A precise way to understand the *proprietor* model as opposed to the *possessor* can be afforded by stressing the respective role which is played in each by the idea of individual use to fulfill basic needs. In his paper,

¹⁷ It might be important here to remind the reader that private exclusive ownership does not imply that the owner is a specific individual person. Private property is best understood as implying a way in which property is controlled, rather than the fact that it is owned individually.

“Ownership,” A. M. Honoré sets out what he feels are the standard ingredients for a “liberal concept of ownership”, such that “if a system did not admit them, and did not provide for them to be united in a single person, we would conclude that it did not know the liberal concept of ownership”¹⁸. What I would like to do here is consider Honoré’s proposed ingredients for a liberal conception of ownership with the intent of establishing that conception as typically *proprietor*. I should like to do this by explaining the differences between Honoré’s analysis of the elements of liberal ownership and our analysis of the *possessor* model in terms of the role played in each by the individual. The intuitive idea is to compare, to think about the two models, in terms of the way in which they allow; i.e., the status they assign the fulfillment and satisfaction of basic individual (both owners’ and non-owners’) needs. Now it should be noted that Honoré’s analysis is typically legal and because of this, some parts of his discussion will bear little relevance to present concerns. Nevertheless, the fact that his analysis is a legal analysis is of help because it depends on an account of the actual controls and conditions afforded by a concrete system of ownership prevalent in advanced market societies. In this way the legal analysis is instrumental to an analysis relevant to the concerns of political theory.

To begin, the first two ingredients or incidents which Honoré sets forth are (1) “the right to possess *viz.* to have exclusive physical control of a thing . . .” which is to be understood centrally as a right “*in rem* in the sense of availing against persons generally”¹⁹; and (2) “The right to use” which is explained in terms of two other incidents; i.e., (3) “the right to manage”, and (4) “the right to income”²⁰. Honoré stresses, as he should, that regulations governing the conditions of gaining and maintaining possession are essential to any intelligible notion of ownership. But, and this is important given our concern, Honoré does *not* see the liberal conception of ownership as one where use (or the right to use) to fulfill basic needs functions in any significant way; i.e., as either a necessary or sufficient condition for the consequences and/or controls tied to the fact of ownership. The right to use so as to fulfill basic needs

¹⁸ A. M. Honoré, “Ownership,” in: *Oxford Essays in Jurisprudence*, ed. by A. G. Guest, Oxford 1961, p. 112.

¹⁹ *Ibid.*, po. 113–4.

²⁰ *Ibid.*, p. 116–118.

is a *consequence* of the liberal conception of ownership. It does not function, as it does in the *possessor* model, as a *condition* for gaining and maintaining ownership; rather, it is seen as a consequence of being *in* ownership. But if this is the case, that individual use to fulfill basic needs is no longer a conditioning fact for acquiring and/or maintaining ownership, then the consideration and protection of the interests of both owners and non-owners is no longer directly tied to the concept of ownership *per se*. A person can thus be an owner, be vested with controls over property which, as we shall see momentarily, affect the basic interests of others, and yet have no use, in terms of his own basic needs, for that property at all. The eventual political implications of this are that social or community control over individual ownership, which on our *possessor* model bore a significant relationship to the protection and consideration of the basic needs and interests of non-owners, is no longer directly connected to the idea of ownership. Hence the idea of social trusteeship as a basis and limiting condition for ownership is all but eliminated by the liberal or *proprietor* model of ownership.

Substantiation for these last remarks consists in the further facts that the right to use is initially manifested, on a *proprietor* model, in terms of “a right to manage” which *Honoré* explains as “the right to decide how and by whom the thing owned shall be used”²¹, which in turn entails a complex of controls over both that which is owned and those who want or need in some way to use or benefit from that thing. Further, while the right to income is seen as implying a right to the use of that thing owned, it is not a notion of *direct* use which is in some way limited by some idea, for example, of directly laboring for the benefits which are afforded by control over that property. The right to income is seen to imply the sorts of controls which greatly expand the notion of use so that an owner can expect benefit from efforts expended by others on, or with regard to, his (the owner’s) property. The idea of income here, as *Honoré* notes, is understood basically as “a reward for work done in exploiting the thing”, but, as he goes on to note, “the line to be drawn between the earned and the unearned income from a thing cannot be firmly drawn”²². The social and economic significance of this last incident becomes especially clear if considered in terms of what is a

²¹ *Ibid.*, p. 116.

²² *Ibid.*, p. 117.

further incident of a *proprietor* model which grows out of the right to manage, namely, what *Honoré* calls “the right to capital” which is defined as “the power to alienate the thing and the liberty to consume, waste or destroy . . .”²³. The fact that *proprietor* ownership implies a right to capital, with such extensive controls over both property and non-owners, completes what can be thought of as the usurpation of any notion of social trusteeship or sovereignty over the institution of ownership. It places the private owner in firm command.

It should *not* be thought that the controls of ownership in a *proprietor* context are totally free of social control; as *Honoré* points out, a typical incident of ownership is the “prohibition of harmful use”²⁴ which prohibits the *direct* use of one’s property to harm others or the property of others. But the prohibitions, in general, do not disallow what might be thought of as indirect harm of others. The prohibition against harmful use, for example, can be understood as a regulation against my using my gun to shoot an innocent person. But it is not understood to imply that one should allow a starving man access to one’s orchard. The right to limit access to non-owners, a corollary of the right to manage, can be seen here as reaffirmation that fundamental to the idea of a *proprietor* model is the sovereignty of the individual, coupled with the relative insignificance of the basic needs and interests of non-owners. *Proprietor* ownership is thus radically individualistic, in the sense that it establishes ownership which is generally unbounded by the needs and wants of non-owners, and, as a consequence of this, *proprietor* ownership constitutes a *prima facie* wedge between the concept of ownership and the idea of social welfare and benefit. Non-owners are *not* considered in virtue of the *proprietor* model; rather, they are considered in spite of it.

The following hopefully self-explanatory characteristics of the *proprietor* model of ownership, which are intended to function as approximate analogues to those of the *possessor* model, are offered in light of the above discussion:

²³ *Ibid.*, p. 123. Interestingly here, *Honoré* (p. 118) notes that while some limitations on this right is possible, such restrictions may be at odds with the liberal conception of ownership. But, as we shall soon see, *Honoré* does note that a usual incident of liberal ownership is a general prohibition against harmful use.

²⁴ *Ibid.*

(1) *Individual ownership is, in general, established and enforced by law; and while it entails a right to use, it is not dependent on (i.e., it does not have as a condition) the owner's having any interest in, or basic need for, the property.*

(2) *Alienation of property is based on conditions set forth and agreed upon by the individual owner and is (barring the conditions set forth in 3. below) independent of the basic interests and needs of non-owners.*

(3) *Interference with private ownership (control) in behalf of the benefits and interests of non-owners is limited to cases of direct harm or other specific legal injunctions (e.g., liability for debts) which are not, ipso facto, conditions of ownership per se.*

Towards a Political Theory of Ownership

The political models of ownership sketched above are intended as offering a general theoretical perspective useful for passing judgments. And the sort of judgments relevant to a political theory of ownership would be those resulting from inquiries into the compatibility of these respective models with coherent evaluative commitments. The operative belief here, then, is that an acceptable theory of ownership would be one which prescribes one model of ownership over and against another on reasoned evaluative grounds. Now while I shall not offer such a prescription here, it might be worthwhile to suggest quickly the procedure which could be followed in such a task.

To begin with, in order to decide whether a *possessor* or *proprietor* model of ownership is desirable, we need to draw out more detailed analyses of the social, political (and especially) economic implications of these models. In one case, the case of the *proprietor* model, that would be a relatively easily achieved goal because of the correlation between such a model and the modern market arrangements with which we are all familiar. But in considering a *possessor* model on the same score, actual historical examples will be far less useful since they have yet to occur in fully industrialized contexts, though it might be argued that some modern socialist societies approximate a *possessor* model. In this latter case, then, the careful use of one's imagination will be crucial.

Once the general socioeconomic implications of these respective models are grasped, another difficult job remains. And that is the job of seeing just how each respective model squares with an overall theory of social good, especially concerns with distributive justice. As I noted early

on, most persons seem quite aware of the fact that who owns what (and now, as we have seen, *how* it is owned) profoundly affects our interests. The question which remains is as to which model of ownership is compatible in an overall schema of justifiable social, political and economic institutions.

GEORGE E. PANICHAS

Prolegomenon to a Political Theory of Ownership

Summary

If a political theory of ownership is to be acceptable, it must rationally prescribe one system or model of ownership as opposed to others. Such a prescription would be rational only if strong normative arguments could be mounted to show it more desirable than its competitors. Thus, the prefatory work for such a theory would consist in the construction of viable models of ownership from which a sound choice could be made. This project would, however, be successful only if originating from coherent, evaluatively neutral analyses of the concept of ownership and other related ideas. The point of this essay is to do this prefatory work.

GEORGE E. PANICHAS

Prologue à une théorie politique de la propriété

Résumé

Une théorie politique de la propriété ne peut être acceptée qu'en soumettant le système ou le modèle présenté en opposition aux systèmes et aux modèles établis. Une telle théorie ne peut être rationnelle que si les normes morales établies et acceptées peuvent démontrer qu'elle est préférable aux théories en existence. Le travail préliminaire étayant cette théorie doit consister de modèles valides de la propriété parmi lesquels un choix logique peut être effectué. Il va de soi que le projet soumis de cette théorie ne peut être accepté que si la théorie le soutenant est l'aboutissement d'analyses cohérentes et d'évaluations impartiales du concept de la pro-

priété et des idées s'y rattachant. Le but de cet essai est l'exécution de ce travail préliminaire.

GEORGE E. PANICHAS

Prolegomenon zu einer politischen Theorie des Eigentums

Zusammenfassung

Soll eine politische Theorie des Eigentums aussichtsreich sein, so muß sie ein bestimmtes System oder Modell des Besitztums anbieten. Ein solcher Vorschlag wäre nur dann sinnvoll, wenn seine Vorteile den ihm konkurrierenden gegenüber als wesentlich besser bewiesen werden könnten. Die Vorarbeit zu einer solchen Theorie bestände also in der Zusammenstellung verschiedener wirksamer Modelle des Eigentums, von denen eine vernünftige Wahl gemacht werden könnte. Dieses Projekt setzt natürlich voraus, daß man den Begriff des Eigentums und anderer ihm verwandten Ideen rein sachlich analysiert und bewertet. Darum handelt es sich in der vorliegenden Arbeit.