

On Property and Aggression

Some critics on the left enjoy faulting libertarians for believing that property is a bulwark against aggression. To the libertarian argument that violations of property — including trespasses on land — constitute aggression, these critics respond that property ownership itself is aggression because it limits the freedom of others. Of course, property by nature limits the non-owners' freedom of action, but not their rights, a distinction lost of these critics. In the libertarian, or radical-liberal, view, if I own a parcel of land, I may rightfully stop others from using it, even from simply walking across it. (Justice requires that the method I use be proportional to the severity of the rights violation. I can't justly shoot an unthreatening person who mere steps on my land.) Our critics call *that* aggression. Thus they conclude that libertarians don't oppose all aggression. Those who make this argument seek to deprive libertarians of the high moral ground by showing that they too favor (certain kinds of) aggression.

I think the fundamental flaw in the argument is that it drops the context in which moral and political philosophy is pursued. These aren't free-floating disciplines or a priori searches for the most elegant model. They represent hard-nosed practical searches for the conditions under which human beings — reasoning, language-using social animals — may flourish. That is the compass that sets the direction of the inquiry. If we forget this, we get ourselves into trouble.

Rights are not metaphysical entities. No pathologist finds them during an autopsy. In a sense, they are conventions, but by that, I do not mean they are arbitrary. They are conventions much in the same way that David Hume saw the virtue of justice, which he equated with respect for property. "Our sense of every kind of virtue is not natural," Hume wrote, "but ... there are some virtues, that produce pleasure and approbation by means of an artifice or contrivance, which arises from the circumstances and necessities of mankind."

The phrase "necessities of mankind" sounds a lot like "human nature." So why isn't the virtue of justice regarded as natural rather than artificial? Because, Hume says, we don't have an inborn inclination toward justice. A child grabs at what he wants without regard for property rights. We develop that inclination only after experience in the world and our consideration of it — namely, as we come to realize that our ability to flourish requires justice, respect for property, and social cooperation. (I don't mean to suggest that acting justly is merely instrumental; it is also constitutive of the good life.)

Natural-law libertarians may take or leave Hume's way of putting it. In fact, he seems to have shared their concerns, for he adds:

To avoid giving offence, I must here observe, that when I deny justice to be a natural virtue, I make use of the word, natural, only as oppos'd to artificial. In another sense of the word; as no principle of the human mind is more natural than a sense of virtue; so no virtue is more natural than justice. Mankind is an inventive species; and where an invention is obvious and absolutely necessary, it may as properly be said to be natural as any thing that proceeds immediately from original principles, without the intervention of thought or reflexion. Tho' the rules of justice be artificial, they are not arbitrary. Nor is the expression improper to call them Laws of Nature; if by natural we understand what is common to any species, or even if we confine it to mean what is inseparable from the species.

At any rate, the dos and don'ts of property — the rights and correlative duties — are rooted in the requirements of individual flourishing in a social context. It's evident that such flourishing would be impossible without stable notions of property acquisition and ownership. To write a dystopian novel, one need only assume an environment in which no such stable notions exist.

To live successfully, persons (self-owners) have to be free to choose and pursue various projects; that's what living is. If one cannot count on the ability to use one's possessions unmolested, one can hardly pursue one's projects. (I don't mean to rule out other good justifications for stable notions of possession.) One's possessions are justly held if they were acquired without aggression against others through original appropriation (of unowned resources), exchange, or gift. No aggression arises from the mere fact that once something is acquired, no others may use it without permission. (Here I ignore cases in which others, say, had been crossing a parcel for some time and have established, by custom, public nonstate property. See Roderick Long's "A Plea for Public Property.")

That every parcel of land was likely long ago an object of theft does not change this analysis. As a general proposition, for such theft to be relevant in the present, a provable claim to a particular parcel by a wronged party or heir would have to be established. Many considerations would bear on the remedy, including how long ago the theft occurred. But the mere fact that every parcel had been stolen in the distant past cannot be good grounds for interfering with all ownership rights today and certainly not for giving control to the state.

The strong connection between property rights and the pursuit of life projects ought to be enough to establish that the radical-liberal approach to property is the correct one.