

**The Metaphysics of Property:
Relations of Ownership as Social Practices**

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Abstract

The ownership of property by a person is fundamentally a matter of that person's participation in a social practice. In fact, each 'piece' of property is constituted by an individual practice involving the rational cooperation of multiple persons. For this reason, ownership is never entirely instrumental in character: the owner and the others with whom the owner cooperates are constrained by reason to treat the right use and maintenance of the property as (to some extent) an end in itself. Given the essentially social and political character of human nature, the social and political right to private property follows immediately. The result is a distinctively conservative theory of property: one that pays appropriate respect to historical facts of tenure, precedent and custom.

I. Introduction: the Ontological Challenge to the Liberal Theory of Property

The liberal theory dominated Western political thought from John Locke through Georg Hegel, and it continues to have a great deal of influence, thanks to the development of 'classical' liberalism and libertarianism in the twentieth century (as typified by the work

of Murray Rothbard, Robert Nozick, Ludwig von Mises, Milton Friedman and many others). At the core of the liberal theory is the idea that property is a relation between an individual human thing (the owner) and some material thing (the object owned). For Locke, property consists in the unlimited right to use the 'object'. For Hegel, the owned object makes possible the 'externalization' of the owner's will. Most liberal thinkers recognized that this theory must be adjusted to some extent to handle the case of intellectual property (and other cases of immaterial 'objects'), but it is the ownership of material objects that is always the central focus and paradigm case (this can be seen clearly in as late a work as Nozick's *Anarchy, State and Utopia*).¹

Immanuel Kant brought a Cartesian perspective to the theory of action: human action is a matter of imposing one's individual will on the phenomena of nature (including the cultural world). There is a deep dichotomy separating the interior life of the mind and will from the material processes of social life. Property is a way of bridging the gap: providing each soul with an exclusive sphere upon which its will can be fastened effectively.

Hegel erases this Cartesian alienation of self from the material world, creating at least the opportunity of restoring the Aristotelian and scholastic holism of human action. But Hegel still insists on a kind of absolutizing of reason and the will that depends liberal property as its correlative.

¹ Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1977).

The liberal theory has been subject, of course, to many challenges: Marxist, progressive, neo-Thomist and Distributist, among many others. I propose to attack it here on a quite fundamental level, by challenging the very existence of the sort of material ‘objects’ supposed to be the owned. If there is literally no such thing as a material object to be owned, then ownership cannot consist in absolute power over such a material object. Instead, each ‘case’ of ownership must be thought of instead as a particular social practice or process. I offer strictly ontological grounds for the thesis that the only thing I could possibly own is my own rational activity or my share in a social activity.²

This ontological discovery leads to a very different conception of the rights of ownership from that propounded by the liberal theory in three dimensions. First, the new, process-theoretic account of ownership provides a principled basis for the respect of past tenure and occupation. Second, it also provides a natural way of finding the limits of the rights of ownership and of adjudicating conflicting rights-claims. Finally, it will make clear why the value of property can never (contrary to neo-classical theory) be purely instrumental in nature. Since property always involves a right to the perpetuation of some

² One complication: I will in fact concede the existence of living organisms. Thus, I do not have ontological grounds for a liberal theory of the ownership of livestock or pets. However, this is, on independent grounds, a problematic case for the liberal, coming uncomfortably close to the case of owning other human beings. Non-human organisms do have their own desires and ends: how is the owner justified in entirely subordinating those ends to his own, simply because doing so does not infringe on the liberty of other human beings?

rational activity, and since the ultimate human good (eudaemonia) consists in such rational activity, the maintenance and use of one's property always has some intrinsic value.

II. Ontological Doubts about Artifacts and Natural Formations

A. The Issue Illustrated: Van Inwagen's Compositional Minimalism

In *Material Beings*,³ Peter van Inwagen re-introduced the classical problem of material composition to the world of Anglo-American analytic philosophy. Van Inwagen argues that there are only two kinds of material things: organisms and simples. An organism is a living thing, all of whose parts participate in a continuum of life. A 'simple' is non-composite physical thing, like an ultimate particle or an indivisible 'moment' of a physical field. Van Inwagen denies the existence of inorganic "heaps" (like mountains, rivers, planets) and of material artifacts (chairs, umbrellas and so on).

Like George Berkeley, van Inwagen wants to speak with the vulgar while thinking like the wise. He argues that ordinary common sense does not in fact recommend belief in the existence of natural formations and human artifacts. We are only tricked into thinking it does so by taking our ordinary language at face value. Van Inwagen proposes instead that we interpret our ordinary speech (including our internal monologues) by means of a scheme of paraphrase or translation. When someone says that he is sitting on a chair, we

³ Peter van Inwagen, *Material Beings* (Ithaca, NY: Cornell University Press, 1995).

should (charitably) interpret him as claiming only to be sitting on some particles arranged chair-wise. We have no good reason (van Inwagen claims) for attributing to the speaker the further belief that these chair-wise arranged particles compose some further entity, to wit, the chair itself.

B. Reasons to Reject Composite Entities

Why should we, as serious and sober ontologists, entertain doubts about such apparently ubiquitous and matter-of-fact entities as mountains and chairs? Why should we be compositional nihilists (believing only in simples) or near-nihilists (believing only in simples and organisms, or simples and persons)? There are three general reasons for doubting the existence of ‘heaps’: non-living, composite material things. In addition, in the next sub-section, I will provide four reasons for doubting the existence of artifacts in particular.

1. Ontological Economy: Ockham’s Razor

The first reason for doubting the existence of composite material things involves an appeal to ontological economy, the principle of Ockham’s razor. Other things being equal, we should prefer the ontological theory that posits the fewest ontological classes and categories. The ontological nihilist denies the existence of all material objects except for simples. To posit both simples and further entities supposedly composed by those simples is to offend against this principle, unless compelling grounds for the additional positing

can be given. However, in the case of natural formations and artifacts, it is unclear that anything is gained by positing the existence of complex things. Can't the theoretical work of the composite things be done by the simples taken collectively, by means of van Inwagen's paraphrases? Instead of saying that Petrarch climbed a mountain, we can say that he climbed some particles arranged mountainously. Instead of saying that Michelangelo completed a statue in the form of David, we can say that he arranged some particles of a stony nature in such a way that they (collectively) resembled the form of David. Singular quantification over composite entities can be replaced by plural quantification over simples (along the lines formalized by George Boolos).⁴

2. Redundancy

Another reason for disbelieving in wholes is that the composite thing does no further causal work, above and beyond the work done by its parts. All of the powers of the whole consist in the possession of fundamental powers by its parts. Imagine, for example, a block of stone sliding along the surface of an icy lake. The stone possesses a certain kind of causal power to move things, based in its total momentum and kinetic energy. The momentum and energy of the whole stone, however, is nothing but the sum of the momenta and energies of its constituent atoms. The whole stone as such adds nothing new. We could describe the result of the block's striking another block on the lake by referring only to the fundamental particles making up the two blocks. Their inertia and

⁴ George Boolos, "To Be is to Be the Value of a Variable (or To Be Some Values of Some Variables)," *Journal of Philosophy* 81(1984):430-449.

mutual interactions could fully explain the results we observe. There is no scientific reason to introduce either block as a further agent, in addition to their constituent parts.

Similarly, rocks and other heaps have no essentially unitary passive powers either. Everything that can be done to a heap can always be re-described (apparently without loss of information) as something that is done to its constituent parts. Heaps can be changed in shape, scattered or re-assembled, but each of these processes consist in nothing more than the movement of the particles. Heaps can be painted or made radioactive, but these changes also involve nothing over and above certain changes to the simplest parts. Can heaps grow or diminish in size? Yes, but only as a result of the particles' being spread out or pressed together. If more particles are added to 'the heap', we could always say that, strictly speaking, we have a new heap, composed of a new set of particles.

This observation suggests a methodological principle: a theory should posit entities of a certain kind only if they are needed in giving a complete inventory of the world's causal powers, a principle defended by Trenton Merricks.⁵ Here's a first draft of such a principle:

Redundancy. Reject any theory that posits entities whose causal powers are redundant, given the other entities posited by that theory.

⁵ Trenton Merricks, *Objects and Persons* (Oxford: Oxford University Press, 2001).

When do the active powers of the parts of a composite thing make the active powers of the whole redundant? What would it be for a whole to have non-redundant active powers? Some philosophers (going back to the British Emergentists of the early 20th century) have used the term 'emergent' for this case. A whole has non-redundant active powers when it has 'emergent' powers.

A whole has emergent active powers when it is able to do things that could not be explained in terms of the powers of its parts. By saying that this 'could not be explained' I do not mean: could not be explained *by us*, due to the complexity or other practical obstacles involved in formulating such an explanation. I mean something like: could not be explained in principle, not even by God, in terms of the powers of the parts. We are interested in *ontological* emergence, not merely some sort of human-centered epistemological emergence.

When a whole has emergent powers, actions take place that are not merely the sum of the individual actions of the component parts. The whole is greater in active power than the sum of the active powers of the parts.

Could we ever be in a position to know -- or at least to believe with good reason -- that some whole has such emergent powers? Here is one worry: whenever we see the whole seeming to do something over and above what could be done by the parts, we could always describe what's going on as the exercise of *hidden* powers of the parts, powers that they never exercise except when they are put together in such a way as to constitute a

whole of this kind. Since that always seems to be a live option, we would never be able to tell whether it is really the whole exercising some emergent power or just the parts jointly exercising some 'hidden' powers.

We could escape from this impasse if we could find certain powers that are *essentially unitary*: powers that could only be exercised by some one, unified entity, and that could never consist in the joint possession of individual powers by the members of a plurality. Here are several possible candidates for essentially unitary powers:

1. The power of self-reproduction, as exercised by living organisms.
2. The power of growth, self-development and self-repair through the assimilation of new material.
3. The power of self-determination as exercised in free, conscious choices.

Each of these powers makes reference to the self that exercises it. This self-reference is what seems to make each essentially unitary. The particles making up an organism's body cannot exercise the power of self-replication, since it is the organism and not any of the particles that is reproduced. Similarly, the particles do not grow, either individually or collectively. If the organism contained a billion billion particles before the episode of growth, then those billion billion particles are no larger or more massive afterward than they were before. It is the organism that grows, not the particles. Finally, the particles

making up person's body does not make up its mind to do one thing rather than another. The particles don't have minds to be made up -- only the person does. Therefore, we will propose that a theory may reasonably posit the existence of a fundamental composite entity only if it credits that entity with powers that are essentially unitary. It seems that these essentially unitary powers will be either immanent or passive powers, not active ones. Anything that can be done to some other thing could, it seems, be done either by a single agent or by a plurality of agents acting jointly.

A passive power, in contrast, might be essentially unitary: the power of sensation, for example. Being affected with a particular sense-quality is something that can happen only to a single thing, because sensory consciousness is essentially unified. Immanent powers can also be essentially unitary, like the power of self-reproduction or organic growth. Thus, in order for a theory's postulation of composite entities to be justified, the composite entities must be assigned both emergent active powers and essentially unitary passive or immanent powers.

Def. 1. A power of a composite entity *x* is *emergent* if and only if the power of *x* is not wholly grounded in the sum of the causal powers of *x*'s parts, together with the intrinsic qualities and mutual relations of those parts.

Def. 2 A power is *essentially unitary* if and only if it is a fundamental power that could by its very nature be possessed *only* by a single entity, not collectively possessed by a plurality of entities.

Redundancy (version 2). Reject any theory that posits any kind of composite entity without *both* emergent active powers and essentially unitary passive powers.

Heaps and other natural formations would seem to lack both emergent active powers and essentially unitary passive powers. The same thing would seem to be true of material artifacts. In fact, if artifacts had emergent powers (i.e., if they literally had a life of their own), they would be harder to make and to control than they are. We can engineer inorganic artifacts precisely because the collective behavior of the particles making up the artifact is reducible to the interactions of the individual particles.

3. The Problem of the Occupation of Space

The third reason to reject “heaps” (i.e., inorganic, composite material things) concerns the problem of explaining how material things occupy space. The key question is, Why is the location of a part always part of the location of the whole? In fact, there are two facts that need explaining:

Spatial Occupation Fact 1. If x is a material part of y , then the location of x is a part of the location of y .

Spatial Occupation Fact 2. If material body y is a sum of the x 's, then the location of y is a sum of the location of the x 's.

There are three possible explanations of these two facts:

1. They are metaphysically brute necessities, or necessities imposed by the laws of nature.
2. The existence and location of the parts are ontologically fundamental, and the existence and location of the whole are dependent on them. The location of the whole is always to be explained in terms of the parts, in such a way as to make true the two Spatial Occupation Facts.
3. The existence and location of the whole are fundamental, and the existence and location of the parts are dependent on them. When an extended material body has a region as its location, the body simultaneously has all of the parts of that region as partial locations. A material part of a fundamental body consists in the fact that the body has some region as a sub-location.

The first option is unattractive from the point of view of Ockham's Razor, since it imposes a vast system of brute necessities between the locations and location-occupiers.

Option 2 corresponds to the following thesis:

Priority of Spatial Points If x is a composite thing, then the location of x is metaphysically grounded in the point-locations of point-sized parts of x .

There is something very natural about the Priority of Spatial Points. It fits well with the plausible view that spatial points are the fundamental sort of location, and spatial regions are to be understood as sets or sums of spatial points.

To reject the Priority of Spatial Parts would require positing a brute necessity connecting dependent parts of fundamental wholes with corresponding sub-locations of those wholes. This is a theoretical cost of the view. We could lessen the cost somewhat by making the parts of fundamental bodies into derivative entities: entities whose very existence consists simply in certain facts about the location and nature of the whole body. The following holistic picture emerges as the sole alternative to the Priority of Spatial Parts: the fundamental entities are certain extended, composite bodies. These fundamental entities have regional locations and sub-locations as one of their fundamental properties. The so-called 'parts' of these bodies are simply identical to the bodies' sub-locations. Each proper part of the location of a fundamental body is in and of itself a proper part of the whole body. Thus, there is no need to explain the proper parts' locations: they simply are the locations, under a different guise.

This whole picture seems implausible if we apply it to heaps: how could the location of any heap be metaphysically fundamental, and the location of its parts merely derivative? The heap has no being or nature over and above the being and nature of its parts. The dependency seems to run clearly in the other direction: point-sized parts and their locations are fundamental, and the locations of heaps are dependent on them. If so, then

we must embrace the Priority of Spatial Points, at least insofar as it applies to heaps as fundamental entities.

If the Priority of Spatial Points does indeed apply to all heaps, then we have a good reason to think that heaps do not really exist. If the location of the heap is grounded in the point-locations of its point-sized parts, then presumably the same thing is true of all the properties of heaps, including their intrinsic qualities and their material composition. If so, then the only real entities are the point-sized parts themselves, which we can identify with material simples.

B. Doubts about the Existence of Artifacts

We have looked at arguments against the existence of non-living composite material things. Now I will present four metaphysical objections to *artifacts* in particular: an appeal to the intrinsicity of existence, the possibility of non-substantial artifacts, artifacts made from living things, and the arbitrariness of the persistence conditions of artifacts.

1. Intrinsicity of Composition

The first argument against artifacts appeals to the principle of the Intrinsicity of Composition:

The Intrinsicity of Composition. Whether or not the x's compose something depends only the intrinsic nature and mutual relations of the x's, not on facts extrinsic to them.

The composition of artifacts seems to be extrinsic in two ways: first, by being dependent on the attitudes and practices of their users and maintainers, and, second, by being dependent on their physical surroundings.

Whether or not some things compose an artifact seems to depend on human intentions and actions that are extrinsic to the artifact itself. For example, suppose some ancient hunters shaped and chipped some rocks in order to form some crude implements, like axes and hammers. Thousands of years later, the chipped rocks have been abandoned and their functions forgotten. Do the axes and hammers still exist? Maybe, but it also seems plausible to say that all that remains are the chipped pieces of rock, now no different from other rocks that have been chipped or shaped by purely natural, unintentional processes.

Here is another argument for the same conclusion. As we have seen, in certain cases, found objects can constitute an artifact, like a stump-chair or driftwood-art. Whether or not the wood in the stump constitutes a chair seems to depend wholly on whether or not it is used and maintained as a chair by external agents. Similarly, imagine that the exact duplicate of a watch were to form by chance in an asteroid field. The watch-duplicate wouldn't be a real watch, but the difference between it and the watch is entirely extrinsic.

The existence of artifacts is extrinsic in a second way. Consider a statue that has been cut and chipped from a natural block of marble. The existence of the statue depends entirely on the physical surroundings of the marble making up the statue. That marble existed, with the very same size and shape, before the sculptor has removed any rock. The statue comes to exist, not by virtue of what happens to its internal material parts, but by virtue of what was done to the marble surrounding it.

2. Immaterial Artifacts

Let's suppose that the following sorts of things are *not* real material things: holes, shadow, spots of light on a wall. Artifacts can be made of such immaterial entities. For example, Alexander Pruss (in conversation) has pointed out that one could make a chess set simply by forming holes in a thick, viscous mound of jelly. One moves one's queen in this set by inserting a tool into the hole in the jelly that is the queen and slowly moving the hole to a new position on the chessboard, and then removing the tool. It seems obvious that the pieces of such a chess set cannot be material entities, since their parts are not material entities. But if this holey chess set is not a material thing, then we shouldn't suppose that an ordinary chess set is, simply by virtue of its being composed of different things. This argument appeals to two principles:

Materiality of Parts. The parts of a material thing are also material things.

Functionality the Essence of Artifacts. If two artifacts are functionally equivalent, then one is material only if the other is also.

A simpler example of the same thing: a trench is an artifact, but a trench consists simply in a long, narrow hole that is produced by digging.

There are works of art that consist of shadows or points of light.

3. Making Artifacts out of Living Things

Van Inwagen asks us to imagine an artifact made entirely of a living thing. For example, we could imagine making a very long snake into a hammock by tying it together into a network of knots. Doing this to the snake would not bring into existence a new thing, nor would it destroy the snake. This isn't a case in which the living thing counts, all by itself, as a material artifact (as a bonsai tree or an artificial organism might). Since the hammock is neither an old nor a new material thing, it seems that it cannot be a material thing at all. If we appeal again to Functionality the Essence of Artifacts, no hammock could be a material thing, since any hammock is functionally equivalent to any other.

We might suppose that turning the snake into a hammock fails to produce a new material thing precisely because the snake already existed. However, this seems an entirely ad hoc solution. How can arranging a rope in a certain way bring into existence a new material

entity, if arranging the rope-like snake in precisely the same way for the same purpose fails to do so?

4. Arbitrariness of Persistence Conditions

Finally, when we try to determine under what conditions an artifact persists or fails to persist in existence, we seem to fall into a series of insoluble paradoxes and puzzles, suggesting that artifacts are not fundamentally real.

Paradox One: the Ship of Theseus

The ship of Theseus is an ancient puzzle about the persistence of material objects through time. We are to imagine a ship whose planks of wood are taken out, one by one, placed in a warehouse, and replaced by new planks. Eventually, all of the ship's wood has been replaced, and a second ship is constructed from the planks stored in the warehouse.

Which ship is the "original"? There seems to be no clearly correct answer. If we reject the existence of artifacts and other incontinent objects, we can avoid the problem by simply denying that there ever was or is a ship at all. All we can say is that there is shipping going on here-ishly and there-ishly. The question of which ship is the "same" as the original ship of Theseus cannot be properly posed.

Paradox Two: Tab and Tab-Minus

Let's tell a story about a table that loses a corner of its top. Let's call the table before the removal of the corner Tab, and let's call the table minus the corner Tab-Minus. It seems that both Tab and Tab-Minus exist before the corner is removed. At that point in time, Tab-Minus is a proper part of the table (all of the table except for its corner). It seems clear that Tab and Tab-Minus are not identical at that time, since Tab has all four corners and Tab-Minus does not. However, after the corner is removed, the table is identical to Tab-Minus, since the table itself now lacks one of its corners. So, we seem to be saying that, at t_1 (before the leg removal) Tab and Tab-Minus were not identical, and the table and Tab were identical. At the later time t_2 , the table and Tab-Minus are identical. So, the table was once not identical to Tab-Minus, and then later it is identical to Tab-Minus. But there is a strong argument (created by Saul Kripke)⁶ for thinking that identity and distinctness are eternal. Once distinct, always distinct, and once identical, always identical.

This problem can also be dissolved by simply rejecting the existence of "incontinent" objects, i.e., objects that can gain or lose parts. However, all artifacts are mereologically incontinent. Hence, artifacts do not exist.

Paradox Three: Intermittent Existence

⁶ Saul Kripke, "Identity and Necessity," in M. Munitz, (ed.), *Identity and Individuation* (New York: New York University Press, 1971).

Consider a watch that is taken to the repair shop. The watch repairman completely disassembles the watch and then re-assembles it. Does the watch exist when completely disassembled? It seems wrong to say that at that stage there is a watch on the repairman's workspace, as opposed to a complete set of watch-parts.

When a watch is re-assembled from the very same parts, is it the same watch that it was before the disassembly? Can something cease to exist and then resume existence at a later time? This seems impossible, so it seems that we must say that the re-assembled watch is a new entity, not identical to the original. However, there is also good reason to say that it is the same watch as the original, since it is composed of the same parts and serves the same function. In addition, it is recognized as the same by both its owner and the repairman. This paradox can be resolved by simply denying that the watch ever existed.

Paradox Four: Vague Identity

Suppose that there once was a restaurant in Philadelphia called Bookbinders'. The restaurant is moved, changes owners and menus. Is it still the same restaurant, or a different one? There will be borderline cases in which we feel that either answer is legitimate. It is hard to believe that there is a real, fundamental fact of the matter. We can make sense of this fact if incontinent objects like restaurants are just useful fictions.

Paradox Five: Exotic Objects

Eli Hirsch asks us to imagine a community with very exotic ideas about the persistence conditions of certain objects.⁷ For example, they do not believe in cars, but they do believe in ‘incars’ and ‘outcars’. An incar consists in what we would call a car while and insofar as the car is inside a garage. An outcar is a car outside a garage. When we back a car out of a garage, the Hirschians would say that an incar is gradually shrinking until it vanishes, and an outcar comes into existence, first as a part of the rear bumper and gradually growing into a complete outcar. Hirschians don't believe in persisting cars. They think that the only really persisting things are incars and outcars. If you drive your outcar into a garage, you have destroyed it and replaced it with a new entity, an incar.

We find it hard to believe that incars or outcars are really there, but do we have a good reason for thinking so? Aren't the persistence conditions we assign to natural formations and artifacts just as arbitrary and conventional as the conditions used by Hirschians? A simple solution is to deny the existence of all incontinent objects, cars and incars alike.

⁷ Eli Hirsch, *The Concept of Identity* (Oxford: Oxford University Press, 1982).

III. Owned Objects as Social Practices

A. The Continuous History Account of Artifacts

One account of the persistence and unity of an artifact exploits certain practices of use and maintenance. For example, if a watch persists, it is because there is a certain ongoing history of use of the watch as a watch, and of maintenance of the watch as a watch. Let's suppose that these social processes or practices have a kind of unity through time, that the process as a whole is metaphysically fundamental, not the various instantaneous events that make up the process. If that is so, then the metaphysical unity of the process over time can be used to ground the persistence of the artifact. We'll call this the Continuous History theory of artifactual persistence.

1. The Ship of Theseus.

Let's call the ship that has been in continuous operation Theseus-A, and the ship that is reconstructed from the abandoned planks Theseus-B. The Continuous History theory entails that it is Theseus-A and not Theseus-B that is identical to the ship as originally built. Theseus-A is associated with a continuous process of nautical use and maintenance, which is not the case with Theseus-B. When the abandoned planks are put together into a ship, a new ship is created, because a new practice of use and maintenance is initiated.

2. Tab and Tab-Minus.

Plausibly, before the corner is removed, Tab-Minus is not what is being *used* as a table. The *whole* table is used as a table. Thus, one can deny that there is any such thing as the Tab-Minus, prior to the removal of the corner. Given this, the puzzles about the identity of Tab and Tab-Minus do not arise.

3. Intermittent Existence

Consider a watch that is disassembled and then put back together. This looks like a case of intermittent existence. What ties the early history of the watch with the later history is again a continuous process of use and maintenance, based perhaps in the intentions and practices of the watch repairman. While the watch's parts are incapable of functioning as a watch but still have the real potential of being re-assembled, we can plausibly say that the watch no longer exists but may exist again.

4. Vague Identity.

We might here take the view that vagueness is merely a reflection of our ignorance. If we understood all there was to know about the processes of use and maintenance that are involved, we might always know the right thing to say about whether the artifact (like a restaurant) persists or not. Alternatively, we might suppose that the vagueness is

ontological. Maybe restaurants are simply vague objects, sometimes indeterminate in existence or in identity.

5. Exotic Objects.

The artifactual objects that exist do depend on our concepts and conventions, since those concepts and conventions shape our practices, and it is our practices that are the ground of persistence for artifacts. However, there may be natural limits to the kind of social practices that can exist. It is hard to imagine a set of social practices that would really die out or begin to exist simply by driving a car out of or into a garage. Cars just aren't the sort of things that can be built or maintained in that way.

There is an obvious objection that could be raised to such a process-of-maintenance theory of artifactual persistence: doesn't it simply push the problem of persistence back a step? What is the principle that unifies the various spatial and temporal parts of a single practice of use and maintenance? Don't such practices simply correspond to myriads of overlapping microphysical processes, with no sharp boundaries in time or space?

These are deep questions, but the defenders of artifacts might well claim that social practices (including the practice of using and maintaining a particular artifact, like a car or a watch) have emergent and strongly unitary powers, just as do living and sentient organisms. It certainly isn't obvious that all of the powers of such social practices are wholly grounded (without remainder) in a host of chemical and microphysical processes.

B. Replacing Artifacts with Social Practices

On the Continuous History view, why not take the artifacts to *be* the social practices?

This would be an “error theory” about our common sense view. We ordinarily take artifacts to be ordinary material objects (with continuous locations, mass, energy and so on), when in fact they are processes, having human actions and intentions as their components. The error is explicable, since certain heaps of particles play a focal role within those processes or practices.

Here is a central question that the social-practices account must answer: what gives real (ontological) unity to a process or practice, especially one involving more than one participant? Why don't we have a mere heap of micro-processes (each involving one or more simples)?

There are two cases of real unity. First, a process is *one* when it is the result of the exercise of some immanent power by a single persisting thing. To each immanent power there corresponds some final ‘end’ or ‘telos’, either as a target-like consequence or as a persistent pattern of activity. Second, processes are *one* when they are social practices, created and sustained by one or more intentional agents, who perform each action *as part of* a single, continuing practice. In such cases, there is a real interdependency in nature between the whole practice and its constituent actions. The actions are not wholly prior to the practice, and the practice not wholly posterior to the actions. Social practices are also

unified by a single end or system of inter-connected ends. I can't think of anything else that could give an essential unity to congeries of events and micro-processes.

IV. Rights to Property are Rights to Practices, not to Things

Our tentative conclusion is that neither land nor human artifacts exist – except as quasi-permanent aspects of human social practices. My claim is not merely that legal property is itself a social practice: it is that each individual *case* of ownership is a distinct and unique practice in and of itself.

If this is right, then respect for private property is nothing more than a special case of respect for rational human action. Contrary to the subjectivism of Ludwig von Mises,⁸ all human action, by virtue of being human action, must have an intelligible end, one that participates in objective value by moving the agents closer to the natural *telos* of human life. Human action can be more or less rational (objectively speaking), depending upon on how accurate a conception of that human *telos* it is predicated on. Grossly irrational practices have little or no claim on the respect of others.

Human beings are naturally social and political – that is, they are naturally cooperative and collaborative. Hence, it is irrational (other things being equal) to aim at the disruption

⁸ Ludwig von Mises, 1949, *Human Action: A Treatise on Economics* (New Haven: Yale University Press).

of the rational action of others, and objectively valuable for each to respect and promote the rational action of others.

Respect for property is a case of respect for existence: what exists has, simply by virtue of its existing, some claim on our respect. This respect is a corollary of the privative theory of evil: what exist is, insofar as it exists, good. All human action, insofar as it is action, and therefore insofar as it is human and rational, is good. Each case of ownership is an instance of human action.

Ownership is not primarily a relation between a human being (the owner) and some external, typically physical, thing (the 'real' property). It is instead primarily a relation between the owner and the owner's own activity, a process or practice with some intelligible relation to certain relatively stable physical things and an intelligible end. The stability or persistence of the owned 'object' is entirely constituted by the owner's practices: the owned object is the 'same' ontologically insofar as it is the same practically speaking. There are no autonomous, purely ontological criteria of sameness here, in contrast to the real persistence of primary substances (including human persons) and processes (including human practices).

Hence, respect for property is an essentially conservative norm, a case of natural piety. The owner has no prior right to use his property in novel or innovative ways. To do so is to initiate a new appropriation of a new 'object', one that overlaps in a contingent way the material composition of the older owned object. Whether or not the new appropriation

is real and binding on others depends on the usual conditions on such aboriginal appropriation: does the appropriation transgress on the prior rights of other persons, and does it leave 'enough and as good' for others to appropriate?

The liberal theory of property, in contrast, is one of absolute rights over *things*, which include the right to alienate and transfer these very rights. This is plainly incoherent: rights are neither physical objects nor social practices: they are not the kind of things that can be owned. Nor can they be created, alienated or transferred. Positive laws don't create genuine rights: they recognize them. A right cannot be transferred, but an interaction can destroy one activity and create a new one (or, more precisely, alter one activity and create a new one), with the consequence that one person loses a set of rights and a second acquires an isomorphic set. Rights are corollaries of the nature of some being – either a rational substance (with its potentialities for action) or a case of concrete rational activity.

The right of inheritance is not absolute and is not the effect of a kind of divine fiat on the part of the testator. Family lineages are an essential component of natural human life.

The social-practices theory of property provides a principled way of adjudicating disputed rights, including conflicts between the claims of first occupation vs. those of needy 'late-comers'. There is a real but not absolute condition of non-interference on rational action: as a rational social animal, my new action must not interfere with pre-existing activities of others. However, human life itself has an ontological priority, since

there can be no rational activity apart from life. Consequently, the prior occupiers have the obligation to make accommodations for the basic needs of the latecomers, and this obligation corresponds to enforceable rights of those latecomers. However, the accommodation to be demanded must be the minimum one necessary for the latecomers to have an equal opportunity for eudaemonia. The latecomers have an obligation to shape their rational life-projects in such a way as to provide maximum respect for pre-existing projects.

The social-practices theory extends naturally to a theory of intellectual property. In contrast, the liberal theory cannot be so extended. Liberals must identify 'ownership' with any kind of exclusive control. That is, something can be owned if and only if others can be excluded from controlling or using 'it'. This is too broad: it makes 'ownership' co-extensive with social authority of any kind.

In contrast, the social-practices theory can identify the ownership of patents, trademarks, and copyrights with the integrity of certain practices of intellectual and artistic creativity. If an idea is created with an intention to sell it, appropriation without compensation interferes with this creative process. Again, there are limits. One cannot simply exclude others arbitrarily or for no constructive purpose. In order to 'own' an idea, one must be willing to accept fair compensation for its use.

What about keeping patents from one's competitors? Beating one's competitors in the market place is illegitimate as a direct object of intention, because it is inherently

malicious. One must always be willing to share in exchange for fair and reasonable compensation.

Moreover, since human beings are social animals, ownership is typically shared, since human activity is typically social. The liberal theory of property is paradigmatically a theory of individual rights, while the social-practice theory can encompass both individual and shared ownership with equal facility.

V. Why Property has more than Instrumental Value

We must distinguish between first-order and higher-order activities. Working a farm or building a house for one's own use and consumption are paradigms of first-order activities, whether the worker is one or a community (a household). Barter and producing for the sake of barter are second-order activities. The use of money and the practices of moneymaking are third-order, banking and usury fourth-order, and so on.

Contrary to a philosophical tradition dating back to Plato and Aristotle, and echoed by Cicero, Augustine and Aquinas, first-order activities are not *uniquely* natural or noble for human beings. Commerce is as natural as farming, banking as natural as commerce. Human reason is naturally ramifying and order-raising. However, participation in higher-order activities does increase the likelihood of confusion about the nature of the human end ('the love of money is the root of all evil,' as St. Paul says in the first epistle to Timothy). In seeking some tertiary good, it is easy to lose sight of the fact that the tertiary

and secondary goods must be anchored in and delimited by primary goods. It is true that among the primary goods are the sort of exercises of human reason and responsibility that are found in the tertiary activities themselves, but these primary goods are also finite and in need of complementation. The pursuit of tertiary goods always threatens to become infinite and inhuman.

At the opposite extreme, utilitarians and economists instrumentalize all human action, making it all merely a means to an exogenous end (pleasure, or the satisfaction of fixed, biological desires). This ignores the fact that happiness (eudaemonia) consists in rational activity. For utilitarians, there can be no natural rights at all, and so there are no natural rights to property. Property rights are purely positive, assigned with a view to maximizing total welfare by creating optimal incentives for action.

On the social-practices theory of property, ownership is both a means and an end in itself, embodying both secondary and primary goods. The use and maintenance of property is intrinsically good, since it involves the exercise of human reason. It also possesses instrumental value, as a means for meeting various human needs. Because it does embody primary and intrinsic goods, respect for property is a natural right, even though what is due respect is always a culturally conditioned activity of one or more persons and not some ahistorical power over a physical thing.