

## *Natural Property Rights as Body Rights*

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This paper presents a derivation of property rights from rights we have with respect to the use of our bodies. The first sections of the paper establish that *if* we have natural moral rights to move and use our bodies, then there are natural moral rights to property as well. It is also argued that there is no upper bound on the amount of property a person can have a natural right to by this derivation. The fourth section of the paper argues that the antecedent of the conditional is true—that we do have a natural right to move and use our bodies. The last section of the paper discusses the relation of natural property rights to social institutions and practices.

This paper embodies two simplifications:

1. This paper does not claim to deal with problems of conflicts or property rights. In particular, a host of thorny problems about what rights a person has with respect to things acquired legitimately from someone who acquired them illegitimately, things whose acquisition was effected by use of illegitimately acquired goods, and so forth, are not dealt with. The paper claims to establish only *prima facie* property rights by showing how, if no one else's rights are violated, a person can have a property right in a thing. I haven't tried to give a complete account of what the condition "if no one else's rights have been violated" amounts to. So, in effect the paper establishes property rights for the idealized situation in which things to which no one else has a right, or whose acquisition-history violates no rights, become private property. Given this idealization the derivation of property rights which follows may not establish property rights to some of what we regard as our possessions.

2. This paper gives no detailed account of initial

acquisition-rights. Subject to the Lockean Proviso that there be "enough and as good left in common to others,"<sup>1</sup> it suffices for this paper that a person can without violating rights do as he wishes with what is unclaimed or discarded. Roughly, with respect to initial acquisition, the paper is only concerned with how, given that it doesn't violate any rights to do as we wish with unclaimed or discarded things, we can acquire natural property rights in such things.

As a final preliminary remark, I should note what may be apparent to many readers: The inspiration for the paper is Robert Nozick's *Anarchy, State and Utopia*.<sup>2</sup> My intention is to fill in a justification of property rights that is lacking there.

#### I. NATURAL BODY RIGHTS

By a natural right I will mean a "right one has independently of institutional arrangements."<sup>3</sup> If a person has a natural right to move and use his body, then it is morally wrong for another to force him to move his body or for another to use his body in ways the person doesn't choose, at least in standard cases. If a bunch of people grab you and clamp you inside a robot which moves your body in ways they choose, then your rights to exclusive control of the motions of your body have been violated whether it hurts or not. If someone decides that your head would make a good door stop and removes it from your exclusive control for that purpose, your rights have been violated, since you have natural moral rights to the exclusive use of your body. Furthermore, it is morally all right for a person to move and use his body as he pleases, unless such motions and uses would violate another's rights. Natural body rights, then, involve the impermissibility of someone else's interference with the motions and uses of your body and the permissibility of your uses and motions of your body.

Alan Gibbard, in arguing that property rights cannot be "grounded in principles of natural liberty,"<sup>4</sup> has posed the problem of justifying property rights as one of showing some grounds for depriving someone of a right without that someone's consent. The rights in question are everyone's *prima facie* equal right to use the things in the world. With respect to things in the world, Gibbard has argued that no transformations one agent brings about of a thing in the world justifies depriving others of their right to use that thing without their

consent. Since everyone has an equal natural right to everything, there is no natural right to private property, according to Gibbard. Social considerations may overrule this natural right of everyone to everything, but only in such a way as to give rise to encumbered property rights.

The existence of natural exclusive rights to move and use our bodies constitutes an exception to the principle that each of us has equal *prima facie* rights to move and use any thing in the world. Rather than treating private property as justified deprivation of the rights of others, this paper begins with this exception to equal rights of everyone to everything and shows how private property rights are extensions of this exception. Since other people, *prima facie*, have no rights to the use and movement of our bodies, no deprivation of rights needs to be justified either for the bodies themselves or for the extended bodies argued for in the paper.

I will argue in the fourth section of the paper that we do each have special exclusive rights to move and use our bodies and to exclude other persons from moving and using our bodies. For the moment though, I take as a premise that everyone doesn't have equal *prima facie* rights with respect to all entities in the world because each of us has exclusive *prima facie* rights to move and use his body.

Intuitively, our special rights with respect to our bodies are independent of several contingencies. In bringing out these intuitions, I am expressing the only data we have that these rights *are* independent of these contingencies.

(1) In the first place, our special rights with respect to our bodies do not depend on the relative equality or efficacy of our bodies. If we were much larger or more excellent physically, we would still have these special rights. If only one of us has a better body, he has every special right with respect to his body that we have with respect to ours.

This last claim needs support, since it countenances a kind of inequality. Suppose that in an isolated society of midgets, there is one normal sized person. That normal sized person has the same rights with respect to his body that we have with respect to ours. Being born into a society of midgets can't reduce a person's rights, since such birth isn't his fault or choice. But our existence as normal sized persons external to this isolated society is morally irrelevant to the normal sized person's rights in that society. Whether normal sized persons

exist elsewhere or not, a normal sized person has exclusive *prima facie* rights to move and use his body. So inequalities among bodies do not affect the fact that each person has special exclusive rights to move and use his body.

The principle of the above argument is that a person can't lose a natural right against his will except by actions that are his fault or choice. This claim is not limited to relative size, strength, or talents. The only two-armed person, the only four-armed person, the only adequately furry person, or the only person able to do his own photosynthesis likewise have exclusive *prima facie* rights to their bodies' motions and use.

The independence of body rights from contingencies of size, strength, and capacities is compatible with the dependence of some consequences of those rights on contingencies of relative size. The right itself has an essence which can be confused with accidental consequences of that right in a given situation. That is, I (accidentally) have a right to exhale in class in part because my exhalations are (by accident) not fatal in the concentrations to which other members of the class are exposed. If the situation were different, I would not have this derivative right, though I would have the underlying basic rights from which the right to exhale around others, given the actual situation, is derived. What is contingent is that exhalation is not a threat.

Thus, for instance, my right to move my body over public bridges might disappear if I were very large. This sort of change of rights to bodily motions with change of bodily size, though, isn't an essential change, but rather the falsifying of the antecedent of a "conditional" right we now have. Such an antecedent in this case might be 'If one's use of a bridge cannot be expected to destroy it . . .'. Actual cases in which ordinarily true antecedents about a lack of threat break down occur in the case of contagious diseases, where we do restrict people's motions and exhalations because they are threats. Nozick handles such questions in Chapter 4 of *Anarchy, State and Utopia*.

(2) The second kind of morally irrelevant contingency involves the difficulty of removal and transfer of parts of bodies. The fact that the removal of parts of our body is often accompanied by a sensation of pain isn't essential to our right to use and move our body. Our natural rights have been violated when an arm is taken for food even if it doesn't hurt. The

non-routineness of removal and transplant of body parts is similarly morally irrelevant to our rights with respect to our bodies. If we now have special exclusive rights to the use of our arms and legs, developments in medical technology which allowed us to pluck them off and store them for later use or donate them to the armless would not remove that right. The principle here is that if we have a right at one time, changes in what people can do can't remove that right.

Related to the moral irrelevance of this contingency is the irrelevance of the fact that we have bodies constructed of protein in the "natural" way. If we were constructed of wires and electric motors, then, given that we were agents, we would have the same rights with respect to plastic and metallic bodily parts that we do with respect to protein parts. In the same way, if our conscious nervous system took over some of the functions of tissue construction now done automatically, we would have the same rights with respect to parts of our body so constructed that we do with respect to our "naturally" constructed parts. Suppose we learned how to take some egg whites, soy beans and vitamin pills, put them into a blender and make an attractive bicep which could be implanted in an arm. We would have all rights with respect to such a bicep which we have with respect to our present biceps.

(3) Not only is it morally irrelevant that parts of the body can't be detached routinely or without pain, it is also irrelevant that parts of the body are standardly attached at all or even have sensation and "agent-type" control. I'll first argue that sensation and agent-type control are irrelevant and then argue that attachment is irrelevant.

Sensation and agent-type control are *actually* lacking in many parts of the natural body. We don't have pain-sensitive nerve endings in our brains, for instance. Much of our control of our brains is *via* other agents we've hired, i.e. neurosurgeons, not agent-type control. If we were abnormal in this respect, so that most people had to have anaesthesia for brain surgery and could do their own lobotomies from the inside, surely our rights not to have our brains interfered with wouldn't be diminished. In the same way, the fact that we are not all adept enough at yoga to control our heartbeat, digestion, and hormone production doesn't make our rights in relation to our hearts, gastro-intestinal tracts, and glands any less. Neither sensation nor control in a direct "agent-type" way

is essential to an entity's being a part of the body. Thus the fact that a person has sensation and agent-control of a body part can't be what makes another's use of that body part against a person's will a wrong.

It might be argued that sensation and agent-type control matter in the case of a body part in which there is normally sensation and agent-type control. But for one thing: this deprives paralyzed people of rights which they plausibly have. A person with damage to his leg nerves who has no sensation in or control of his leg below the knee still has his rights violated if we painlessly remove it, whether or not he is able to hobble around on it.

If having normal sensation and control is what matters, we have the further problem that what is normal seems to be quite accidental. Some can wiggle their ears. Yogi's can do all sorts of things. If these skills were more widely taught, and so became normal, surely we who lack those skills wouldn't *lose* some prerogatives.

To see the irrelevance of sensation and agent control more clearly, imagine installing sensors and control devices in a model airplane and, rather than having the dials and push buttons ordinarily associated with radio controlled model building, having these controls and sensors hooked up to the agent's motor and sensory nerves. In such a variation of model airplane technology, the agent senses his plane's altitude, etc., directly rather than by looking at dials, and makes his plane bank and roll in the way he moves his fingers. (This would take some practice, like wiggling the ears.) On the view that special body rights are special because of agent-type control and sensation, the person who went to the trouble of installing this very elaborate setup would have rights with respect to his model airplane that I lack with respect to mine. But this is intuitively false. We each have equal rights with respect to our planes. His elaborate organic control box doesn't make his plane more special to him than mine is to me. Our natural rights with respect to our bodies, then, are not essentially connected with sensation and agent-type control.

Attachment might seem to be the feature of body parts that is essential to the special rights we have with respect to our bodies. I will argue that attachment doesn't gain us rights and that detachment doesn't diminish our rights.

Suppose that in 1981 Cadillac offers as an optional replacement for seatbelts a specially constructed protein car, all

of whose parts are attached by ligaments, etc., just as a natural body is. This car is designed so that, when the driver sits in it, his skin in contact with the seat dissolves and the material of the seat sends tendrils into his body very quickly. There is some fluid interchange, etc., just as in the case of graftings. (For driver convenience, the process is brief, painless, and reversible by a push button.) It would seem that this option doesn't give the driver of the Cadillac special rights to it which the driver of a Cadillac without such an option lacks. Of course, just as we must allow a person to release his shoulder belts before removing him from a car, so we must allow this person to become detached from this specially equipped car. (And, if we've taken someone's arm by eminent domain, we must allow the person to take procedures which will make removal of his arm as painless and as harmless as possible.) "Organic attachment," then, doesn't seem to be the source of special prerogatives with respect to bodies, since there can be attachment without a difference in the rights we have with respect to things.

That detachment doesn't diminish rights can be seen by considering the following deviation in human physiology: Reed, of the Fantastic Four,<sup>5</sup> is able to form what amount to pseudo-pods. For instance he can reach out one hundred feet with a hand, expand the surface for his hand to about twenty square feet, and grab a criminal on the run. (As I understand it, the volume of his body remains constant.) Consider the situation when he's reached as far as he can. Presumably, the ultimate stretch leaves his hand connected to the rest of his body by one motor and one sensory nerve bundle. This long strand still constitutes attachment and allows natural agent-type control. A modified version of this, which would allow for still longer reach, would use just a single fiber of, say, ligament-tissue. What might suffice in this physiology, if Reed is to use his hand in an agent-type way, would be a pair of tiny radio transceivers in the hand and trunk to get the hand to do the right thing and to "report back." The hand is still attached, but the attachment no longer seems important, since it doesn't have the strength to hold the hand from further separation. In fact, Remote Man, a crime fighting rival who dispenses with the connecting fiber, would seem to have a hand with the same moral status as our modified Reed. When we switch over to total radio control without the connecting fiber, nothing essential is changed. Remote Man has hands with much longer

range, and those hands are still part of his body, with all rights accruing thereby. But his relation to those hands is exactly like that of the second model airplane owner. So it appears that attachment is not essential to whether a thing is part of our body or whether we have body rights with respect to it.

Since neither sensation and agent-type control nor attachment is essential to body rights, at least the burden of proof is on someone who claims that the disjunction is essential. If Remote Man should decide to replace his neural hookups to his hands with a system of dials and push buttons, it would seem that this modification wouldn't change his rights with respect to his hands.

The above arguments indicate that "control" in any very clear sense, agent-type or otherwise, is irrelevant to body rights if agent-type control is irrelevant. No moral difference attaches between a system in which arms are moved by a generally reliable set of dials and switches and one which often breaks down. Since nothing about radio waves is morally privileged, a system in which winged couriers are hired to fly back and forth from trunk to arm is likewise morally on a par with more usual systems of arm movement. If unreliable switches don't diminish rights any more than certain nervous diseases, neither do unreliable couriers hired for the same job. Any number of intermediaries between a direct "act of will" and a motion of the hand leave body rights intact. If the couriers and their subcontracted couriers are corrupt shirkers, the actual control I have over my body can become more normative than real. (Rather like the control I had over my Arabian oil refinery.)

(4) The final independence from contingency concerns bodily surpluses. Intuitively we have the right to exclusive use of our bodies even when we have more body than we need or are likely to need. In a way, this follows from the point that inequalities among bodies are acceptable and compatible with everyone having special exclusive rights to use and move his body as he sees fit. After all, having a body with larger and stronger biceps than most other people gives a person a surplus of strength—more than he really needs, an envious weakling might claim. Furthermore, most of us have two kidneys and could get along with one. The chances of needing that extra kidney are really rather small, compared to the chances of needing an extra car, for instance. If a person has



exclusive rights to his extra kidney when he has two, though, he has such rights when he has five. So, if we have an exclusive natural right to the movement and use of our bodies, we have that right even when we have a surplus.

## II. THE DERIVATION OF PROPERTY RIGHTS

Rights are instances of principles. To *derive* a right is to show that whatever moral principles apply to a clear case in which there is the right, apply also to a new case in which the right is not clear. If no moral distinction can be drawn between the cases, then if there is a right in the one case, there is that right in the other case as well.

The derivation of property rights from rights with respect to our bodies depends on observing that *things* can become part of our bodies. If a person has used some unappropriated and *therefore no-one's food* and converted it to protein, he now has the right to exclusive use of that protein. The difference from Gibbard's case of the cleared and planted cornfield,<sup>6</sup> to which everyone seems to have a right (since they haven't given their permission for the right to be removed) is only that, in the case of conversion into protein, something is incorporated into a person's *body*. If we do have special exclusive rights with respect to our bodies, this kind of incorporation is one way of making non-property into private property. That is, incorporation into a body turns what everyone has a right to use into something only one person has a right to use, if we have exclusive rights to move and use our bodies. The argument below claims that Gibbard's cornfield case is not significantly different from the conversion to protein case, and that the industrious farmer has the same rights with respect to his cornfield that you have with respect to your arm.

To begin this argument, remember that nothing is special about internal unconscious processes as far as moral rights go. Similarly, whether a bodily part is made of protein is morally irrelevant, as we have argued. Suppose a person could eat twigs and branches and grow a wooden leg. This wooden leg would have the same moral status as our protein legs. Since there's nothing special about internal processes either, a person who used some unwanted stuff from the dump and built himself an artificial leg with it would have a leg which was morally equivalent to our "natural" legs. A transformation of non-property-stuff to which everyone had a right, into a pri-

vate leg to which exactly one person has rights seems to have been accomplished without the consent of those who *had* an equal right to that stuff in the dump. Building artificial limbs is morally equivalent to eating food.

Some of the things in the world to which everyone has an equal right can be removed from that domain without the consent of those whose rights are diminished, if no one's special rights have been violated. In the cases both of building and attaching an artificial limb and that of eating an apple from the woods, something unclaimed has been taken out of the public domain. So far, only the limited number of things that can be made into artificial or real limbs seem to be able to be thus appropriated. The following arguments show that, once artificial limbs are permitted as parts of bodies, nothing stops a person's incorporation of virtually anything.

Artificial arms and legs made from unwanted or unclaimed stuff seem to be morally equivalent to our bodies. But the same holds true of a member of an armless society who builds himself a pair of arms. Since our natural and artificial arms are ours to do with as we please, so are this person's arms. The fact that arms aren't a "natural" part of the bodies of his fellows doesn't deprive him of the exclusive right to the use and motion of his arms. As we have argued above when imagining this society to be isolated, our existence is morally irrelevant to this person's rights. So whether an artificial body part is a makeshift for one "found in nature" is irrelevant to our rights with respect to such a part.

I've already argued that detachability and whether a body part is surplus or not are morally irrelevant. So the person with two artificial arms can leave them at home if he wishes and still have exclusive rights to their use, just as if we could detach our natural arms (perhaps in order to wear a new style sweater). Those arms lying on our dresser are still ours, given that we have the exclusive right to move and use our body. I have also argued that the lack of pain that loss of an artificial arm gives is irrelevant. A sensation can't create a right. That artificial arms can also be far better than any normal arm without significant moral difference from fleshly arms follows from the permissibility of inequalities in bodies.

If an artificial body part doesn't have to be *natural* for our group for us to have body rights with respect to it, then an artificial version of anything that someone *could* have as a body

part can be something we can acquire an exclusive right to. This is true even if it's like a remote-control artificial arm which is detached at all times. If detachability is all right for preserving body rights, usable body parts need never be attached. For instance, men are not usually born naturally furry enough for protection from cold and embarrassment. So legitimately acquired clothing is for moral purposes artificial fur, i.e., an artificial and always detached body part. Since an animal could have very rapid and adaptable molting, and thus could have what amounts to spare furs just as we have spare kidneys, nothing prevents exclusive rights to whole wardrobes as artificial body parts.

In the same way, turtles and snails have shelters which grow as parts of their bodies. We genetically defective humans have designed artificial shells with pleasant features lacking in the nicest turtle shells. In principle, nothing morally distinguishes my mansion from an artificial arm several times defter and stronger than any natural arm. Since nothing morally distinguishes such an artificial arm from a natural arm, my mansion is, at least morally speaking, a part of me. (The physical and emotional damage to me at its removal may be as intense as that I feel when I've lost a finger.)

Extensions to most other useful things a person might own should be obvious. We could be telepathic, naturally musical, very fast on our feet, have luminescent protuberances, and have a very accurate sense of time. We could, similarly, have a capacity for using very flexible stored material to build parts of our body as they were needed, much as we store fat. (Justifying ownership of money will require the section to follow on transfer rights, but the morally relevant description of money is that it is just a kind of social artificial body part construction material.)

No limitation is in sight with respect to usefulness, either. Diamonds and sequined dresses are for moral purposes artificial plumage. Since my pretty eyes are mine to move and use as I please, your lavender sunglasses are likewise yours. You must not use mine and I must not use yours without your consent.

The argument so far makes the claim that there is no line between what's part of the body of a person and what is his property. In most actual cases, things seem to group themselves into body parts and things that are not body parts. This

grouping, though, is accidental and doesn't reflect any real difference in moral or metaphysical kind. An analogy: Suppose that there is in fact an undiscovered genetic continuum. That is, there are physically possible animals such that each of them looks to be of the same kind as the next on the continuum but the first in the sequence is a "paradigm rabbit" and the last a "paradigm squirrel." We can imagine the intermediates as either undiscovered (by accident) but around, as very rare, or as merely possible. If we had different obligations towards rabbits and squirrels (e.g. there are circumstances when it is permissible to kill a rabbit for food but none in which it is permissible to kill a squirrel), there would have to be a point at which a moral line could be drawn with some metaphysical backing. That is, at some point in the sequence, animals have a property which makes killing them wrong. But if the variations are continuous or close enough so that it is correct to treat adjacent elements in the same way, then the differences in moral judgements of obligation are not justifiable, since rights and obligations must depend on principles.

I don't claim that this type of argument applies for moral argument in general. I don't, for instance, hold that it applies to "good" and "ought" arguments. That is, if the consideration that applied were "the shorter a thing's tail is, the *worse* it is to kill it," then there could be significant moral differences between squirrel and rabbit killing even though no sharp line separated them. But this consideration against rabbit killing is a guideline and not an absolute, since circumstances can make a given killing of a paradigm rabbit a good thing to do. "Good", roughly speaking, is an attributive under which lies a continuous dimension, unlike "has a right". Questions about whether an act is good are questions of whether an act is *better than* an alternative, roughly. But "better than" can be a dimension, so that insignificant changes can add up to one alternative outscoring another.

"Right" is not an attributive<sup>6</sup> and has no underlying dimension. Features relevant to rights are present or absent in a case. Violations of rights are all wrongs, but some wrongs are worse than others.

Further features show that "right", "wrong", and "is obliged" are logically different from "good", "bad" and "ought".<sup>7</sup> When a right has been violated, a wrong has been done even when it is outweighed by considerations of good

and bad, or by conflicts with other rights. On the other hand, if it is good, other things being equal, to have pleasure, a particular case of having pleasure which has bad consequences may be no longer good at all.

That is, rights, and obligations do not disappear when they are overridden, whereas good and "oughts" do. This, I have argued,<sup>8</sup> is because goodness and "ought-sentences" are governed by guidelines roughly analogous to probability principles, in which "it is probable that Q, given P" and "it is probable that not Q, given P and R" can both be true, whereas rights and obligations are governed by principles analogous to universal quantifications, in which " $(x)(Fx \rightarrow Gx)$ " and " $(x)(Fx \& Px \& \neg Gx)$ " cannot both be true.

These two distinctions are connected in the following way. If a " $(x)(Fx \rightarrow Gx)$ "-type principle explains the right of b to c, then if b lacks a right to d, F must be present in one case and *absent* in the other. Thus any transition from having a right to lacking a right must be a loss of a property morally significant by itself. On the other hand, if a "given feature Q, doing a is good" principle can explain why it is good for Jones to do a, "given features Q, R1 . . . Rn, not doing a is good" could explain why it was *not* good for Jones to do a even though no one of R1 . . . Rn *by itself* is morally significant. Furthermore, {Q, R1 . . . Rn, Rn 1} might again make it *good* for Jones to do a. Ri has no moral significance, in isolation, then, but only given a "context". So a transition-property in the case of "good" need have nothing intrinsically moral about it.

If rights *can* be overridden by considerations of utility, then a wrong has still been done, but it will be a wrong that ought to have been done because it was a good thing. In establishing property *rights*, then, we are not establishing the inviolability of property but rather showing that a wrong is done when property is taken away from its rightful owner. How bad violating someone's property rights is in a given situation *may* depend on the circumstances of the case and the magnitudes of the goods to be derived from such violation. There may well be circumstances in which violations of someone's property rights is a good thing and so ought to be done. (Thus what politics my view of property commits one to depends on how and whether one thinks that rights can be overridden by utility. That is, rights and their violation must

somehow fit into an overall account of what it is good to do. Violating rights, at least on the whole, must be a bad thing, so that these families of moral facts fit together. I have no satisfying answer to the question of how the two sorts of principles cohere to tell us what it is moral to do.)

Thus, since rights require principles of the " $(x)(Fx \rightarrow Gx)$ " kind in which "F" is not a degree-term, the argument that, if no line can be drawn between cases, the right is still there, holds. That is, "derivation" by *principles* requires that significant moral distinctions be drawn between cases. To justifiably ascribe a right in one case and withhold it in another requires that some *property* which distinguishes the two cases in a morally relevant way be appealed to. No such *lines* need be drawn in the case of goods and bads, since there is an underlying dimension on which they are attributives. (So, for instance, gentle spanking of a child for obnoxiousness can be a good thing in the circumstances while bludgeoning her is not a good thing, even though perhaps is a continuum of ergs expended between gentle spankings and bludgeonings. Roughly, even though an erg is not a significant difference, a single erg's difference can distinguish a good chastisement from one that ought not to have been done.)

I have sketched some of the intermediate stages between paradigm bodies and paradigm non-bodies to show that some moral rights and obligations with respect to one apply also to the others. If there are principles which fail to apply to paradigm non-bodies, there must be a line to be drawn. If there is a line to be drawn, it must be drawn somewhere, and I can see no justification for any such line. Each stage is morally indistinguishable by principles from the next. Your property is your body.

### III. THE USE OF THE BODY: TRANSFER RIGHTS

Thus far we have argued that, given that a person has an exclusive right to the use of his body, he can have anything he has incorporated out of unwanted stuff. Precisely what it takes for there to be "incorporation" is something that we can ignore for purposes of this paper. For our purposes, obvious cases of making things, clearing fields, and so forth will do. I believe that incorporation is a real relation, if persons are real, but I am not prepared to specify its truth-conditions. In a state of nature where there is unincorporated stuff, such unincor-

porated stuff can be made into parts of a body and thus become a person's private possession. To get fabulously wealthy, though, a person needs to acquire another person's stuff, since life is too short for enough of the above kinds of manufacture, and since, in fact, unincorporated valuables are hard to find. The legitimation of fabulous wealth, then, requires that transfer rights of property be justified and derived. (Legitimation requires only that a right is established, not that it be shown that fabulous wealth *ought* to be encouraged or that it is a good thing.)

Transfer rights are derived from our right to *use* our bodies. What are the uses of the body to which a person has exclusive rights? We can use our fingers as dike plugs, our arms as paperweights, signal devices and so forth. We can use one body part to make another. A common medical procedure is to take a vein out of a thigh and use it to replace a damaged vein elsewhere. If technology advanced, it might be possible to transform a person's spare kidney into a liver. Any use a person makes of his body, including getting a better body, is his exclusive prerogative, if it doesn't violate others' rights.

A social way of using one's body would be using parts of it as items of trade. This is morally no different from using up a lot of stored body fat in the effort required to build an artificial arm using only your feet. Imagine an unfortunate who not only has the task of building an arm in such conditions, but burns up body fat and muscle tissue from specific locations rather than diffusely as we do. That is, in order to build his artificial arm, he has to burn up a buttock, for instance. Such a person is using, by divesting himself of, one body part in order to get another one. Part of the body is sacrificed to create or acquire a more needed part. It would seem that such a person has the right to use his body this way, if we have the right to burn body fat for our ends. The social procedure of trading is to be described for moral purposes as essentially the same procedure.

So, suppose you need a kidney and I need an arm. You have an arm you can get along without and I have a spare kidney. If we both have a right to use our bodies as we see fit, it seems that we can trade one part for another, using an arm to get a kidney and vice versa. If we can use body fat or burn up a buttock to gain an external arm by building, we can use an arm

to get a prefabricated kidney by trade. When we use a bodily part this way, we voluntarily let someone incorporate a part of your body into his body.

What holds of natural body parts, though, holds equally for artificial body parts. Furthermore, if you have flexible artificial part-building material, you can trade that for body parts, that is, buy them with money.

If you have the right to use your body as you please, no outside agent can decide when you're making a fair trade. If you have special rights with respect to your body, you have the right to make trades for any purpose you please and for any item someone is willing to trade you, barring fraud, etc. So you can trade an arm for a kiss, using a body part to get pleasure. If you can trade an arm for a kiss, though, you can trade an arm for the pleasure of having someone else have your arm. You can give away body parts at will. If this is a use to which your body rights guarantee that you have a right, then the recipient acquires body rights to these gifts just as firmly as you had them. That is, if such gifts and trades are legitimate uses of the body, then the recipient of a traded or donated item can have exclusive rights to it just in virtue of the donor's right to use his body. ("Weaker" sorts of gifts are, of course, allowable also. How much of a property right is transferred depends on the agent and the relevant contracts, social and personal.)

If any rights we have with respect to our natural bodies are also rights we have with respect to artificial parts, we can trade or give houses, money, clothes, diamonds, or whatever. By astute trading or by the lucky accident of being well-loved or well-born, a person can have exclusive *prima facie* rights to the use and movement of any number of things whatsoever.

As I have said, it may be that these rights really are just *prima facie* and that some considerations may override them. For example, it may be that the uncharitable owner of the world's total food supply can legitimately be coerced into parting with some of his property. Such a violation of property rights, though, is on a par with taking the flesh of the only robust person against his will to feed the starving. Each such overriding of property rights must be justified against a strong *prima facie* right of persons to control what they legitimately have as body parts. I have no idea *how* principles of good and bad can suffice to make it the case that we ought to violate another's rights.



Furthermore, that a thing has been incorporated into a person's body only gives him a property right to it, even *prima facie*, if its incorporation violated no one else's rights. If I take your arm while you're asleep, and attach it to myself, I don't have a property right to it, since it's not clear that it's really part of *my* body. This paper takes no position on what steps you're entitled to take by way of recovery of the arm or the money I earn by use of the arm. If I innocently buy your arm from someone, now dead, who stole it from you in your sleep, subtler problems of rights and compensation arise. The above theory deals directly only with property whose history doesn't contain such injustices. Much actual "property" may well be a result of assiduous employment of goods with such tainted histories. Thus the theory as developed so far may say little about who owns what in the real world.

#### IV. THE TRUTH OF THE ANTECEDENT: OUR RIGHTS TO OUR BODIES

The derivation of our rights with respect to our bodies depends on finding some still more basic right which entails our right to move and use our bodies. I argue that our right to move and use our bodies as we please, and the obligation others have not to move, use, or transform our bodies against our will, is essential to our right to exist as agents at all. If we have a right to exist, then we have a right not to have our agenthood terminated. I will show that, if we have a right not to have our agenthood terminated, then we must have a right to the exclusive use and movement of our bodies, natural and extended.

To begin with, suppose that two-substance dualism is false, so that, at least, destroying a brain destroys a person. If we do not have exclusive rights to move, use, and transform our bodies, another could legitimately and permissibly eat our brain for supper, or transform it into viscous paving material. If another quicker person has equal right to use and move your body, it seems that he can move your brain out of your head and use it for paving material. But this gives him the right to destroy you. When your body is sufficiently transformed, you're gone.

The obvious strategy to avoid body rights and keep equal rights to all entities for all people without making such agent-termination permissible is to propose a rule such as: "It is permitted to use any thing one pleases, but one must not

terminate an agent's agenthood." To begin to see what is wrong with this rule, we should note that many uses short of using a person's brain for paving material in effect eliminate agenthood. If I'm a powerful telepath and decide to transform Jones in ways which do not kill the organism, for instance by shaping his will to fit mine so that my dishes get done without effort on my part, I've destroyed Jones' agenthood. Similarly, a person's agenthood is effectively destroyed in most cases if you just transform his arms and legs and muscle into hamburger.

Eliminating agenthood seems to be a matter of degree. No line obtains between diminishing an agent's power and making him no agent at all. If we chop off a section of a finger, we might say that the agent is still there, able to affect the world. In fact, it would seem that any minute diminution of an agent's body would be such that, if the agent were there before the diminution, he would be there after it. But if no such diminution eliminates the agent, the agent can act without a body, which is false. Thus the only *principle* which could give a person the right to be an agent would give a person a right to be as much of an agent as he is, if eliminating agenthood is essentially vague and also violates rights.

If a person has a right to be an agent, he must have a special right to whatever body he has, since no narrower rule can be justified. A person's special right to his body is just his right to be. Since a person does have a right to be an agent, and since exclusive rights to movement, use and transformation of some of his body is essential to his agenthood, and since no moral justification exists for drawing the line anywhere, a person has exclusive rights to all of his body. This argument doesn't give agents the right to use whatever power they have, if that power involves usurpation of another's body.

It may be objected that theft of "surpluses" doesn't diminish agenthood. But surpluses can be used both to acquire more stuff and as "insurance" for various risky activities. If I have only one kidney, I can still risk it playing football, but it's not usually rational to do so. If being an agent involves planning for the future, and actions are constrained by possible future needs, then theft of surpluses diminishes agenthood. In any case, what counts as a surplus is vague and interest relative, by obvious arguments.

The same considerations apply to "artificial" body parts. You can kill an eskimo just as effectively by transforming his

clothes to dust as by transforming his brain to pavement. You may diminish a person's agenthood just as much by taking his car as by taking his right eye. Property, i.e., artificial body parts, can be just as important to our agency as "natural" body parts. If the right to agenthood is what preserves rights to bodies, and no line can be drawn between permissible and impermissible body reductions, then a person has rights to all of his property by the same argument. No significant moral difference in kind obtains between eliminating my ability to play softball by taking my knees away and eliminating my ability to play the market by taking my money away. Crimes against property are just crimes against persons which tend not to produce immediate sensations of pain. Theft, taxation, and disembowelment are different forms of the same kind of violation of rights.

#### V. SOCIAL INSTITUTIONS AND PROPERTY RIGHTS: A CURSORY TREATMENT

Many people hold that property and property rights are essentially social, so that the most a derivation such as the above can show is what pre-institutional property rights might be. Since I hold that incorporation and property rights are natural, i.e., independent of institutions, the arguments to the opposite conclusion must be dealt with. The basic current form of the argument says that, since property and property rights are logically connected to other persons, rights are essentially social. Furthermore, if rights belong to people essentially, then people are essentially social entities and it doesn't really make sense to derive "rights" for them in an individualistic, a-historical way. I'll deal with the social nature of rights, which implies that what your property rights are depends on what your society is, and then discuss the claim that persons are essentially social.

Property rights *are* social in the sense that an agent in isolation has in fact exclusive use of everything and so has no call to enforce any rights. This though, entails neither that what rights a person has varies from society to society nor that those rights are properties of an individual who is of necessity social.

First, the non-relativity argument: Murder, torture for fun, and enslavement are violations which likewise require other persons. Intuitively, though, the rights that such acts

violate are differently enforced in different societies. A society which condones killing someone, if a majority in it so vote, is not a society in which such killing does not violate rights. It is an unjust society, one whose laws do not protect certain rights. So the claim that rights can't be logically independent of some society doesn't show that rights vary from society to society.

I regard rights as necessary conditional features of persons *qua* persons. I will argue later that "person *qua* person" is a notion which is metaphysically independent of "society". How can there be essential features of persons which are logically connected to societies unless the person is essentially social and the features dependent for their reality on the society the person is in? The following argument should make this independence clear and should clarify what a necessary conditional feature is:

- (1) Brontosauri are essentially over seven tons (suppose).
- (2) Chipmunks are essentially under one pound.
- (3) Necessarily, any brontosaurus outweighs any chipmunk.
- (4) Brontosauri have an essential feature which is logically connected to chipmunks, i.e., which cannot be made sense of apart from the concept of a chipmunk.
- (5) Brontosauri are inconceivable apart from chipmunks, if necessary features follow from every adequate concept.
- (6) The weight of a brontosaurus is something he has only in relation to chipmunks.

The absurdity of conclusion (5) will be used to argue that persons are not essentially social even though some of their essential features are logically connected to society. That of conclusion (6) I now use to argue that rights are properties of persons apart from societies in the same way that a brontosaurus' disposition to outweigh any chipmunk is a feature it has in itself which doesn't depend on the being of chipmunks. The argument depends on noting that another description of exactly the same feature doesn't make reference to chipmunks. Outweighing chipmunks is a feature that derives from brontosauri necessarily weighing over seven tons. Bron-

tosauri, in virtue of their necessary weight, are such that, if there are chipmunks, then in virtue of necessities about chipmunks each brontosaurus necessarily outweighs each of them. Logical connections between features are connections between features under a description. Any two kinds with distinct essences can be "logically" connected in this way by an obvious argument. I would argue that a person's rights derive from his being a rational agent. A rational agent is necessarily such that, if he's in contact with other rational agents, he should be treated by them in certain ways. This feature gives him his rights. But this no more shows that he or his rights depend on other agents than the analogous argument shows that a brontosaurus' weight depends on chipmunks.

The derivation of rights from rational agenthood is, admittedly, tricky, and I refer the reader to Kant for a good sketch. The importation of a society, though, seems not to reduce the problem. If one person can't have rights, how can a lot of people help?

For many people, the flaw in the derivation of society-independent rights from rational agenthood is that rational agenthood is, arguably, impossible without the support of the society. An entity cannot be a rational agent outside of a society. This, along with the argument that rights are essential to man, rights are essentially social, so man is essentially social, is one of the main rational supports of the view that individualist approaches to ethical and social philosophy are misguided.

Rights, on any account, derive from the nature of man. The real reason a defender of a social basis for property rights thinks property rights are social fabrications is that he thinks all rights are social fabrications, because the nature of man is to be a social entity. A well regarded argument for this claim takes the nature of man to be rational agency and argues that being a rational agent requires social support. To be a rational agent requires being something which represents states of affairs truly or falsely, and plans on the basis of such representation. To represent a state of affairs is to have terms or thought tokens which pick out properties and objects, i.e., which refer to properties and objects. A term's reference is determined by what it is applied to—i.e., what a culture means by "toad" depends on what things they call toads. The culture's use of a term, its dispositions to apply the term, deter-

mine what the term is true of. Roughly, then, the content of a concept determines its referent. When this theory of reference is applied to an isolated individual, though, it becomes impossible for that individual to state falsehoods. If what he says when determines what he's talking about, and this determination proceeds by making what he applies the term to something to which the term applies, then the person can say nothing but truths, by the very nature of what "applying to an entity" is. That is, there is always some extension which fits exactly the person's use of a term, so that, by the principle that reference is a function of use, no alternative utterance the person might have made could be false. But unless there is some possibility of uttering falsehoods, there can be no uttering of truths.

On the "meaning is use" theory, then, the unit for determining reference and therefore truth must be the response patterns of groups of people, so that a kind of majority rule can determine a reference and a correctness of response relative to which an individual can deviate. So if rationality requires representation of truth and falsity, and such representation requires a history of membership in a society, rational agenthood is possible only in a society. So if man is essentially rational, he is essentially social.

What is wrong with this argument is that it rests on a mistaken theory of reference. Reference does not work by matching dispositions to respond with the objects which would elicit those dispositions. The "meaning is use" theory is a theory that internal features of concepts determine reference, so that, to determine reference, we check a culture's head, check the world, and see what matches what. This theory has been attacked<sup>10</sup> and shown to be self-contradictory.<sup>11</sup> Reference depends on what is in the world, what kinds there actually are, not on what sets of things our response patterns would pick out. If a whole culture would be fooled by artificial diamonds made of synthetic abrozone, that doesn't mean that their term "diamond" refers to diamonds and abrozone. So an individual can have his own language apart from a society. Once this isolated speaker names a certain substance "gold", then, if what he next applies the term to is not of the same kind, he has said something false. Reference is up to us when we're baptizing, but reference of general terms<sup>12</sup> is to kinds, and what is another element of the same

kind is not up to us or to the contents of our concepts, but rather up to nature.

So an entity can be a rational agent without being part of a society. If rights devolve from the essential nature of man and man is only accidentally social, rights cannot be social fabrications. Societies can only protect or fail to protect rights that are there.

In any case, my derivation is primary and prior to any historical account. If persons really exist, they have a nature. If there are no reasons to think that their nature is social, then none of their rights can be dependent on what society they live in. All persons have the same essential features which are their rights. So historical accounts of rights are just accounts of how societies have come to recognize and disavow certain rights (rather like the history of science). Capitalism may be doomed historically, at least for a while, but this no more shows that it is mistaken than the inevitability of the dark ages showed that Archimedes and Euclid were wrong. There is no reason to think that great discoveries necessarily stay believed, apart from confidence in some mystical progress<sup>13</sup>.

## NOTES

<sup>1</sup>Locke, John, *Second Treatise of Civil Government*, Sec. 27 (Henry Regnery Company: Chicago, 1955): 22.

<sup>2</sup>Nozick, Robert, *Anarchy, State, and Utopia*, (Basic Books, Inc.: New York, 1974).

<sup>3</sup>Gibbard, Alan, "Natural Property Rights," NOÛS (1976): 77.

<sup>4</sup>Gibbard, p.85.

<sup>5</sup>*Fantastic Four*, (Marvel Comics Group: New York, November 1968) *passim*. Plastic Man had similar talents.

<sup>6</sup>Gibbard, pp.79ff.

<sup>7</sup>For an explanation and theory of attributives see Sam Wheeler's "Attributives and Their Modifiers", NOÛS 6(1972) 310-34.

<sup>8</sup>See "Inference and the Logical 'Ought'," NOÛS 8(1974): 233-58.

<sup>9</sup>In "Inference and the Logical 'Ought'," *loc. cit.* This is borrowed from Donald Davidson's "How is Weakness of the Will Possible," in *Moral Concepts* ed. by Joel Feinberg (London: Oxford University Press, 1969).

<sup>10</sup>Kripke, Saul, "Naming and Necessity," in Davidson and Harman, eds., *Semantics of Natural Languages* (D. Reidel: Dordrecht, Holland, 1972): 253-5.

<sup>11</sup>That this is the import of Kripke's argument is argued in Sam Wheeler's "Reference and Vagueness," *Synthese* 30 (1975): 378-9.

<sup>12</sup>If reference is a real relation, then whether a term is a general term will be a fact of nature, not an artifact of a "general term language game."

<sup>13</sup>I thank the following people for helpful comments on earlier versions of this paper: David Braybrooke, Roger Gottlieb, A. S. McGrade, Joel Kupperman, Robert Nozick, Michael Simon and John Troyer.