

John Christman, **The Myth of Property** (New York: Oxford University Press, 1994) [pp. ix + 184, + Notes, Bibliography, Index].

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In this interesting but irritating book, John Christman sets out to attack the thesis of "full liberal property rights," which - oddly - he seems to think is the prevailing theory of property nowadays. This bundle or package includes rights to do many distinguishable things, and these things can be not only distinguished conceptually but actually held distinct in practice. The list is old and familiar: rights to use, possess, control, sell, rent, manage, hold as capital, hold the income from, and so on.

Here is how Christman sees the task of his book:

The new understanding I will put forward says that ownership can involve a kind of control over the thing owned, or it can involve a right to income from trade or rent of the thing owned. The interests that these two (sets of) rights protect are different in character and weight... Thus the set of property rules adopted by a society...must be considered as separate packages. The contrast between each of these pairs is so stark that principles of distributive justice must deal with them as completely separate normative structures. (7-8)

On one understanding of the main analytical purpose of this work, the first several chapters are devoted to arguing for this last point. Christman believes he has met his task and says: "I conclude...that liberal ownership ought to be rejected as the paradigm of individual property rights in a just society." (10) If so, that's puzzling, since the distinguishability of these things, on which he rests this sweeping conclusion, is something nobody would or can deny. Obviously there are people who rent but do not own, people who collect income without owning, people who use in some ways without controlling in various other ways, and so on. If Christman's purpose were to show us that, the book would be pointless - it's old hat. What needs arguing, of course, is the second thesis: that there is a strong normative case for treating the supposedly two sharply different aspects of property so differently as to amount to two radically different theories of justice. Does he succeed in this? Not in this writer's judgment.

Christman's central concern is with a thesis he calls "liberal ownership." Just what is that thesis? Roughly, I guess, it's that all of the various rights enumerated hang together in some sense. What sense? Presumably that if one has some of them, then one has the rest? But that can't be it, because property rights are "alienable" - that's one of their main attractions. The man who owns can rent, if he wants to; and if he does, then he relinquishes, for the time being, certain rights over his property in return for the rental payment. So the "liberal thesis" clearly cannot be that if you have one right, you necessarily do have them all. What is it, then? Plainly it has to be a normative idea: that people *should* have, by virtue of some kind of initial acquisition, all the rights in the package, unless and until they voluntarily relinquish some or all to someone else on mutually agreeable terms.

Is there anything about the property rights package that suggests this? Yes. There is a basic right in the package such that, if you have that, then there is a good fundamental

liberal reason why you should have all the others, until you voluntarily relinquish them. It is, simply, the right to control, that is, to do what you like with - to have, in short, authority over the use or disposition of, the item in question. Once you have that, you are in a position to rent, lease, or sell it, or enter into a partnership with, any willing other person who has similar control over something you might want. According to the liberal *thesis*, individuals who have the first right ought not to be prevented from engaging in the other activities as well. To deny individuals the right to do those other things is, according to this moral thesis, to *violate* their rights.

But the liberal property thesis, it seems, is founded on a "myth", according to the author. Well, what myth? We aren't told, really. Feminists sometimes refer to the "myth of masculine superiority." Referring to that set of beliefs as a 'myth' makes some sense: we know what is meant, and intelligible options for discussion are opened by it. But nothing like that is claimed by Christman to be at the root of the idea of property. Individuals who own things are not thought, by liberal theorists, to be supermen, or to be engaging in magic. They're doing ordinary, recognizable kinds of things, and the liberal is the theorist who thinks there is good reason for allowing people to do those things - that we have no satisfactory general reason for disallowing any of them, so long as they obey the familiar constraint that none of them may violate the rights of others in the process. But those other persons' "rights" are not up for grabs either. Each and every person, on the liberal view, has a fundamental, negative right to his own person, and thus to his own activities. Positive rights, e.g. to a "social minimum" or to "equality," are not part of the liberal package. The main thesis of the book is that these many things that can be done with things should be separated into just two general classes: (1) rights of possession and use, and (2) rights to income - "these two notions, control and claims to income, must be completely separated in our understanding of what it means to own something" (p.26). Christman's view is that the second, but not the first, should be taken over wholesale by the state, to be used to promote the familiar agendas of the political "left". (See Ch. 9 entire).

Why? According to the author, "The interests that these two (sets of) rights protect are different in character and weight... Thus the set of property rules adopted by a society...must be considered as separate packages." (7) This is an old idea, distinguishable only in detail and in terminology from the main idea of Marxists, who want to deny "private ownership of the means of production" while affirming rights of individuals to use the products of those means, or of Proudhonists, from whom Christman may as well have got the idea. The question is whether there is any real basis for doing anything of the sort. That it in some sense *can* be done - or at least attempted - is obvious enough. But that it *can* be is, of course, not enough to show that it also *should* be. Yet the unwary reader might well get the impression that the analytical work here is supposed to support the normative theses all by itself. Of course it can do nothing of the sort. The analytical work doesn't show in the least that the people who make something, for example, do not thereby have any claim to the income they might be able to derive from its sale. All they show is that other people can take that power away from them if they want to - and, as I say, we already knew that: we know about socialism, just as we knew that it *can* also take the first one away - we know about slavery, for example. Christman agrees that slavery is a bad thing. But he wants to support the state's disallowing of individuals from uninhibitedly engaging in "capitalist acts between consenting adults," as Nozick so delightfully put it.

Whether this makes good conceptual sense is the question. I think not, and am completely unconvinced by any of the author's often intricate arguments. Possibly in contrast to some who might hold egalitarian thesis, Christman wants to accept the rights of individuals to use and possess and control material objects in their own interests, even when the resulting patterns of possession and use will be highly "unequal" in whatever intelligible sense one can apply the notion of equality here. That provides a good point of departure. For the question now is: where is the rationale for segregating these rights of possession and use from the rest, involving income and exchange?

Christman claims (1) that these various rights fall neatly into two sets, and (2) that highly plausible normative bases exist for distinguishing between them along the lines indicated. I find both of these claims problematic in the extreme. Consider, for instance, the general idea of "income rights." Suppose that Robinson, all by himself, ingeniously plants a garden, resulting in a very generous table in the future. Isn't this *income*, in any reasonable sense of that term? It's a return on that individual's investment of his own resources, physical and mental in a bit of the natural world. If Christman thinks that's OK, as he apparently does, then why does the addition of just *one* other person make so much difference?

Note that the maker or original user and possessor of anything will thereby have powers of the interpersonal "income" type, as soon as he's in touch with one or more others who have the same powers of use over other things. So long as neither the possessor nor those he is dealing with are hampered, say by gangsters or by governments, they will engage in trade, on terms mutually agreed: that is, those who work on material objects, transforming them intentionally in certain ways, are simply carrying on from where they are if they then go ahead and proceed to make trades of those items with others. Logically, the situation would seem to be straightforward. If I genuinely *have* the right to *control* the disposition of some item, then obviously I am thereby in position, and thus would by that token have the right, to give it to someone, or sell it to him, or rent it to him, or whatever, so long as he too has the same initial right of control over the objects I wish to obtain, or the services I wish to have him do for me. We need but lay down conditions on which we will relinquish these objects from our own control, and make those conditions include the taking into our possession of the items previously controlled by the other. And, of course, once I can do that, then I can also, if I like, rent it instead of selling it, and so on; or direct that all the rental income go to my favorite niece, or my favorite charity, or whatever. That is because I have *control* over the items. So the question is, Why not? Christman needs to supply specific good reasons for forbidding activities which are naturally engaged in by people having the kind of rights he wants to agree they have. I don't think he's found any.

Under the circumstances, Christman's thesis looks remarkably arbitrary. In his view, *One* person, working by himself, has, the right to whatever increase he can get from *his* labor - yet as soon as there are *two* or more, they do *not* have the right over *their* labor: "society" gets to intrude on the proceedings, collecting taxes and so forth, and using the income to redistribute the cooperative surplus of their activity to any number of other people - fellow Americans, say - even though none of them had anything whatever to do with the creation of that new wealth - only the joint work of the two did that. This, it seems

to me, makes no sense. Either society should have been able to step in right from square one and enslave the individual to any degree it likes; or it should not be able to do so just because there are now two, or five, or 867, or 122,000,000 cooperating persons instead of just one. But income rights are just that: income is got from exchanges with other persons, and whether those be one or a million, the situation is the same: the new wealth is created by precisely those people, and not by society in general. So either society has no claim on any of it, or else it had just as much claim to any single individual's non-cooperative production as it does to the groups.

Some transactions involve negative externalities of a significant kind; when that is so, property theory itself shows why those on whom they fall have a complaint. What to do about such situations is an important and interesting question, but it is also usually a sideshow. It is anything but a sideshow when there is up-front force or fraud, of course. The presence of those factors obviously mean that the "exchange" is not a free-market exchange at all. And it is precisely the unfreeness of the effects of pollution on the lungs or yards, or whatever, of those affected by it that is the basis of their complaints; such things obviously are relevant to any defender of the liberal market. Just as we must prohibit violence and fraud, so we need to enable genuine victims of side effects of transactions and processes to be correctly compensated. But things like that will not get us to socialism.

The trouble isn't just that socialist governments in the past have been, by very far, the world's worst polluters; rather, it's that the foundations of socialism simply have nothing to do with any of these things. Socialists fundamentally deny producers' rights to what they produce. The state will instead "direct" production, manage its sale if sale is involved, and in whatever other ways distribute the results to persons who have no obvious claim on it. Christman embraces what he terms 'egalitarian' ends, though they have no better claim to that term than do the proponents of general liberty rights as the fundamental principle of the social charter - actually a good deal less, some of us might say. But at any rate he embraces the familiar leftist agenda: let's take from the "rich" - a.k.a. the productive - and give to the "needy" - that is, those designated as such by the state planners, into whose hands the control of our purposes will go. Obviously this is possible - it happens all the time. But why *should* it?

Like every book to this general end, Christman's book actually contains no arguments whatever for its fundamental normative claims. He is an "egalitarian," - but why? We are not told; it's just *asserted*. Distributive claims, without paying attention to the wishes of the producer on that point, *need to be argued for*. But where is the argument? You can search the pages of this book exhaustively and you won't find one. Genuine arguments for property rights, on the other hand, exist; Christman even has some inkling of some of them. But not, as it turns out, much, since in each case they are distorted into irrelevancies. On the other hand, socialism has its share of real myths, or at least illusions: that private ownership of the means of production consists in some people taking things from others; that it is incompatible with the production of public goods; that it caters to and lives by racism or other such 'isms'; that it is a matter of "rewarding the hard-working" and paying according to "effort" - these are all, by now, exploded ideas, put into circulation by people, such as Marx and Engels, who offered no clear analysis of why we should expect them to be true, or made the criticisms in too vague a way even to be certain what the charge is,

and perpetuated by people who haven't done their homework. There is no longer any excuse for maintaining any of them - and therefore, in reality, for this book. Despite its considerable learning and elaborate analyses, it is a book with nothing basically new to offer; and what is old is, in all normatively significant respects, wrong, and certainly not argued for.