

# **On Economic Rent: Michael Jordan, The Reichmann Brothers, and Jim Smith, Day-laborer: Whom do we get to Tax, and Why?**

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Michael Jordan is a highly talented basketball player; crowds delight to watch him exercise his skills, thus enabling him to sell those exhibitions at a good price. He has done this for some time, and is in consequence a wealthy man. The Reichmann Brothers, for awhile, were immensely wealthy from clever real-estate investments. (They also went broke, for awhile, when real estate values collapsed. We hear that things are going better for them these days.) And Jim Smith is a working-class person, who gets the going rate for sweeping the floors in a warehouse. We should no doubt add Bill Gates, for completeness: his stock has gone through many roofs, making him - for the present, at any rate - an extremely wealthy man. Our assemblage of money-getters thus covers the classical gamut of Wages of Labor, Rent of Land, and Profits of Stock. According to Barbara Fried, we get to tax all of them except Jim Smith. The others, we are told, exemplify the category of "surplus value," and the incomes derived therefrom are accordingly taxable by virtue of amounting to "economic rent." Even David Gauthier concurs that insofar as income is "economic rent," it is in principle eligible for being taxed. Views of that kind are widely held. Not, however, by the Taxman himself. That personage avoids subtle distinctions, feeling free to tax absolutely anything he can get his hands on. Convenience of collection and relative lucrateness are all that matter to him.

The purpose of the present essay is to dispel illusions to the effect that there are differences among sources of market-derived income such that some are properly subject to tax and some not. I am of the contrary view: no income of any kind should be taxed, taxation being a mistake. Most readers will draw the opposite conclusion: that virtually *everybody* should be taxed. Whichever of us is right about that, the point remains that the taxman is right in making no basic distinctions among these resources for income. Either it's all grist for his mill, in principle, or none is. If he distinguishes some potential revenue-suppliers from others, it will quite properly be on pragmatic grounds, not grounds of fundamental principle. Less-than-fundamental considerations of fairness, yes: but that cuts across the distinction we are concerned with here, namely the

distinction between income from economic rent versus other kinds. While most readers, for reasons I am unable to go into here, favor the taxman, I prefer the people. But that is not the main point at issue here.

I shall discuss the subject via reflection on two recent papers<sup>1</sup>, one stimulated by the other. Both writers discuss Nozick, who will therefore also come in for mention below.

### 1. Fried's Thesis

I begin with Barbara Fried. Her argument is essentially this:

1. [assume:] Laborers deserve what they get from their labor.
2. Income from rent or holding stock isn't real "labor"; income of the latter sort is not "earned"; it is essentially "rent."
3. Rent is therefore essentially appropriable by the public, even if the products of labor, as such, are not.

Fried's central focus is on a narrower issue: whether we should say that high-income talents are like land and stocks in being essentially the source of "rental" rather than "earned" income. Michael Jordan may work very hard, both while he plays and in the many years of intensive practice honing his skills in the years preceding professional play; but basically those skills were inborn, and so "at least in theory, we could tax him on the value of that income-earning potential from the moment of birth, with appropriate adjustments each year to reflect changes in its value."<sup>2</sup>

On this narrower issue, there is an obvious rejoinder to the argument about the very talented: *all* talents, great *and* small, are likewise inborn (or, as in Rawls' famous argument, made possible only by possession of features of the subject that, in turn, are inborn). If being inborn is what makes a valuable asset eligible for taxation as being unearned, then *all* income earned from the sale of work is eligible, since it is all unearned. Fried's effort to drive this particular wedge thus comes to grief: it is a distinction without a difference, except in degree. But then, if we will tax a factor, *F*, that is variable in degree, we will *prima facie* tax it proportionately.

Why, then, does Fried, or anyone, think that it does make a difference? Her answer is this: What is "implied in property", says John Stuart Mill in a passage quoted by Fried, is "the right of each to his (or her) own faculties, to what he can produce by them, and to *whatever he can get for them in a fair market*; together with his right to give this to any other person if he chooses, and the right of that other to receive and enjoy it."<sup>3</sup> I would note that Mill's statement of the matter is redundant, since the right of the seller to give or sell to whom he chooses, and of potential recipients to receive as they will, is all there is to a "fair market." Fried might possibly dispute this latter point, and it is important; much of the remainder of this article will, in effect, be concerned with such possible disputes.

Meanwhile, she goes on to say that “the moral appeal of a Lockean labor theory of ownership lies in its promise of (quoting Mill again) ‘proportion between remuneration and exertion’”<sup>4</sup> But on that point, Mill’s phrase is misleading. For there is no independent measure of “exertion” here - nothing you can point to in what is done by the worker or the entrepreneur, such that whatever the former produces or whatever profit the latter reaps from his investment will necessarily be proportional to it. That reflects the problem with every version of the “labor theory of value.” As Nozick demonstrated,<sup>5</sup> attempts to recalibrate the input so that it will match the output inevitably have the tail wagging the dog: how much you have worked is measured by output rather than by the number of hours, or calories, or whatever, that went in; but then the evaluation of that output is made by consumers consulting their desires and their budgets, not by theorists. Michael Jordan probably puts out a lot more calories than, say, Thomas Edison, and probably works more hours than a lot of us; but his high salary is not a payment for calories or hours, but rather for performances at basketball, and how much he may need to practice to perform so well is an empirical question to which answers will be hard to come by, and probably vary widely.

At the outset of her article, Fried characterized the view that people are entitled to what they create as “the most widely held intuition about distributive justice.”<sup>6</sup> The intuitive status proclaimed for this truth is of some interest, perhaps. But what matters is the strength of the reasoning underlying it. And that reasoning is straightforward. What *do* creators create when they create something? The immediate answer might be some material good, or an essay or painting or whatever. But there is a more fundamental answer, for present purposes: In doing this, they create the occasion for desirable experiences for others - experiences desirable enough to make those others willing to pay something in order to have them. If you create *x*, *x* wouldn’t have existed but for what you did; other people, if any, who come to use *x* in some way have therefore been done a service by you. This service is worth something to them. How much? As much as it’s “worth” to the buyer - which is, of course, very variable from one potential customer to another. So the price to propose is a matter for each potential future user to decide for herself, and whether it is accepted is up to the seller. In light of her answer to that, she either pays a proposed price or she doesn’t buy, perhaps proposing an alternative price - all of which she is permitted to do on the general assumption that she may do as she pleases provided only that she not thereby impose involuntary costs on others. Thus the price is, quite strictly, a matter for negotiation.

All of this is part of the package we are considering. There is not an independent component, consisting of a publicly available, common measure of labor on the one hand, and a measure of output on the other, and some common measure of the two, such that we can say on the basis of the one that a creator is entitled, *qua* creator, to such-and-such a ‘reward’ for his efforts. That is not what the “intuition” Fried is exploring amounts to. The intuition, rather, is that if you scratch my back, I’ll

scratch yours; and more specifically, that if you offer to scratch mine if and only if I scratch yours, and I take you up on it, then we owe each other a scratch - and we owe it to *each other* rather than anyone else, because it is each other who is the provider of the service of which we thereby avail ourselves, and therefore the one to whom it is relevant to make an offer.

In none of this is there any interest whatever, fundamentally, in the question whether what the potential seller can do for the potential buyer is something that costs the seller a certain amount of physical labor, or of mental labor, or anything except attention to the question of whether she should part with her control over it in response to the offer being made.

Why do people think that such distinctions do matter nevertheless? There is an easy and plausible answer. Taxation is enforceable; governments use force, when necessary, to transfer wealth from its possessors to themselves, or to others as designated by the government rather than by the initial possessors. People with more will thus be viewed by people with less as eligible targets for such transfers. People with nothing are unlikely to be capable of effecting such transfers, but people with below-average amounts are quite likely to be so. Thus we below-average types need a "social theory" according to which ordinary workers receiving ordinary wages have "deserved" and "earned" them and thus get to keep them, whereas the so-and-sos who have a lot more than we do clearly have not "earned" them and are therefore justifiable targets for predatory activity by the "people," that is, by people well below the median income. But, I shall argue, no such theory is plausible.

The fundamental reason for claiming that a laborer is entitled to his wages is that he has *produced* what he gets. An isolated frontier farmer in 18th or 19th C. America, for example, makes virtually everything he has. Taking it from him obviously invades him; forcibly transferring it from him to others effectively enslaves him to those others. And we all, of course, think that slavery is wrong.

If we are inclined, as is Fried and almost everyone, to accept this story, then we shall quickly enough run into a snag. For our frontier worker works on land that was not created by himself. If he is entitled only to the fruits of his labor, no matter how you construe that, then how do we separate out what he himself has made from what nature has contributed? Clearly he does not deserve nature's share in the enterprise, does he? So we are back to being able to tax even marginal farmers, after all. So the story goes.

The latter argument would be susceptible of no reasonable reply, if its premise were correct. For there is no rational way to assess the relative values supposedly distinguished in the preceding argument - no way to apportion what *we* contribute in comparison to what *nature* did. Nature's contribution will always be necessary: no amount of effort expended on nothing will ever yield our dinners, or even our symphonies. The closest we can come is purely intellectual effort; but even if man could live by bread alone, he certainly cannot live on thought alone.

However, man does not live by nature alone either. Put our individual in whatever paradisiacal state you like, and at least *some* effort on his part will be necessary in order to translate nature's bounty into a square meal. At the lower limit, perhaps, we could envisage returning to the womb, where everything is truly done for us. But then, the person who does it for us is quite decidedly not in a womb herself, and certainly must put forth effort, guided by some at least rudimentary know-how, to enable her to continue to function as a supplier to her infant.

Should we say, then, that all effort being human, nature's "share" should be zero? Or should we instead say that all effort is made potentially fruitful only by nature, and so nature's share should be 100%? To this, fortunately, the correct answer is easy: *we* get it all. Nature's share is zero, because nature *isn't one of the players in this game*. Nature, as such, has no moral status. It is, simply, *there*, a bunch of stuff of various kinds. When people devote effort to altering nature in one way or another, it is with a view to satisfying assorted desires, realizing various values, of their own. Nature has no desires to satisfy, no values to realize, and in any case, no intelligence to enable it to address itself to the question of what to do this morning, or how to accomplish it. So the right answer to the question posed in the previous paragraph can only be as I said: *all* for us, *nothing* "for nature".

This obvious point will no doubt raise hackles. It will be thought that I'm devaluing nature. Not at all. I am instead merely correctly identifying its relation to morality. People's valuations of nature, both as a means to useful products and as an object of aesthetic admiration or spiritual contemplation, are among their primary inputs to moral and political matters, which largely concern whose values are to give way to whose in situations of conflict. Those who admire nature as it is attempt, on the basis of their admiration and love - *theirs*, not *nature's* - to exclude others who would turn it into parking lots. One set of values and agents contests with other sets. But nature isn't one of the players; it is, instead, what the game is about.

Now, the arguments we are considering here do not in fact put it that way. Their proponents make an assumption: if good X is "due to nature" rather than to Jim Smith, then it is appropriable *by the rest of us* despite the productive human effort involved being Jim's. Why? The answer could only be that nature, as such, is assumed somehow to belong to mankind *collectively* - the hoary Lockean assumption that got philosophers in the ensuing three hundred years into writing articles such as Fried's. But the assumption is manifestly wrong, even absurd. Nature is inert. It does not, as such, *belong* to anybody - it simply *is*. People are equipped with interests, intelligence, limbs, backs, torsos, muscles and bones, and the motivation to use those resources in order to accomplish their goals. They apply those to whatever they can apply them to: land, trees, veins of gold, whatever. That's just the way we are.

Where does morality enter this picture? Again, the general answer is clear. It enters as a set of what we nowadays may reasonably describe as "social software." People encounter other people, likewise equipped

with desires, intelligence, and the other means to fulfill those desires. So long as we are Robinson Crusoe, there is no need for such software - though there is plenty of need for prudence, directing us to allocate our efforts more efficiently rather than less. But it is when people come in contact with each other - as, we may well suppose, all of them do - that we encounter the kind of problems that we can hope to do something about by means of an institution of morality, moral-type software. So conspicuous among these problems as to be almost definitive of them is that some people will see a prospect of gain from availing themselves of services capable of being provided by others, especially in the form of appropriating the products of other people's efforts. The thought occurs to such people that by investing some effort in the means for such appropriation, rather than directly from nature, we can increase the efficacy of our efforts.

There are basically two species of such efforts that matter from the point of view of the potential re-appropriator, and that set the stage for a moral institution.

(1) In one case, the effort is devoted to inducing voluntary transfers of control over various products or other services to the other person.

(2) In the other case, effort is devoted either (a) to forcibly appropriating those products, nullifying any effort the attacked parties might make to resist, or (b) to *coercion*, which induces people to transfer those products by the prospect of still greater loss if they do not.

The difference between (2a) and (2b), for present purposes, is immaterial. It is enough to observe that people are sometimes motivated to "invade and despoil", as Hobbes puts it. Any of these methods might be rational from the point of view of the appropriator. But from the point of view of potential victims, there is a clear distinction between them: he greatly prefers (1) to (2). Or at least, he does provided that the methods employed under the aegis of (1) do genuinely make the transfer fully voluntary. They will be so only if the communication by which otherwise voluntary transfers are induced is reliable, in the sense that the information transmitted by the first party to the second (and vice versa) is clear and accurate, so that the second party knows exactly what he's getting into. Only thus will the transfer be fully voluntary. Since it is easy and can be highly profitable to lie, mislead, distort, or obfuscate, the temptation to do so is great. But these deviations from clear communication are part of methods of type (2), not (1). Blending voluntariness with coercion is easy and familiar.

Various facts about the general situation of people may now be brought in to support a fairly simple and straightforward principle for designing the needed social software, that is, moral rules. First, we are all quite capable of employing either method (1) or (2). Were it not so, a plausible social rule might be designed that would solidify and provide social recognition, "legitimacy", to the continued existence of a subset of people who would standardly exploit the rest. We might think of the Medieval period in Europe, in which there developed a warrior class

whose members were so formidably superior in fighting ability to ordinary working people that their continued dominance was recognized in the social mores of the day. And second, investment of effort on methods of type (2) is, from the social point of view, inefficient. *Prima facie*, investment in predation is unproductive. In order for predation to "produce" anything, someone else, the potential victim, must have engaged in nonexploitative production. Predation produces for one person at the expense of another. Again *prima facie*, had the exploiter invested his own labor in production rather than predation, there would be more for both parties. (We will also do well to appreciate how long it took Europe to move from a situation of desperate poverty to one of modest poverty. The correlation between that and the thralldom of the productive to the militarily superior is, I suggest, hardly accidental.)

It might be argued that the proper social rule is got by calculating the expected gains to predators from predation as compared with their expected gains from their own non-predatory production, and then imposing a tax on the nonpredatory producers to compensate the potential victors in predation for desisting from such predation. This provides mutual benefit - or does it?

The answer to this is that it would, if the potential exploitees were incapable of predation themselves, or otherwise spoiling the picture for the exploiters. But since that is normally false, a proposed system of the above kind will induce normally productive persons to turn to defense or counter-predation themselves. This reduces social efficiency yet more. Instead of a predatory class exploiting a productive class, we will have everyone spending most of his time and energy either on predation or defense, or a mix of both.

Taking all this into account, we may propose a simple hypothesis: let's prohibit activities of type (2). Or in the words of Hobbes, let us adopt as a general rule of conduct, a "Law of Nature", as he calls it, to "seek peace and follow it," confining the use of interpersonal force or threats of same to the countering of previously initiated aggression by others. As noted, we will count fraud, which is the misuse of communication, as a species of coercion, so that (2) comprises not only invasion with fists and knives, but also with false words and deliberate obfuscation.

The effect of this is indeed to confirm one of Fried's intuitions: the products of the productive efforts of person A are to be left in the control of person A, so long as A in turn confines his uses of those products to those compatible with the prohibition on aggression. That, of course, leaves the door wide open to mutually beneficial exchanges between person A and person B. The importance of such exchanges is almost impossible to underestimate.

We should also note that sometimes there is what we would ordinarily describe as a one-way transfer of wealth from one person to another, namely gift. But they are not an exception, for such transfers are nevertheless mutually beneficial. If A voluntarily supplies B with a product of A's efforts, x, then that must be because A sees some value in B's having x, so that in making this transfer, A course realizes that value; thus B is

not the only beneficiary, unless we look, myopically, only at the material objects involved, such as the slice of pizza A puts into B's waiting hands.

This last leads to a further reflection. Many transfers of desirable things from one person to another will not actually transfer "things," that is, "material" things. If A plays the violin so that B can hear it, and B enjoys the result, no material transfer of bits of matter from one to the other has taken place, but B has certainly benefited. For that matter, we might go further and point out that when we say that possession of some material object is a good thing, what makes us say it, and what makes it true, is what possession of that object *does* for us. The car enables me to get around, enjoy its comfort and handling, say; the fine big house is a pleasure to look at and walk around in, and so on. And in turn we can say - because it is, on reflection, true - that when someone transfers the right to some material object that we want to us, he is thereby doing us a service. So that when we are willing to pay money for this, what we are really buying is a *service* - the service consisting of transferring the right to use the thing unmolested from him to us, he in turn enjoying the service of our providing him with the cash, which is actually a kind of general draw on the voluntary services of yet others.

When we view the matter carefully, we see that *all* exchanges are of services. Playing the violin beautifully before willing audiences, washing floors, enabling someone to drive a nice car by selling it to him, are all services, and those services are the real objects of transfers. Paying someone money is a service to him - normally a very useful one, precisely because it enables the recipient to take advantage of quite a wide range of opportunities, rather than some very specific one only.

When I make my way into a previously unoccupied wilderness and put it to some sort of use, and you, seeing that I have done so, refrain from trying to use the bits of it that I am now putting to use, you also do me a sort of service: you refrain from molesting me, and that is to my benefit. What do you get for it? The answer is that you get, at a minimum, similar service from me, should you set up shop down the path a bit. If each of us could molest the other if we felt like it - and we usually could - then mutual refraining from doing so is a mutual benefit, and normally an extremely easy one to provide, since one can provide it by doing nothing. In general, I would argue (following Hobbes, Locke, Kant, and many others) that the uniquely right payment for the benefit of noninterference is reciprocal noninterference. It is *never* true that A owes B not only noninterference, but also a free lunch, in return for B's noninterference with A.

### **Fried on Original Acquisition and Capital Appreciation**

We are now in a position to respond to some of Barbara Fried's arguments. We may start with an offhand observation she makes about Nozick in regard to the theory of Justice in Acquisition: "Among the things left ambiguous is whether the process by which unowned things are



justly acquired is that of a Lockean labor theory of ownership, first possession, or some other thing entirely..." (227). Whether that is a fair comment about Nozick's discussions in particular is not my concern here; rather, I want to consider the widely held idea that these *are* "different accounts." They are not. What matters about someone's laboring to produce something is that that something originated as a result of the labor in question. The person expending that effort either intended to produce that very thing by means of it (the normal case), or if not, he noted potential use for what he inadvertently produced, and proceeded to take it in hand in some way. In either case, he is, literally, the first *possessor* of that thing. He is not, just by virtue of being the producer, the *owner* of that thing, for ownership brings up normative claims. Rather, he is literally its possessor, that is, the person within whose grasp, under whose immediate control, it now is. Exactly the same is true of someone who finds, rather than makes, some useful thing - such as a bit of real estate. It is often harder to establish and identify boundaries for the latter than the former, to be sure, and that is understandably the source of much difficulty, as when people with some agricultural technology intermingle in an area with people utilizing only hunter-gathering technology. Nevertheless, the basis for a claim that a bit of land or a gold mine or whatever "belongs" to person A rather than person B is, in the absence of exchange, the fact that A was the first possessor of it - that A got there first.

Many writers seem to think that being first is *arbitrary*, in a sense that implies some kind of unfairness or inadequacy in a system paying important attention to this factor. And in a sense, it is arbitrary, but not in such a way as to entail unfairness - indeed, exactly the opposite. The arbitrariness of first-coming mirrors a fundamental "arbitrariness," the one that Rawls refers to as the operation of the "natural lottery." The fact that each of us is born with the particular set of characteristics we have, in the circumstances and locations we are in, is fundamentally not due to our efforts; as such, it is morally neutral, reflecting no credit of any sort for the sheer possession of those features. Despite this, however, the best principle for society is one declaring that each one of us is, absolutely, entitled to be the person he or she is, and to remain, barring certain extreme eventualities, inviolate against the invasions of any and all others. The fundamental "reason" for respecting Jones as such, with all his peculiarities, is that each one of us is a particular person, a particular bundle of peculiarities which we nevertheless value in themselves, and which form the very fountainhead of whatever other values we come to adhere to. To be someone is to be a particular, cosmically arbitrary, individual; if that doesn't matter, nobody matters.

This cosmic arbitrariness is existential. Even so, the reason for insisting on our right to the selves we happen to be is closely related to the reason for recognizing first possession as a ground of ownership. When person A "gets there first", some time elapses between the time of his discovery and the time, if any, that the next person comes on the scene. What happens to the valuable bit of nature that A finds and goes

to work on - using, contemplating, or altering it to his purposes - if we say that the arbitrariness of individuals qua individuals must be overridden by the interests of society at large? The answer is that it lies fallow while "society" squabbles about how it is actually going to use it. And in doing so, it disenables A from putting that thing to good use - good, in A's own view of what is good, not in society's. But then, society's is just somebody else's - it is not some superior kind of being with a different order of claim on things. In addition, of course, we must mention the fact that A will try to defend himself from the efforts of others to take over the results of his work. This brings the situation within the scope of the preceding argument about the inefficiency of aggression. It is this consideration especially that underwrites "first come, first served" as an *efficient* social principle: it will enable more people to realize more of what is of value to them than any alternative. Being able to count on continued possession of a useful thing enables the possessor to improve it; being unable to count on that motivates under-use, or irresponsible use. (As a contemporary example, clear-cutting in Canadian forests occurs because those who cut do not own the land but have simply acquired cutting rights from the government which does own them.)

Those who dissent from this typically buy into an idea that comes very naturally to us all, especially professional academics. That view or idea is that the good of individuals is something that we can know in a sense that outruns or even is quite irrelevant to the view on that subject of the very individual whose good it is supposed to be. We are all natural paternalists: we have a set of values, and we naturally think, especially if we are high-brow thinkers of great thoughts, as in Philosophy, that they are *right, true*. And if "true" for me, then of course true for everyone, no?

Well - no! What's wrong with it? Nothing, if we don't mind being more or less continually at war with our fellow men, who for some reason obstinately insist on thinking differently from us. But if the prospect of being subordinate to the values of others is of any interest to us, then the idea that what's good for Jones is what Smith thinks is good for Jones is going to run into heavy weather. Jones, of course, will in turn hold that what's good for Smith is what Jones thinks is good for Smith, and on the face of it, it is hard to see why either opinion on this point should be intrinsically more plausible than the other. But there is very good reason for thinking that Jones, at any rate, is going to be motivated by Jones's ideas about what is good, and Smith's by Smith's, and *not* the other way around. Jones acts rationally when he tries to realize the values he actually has, and not - if that even makes any sense - the ones he does not have. So rational beings will also understand that for one person to declare that the other one should do x, despite the fact that the other person has no interest in x, nor in anything that supports the doing of x, is for that person to talk great nonsense. If he persists in talking that way, or worse, acting on it, he is, manifestly, asking for trouble.

While it is not a simple, direct, immediate inference from the preceding, I nevertheless think that there is only one plausible inference: rules purporting to be good rules for the direction of human society will

have to be rules that are for the “common good”, that is, they will have to benefit *everyone*, all things considered; *and* they must support it compatibly with each person’s being allowed to be the ultimate authority on what is good for him or her. Given the known variability of human values, it is a quick inference from this, in turn, that we should refrain from using force to attain our ends against those of our fellows. Instead, we should allow each person to do what he can in the way of promoting what he sees to be valuable, with costs and benefits of his activity falling to himself rather than their being socially forced upon others. That in turn entails allowing individuals to use otherwise unused bits of the world when they have the opportunity to do so. When, as might conceivably happen eventually, there is nothing left not owned by someone, then the individual thus “bereft” is obliged to make offers to the existing owners. This method of making his way in the world is, of course, certain to be immensely easier and more profitable than trying to slug it out with Mother Nature, so the absence of opportunity to acquire what was never used before is not a net loss, but just the reverse.

Now it will often be true that the utility to me of item *x* is a function of my relation to others. If item *x* can be used for purpose *P*, which I do not share, *x* may nevertheless be valuable to me on that account; for if I see that others do have *P* and therefore an interest in *x*, and if I can enable them to use *x* provided they do something for me that enables me to realize my own purpose, *P'*, then we are in a position to benefit from exchange. Other persons, no doubt, are in a position to benefit from *x*, but if they have nothing to offer that interests me, it is not rational for me to relinquish my possession of it in order to enable them to do that. The vendor of images of saints waiting outside the gates of the cathedral for the emergence of people to whom those saints do have value, is motivated to serve the interests of those religious people even if he is an atheist himself. If he were only constrained to deal with like-minded people, both he and the religious people in question would do worse.

Let’s now apply these considerations to our erstwhile day-laborer *JS*, who buys a lot in suburban New York City for \$5,000 in 1960 and sells it in 1980 for \$500,000. According to Fried, a theorist under the rubric of “Left Locke” would reason, with Ricardo and Henry George, that “by virtue of his labor *JS* is entitled to a portion of the value of that land, but (being a strict desert theorist) would argue the portion is limited to *JS*’s actual cost, or sacrifice, in acquiring it (\$5,000), plus perhaps a fair return on that cost.”<sup>7</sup> And why? “Any appreciation in value above that amount is purely fortuitous so far as *JS* is concerned, resulting from the intersection of a naturally constrained supply of land in commuting distance from New York City, and increasing societal demand for such land.”<sup>8</sup>

But is it “fortuitous”? Perhaps *JS*, day-laborer though he be, was canny enough to see that demand for this land was likely to increase. Possibly he could even, as we say, “make a killing” by hanging onto it for two decades before he sells. Let us not try to analyze *JS*’s reasoning as a real-world case: he could have been mistaken in any number of ways. Perhaps, for example, had he sold it two years later for \$8,000, and

invested \$5,000 in stocks, those stocks would now be worth \$2,000,000 instead of the paltry half-million he can now get for his lot as a piece of unimproved real estate.

But it doesn't matter. For Fried and Henry George have made a subtle but crucial mistake here. The value of me to you is what I can do for you. The "market" value of me to you is what "I" am worth on the open market. But then, an open market is just you and I and more people being free to buy whatever they like from whoever is willing to sell at the prices envisaged. So the value of me to you on an open market is the value of me to you, given that a lot of other people might also be interested in me and that I am disposed to sell myself (= my services) to the highest bidder - as, of course, I am. Now, what has JS done for society? He has in fact made available to someone an extremely valuable piece of land. So far as JS knows - and he does not know for certain, of course, but he calculates against a tolerably good background of information, we will suppose - any earlier sale by JS would not have netted JS as much. As the years go by, JS is in a position to offer a more and more valuable service to somebody. He calculates that his optimal selling point is Feb. 17, 1980: that is when he can most use the half-million in liquid form, and when his buyer makes his best purchase by expending it on that land instead of keeping it in the bank. And this is all due to JS, as far as that purchaser is concerned. That the increment of value is due to the presence of a whole lot of people in the near neighborhood is true too, but constitutes no reason whatever why something should be done with that land other than letting the person who did indeed get there first, in the relevant sense of buying it, sell whenever he judges is the best time for him to sell, to whoever judges that that is the best time to buy, at the price available at that time. JS has now done a very substantial service to the public: he has enabled it to reap the benefits of an investment worth a half-million dollars in capital cost. (JS, to be sure, is not a "first-comer." But then, we can tell similar stories, mostly boring, that would eventually take us all the way back to the Indians selling Manhattan for what they take to be the excellent price of \$24 in beads.)

So in making his initial purchase, JS turns out to have done a very great service instead of the modest one he might have performed, years earlier, by building a modest home that might now be worth only \$150,000. And so on. In general, when in a free market the price of G is \$X, X reflects the values of the persons concerned: it will be the highest price someone is willing to pay for the opportunity to use G that G's owner is willing to accept for transferring the right to G over to the purchaser. If that owner has played his cards right - as of course he may not, but then, they are his cards, not ours - then it will be true at every earlier time when he does not sell that he is doing society the service of keeping the item out of a less productive use and waiting for the moment when it has its maximally productive use, as judged by the interests of all consumers and potential producers over the period in question.

One trouble with Fried's exposition, and those of almost every recent writer, is that there is an assumption that what is "owned" is

essentially some or other *material object*, as such, and the “labor” of a “worker” is essentially devoted to creating or otherwise modifying that object, and that’s that. But that is certainly not that. What the worker - any worker - does is to provide a *service* to someone. The someone is usually an employer, in the first instance, but of course the employer is in turn attempting to provide a service to some potential customer, and what the worker does helps to achieve that end. In the “service industries” narrowly so called, the point is obvious anyway; but the paradigms in this subject got set in the 19th Century, and it has taken rather too long for philosophers to take the larger view that was really needed right from the start. The distinction of goods and services simply has no fundamental significance. What is economically valuable about a good is measured by the interest in the service that its provider performs for those interested. Whether the service involves pushing some material object around is of no fundamental significance.

Of course it is not just “workers,” in any sense in which we can distinguish between a set of workers and a set of people who earn money in other ways, who provide services. Obviously the investor provides a service too, just as does the landlord, the violinist, the basketball player, or the minister of some religion. Services provide benefits at various distances in time and space from provider to beneficiary. People can attempt to provide services to people forty years down the road, such as a manager of a pension fund, or on the other side of the globe, and so on. In all these cases, the provider negotiates a price for his or her services and will, ordinarily, go for the highest price available, just as those benefiting from the service will hope to pay the least possible. Sometimes the “price” is not fixed but an open-ended arrangement, as with speculative investments. If we ask, then, who has “done more” for people as between the baker or the investment banker, the likely answer is that the latter has: his services have been judged by those who benefit from them to be worth a good deal more than those of the creators and suppliers of material objects, even when those objects are loafs of bread or other items deemed essential to life.

This assessment, that the person who gets the higher price is the one who is thought to perform the greater service, must not be confused with another kind of evaluation. Some are not interested in money, or profess not to be. In claiming that the services they claim to provide are beyond price, or worth something in kind that is not available on a market - happiness, for example - they certainly make a relevant and intelligible claim. And it is easy to see how such persons might want to advocate a social system oriented toward the production of that special value rather than the innumerable different satisfactions provided by the liberal economy. Liberalism attends to the values people have, as revealed in their choice behavior. The Platonist or the proponent of some other sort of “ideal” values readily accepts the view that many of those choosers know not what they do. The way of life he proposes for us is, he claims, much superior to the tawdry and defective ones we presently have, and of course a social system should be geared to promoting that more valuable one. (Shouldn’t

it? Obviously it should!) This will be readily agreed to by all those who are persuaded. But then, those *not* persuaded will find it equally obvious that it should not. Meanwhile, liberalism, as has so often been emphasized in the literature, is austere neutral on the subject. It says only that we shall deal with each other on a basis of respect, not love. It commands us to advance our values only insofar as we can do so without thereby frustrating other people's pursuits of their values. And the economic "values" of the marketplace, rather than being some new set of special values, are simply measures or indicators of success in the terms recognized by whatever people there are, as they are at the time of purchases.

People can reckon themselves to be better off as the result of some other person's activities even though no material objects have been shoved their way by those activities. When they enjoy musical or athletic performances, or gain, as they suppose, in intellectual or spiritual respects, their gains are not measured in material terms. Even so, there is no problem comparing such benefits to "material" ones. We can miss lunch in order to hear a good speech, and sacrifice our bodily well-being for what we take to be spiritual improvements. There would indeed be such a problem if the theorist wished to find some measure of benefit that is both valid and independent of the preferences, attitudes, and powers of those concerned. But that is the theorist's problem, not ours. What each individual does is to look about for opportunities to do what will find favor with others, to the point where they will in turn do what finds favor with him. We are then ready to "do business" - that is, to participate in a scheme of interpersonal behavior that is mutually beneficial in the eyes of those who participate in it, even though the terms of benefit are peculiar to each.

Once we view an economy this way, our cast of characters is put in a perspective that shows the arbitrariness of distinguishing among them for purposes of political exploitation. The politician's or the social theorist's claim that some economic agent, A, "hasn't done anything" is conclusively refuted by the fact that what he does is valued by someone else so greatly as to induce that other person to provide a reciprocal service, in the form of offering a monetary payment, for its performance. Whether A has labored for hours in a dark sweaty place, or instead sat at a large mahogany desk for a few minutes, or stood on a stage drawing horsehairs across catgut, does not matter. What matters to B, the purchaser of A's services, is, simply, that what B offers her is what she wants, sufficiently so to induce her to respond by reaching for her wallet, or whatever else she might be able to offer to A in order to induce him to provide those desired services. So long only as what is offered to B matches what is actually received by B, B has no interpersonally acceptable complaint.

The thesis that some income comes from "economic rent" *instead of* the productive efforts of someone and is therefore eligible for political ministrations, independent of the preferences of the parties to the transactions in question, is consequently short on economic sense. We always pay for someone's efforts, of some kind or other. In making those

efforts, that person has, as it turns out, succeeded in providing what someone else wants. If we tax the “rich” instead of the “poor”, we increase the cost of the services by which those people have made their money. This is as true when the tax is on income derived from rent, profits from investment, or fees for exotic performances as when it comes from manual labor. And since the laborer, like anyone else, makes his purchases from various of these other people, in making life more difficult for them we also make it more so for him. Increases in the costs of what one buys are increases in one’s cost of living, hence decreases in one’s real income.

If taxation were a sort of “investment”, as it is widely claimed to be, it should be possible to estimate its expected returns and compare those with the returns that might instead have been expected from voluntary activity in its own right. But the sheer fact that taxation is not voluntary leads one to suspect that the verdict would always favor the latter, and never favor taxation - so long as we are measuring social success in the person-neutral terms of the market, these being the terms of the people whom social institutions are, on our liberal view of the matter, supposed to be trying to benefit, rather than by some imposed set of values belonging to the politically powerful.

I conclude that Fried’s attempt to distinguish the workman from the capitalist from the renter are ineffective. Market rent is not what she and so many others evidently suppose: the holder of valued permanent assets is not a useless leech on society, but rather performs one more useful service among others, its utility being measured by the effective demand for it when others are free to make offers for it.

## 2. Gross’s Counter-critique

A different response to Fried, by Damon J. Gross<sup>9</sup>, also expresses concerns about the problems of private ownership, but argues that Fried is mistaken in assimilating the income Jordan gets by exerting his scarce talents to the capital gains income accruing to JS from his ownership of land purchased long ago and now worth a hundred times what he paid for it. His claim is that “as land becomes scarce, and therefore comes to have value, private property rights with respect to land come into conflict with what I shall call the principle of equal liberty” (44) What fundamentally makes for this problem is a “serious general problem” - namely, that “any system of property rights... restricts someone’s liberty in some way.” (44)

How serious and how general is this problem? On the one hand, it is indeed very general, if as he says it is a matter of “trading off one set of restrictions for another.” (44) That is because we are *always*, and necessarily, trading off one set of restrictions for another as long as we are in the business of trying to establish rights: A’s having the right to do whatever he has the right to do inherently restricts B from interfering. It does that because that is the whole and entire point of rights: rights *prohibit*. They are never *free*. No free lunch, no free rights. To be a right is

to be a restriction on the activity of someone else who might for some reason want to do what that right grounds the prohibition of: taking the rightholder's life, for instance.

And so when he states the libertarian principle as "The notion that we should all have the greatest possible liberty consistent with the equal liberty of all others..", tradeoffs loom before us. Can we escape them by adopting what he claims is "a somewhat weaker principle... that whatever liberty one person has, it is to be limited by the equal liberty of all others"? (44) Plainly, as we have seen, the answer to this has to be in the negative, no matter what meaning is attached to the idea. All rights limit the activities of others. But further, both formulations employ the adjective 'equal.' We should not suppose that we know what we mean when we combine the two. Is liberty L1 "equal to" liberty L2 when the same description of the permitted action is used in each? Or when the value to the person who has L1 is equal to the value L2 would have for him? Or is there an obscure idea of measuring the number of kinds of activities L1 permits as compared with L2, and then counting so as to see whether each has a roughly equal number?<sup>10</sup>

Of these three answers, the first and third are plainly hopeless. The *value* of the liberty in question is the most basic consideration, since it is, by definition, all that anyone cares about - to "value" liberty over and above the value we put on what it allows us to do is, I take it, nonsensical. But if that's so, then we surely will be hard put ever to apply any principle of "equal liberty:: we can let Smith do x and Jones do x, but how are we to know that x is just as valuable to Smith as it is to Jones? And when we move from Smith and Jones to all members of a large class of people, it's still more obviously game over. We cannot know that sort of thing about them, and anyone who claims to is importing his own values into the situation, rather than going by those of the persons concerned.

But we can no doubt get a better insight into Gross's idea by looking at his own scenarios, which are designed to explicate it. He produces 3:

1. A and B go for a walk in an orchard; there are lots of apples within easy reach of both. A eats one.
2. Only one apple is within reach of either. A takes and eats it.
3. A is much taller than B and can reach lots of apples, while B is too short and can reach none. A takes one and eats it.

In case 1, by eating that apple, A deprives B of the liberty of eating that particular apple; but, Gross says, it does not deprive B of equal liberty, "because there are plenty of apples left for her to pick, and she and I are indifferent with regard to any differences that may exist among the many apples within our reach." (45) But why does 'equal liberty' reach to the case of eating *some* apple or other, but not to the case of eating *that* apple? After all, that is a possible action, and A's performing it precludes B's doing so. Of course, most of us do not care which apple we eat, and Gross specifies that this is so in the case of his person B. But some jealous person might envy the apple A eats, no matter which it is, and just



because it is A who is eating it. We'll return to that below, but first let's consider the two other cases. In case 3, says Gross, A's taking an apple does not deprive B of the liberty to do "anything she could have done had I not been on the scene". Perhaps - although B might ingeniously erect a ladder, or find other ways to avail herself nevertheless of the apples. It remains that A's eating one apple blocks B from getting *that* one, and also (therefore) from getting them *all*, by whatever independent method B might be able to use to get them.

Case 3 presents an important new feature: the technological difference between the two, which is such that A's presence increases B's potential, at the time, for apple-getting; she can now obtain an apple by asking A for it, for instance; or by offering something of value to A. Division of labor can go to work, increasing the satisfactions of both parties.

But it is case 2 in which, Gross thinks, B's equal liberty has indeed "been compromised". Presumably this is because it is not only B's desire to eat that particular apple that has been thwarted, but also her desire to eat any apple at all (from that orchard). And in the circumstances, that is true. But it is unclear what the word 'equal' is doing here. In eating the sole apple, A deprives B of a liberty: to eat an apple. Had B instead got it, B would have deprived A of that same liberty. If B in fact doesn't like or need an apple anyway, the deprivation wouldn't matter to her. But supposing that B either likes or needs an apple, then there is a conflict here: both cannot have the one apple there is. (They could split it, but this is uninteresting. We will stipulate that half an apple isn't enough to satisfy the particular interest we have in mind.)

Now, why call this "equal" liberty? If it's a matter of identity of description for acts available to the persons in question, then we must point out that both A and B *can* have a right to a "same liberty" regarding (2): the liberty to take *whatever apples aren't already taken*. In the scenario, A doesn't violate that right of B's, nor of course does B violate that right of A's. And in fact, in all three scenarios, specifying that as the relevant right will resolve all problems of conflicting rights. The question would only be, why seize upon that particular act-description rather than some other?

To this there is an excellent answer. The case concerns apples, and the assumption is that everyone would like to have one or more of them. There is no problem about both satisfying that particular consumption interest in case (1), and there are different difficulties about doing so in the other two. Only in case 2, that of scarcity, is there an insuperable difficulty about it at the particular time. So the question is, what is the right rule for managing the modest conflict that exists in that case? The answer is the rule I have specified in the previous paragraph, which in effect is, first come, first serve. For that rule maximizes liberty for all in the only way it can be: by generally prohibiting violations of liberty. It prohibits that because to violate liberty is to prevent people from using their capacities in whatever way they want, from the available range of options insofar as those options are available without coercion.

Suppose the sole apple is  $x$ . When A arrives, there hangs  $x$ , available for the picking, and A picks it. When B arrives, there is no apple that can be got without taking it from someone. A did not take it *from B*, who wasn't there as yet - instead, he merely took it from the tree, which by hypothesis does not belong to B or anybody. Both do have the "same liberty": to use whatever they can use that has not already been put to use by someone else. This is the only sense of 'same liberty' that matters. Each of us has things we want to do, and attempts by others to prevent our doing them will therefore be resisted. There isn't any other aspect of liberty that matters to each of us. This is the one liberty that can function as the common good.

Gross proposes to generalize as follows: "When land has no market value whatsoever it is like the apples in (1). My exclusive use of it cannot come into conflict with the equal, but non-identical, liberty of anyone else. (46-7) But when the first parcel of land in the world comes to have value, we are into (2). There, B is deprived of equal liberty." (47) Yet, despite this, Gross says, "there are very strong, perhaps compelling, reasons that people should be allowed exclusive use of parcels of land..." (47) This is unsatisfactory: we should not have a structure of rights such that we have to infringe them sometimes, in the interests of something or other, and then say that it's nevertheless OK to do so in those cases. The point of a theory of rights should be to enable people to know what they may and may not do. A maneuver such as Gross's should be rejected if we are to get a decent solution to the social problem to which a schedule of rights is proposed as the solution.

The scarcity of land, Gross suggests, leads us to Locke's Dilemma: "either one must give up equal rights to land and thereby give up equal liberty; or one must give up the benefits of exclusive ownership of land, and particularly the benefit of the assurance of one's rights to exclusive use of the fruits of one's labor" (48) If this were indeed the dilemma, then we would be in bad shape; for lack of exclusive ownership, whether of land or of anything else, is indeed equivalent to lack of freedom. One is free to do  $x$  when nothing prevents one's doing  $x$  at will. Lack of exclusive ownership of anything, say  $M$ , means, by definition, that someone else may prevent one from doing what one wants with  $M$ . Scarcity entails lack of ability to exercise exclusive ownership, for all who might like to do so, over the scarce items. That means that unilateral action becomes impossible. And if unilateral action is impossible, action in general is impossible.

But *does* equal liberty imply equal rights to land, as Gross apparently supposes? Not if the measure of liberty is the value attached by each to the actions permitted by the liberty in question. Those with no interest in farming, say, or of the other uses that the land in question might be put to, lose less than those with such interests. And among them, those with the most passionate interests but who are deprived of the use of the land they want lose the most. Since people vary a great deal in such respects, the idea that they should be thought to be entitled to equal liberty *as so measured* is plainly absurd.

Should they be thought to be entitled to it in the first sense? Again, plainly not. Not only is it impossible to apply the principle as interpreted in that way, but insofar as one can apply it at all, we would have to expect it to be impossible to realize it. Given the range of desires possible to humans, the probability of at least some of them conflicting in zero-sum manner is essentially unity. But a “right” that it is impossible to fulfill for all who have it is a non-starter. Any statement of a right having that implication is incomplete and needs modification. To take a famous example of H. L. A. Hart’s, if there is a five dollar bill lying in the street, we cannot both have the right to *it*. What we *can* both have, though, is the right to it *if we get there first*, plus a right to try to do so.

Gross lists 4 attempts to solve this supposed dilemma: (1) the Lockean Proviso in its original form; (2) Nozick’s modification of same; (3) Spencer’s proposal to give all land to the state; and (4) Henry George’s idea of taxing land-rent at 100%. His (and my) quick comments on each follow.

1. The Lockean proviso in its original form is a cop-out, as Gross points out. As Fried says, “We leave ‘enough, and as good’ for others only when what we take is not scarce. But when it is not scarce, it has no value...” (Fried, 230)

2. Nozick modifies Locke by proposing only that we require that appropriation not worsen the situation of others. But, says Gross, “It has been argued convincingly that Nozick’s proviso does not preserve equal liberty but merely substitutes his favorite system of property with its inherent restriction on liberty for less favored (by him) systems of property with their inherent restrictions on liberty.”<sup>11</sup> We now see, however, that this assessment is wrong. The right of all to use whatever is not already taken so long as it is not used to violate the existing rights in what others already have, which is almost Nozick’s proposal, does preserve equal liberty in the only relevant sense.

3. Herbert Spencer’s conclusion: Make the state the owner of all land, which would be leased to the highest bidders. (My comment on this: And then what? Why would the money be spent on whatever it would be spent on? Whatever the answer to that, why should we think that the state’s use of it would be better than the uses to which income got by private owners would be put? In any case, the outcome of any such scheme, one has to think, would be squalidly political in the worst sense. Cf. the Soviet Union: Mankind has been there, done that, and thank you, has had quite a bit more than enough.)

4. Henry George’s solution: All rent of land to be collected as tax. “In this way all members of the community are placed on equal terms with regard to natural opportunities that offer greater advantages than those any member of the community is free to use...”<sup>12</sup> (Of course this requires us to know what part of the income is “rent” - as well as inheriting the demerits of the Spencerian scheme. I have previously argued that this is unknowable in any interesting sense.)

Gross concludes that, alas, there seems to be no solution to the problem of land. But what about Michael Jordan and his special talents?

He considers 4 ways to construe the Jordan examples "in such a way that it might appear that someone is deprived of something:" (50) They are that he deprives others of (1) their money; (2) the chance to be Most Valuable Player etc.; (3) whatever Jordan, with his higher income, might have outbid someone for; (4) the equality necessary to prevent oppressive regimes from taking over... (50-51) None of these, he thinks, carries much weight - despite the fact that the first three are, in differently irrelevant ways, true. But they are irrelevant. (1) Of course you don't "deprive" someone of his money when you sell him something; (2) the chance to be MVP is a competitive game which all play because they want to, and outbidding is simply willingness to pay more, rather than a tendency to "deprive"; and as to (4), it's largely far-fetched, but is in any case a quite independent point, depending on incidental circumstances.

So Gross concludes, "If what I have argued is correct, then *either* there is one class of holdings, to which land belongs, for which the holder's entitlement is nothing like as absolute as Nozick believes, *or* an adequate principle of justice must prohibit the acquisition of exclusive rights to land. On the other hand, for all that has been said in this paper, there may be another class of holdings, to which natural talent may belong, for which the holder's entitlement is more nearly absolute..." (52)

And he concludes, first, that there is indeed "a general problem with full private property rights to land that goes as deep as the principle of equal liberty" (49); and second, that any problems with extreme disparities of wealth and power "have no special connection with surplus value. But we have not found a general problem with market-based distribution." Meanwhile, "it would seem that land value is an especially apt candidate for a redistributive tax... [but] Since neither the possession nor the use of natural talent conflicts with the principle of equal liberty the same case cannot be made for an endowments tax. Michael Jordan's talent is not like the appreciation of JS's land. An endowment tax is not analogous to government collection of land rent." (52)

Of course, it is analogous in being a tax, and thus raising the same question that any other tax does: why think that imposition of the tax and expenditure by a political body of the resulting income would do better for people than nonimposition and expenditure by individual people? But in any case, I wish to challenge the thesis that there is a relevant difference. We should take issue with the claim that there is the problem he says there is: "a conflict between full private property rights to land and equal liberty". Gross says that if we don't like that phrase, then we may talk instead of "the equal right of all for the opportunity for self-preservation, for some place to live, some place to work, for some place to play." (50) It is unclear how he means these uplifting phrases to be understood, but it does seem clear that he supposes that we all have *positive* rights to all those things - rights to them that are supported at other people's expense. We should, of course, raise the question where people are supposed to have gotten such rights. And we must certainly ask why anyone should think that people should have, say, identically sized houses on identical plots of land, irrespective of any sort of work or

service they have provided for those who would make those houses. Whatever we say of that, it is surely completely disputable that there is an equal right of a kind that will bear those particular consequences. And Gross does not discuss the equal right to climb Mount Everest, to pilot a 747, to be the exclusive viewer of the Mona Lisa for awhile, or in general to any of the myriad activities that are plainly impossible for more than a few, or in many cases more than one, person to do. A theory billing itself as offering an equal right to liberty which is logically incapable of delivering on what it promises is a theory we should reject.

Above all, we have to point out that any egalitarianism of that type will have the usual problem that it is wildly unequal in its visiting of costs relative to benefits for each individual person. When those who do much are given the "same" benefits as those who do nothing or very little, such equality has been kissed goodbye. And of course it leaves us with the question which sort of equality is the right sort, and why. But the question has an answer. When we talk of "equal liberty" what, in general, are we talking about? Liberty is the absence of interference. You and I are equal in this respect when neither of us interferes with the other; we are morally equal when we are morally prohibited from doing so. We interfere when we block courses of action that people are engaged in. Some of those actions consist in transforming bits of nature in sundry ways; others do not. In the former case, we interfere if we take those bits of nature that others have already begun to work with or on and use them for our own purposes without their consent. Supposing that they, in working with them antecedently, do not in turn interfere with the ongoing activities of others, then the principle of liberty, which is the same as a principle of general and mutual noninterference, calls upon all to respect free activities that are innocent in that sense. We shall all be equally and maximally at liberty if and only if we all respect each other's liberty, as so specified, completely. When we do, we cannot enjoy more freedom without some else enjoying less. This is the by-now familiar Pareto principle.

Pareto principles require baselines for their interpretation, and this brings up Ryan's point against Nozick: that his version of the Lockean proviso does not preserve equal liberty but merely substitutes his favorite system of property with its inherent restriction on liberty for systems of property less favored by him, with their inherent restrictions on liberty. All rights principles restrict liberties, as I have pointed out: that is what they are for, and why they can be of any use; and so the complaint as stated is pointless. The question has to be whether the Nozickian modification is the relevant one if our interest is in liberty as such. And on the face of it, that does sound right. Nozick's modification prohibits whatever uses of newly acquired things worsen the situations of others. Since (social) liberty is nothing but the absence of costs imposed by other people, and costs are just worsenings of one's situation, it is hard to see how Nozick's principle could be wrong. The question is only how we conceive the baseline for worsenings.

To see how, let us go back once again to Gross and his apple cases. The trouble, he thinks, arises when we contemplate case (2):

there's just one apple, and if A takes it, then B doesn't get it. But as a representation of mankind's general situation vis-a-vis scarcity, case (2) is crucially misleading - and has misled almost everyone in this area for a very long time. For it omits the fundamental solution to problems of scarcity: production. B can't get *it*, true, and at that moment he can't get any apples at all. But knowing that there is a demand for apples can motivate A to take steps to grow more, thus enabling B's demand to be satisfied after all. Supply isn't fixed - not even of apples. And on the other hand, there is great variation in our world among people who are in B's position at particular times. Typically, they are in case (3), not case (2). Most people, for example, would like a bigger, faster, more convenient computer, but are quite incapable of producing one with their own hands and brains. However, other people are, and some of them do, in return for money that most people are capable of earning by doing whatever *they* can do. So supply increases, scarcity diminishes, and we are not in case (2) any more.

The idea that the fundamental scarcity in the world is of *land* in particular is, when one thinks of it, quite wrong. Land may - or may not - be good for growing food, for walking around on, for aesthetic contemplation, for building houses and malls on, and any number of other things, depending what sort of land it is and where it is in relation to which sort of neighbors. On the other hand, land is not much good for operatic productions, lectures on quantum mechanics, and so on indefinitely. In fact, it is, in its unimproved state, not really much good for food either. What most of us eat is not a product of raw nature, but of technological ingenuity on the part of agricultural and many other kinds of producers. The land on which they grow what we eat is very different from "state of nature," and were it not so, we would almost all starve.

Production of anything, in turn, requires noninterference with the productive process. There is a special kind of noninterference that is especially relevant here, beautifully explained by David Schmidtz in his discussion of the Lockean Proviso<sup>13</sup>: food-growing characteristically involves a period during which premature harvest is advantageous - in the short term - to some others. The cultivator of an apple orchard, for instance, must worry about people who would pick and eat the apples before they can reproduce, and especially before they would be sold by the cultivator. In both cases, this short-sighted predatory activity will cause reduction of output. In extreme cases, it will lead to general starvation, as Schmidtz observes.

It may seem as though the point just made is a pretty narrow one, applying only to the production of "consumer goods," in some limited idea of what consumers consume. But wrongly. In fact, people consume a vast range of things. Indeed, 'consume' is a poor word for most of the activities we have in mind, for many uses of many things do not consume them, and plenty of activities valuable to the actor don't consume anything at all, except time: two people having a pleasant chat are engaging in activities useful or agreeable to them. For others to intervene in this agreeable transaction is for them to decrease the "production" of desirable

states of affairs. There is not, intrinsically, any reason to insist that the production of material objects is more important than the production of agreeable experiences. In fact, it's the other way around: the point of producing any material object is to enable it to function in such a way as to improve the lives of those interested.

On occasion, intervention will result in net improvement despite its intrusiveness. I interrupt your pleasant chat to point out that the house is afire and you would be well advised to move; or to invite the both of you to a party which you will both enjoy; or... But what determines whether the intervention is a desirable one? The right answer here is that the preferences of the subjects of the chat do.

We could perhaps say that an intervention is not an intervention when it is welcome. Or better, that what might have been an intervention is not such, if it is welcome. Better still, let's distinguish between a proposal to enter into a relation and an entering not previously negotiated, and in turn, between the latter when it is also welcome in the event and when it is not. The term 'intervention' should perhaps be confined to the latter case. At any rate, it is intervention in this last sense that is to be generally disallowed or at least disapproved in human affairs. But what about scarcities when the intervenor sees no other way to rectify his need? The arguments considered previously were intended to establish that persons deprived of the use of natural resources by others' prior uses of it are thereby deprived in a way that creates a case for compensation. I deny that. There is, simply, no case as a matter of right. Others are not required to preserve shares of the world for my use if I have done nothing to merit them, nor am I required to do so for them. Nevertheless, we will, almost all of us, be motivated, almost always, to utilize the resources we do command in such a way that others do in fact share in their benefits, namely by exchanges, which improve the lots of both. Not to do so is enormously imprudent.

We should note that all benefits from anything in social situations are *broadly cooperative*. Being free from the molestations of others is a benefit much outweighing the benefit to be expected from having the right to molest others, should they not be inclined to assist me when in need. And indeed, the right that others molest me really doesn't make much sense. It is in my interest to engage your energies, one way or another, in cooperative enterprises to mutual advantage. The success of such enterprises is always very much contingent on the past efforts of others, either freely or, perhaps more frequently, elicited via mutually satisfactory arrangements. Unilateral intervention is the enemy of such undertakings at all points. The claims of newcomers to need what others have made, and in particular to be *entitled* to it on the ground that they were disinherited of their supposed share in the natural resources of the world, are without substance.

Parents produce all the people there are, and prudent parents will produce only such children as they can expect to support through their childhood years and into productive adulthood. Imprudent ones will be encouraged by the arguments of the Lockean-commons theorists to

produce children without that support, thus making them a burden on their neighbors. In fact, those neighbors are likely to be supportive anyway, out of sheer fellow-feeling as well as from the prospect of useful contributions by those children in future if they are reasonably well taken care of now.

There is, in any case, no sense to the idea of an "equal share of natural resources." This has been well dealt with by others (and by myself earlier<sup>14</sup>), and there is no need to restate the case at length. The earth's resources are resources only to persons with the knowledge, willingness, strength of body, and skills to make use of them, and are resources for countless different uses. There is no such thing as a "resource" independently of those personal inputs from potential users, and thus no "value" of such resources can be attributed to them apart from the interpersonal situations of users and would-be users. Trying to make out that everyone is entitled to an equal share really means that everyone may hold everyone else in bondage - hardly what the writers we have been considering here had in mind.

### **Conclusion**

Neither Fried nor Gross has made a case for singling out some kinds of actors in the economic scene as eligible for taxation on grounds not applicable to others. All economic agents are in the same boat: they utilize whatever resources they have for what they take to be the best ends, and in the process characteristically create opportunities for others. So long as no one disrupts this process by using violence against others, physically or by fraud, all of these actors operate under the same set of basic rights - the right to pursue one's ends as one pleases, consistently with the like right of all. Taxation disrupts this desirable scene, no matter on whom it is visited or how. If some independent case can be made for justifying taxation as such - and I doubt that this is really possible - then one may conjecture that the tax to impose is what is easiest to collect and will ruffle the least feathers, or be perceived by most as being equitable. But there's no saying, a priori, which that would be, and in particular we do not have good philosophical reason to try to distinguish rent from other sources of income, so long as the property being put to rent is got by free means. There is, at any rate, no problem of the general type that Fried and Gross propose. The same maximal liberty for all is definable, coherent, and just.



## Notes:

1. Barbara Fried, "Wilt Chamberlain Revisited: Nozick's 'Justice in Transfer' and the Problem of Market Based Distribution", *Philosophy and Public Affairs* 24, no. 3 (Summer 1995), pp. 226-245; Damon J. Gross, "Land and Human Endowments" *Reason Papers* No. 22, Fall 1997, pp. 39-57.
2. Fried, *op. cit.*, p. 227.
3. Fried, *op. cit.*, p. 228. The quote from Mill is in his *Principles of Political Economy* (London: Longans, Green, 1929) Bk. II, Ch. 2, #3, at p. 221.
4. Mill, *op. cit.*, p. 209.
5. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), pp. 253-262.
6. Fried, p. 227.
7. Fried, 236-7.
8. Fried, *Loc. Cit.*
9. Damon J. Gross, "Land and Human Endowments" *Reason Papers* No. 22, Fall 1997, 39-57
10. See "How Free? Computing Personal Liberty," by Hillel Steiner, in Phillips Griffiths, ed., *Of Liberty* (Cambridge, England: Cambridge University Press, 1983, pp. 73-90.
11. Gross refers us here to Cheney Ryan, "Property Rights and Individual Liberty", in Jeffrey Paul, *Reading Nozick* (Totowa, New Jersey: Rowman & Allanheld, 1981), p. 340.)
12. Henry George, *Progress and Poverty* (New York: Robert Schalkenbach Foundation, 1966), p. 32
13. See David Schmidtz, "The Lockean Proviso", in his *The Limits of Government* (Boulder, Col: Westview, 1991)
14. See my "Libertarianism vs. Marxism: Reflections on G. A. Cohen's *Self-Ownership, Freedom and Equality*", for *The Journal of Ethics*, Winter 1998]