

Is It Necessary to Be Necessary?

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Gordon Barnes begins his article “Property and Progress” by stating, “According to Schmitz, the original appropriation of resources as property is necessary to prevent the tragedy of the commons.”¹ I welcome Barnes’s article. I am grateful for the chance to reflect on the methodological issue it raises. I also welcome the chance to add this clarifying discussion note.

I launched an ongoing series of essays roughly twenty-five years ago with an article that was published in 1990, called “When Is Original Appropriation *Required*?”² At the time, my answer to the title question was: Appropriation is required when leaving enough and as good for future generations is required, and when leaving resources in the commons would not leave enough and as good for future generations. Importantly, even then, what I meant by original appropriation was not the more specific idea of appropriating for private use, but more generally any way of removing resources from a state where they are subject to tragic degradation. The ecological and philosophical literatures that I was bringing together were innocent of each other at the time, so the article was news in its day. So far as I know, the central point is no longer regarded as controversial. In any case, I moved on. I haven’t changed my mind about the central point, but still, the article was an overture, not a grand finale. My aim here is to indicate how my thinking evolved from there.

Suppose we notice people driving on the right-hand side of the road, and ask what can be said on behalf of their doing that. We note that coordinating on a convention of driving on the right solves a problem. We then note that right-side driving is not necessary; people could just as well have solved the problem by driving on the left. Finally, we acknowledge that whether right-side driving is necessary is beside the point. A convention’s justification typically has nothing to do with whether the convention is necessary.

¹ Gordon Barnes, “Property and Progress,” *Reason Papers* 34, no. 2 (October 2012), p. 144.

² David Schmitz, “When Is Original Appropriation *Required*?” *The Monist* 73 (1990), pp. 504-18.

As Barnes stresses, nowhere do I defend the claim that appropriating resources as property is necessary in order to avoid commons tragedies. This has to be correct. To see why, let us start by asking: What would count as a proper counter-example to a claim of necessity? Here is a proper counter-example: Most shared kitchens are commons tragedies, yet roommates sometimes solve the problem, often without any of them asserting a right to exclude free-riding roommates. (There may even be literally open-access households that do not exclude complete strangers, and thus do not assert even a *communal* right to exclude.)

I have offered such counter-examples, and less prosaic ones too, in a series of articles, some of which Barnes cites. When I document in those articles the existence of functional communal regimes, my point is that communal management is justified in those cases. Why? Not because communal management is necessary, but because it solves the problem. Communal management, when it works, is still only one solution among many, but a solution need not be unique in order to count as a solution.

What does it take to justify an institution? In my “Justifying the State,” I distinguish emergent from teleological justification.³ A paradigm of an arrangement justified in terms of how it *emerged* is one to which the people involved consented to it. *Teleological* justification is justification in terms of whether an arrangement solves a problem. While much of my work on property institutions has been historical, all of it has been in the service of what I call teleological justification. So, I treat property institutions as solutions to the generic problem of establishing a fabric of mutual expectations that helps people to live together and trust each other enough to show up at the market with goods and services that other people want. Specifically, when property institutions are working, they secure our possessions well enough to make it safe for us to be a part of the community, and put us in a situation where the key to personal prosperity is to devise ever more effective ways of making the people around us better off. And when they are working, they are justified.⁴

Whether an institution solves a problem does not depend on whether it is necessary. Consider a simple mathematical truth about what it means for one variable to be a function of another: Whether y is a function of x does not depend on whether a change in x is necessary for a change in y . Philosophy made a vast mistake when it fell into the habit of assuming that necessary and sufficient conditions are where the action is.

By 1995, when I published *Rational Choice and Moral Agency*, I was touting “supporting” conditions as a more practically relevant concept for

³ David Schmidtz, “Justifying the State,” *Ethics* 101 (1990), pp. 89-102.

⁴ Or so I argue in my “Functional Property, Real Justice” (Keynote Address, European Liberal Forum, Berlin, Germany, November 15, 2009), available online at: <http://www.davidschmidtz.com/sites/default/files/articles/functionalproperty.pdf>.

philosophers studying teleological justification.⁵ A supporting condition is a condition sufficient in the absence of defeaters. *Elements of Justice*, published in 2006, treats theories as maps rather than as attempts at philosophical analysis, thereby putting even more distance between me and the idea that specifying necessary and sufficient conditions is the proper aim of philosophy.⁶ Especially when we are pondering the functionality of actual property institutions, we are pondering an empirical realm where it is rare, and in any case contingent, for a problem to have exactly one solution.

Accordingly, I assert in “The Institution of Property”⁷ and its sequel, “Reinventing the Commons,”⁸ and again in *Social Welfare and Individual Responsibility*: “Private property enables people (and gives them an incentive) to take responsibility for conserving scarce resources. It preserves resources under a wide variety of circumstances. It is the preeminent vehicle for turning negative-sum commons into positive-sum property regimes. However, it is not the only way.”⁹ Then, I prove with real cases that this is not the only way, discussing at length circumstances in which communal property institutions have solved the problem well enough.

Toward the end of his article, Barnes states, after quoting *Social Welfare and Individual Responsibility*:

By giving people control over resources, the institution of property gives people some control over their well-being. If they use their property to produce, then they will prosper, whereas if they do not use their property to produce, then they will not prosper. This control over one’s own prosperity encourages one to internalize responsibility for one’s own prosperity, and that, in turn, makes people more productive than they otherwise would be. No one would doubt that property often has this effect, but is there any reason to think that property is the *only* way to get people to internalize responsibility? Schmitz offers no argument for this supposition.¹⁰

⁵ David Schmitz, *Rational Choice and Moral Agency* (Princeton, NJ: Princeton University Press, 1995).

⁶ David Schmitz, *Elements of Justice* (New York: Cambridge University Press, 2006).

⁷ David Schmitz, “The Institution of Property,” *Social Philosophy & Policy* 11, no. 2 (1994), pp. 42-62.

⁸ David Schmitz and Elizabeth Willott, “Reinventing the Commons: An African Case Study,” *University of California at Davis Law Review* 36 (2003), pp. 203-32.

⁹ David Schmitz and Robert E. Goodin, *Social Welfare and Individual Responsibility: For and Against* (New York: Cambridge University Press, 1998), p. 46.

¹⁰ Barnes, “Property and Progress,” p. 149.

Barnes is putting it mildly when he says that I do not argue *for* this claim. My objective in proving that private property in particular is not the only way to internalize responsibility is to emphasize that being necessary is not necessary, and thus to be clear about what truly matters.

The justification of an institution does not turn on whether it is necessary. To show that an institution of property is solving a problem is to do what it takes—and all it takes—to offer a *supporting* condition for the institution. That is all a philosopher can do in the messy empirical world where justifications of real-world institutions stand or fall.

