



Universiteit
Leiden
The Netherlands

Property Right, Justice and the Welfare State

Lehning, P.B.

Citation

Lehning, P. B. (1980). Property Right, Justice and the Welfare State. *Acta Politica*, 15: 1980(3), 319-356.

Retrieved from <https://hdl.handle.net/1887/3452059>

Version: Publisher's Version

License: [Leiden University Non-exclusive license](#)

Downloaded from: <https://hdl.handle.net/1887/3452059>

Note: To cite this publication please use the final published version (if applicable).

V.U. Amsterdam 1977, p.i.

35. Bij voorbeeld: W. A. Riker, P. C. Ordeshook, A theory of the calculus of voting, *APSR*, 1968, pp. 25-42. J. H. Aldrich, Electoral choice in 1972: a test of some theorems of the spatial model of electoral competition, *Journal of Mathematical Sociology*, 1977, pp. 215-237; vergelijk ook: I. Budge, D. Farlie, *Voting and Party Competition, A Theoretical Critique and Synthesis Applied to Surveys from Ten Democracies*, London/New York 1977.

36. A. E. Bronner, R. de Hoog, *Politieke voorkeuren: oordelen en beslissen*, Amsterdam 1978, p. 80 en p. 165. Zie meer in het algemeen voor de mathematische implicaties van dit afstandsmodel: H. H. Bock, *Automatische Klassifikation*, Göttingen 1974, pp. 39-40.

37. A. E. Bronner, R. de Hoog, *op. cit.*, p. 175.

38. Idem, p. 174.

39. Idem, p. 186 e.v.

40. Idem, p. 195.

41. Zie ook H. H. Bock, *op. cit.*, met name pp. 39-40.

42. O. A. Davis, M. J. Hinich, P. C. Ordeshook, An expository development of a mathematical model of the electoral process, *APSR*, 1970, pp. 426-448.

43. H. H. Bock, *op. cit.*, pp. 40-44 en A. Verbeek, Clusteranalyse, *Mens en Maatschappij*, 1976, pp. 230-272.

44. A. E. Bronner, R. de Hoog, *op. cit.*, pp. 117-140.

Property Rights, Justice and the Welfare State*

by Percy B. Lehning

I. Introduction

It can be argued that the debate between socialist and liberal conceptions of justice largely turns on the existence and the extent of property rights and on the related question of how much government intervention in these rights should be allowed.¹

The classical liberal idea of individual autonomy was partly based on the ownership of private property. One of the reasons that a philosophy, dedicated to the support of freedom, has paid close attention to the nature and significance of property rights is the fact that such rights play a central role in the determination of economic freedoms and in the resolution of conflict between these freedoms.

The industrial revolution and the associated sanctification of the market can be associated with this link between private property and individual freedom. However, the unconstrained individualism, with its unrestricted system of private property rights became increasingly challenged when more attention was paid to the effects the rising industrial society had brought with its development: large numbers of people without any property at all, without hope of acquiring any and with only their labour power to sell.²

Norman Furniss and Timothy Tilton have formulated in 'The Case for the Welfare State' that:

'The central phenomenon in advanced western nations is public intervention in economic markets and property relations; the central issue is the form and goal of this intervention'.³

And indeed, today, with a more or less mature welfare state in which the goal of social organization is seen as the promotion of welfare for all people, the

* Revised version of a paper presented to the Workshop on Political Theory of Property Rights of the European Consortium for Political Research. Université des Sciences Sociales de Grenoble, 6-12 April 1978.

political debate can be described as turning – again – round the question how much, if at all, government intervention in a free economy and in property rights should be allowed.

This debate has aroused a renewed interest by political philosophers in the concept of 'property' itself and in the relation between conceptions of justice and conceptions of property rights.

This has resulted in different normative answers to the question mentioned above: 'ought private property rights to be unrestricted or should the government of the welfare state be allowed to interfere in them and in a free economy?'

We can, for the sake of argument, distinguish two extreme positions in the answers given. On the one hand, it is argued that always, in any situation, interference by the government in property rights and in the market – presumed to bring about a fair distribution – is unjustifiable and should not be allowed. On the contrary, priority should be given – by a minimal state – to the protection of private property rights. This is the proprietarian account of justice, in which natural rights are the last court of appeal in political assessment.⁴ On the other hand, there are those answers that formulate that intervention in market relations and property rights is necessary to bring about a just society, even to the point where the market should be abandoned.

In this article I intend to investigate some recent justifications of property rights and the correlated question of distributive justice, in relation to the welfare state.

My suggestion is that it is possible to place these theories on a continuum. To describe the different positions these theories have on this continuum I discuss questions to their bearing on one crucial issue: how much government intervention in private property rights is allowed, or how many constraints should be placed on these rights? State intervention is seen here only in terms of intervention in property rights and regulation of the economy.

The left end of the continuum represents full government control, while the right end means a completely free economy. At this right side there is no intrusion whatsoever on property rights.

The continuum should be interpreted to represent a position of extreme libertarianism on the right to centrally planned socialism on the left.⁵

Libertarianism holds that economic assets should be left in whatever hands they reach through voluntary individual transactions. It exalts the claim of individual freedom of action and asks why state power should be permitted as, for instance, in the interference represented by progressive taxation and public provision of health care, education and a minimal standard of living. The libertarian wants to keep his rightfully acquired property. For property, when created or gained through *voluntary association*, is the reward for a

person's self-generated action or a free gift from others. At the same time it is held that a free market can provide every service that a person might require and that competition would ensure that the quality of these services would be the highest possible.⁶

All positions at the left-hand side of this view can be interpreted as being a critique of this extreme position. Next to the extreme libertarian position we find the limited statist who argues that a *state* is necessary to provide protection of lives and property. This state, however, should be a strictly limited one and should not, for instance, be allowed to levy any taxation other than the dues for maintaining the protection of lives and contracts. When we move on to the left along our continuum, we reach a position in which it is argued that strong safeguards of individual liberty are too great a hindrance to the achievement of a just society. As we go on, more and more attention is paid to the realities of economic power based on private property and a free market system. Government intervention in property relations and the market is defended with the argument that only in that way a society will be reached in which not only individual liberty is guaranteed but in which also the possibility of selffulfilment for each individual is realized.

Five contemporary political philosophers will be placed along the above sketched continuum. By placing them in this way it is possible to analyse their different views with regard to government intervention in property relations. The different justifications of property rights they give – which explain their different positions along the continuum, i.e. their different political standpoints – are closely interwoven with their different conceptions of justice.

The philosophers I have selected are (placed along the continuum from right to left): Murray N. Rothbard, Robert Nozick, James M. Buchanan, John Rawls and C. B. Macpherson. They represent typical examples of the different positions that can be taken along the continuum.

Right from the start it should be pointed out that it is not my intention to treat each theory in full. I only intend to look at those arguments that are given by each for, or against, the central question posed in this article. The idea of a continuum suggests that each author can be read as an *explicit* or *implicit* critic of the position(s) on both sides of himself. Furthermore, the idea of a continuum implies a notion of *transitivity* and *intensity*. So, for instance, when Nozick criticizes Rawls, one must assume that he also will reject Macpherson. One must also assume that he will reject Macpherson more vigorously than Rawls.⁷ On the other side, we may suppose that when Macpherson is critical of Rawls, he will be even more on all those views at Rawls' right-hand side. There is no one to be found on the right-hand side of Rothbard; he simply takes the most extreme position. On the left-hand side this cannot be said of Macpherson. In this article, however, I will not go into

the different socialist views one can find on his left; in my treatment therefore, Macpherson stands in the most extreme position.

A final preliminary remark should be made. None of the authors has placed himself on a continuum like the one I suggest. Others, however, have placed themselves between the extremes one can find on this continuum. For example Lawrence Becker places himself somewhere between libertarianism and socialism. His formulation of the two 'extremes' gives a good summary of the positions at each end of the continuum used in this article.

'Thoroughgoing libertarians are willing to tolerate nearly any resultant distribution of goods in order to preserve the liberties of a social order based on private ownership. Socialists are willing to restrict or eliminate almost any form of private ownership in order to achieve justice in distribution'.

Becker remarks that

'It has become increasingly evident over the last century that advocates of a compromise between libertarian and socialist extremes lack a principled consensus about what they will or will not tolerate'.⁸

His object is to make a contribution toward such a consensus. My object is to give some recent examples of different positions on and between the two extremes and make clear where consensus is missing and what reasons there are for the lack of it.

II. Murray N. Rothbard

Murray Rothbard is a libertarian anarchist.⁹ This kind of anarchism is a peculiarly American breed; it is a form of anarchism (labeled 'private property-anarchism' or 'anarcho-capitalism') which insists on private ownership of the means of production and market exchanges. It extends the defense of laissez-faire to the supply and competitive organization of the policing function. In Rothbard's idealized conception of the world there should be no stake-like entity.¹⁰ His libertarianism is an extreme individualism; society as such does not exist, it is simply a label for a set of interacting individuals.

II.1. In 'Power and Market' Rothbard remarks that 'critics of the freemarket economy [say] that *they* are interested in preserving "human rights" rather than property rights'.¹¹ But in Rothbard's view this is an artificial dichotomy and

'has often been refuted by libertarians, who have pointed out that (a) property rights of course accrue to *humans* and to humans alone, and (b) that the

"human right" to life requires the right to keep what one has produced to sustain and advance life. In short, they have shown that property rights are indissolubly also human rights'.¹²

Rothbard stresses the point that in his view not only are property rights human rights, but there are no rights but property rights.

'The *only* human rights, in short, are property rights'.

In 'Justice and Property Rights' Rothbard argues that the correct theory of justice in property rights is to be based on two fundamental principles.¹³ These can be called the libertarian axioms: (a) *the right of self-ownership*, and (b) *the homestead principle*:

- (a) the absolute property right of each individual in his own person, his own body;
- (b) the absolute right in material property of the person who first finds an unused material resource and then in some way occupies or transforms that resource by the use of his own energy.¹⁴

The homestead principle refers, according to Rothbard, to John Locke's ideas on 'mixing one's labour' with an unowned object.

In the first place each individual, as a natural fact, is the owner of *himself*, the ruler of his own person, first in his own body and second in previously unused natural resources which he transforms with his labour. The central axiom of the libertarian creed is non-aggression against anyone's person and property. The 'human' rights of the person that are defended in the purely free market society are, in fact, each man's property right in his own being, and from this property right stems his right to the material goods that he has produced.

The two mentioned basic axioms form the entire system of justification for property rights. He remarks that the concentration on 'vague and woolly "human" rights has not only obscured this fact but has led to the belief that there are, of necessity, all sorts of conflicts between individual rights and alleged "public policy" or the "public good"'.¹⁵ There is no possibility of placing any limit upon property rights: *these are absolute rights*. From this right to private property follows the justification for the free market economy. Closely related with this conception of property rights is Rothbard's defence of liberty: freedom to contract what one owns without molestation by others.

'Freedom is a condition in which a person's ownership rights in his own body and his legitimate material property are *not* invaded, are not aggressed against. . . . Freedom and unrestricted property right go hand in hand'.¹⁶

Justice is concerned with but one thing: to give everyone his due. And in the

libertarian conception of justice this means that a man is due what he has made for himself of what he has acquired from others by purchase or gift. In determining questions of ownership, justice has been done when it has been determined who made the object in question and to whom it is transferred to.¹⁷

II.2. How does one, in this theory acquire any income? 'A man does not acquire the right to "income", but to the *property* which he himself creates'. A man has the right to his own product, to the product of his energy, which immediately becomes his property. In this conception one's income is, therefore, completely determined by the monetary valuation which the market places on someone's goods or services. This means that in a free market society everyone obtains money income only insofar as he can sell his goods or services for money. The essential question is: who owns the product?

Rothbard stresses the point that no such thing as the marginal productivity theory is necessary to this ethical discussion. The criterion to be used in determining who has made the product, and who should therefore earn the money, is really very simple:

'A spends his labor energy working in a factory; this contribution of labor energy to further production is bought and paid by factory owner, B. A owns labor energy, which is hired by B. . . . B hires various factors to work on his capital, and the capital is finally transformed into another product and sold to C. The product belongs to B, and B exchanges it for money. The money that B obtains, over and above the amount that he had to pay for other factors of production, represents B's contribution to the product'.¹⁸

We see that individuals do not create income. They create a product which they hope can be exchanged for income because it is useful to consumers. It is the market that 'solves the problem of estimating worth, and better than any coercive agency or economist could'. Rothbard adds that 'true free market doctrine is that no person may *coerce* others into giving him aid. It makes all the difference in the world whether the aid is given voluntarily or is stolen by force'.¹⁹ The prime reason for the free market is not, in this analysis, a utilitarian one, but a moral one: *it is rooted in the natural rights defence of private property.*

II.3. It will be clear that in this theory a search for criteria of 'just' taxation is absurd as long as the justice of taxation *itself* has not been proved. It can come as no surprise when we read:

'Libertarians regard the State as the supreme, the eternal, the best organized, aggressor against the persons and property of the mass of the public. *All States, everywhere . . .*'

The 'libertarian', Rothbard continues, 'sees a crucial distinction between government, whether central, state, or local, and all other institutions in society'.

'Only the government obtains its income by coercion and violence . . . This coerced levy is taxation . . . Only the government, in society, is empowered to aggress against the property rights of its subjects, whether to extract revenue, to impose its moral code, or to kill those whom it disagrees'.²⁰

And at another place Rothbard remarks:

'In a sense, the entire system of taxation is a form of involuntary servitude. Take, in particular, the *income tax*. . . . Part of the essence of slavery, after all, is forced work for someone at little or no pay. But the income tax means that we sweat and earn income, only to see the government extract a large chunk of it by coercion for its own purposes. What is this but forced labor at no pay?'²¹

II.4. From the foregoing it will be clear that the welfare state, with its intervention in property relations and the free economy, and its system of taxes and transfers, cannot hope to get any support from Rothbard. Even where one of the main purposes of the welfare state is to help the poor by guaranteeing them a minimal basis for subsistence, Rothbard rejects the welfare state outright.

'What, then, *can* the government do to help the poor? The only correct answer is also the libertarian answer: Get out of the way. Let the government get out of the way of the productive energies of all groups in the population, rich, middle class, and poor alike, and the result will be an enormous increase in the welfare and the standard of living of everyone, and most particularly of the poor who are the ones supposedly helped by the miscalled "welfare state"'.²²

The ultimate libertarian programme may be summed up in one phrase: the *abolition* of the public sector, the conversion of all operations and services performed by the government into activities performed voluntarily by the private-enterprise economy.

The allocation of initial property rights goes to those who find and transform natural resources by their labour.²³

In Rothbard's theory any argument that would assert the necessity of the state for the protection of property rights (the main difference with Nozick, as we will see) is absent.

But how are disputes – in particular disputes about alleged violations of persons and property – to be resolved? Rothbard remarks that '*any* society, be it statist or anarchist, has to have *some* way of resolving disputes that will gain a majority consensus in society'.²⁴

According to him this is to be done by arbitrators, who are selected in the following way:

'the arbitrators with the best reputation for efficiency and probity would be chosen by the various parties on the market. As in other processes of the market, the arbitrators with the best record in settling disputes will come to gain an increasing amount of business, and those with poor records will no longer enjoy clients and will have to shift to another line of endeavor'.²⁵

One may wonder, however, whether – if the arbitrators are to be empowered to enforce decisions against guilty parties – this would not bring back the state in another form and thereby negate anarchism. According to Rothbard, this is not the case. He 'explicitly defined anarchism in such a way as not to rule out the use of defensive force – force in defense of person and property – by privately supported agencies' and he adds, that it 'should be noted, however, that in the anarchist society there will be no "district attorney" to press charges on behalf of "society"'.²⁶

Rothbard attempts to show that only a stateless society can maximize social welfare. Justice is only that which comes out of the unobstructed market process.

III. Robert Nozick

Nozick starts his 'Anarchy, State, and Utopia' with a strong formulation of individual rights: 'individuals have rights, and there are things no person or group may do to them (without violating their rights)'.²⁷

His first explicit objective is to demonstrate that a minimal state will qualify as morally legitimate, a demonstration that is specifically aimed at undermining the opposing claims of libertarian anarchists. In this, his implicit adversary is Rothbard. Nozick stresses that he treats 'seriously the anarchist claim that in the course of maintaining its monopoly on the use of force and protecting everyone within a territory, the state must violate individuals' rights and hence is intrinsically immoral'. (N, XI).

He argues, however, that through a series of ordinary market-like exchanges a dominant protective firm or association will emerge, which develops into a minimal state that does *not* infringe on individuals' rights.²⁸

His second objective is to argue against those who think there should be a more than minimal state. Such a state would be allowed to undertake redistributive policies and infringe on individual rights. Here his adversary is explicitly John Rawls with his views on distributive justice.

III.1. Those familiar with Nozick's argumentation against a more extensive

state will have been struck, I think, by the similarity between his arguments and Rothbard's, the one essential difference being Nozick's acceptance and defense of a minimal state.²⁹ For the rest Nozick could very well agree with Rothbard.³⁰ Perhaps we should call Nozick's view one of 'revised libertarianism'.

Defenders of private property have traditionally linked the rights of ownership with individual liberty. In Nozick's theory, as in Rothbard's, we find again this proposed connection between private property and personal liberty.³¹ This is especially clear in Nozick's defense of property rights against incursions of the welfare state and schemes of distributive justice which motivate welfare programmes.

Nozick takes the right to liberty as virtually absolute and he provides an analysis of how individual liberty supports the principle of limited government. It is the mechanism of the free market that, in his opinion, supports individual freedom.

As for his theory of justice Nozick makes a distinction between historical principles of justice and non-historical principles (which he calls end-state principles). With respect to distribution, a defender of the historical approach argues that in assessing the justice of a situation, it is not enough to see how the goods are distributed. We must also look at how the goods were produced and how the specific distribution came about. Attempts to achieve a *patterned* distribution, however, result in an infringement on one's right to liberty. Therefore, as an alternative, Nozick develops a non-patterned theory that he calls *the theory of entitlements*, that is, a theory of justice in holdings. This entitlement theory should provide us with a justification of a certain initial distribution. In Nozick's view a distribution is just if everyone gets what he is entitled to. To determine what people are entitled to, we must analyse the original acquisition of holdings, the transfer of holdings, and the rectification of holdings. (Note, once again, the similarity in arguments between Nozick and Rothbard.) Nozick's theory of acquisition is, as he himself explains, based on Locke's theory of property rights. It will be clear that the account of acquisition is essential to this theory. In describing how a just acquisition is achieved, Nozick emphasizes liberty at the expense of all other values.

The starting point in Nozick's theory is the unargued premise that individuals have certain inviolable rights which may not intentionally be transgressed by other individuals or the state for any purpose. The state may not use its coercive apparatus for the purpose of getting some citizens to aid others. But as Thomas Nagel has remarked:

'to present a serious challenge to other views, a discussion of libertarians would have to explore the foundations of individual rights and the reasons for

and against different conceptions of the relation between those rights and other values the state may be in a position to promote'.³²

Nozick's case hinges on the justification he can provide for such rights. What, then, are his arguments? His answer is: 'This book does not present a precise theory of the moral basis of individual rights'. (N, XIV). Nozick simply assumes a set of rights and then examines the political structure which would follow from the constraints set by these rights. The omission of a justification for private property rights can only be explained by the assumption that Nozick believes that such rights are required by adherence to the value of personal liberty and autonomy.

III. 2. One of Nozick's main purposes is to argue against redistributive policies which infringe on the property rights of individuals and in a certain way restrict a free economy. His search for an answer to the question 'who has the right to the product in a complex industrial process in a capitalist economy?' relies on an argument against redistribution policies undertaken by the state.³³ It is in particular an argument against Rawls' theory of justice and the distributive activities which that theory would imply. Nozick's central question in this regard is the following one:

'Why does social cooperation *create* the problem of distributive justice? Would there be no problem of justice and no need for a theory of justice, if there was no social cooperation at all, if each person got his share solely by his own efforts?' (N, 185).

The following argument gives the answer to this problem:

'In the social noncooperation situation, it might be said, each individual deserves what he gets unaided by his own efforts; or rather, no one else can make a claim of *justice* against this holding. It is pellucidly clear in this situation who is entitled to what, so no theory of justice is needed. On this view social cooperation introduces a muddying of the waters that makes is unclear or indeterminate who is entitled to what'. (N, 185-6).

Nozick cannot find any argument why social co-operation so changes matters that suddenly the entitlement principles – which applied to the non-co-operative cases – should become inapplicable or inappropriate to the co-operative situation. If the argument would be that the contributions of different individuals were so entangled that one could not disentangle each separate contribution, then there would indeed be a problem if there was some coherent notion of an identifiable marginal product. In that case one could ask if the marginal productivity theory would be an appropriate theory of

fair or just shares. But in Nozick's theory this sort of reasoning is completely irrelevant. The entitlement theory finds acceptable whatever distribution may result from the party's voluntary exchanges.³⁴

The legitimacy of the distribution is only to be evaluated according to how it came about; the only relevant questions is whether property to which owners were entitled was freely transferred or exchanged without violating any rights. Nozick stresses that this is unlikely to result in any fixed pattern. He suggests as an embodiment of his just historical principles the operation of free market exchange, without state control or any forced redistribution. It is the free market economy that is the sole distributor of advantages.

The principles of free acquisition and transfer take precedence over all other claims on material property because in Nozick's theory a higher value is placed on freedom than on values like equality, fraternity, welfare and even life. Only free exchange recognizes a maximum of freedom of action for individuals.³⁵

III.3. When Nozick argues against redistributive activities by the state, his arguments are again very similar to those of Rothbard.

Persons, in Nozick's theory, are entitled to what they earn; they are entitled to those rewards of their socially productive efforts which others are willing to pay. To appropriate the results or earnings of someone's labour amounts to making him work a certain amount of time against his will for the benefit of others.

It is for this reason that Nozick can say: 'Taxation of earnings from labor is on a par with forced labor'. (N, 169).

Nozick's problem with distributive activities lies in the fact that, when end-result principles of distributive justice are built into the legal structure of society, 'they (as do most patterned principles) give each citizen an enforceable claim to some portion of the total social product; that is, to some portion of the sum total of the individually and jointly made products'. (N, 177).

What happens is that

'end-state and most patterned principles of distributive justice institute (partial) ownership by others of people and their actions and labor. These principles involve a shift from the classical liberals' notion of self-ownership to a notion of (partial) property rights in *other* people'. (N, 172).

III.4. Nozick proceeds from the moral inviolability of persons to a set of individual rights. His theory of entitlements, the central element of his theory of justice, develops out of these individual rights and not from a 'just social practice'. In the light of this theory Nozick can then ask what connection there can be between social co-operation and distributive justice.

The elaboration of this supposed connection (which, as we shall see, plays a central role in Rawls' theory) leads Nozick to reason that if such a connection is suggested, then it must be because individual contributions to the joint social product are so entangled with another that they cannot be distinguished. However, this is *not* at all the point at issue in theories that suggest that there is, indeed, a relation between social co-operation and distributive justice. It is the social nature of human beings, a point neglected in Nozick's theory, that causes difficulties.³⁶ This point is very clearly made by Buchanan in his reaction to Nozick, as we shall see.

IV. James M. Buchanan

In 'The Limits of Liberty' Buchanan describes how a form of contractarian agreement might emerge which would define, guarantee, and enforce a distribution of *rights* and *claims* prior to the exchanges in these rights and claims by a market process.³⁷ He does not agree with Nozick that the state should have only a *protective* function; he also distinguishes a *productive* role. On the other hand, he cannot go all the way with Rawls in describing specific precepts of justice which should give direction to the productive role of the state. In his theory Buchanan does not identify a set of principles intended to define the 'good society'.

IV.1. In Buchanan's conception rights are not 'given by nature' as in the theories of Rothbard and Nozick. He wants to demonstrate 'that, even among men who are unequal, a structure of legal rights can be predicted to emerge'.³⁸ His aim is to give a conceptual explanation of how social order might have emerged contractually from the rational maximization of utility. Social order embodies a definition of the assignment of individual rights and the establishment of a political structure charged with enforcing rules of personal behaviour with respect to these assigned rights. For the purpose of this explanation he introduces the idea of a natural equilibrium in a Hobbesian state of nature as an analytical starting point for social order. In this initial conceptual setting individual differences account for varying degrees of success in the continuous struggle for survival. In this situation there are no laws 'and there is no need for a definition of individuals' rights, either property rights or human rights. There is no society as such'.³⁹ The absence of authority presents the individual with a choice of using his labour to produce goods or to take by force those goods produced by others.

There emerges a natural distribution which can be seen as a conceptual equilibrium. Buchanan's idea is that this natural equilibrium serves as the starting point in which individual persons are identified and from which

contractual agreement becomes possible. This social contracting is concerned to reach *unanimous* agreement on an assignment of individual rights. The distribution of rights laid down in this contract is directly linked to the relative command over goods and the relative freedom of behaviour enjoyed by each individual in the Hobbesian state of nature.

The considerable differences that exist between persons in the pre-contract setting mean that 'postcontract inequality in property and in human rights must be predicted'.

The logical foundation of property rights lies in the need for boundaries between 'mine' and 'thine'. Being unequal in a variety of aspects, some people will acquire more 'property' than others. Some may get a lot, some hardly anything at all, but in this analysis there is no place to criticize the resulting distribution from a moral point of view.

Buchanan tells us that 'there is really no categorical distinction to be made between that set of rights normally referred to as "human" and those referred to as "property"'.⁴⁰

In this analysis it is impossible to derive any set of 'universal' or 'inalienable' rights independently from the analysis of the emergence of property rights in the natural distribution.

Buchanan makes a distinction between two stages of social contracting: the constitutional stage and the post-constitutional stage. This makes it possible to distinguish the state in two separate roles.

At the constitutional stage, the state emerges as the enforcing agency or institution, conceptually external to the contracting parties and charged with the single responsibility of enforcing agreed-on rights and claims. This is the legal or protective state; it is not to be seen as a decision-making body but only as a referee and has no legislative function. That function is fulfilled by the productive state, the agency through which individuals provide themselves with 'public goods'.

The productive state is not allowed to cross the boundaries of the protective state and to intrude or change property rights. The only possibility in this analysis to change these rights is by a new constitutional contract in which unanimous agreement has been reached. The protective state is similar, according to Buchanan himself, to the minimal state as conceived by Nozick. But:

'My contractarian model does not, however, allow the state to be closed off at these limits. If contractual agreements emerge for the provision of jointly-consumed public goods, there may be a role for a productive as well as for a protective state'.⁴¹

IV.2. This outline of Buchanan's theory seems at first sight to be in accord

with straightforward 'laissez-faire' theory. An orthodox libertarian would apparently find no difficulty in associating himself with such a position. But that would be a hasty conclusion. In a critique of Nozick it becomes clear where the differences between Nozick and Buchanan lie.⁴²

Nozick appears, according to Buchanan, to succeed in tying together a libertarian position with an entitlement theory of distributive justice.

'This-tie-in, should it be accomplished, would discredit, and substantially destroy, the moral appeal of the basic libertarian position'. (B, 50).

Buchanan concludes, however, that 'Nozick's whole attempt must . . . be judged a failure'. (B, 61).

The end-state results, whatever they might be, that emerge from the ordinary market process are acceptable in Nozick's view because the process itself is unobjectionable and the initial situation is as well acceptable. He is committed to the free operation of a market society, to voluntary transactions. And his underlying presumption seems to be – in Buchanan's interpretation – that something akin to a competitive market order will emerge naturally or spontaneously under the operation of the minimally protective state.

Buchanan accepts Nozick's commitment to the free operation of a market system. However, he cannot accept Nozick's underlying presumption.

'Somewhat indirectly . . . Nozick's entitlement conception becomes a vehicle for receiving the argument that attributes ethically desirable properties to the distributive outcomes of a competitive market order'. (B, 59).

However, despite the dreams of some of the more enthusiastic 'laissez-faire' theorists, and despite the acknowledged historical role of the state in restricting competition, there seems to be no ground for the belief 'that the "natural" forces at work in an economy will insure a workably competitive order, independently of specific institutional arrangements designed to promote this end'. (B, 59).

Hence Buchanan sees a bigger task for the protective state than only the enforcement of property rights. He insists that the role of the protective state should also be to guarantee a workable competitive order.

'Freely associating individuals, within the confines of the minimally protective state, may exchange restrictive as well as productive agreements'. (B, 59).

Therefore, contrary to Nozick's construction, Buchanan allows for laws and institutions that are deliberately designed to promote competitive and deter

noncompetitive contractual agreements among parties. But there is a second objection to Nozick's theory. Assuming that the problem above mentioned is non-existent, that indeed a workable competitive economy will tend to emerge and be maintained under the legal framework of Nozick's minimal protective state, 'the range of end-state distributive results that might fall within this domain is wide, indeed'. (B, 60). Therefore, according to Buchanan:

'The alternative route that might have been taken is to acknowledge that the minimal state alone will not insure the workability of a competitive economic order and that even should it do so, there might be limits beyond which the distributive results would prove unacceptable'. (B, 60).

And he adds:

'This route would, however, introduce explicit discussion of the design of the laws and institutions along with their possible contractual derivation from the constitutional stage of agreement among persons . . . Nozick simply does not allow for a process through which laws, rules, and institutions are explicitly chosen by members of the group. And by implication he does not allow for a method through which existing laws, rules, and institutions may be evaluated with a view toward possible reform or improvement'. (B, 61).

IV.3. How does Buchanan react to the claim, as put by Nozick (and Rothbard), that 'taxation is on a par with forced labor'?

'I find myself being required, by force of law, to give up a large share of my annual income, almost all of which is labor income or salary, to the support of the state, which I feel powerless to control. My vote will not effect the governmental decisions that are relevant for my position'.
'Much of the government's activity is clearly illegitimate by my own standards of evaluation. But I cannot, with Nozick, go all the way and classify all government beyond protection of life and property as illegitimate'. (B, 62).

Buchanan recognizes that one cannot subsist without the co-operation of one's fellows and that he does not possess an effective option of withdrawing completely from the economic nexus. But has he then become a slave of the state? As long as he retains the possibility of reducing his income tax liability by his own choice through a total or partial withdrawal from the economic nexus he has not. 'The critical step toward becoming a slave would be that which denies me this option, which either imposes a tax on my potential earning power or requires that I do forced labor for the collectivity'. (B, 62).

IV.4. Buchanan's general idea about redistribution activities can be sum-

marized as follows. Political constraints must be recognized to exist when the problem of implementing constitutionally approved rules in income-wealth redistribution is discussed. In any real-world setting, of course, the discussion of institutional rules affecting income-wealth redistribution must take place in recognition of existing legal definitions of property rights, of existing political decision-making mechanisms, and of predicted patterns of income distribution as well as predicted positions of persons within these predicted distributions.⁴³

We have seen that Buchanan gives a contractarian analysis of the emergence of property rights, in contrast to both Rothbard and Nozick. He argues that Nozick (and we may implicitly also add Rothbard) goes much too far in the absolute defense of individual liberty. On the other side, as we shall see, the essential difference between Buchanan and Rawls lies in the fact that Buchanan does not want to give any specified precepts of justice.

How close, then, is Buchanan's standpoint to that of Rawls?

'A strong defense of the liberties of individuals, which can only be secured in an operating market economy, may be joined with an equally strong advocacy for the reform of basic social institutions designed to produce greater equality among individuals in their initial endowments and capacities'.⁴⁴

And Buchanan adds: 'This is how I interpret John Rawls' position'. But immediately follows the remark that in his opinion Rawls 'does not seem to recognize the necessary relationship between an operative market economy and the dispersion of property ownership'. To determine whether this is, indeed, the case, we must now turn to the theory of John Rawls himself.

V. John Rawls

At first glance one might think that Rawls has nothing to say on property or property rights in 'A Theory of Justice'.⁴⁵ In contrast to, for instance, Nozick, Rawls is virtually silent on the status or extent of property rights. It would, however, be a mistake to conclude from the absence of any reference to property in the index of 'A Theory of Justice' that his theory has no bearing on property rights.⁴⁶

First we should note that in Rawls' theory of justice we do not *start* with a set of rights, but that rights *themselves* are subject to debate in a – hypothetical – contract situation. This is an important contrast with Rothbard and Nozick, in whose theories individuals' rights are somehow 'given by nature'. In Buchanan's case there is, as we have seen, also a contract concerned with rights. The essential difference, however, lies in the fact, that in Rawls' case,

once the social contract has been reached, ethical principles are chosen *once and for all*. In Buchanan's theory the social contract can be renegotiated at a later point in time.⁴⁷

V.1. Central to the Rawlsian conception of justice is the notion that everyone should be able to fulfil his plan of life and to take account of the fully social nature of human relationship. The attributes necessary for each individual to achieve his plan of life are primary goods (rights and liberties, powers and opportunities, income and wealth, and self-respect) which are distributed through *the basic structure of society*. By the 'basic structure of society' is meant the way in which the major social institutions assign fundamental rights and duties and determine the division of advantages from social co-operation. It is the basic structure that is the primary object of Rawls' undertaking.

'The political constitution, the legally recognized forms of property, and the organization of the economy'

are major institutions and belong to the basic structure.⁴⁸

'Taken together as one scheme, the major institutions define men's rights and duties and influence their life prospects, what they can expect to be and how well they can hope to do'.⁴⁹

The basic structure is the primary subject of justice because its effects are so profound and are present from the start.

The role of the basic structure is to secure just background conditions against which the actions of individuals and associations take place. Unless this structure is appropriately regulated and corrected, the social process will cease to be just, however free and fair particular transactions may look when standing by themselves. This means, for instance, that the distribution from voluntary market transactions is not, in general, fair *unless* the antecedent distribution of income and wealth as well as the structure of the system of markets is fair. The existing wealth must have been properly acquired. This must not be interpreted, as many critics of Rawls have assumed, to imply that there should be a situation of absolute equality in the basic structure.

'The basic structure most likely contains significant social and economic inequalities. These I assume to be necessary, or else highly advantageous, in maintaining effective social cooperation; presumably there are various reasons for this, among which the need for incentives is but one'.⁵⁰

When the basic structure takes form the distribution that results will be just

(or at least not unjust) whatever it may be. This means that the two principles of justice make considerable use of the notion of pure procedural justice. These two principles, that have been derived in the social contract situation, are:

- First principle: Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.
- Second principle: Social and economic inequalities are to be arranged so that they are both: (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and (b) attached to positions and offices open to all under conditions of fair equality of opportunity.

The principles are to be arranged in serial order with the first principle prior to the second. Rawls' idea is that these two principles of justice achieve the aim of treating men as ends in themselves and not as means.

These principles apply to the basic structure and its system for acquiring entitlements. Given the notion of pure procedural justice, whatever distributive shares result, within appropriate limits, are to be called just. Rawls' idea is that 'each receives that total income (earnings plus transfers) to which he is entitled under the public system of rules upon which his legitimate expectations are founded'.⁵¹

This account of distributive shares is an elaboration by Rawls of the familiar idea that income and wages will be just once a (workably) competitive price system is properly organized and contained in a just basic structure.

V.2. The traditional idea of a natural right to property in the fruits of one's labour is basic to the theories of Rothbard and Nozick in particular. What has Rawls to say about this traditional idea? Some common sense precepts of justice do appear to him, at first sight, as quite general. As an example he mentions the precept 'to each according to his contribution' which covers many cases of distribution in a perfectly competitive economy. By accepting the marginal productivity theory of distribution, each factor of production receives an income according to how much it adds to output (assuming private property in the means of production). In this sense, Rawls argues, 'a worker is paid the full value of the results of his labour, no more and no less. Offhand this may strike us as fair'.⁵²

But Rawls is quick to add that such a common sense precept is at *the wrong level of generality* to count as a principle of justice. 'The marginal product of labor depends upon supply and demand. What individual contributes by

his work varies with the demand of firms for his skills'.⁵³ This, then, leads to the conclusion that following the precept of contribution will only lead to a just outcome, when the underlying market forces, and the availability of opportunities which they reflect, are appropriately regulated. This, of course, is in Rawls' opinion only guaranteed if the basic structure as a whole is just.

The conception of a suitably regulated competitive economy with the appropriate background institutions is an ideal scheme which shows how the two principles of justice might be realized. It is Rawls' conviction that a private-property economy and a socialist regime can satisfy his conception of justice. This is due to the fact that *market institutions*, according to Rawls, may be common to both private-property and socialist regimes. His idea is that it cannot be determined in advance which of these systems and the many intermediate forms most fully answer the requirements of justice. The ideal scheme makes considerable use of the market arrangements. Essential is Rawls' original assumption that the regime is a property-owning democracy.⁵⁴

In contrast again to Nozick, Rawls' start with society conceived as an arrangement for cooperation between rational individuals. Social cooperation makes possible a better life for all than any would have if each were to live solely by his own efforts. The conflict over how these greater benefits should be distributed is regulated by the two principles of justice. The social aspect of human relationship is reflected in the context of the principles themselves. In a recent elaboration on these points, Rawls makes quite clear how this aspect of social cooperation is to be seen.

'The difference principle (which governs economic and social inequalities) does not distinguish between what is acquired by individuals as members of society and what would have been acquired by them had they not been members'.⁵⁵

This can be read, in my opinion, as a direct critique of Nozick's interpretation of Rawls.⁵⁶ Rawls continues:

'Indeed, no sense can be made of the notion of that part of an individual's social benefits that exceed what would have been their situation in another society or in a state of nature'.

According to Rawls there is no question 'of determining anyone's contribution to society, or how much better off each is than they would have been had they not belonged to society and then adjusting the social benefits of citizens to these estimates'.

But how about entitlements? The two principles of justice regulate how these are acquired, not by some 'natural right', but 'in return for contribu-

tions to associations, or to other forms of cooperation, within the basic structure'.⁵⁷

The essential point Rawls wants to stress is that, insofar as the worth of citizens is compared at all, 'their worth in a well-ordered society is always equal; and this equality is reflected in the system of basic equal liberties and fair opportunities, and in the operations of the difference principle'.⁵⁸

V.3. From the foregoing it will be clear that Rawls does not argue that 'taxation is theft'. This is, as we have seen, due to the fact that Rawls sees society as an arrangement for social cooperation. It is the difference principle that is to regulate income and property taxation and which holds for fiscal and economic policy. Now, again, with regard to the working of the difference principle and its consequences, there has been substantial misunderstanding, as Rawls himself notes. Therefore he stresses the fact that

'there are no unannounced and unpredictable interferences with citizens' expectations and acquisitions. Entitlements are earned and honored as the public system of rules declares. Taxes and restrictions are all in principle foreseeable, and holdings are acquired on the known condition that certain corrections will be made'.⁵⁹

V.4. One of the objections Nozick has made against Rawls' theory is, that the aim of government interference in property rights is to guarantee that the outcome will be a specified pattern: equality. This same objection is made by other authors who have rejected Rawls' theory outright because they have interpreted it as having a strongly egalitarian connotation.⁶⁰

But this interpretation is also due to a misunderstanding of Rawls' two principles of justice. It is not true that these principles 'insist that the actual distribution reflect any observable pattern, say equality, nor any measure computed from the distribution, such as a certain Gini coefficient'.⁶¹ And Rawls goes on to explain that what 'is enjoined is that (permissible) inequalities make a certain functional contribution over time to the expectations of the least favored'. Rawls' idea is that institutions must be organized in such a way that social cooperation will encourage constructive efforts. Everybody has a right to his 'natural abilities and a right to whatever one becomes entitled to by taking part in a fair social process'.

A final remark should be made on the constraints that are put on the consequences of applying a theory of pure procedural justice. These constraints are incorporated in the two principles.

Among these constraints are, in Rawls' words,

'the limits on the accumulation of property (especially if private property in

productive assets exists) that derive from the requirements of the fair value of political liberty and fair equality of opportunity, and the limits based on considerations of stability and excusable envy, both of which are connected to the essential primary good of self-respect'.⁶²

These remarks will be important in connection with Macpherson's critique of Rawls, to whose theory we now turn.

VI. C. B. Macpherson

With Macpherson we arrive at the left side of our continuum. In essence he has tried to show that the weakness of traditional liberal-democratic theory can be traced 'to its retention of the concept of man as infinite consumer and infinite appropriator: that concept of man is clearly inextricable from a concept of property'.⁶³ Macpherson gives primary importance to access to the means of life and the means of labour, without which men cannot hope to realize their human potential.

VI.1. Macpherson argues that the meaning of property is not constant. The actual institutions and the way people see it, and hence the meaning they give to the world, all change over time.

'The changes are related to changes in the purposes which society or the dominant classes in society expect the institution of property to serve'.⁶⁴

In modern market society changes in the concept of property are needed if the concept is to be made consistent with what Macpherson understands to be a democratic society. The modern view of property is 'an exclusive right of a natural or artificial person to use and dispose of material things (including land and resources'. This 'leads necessarily, in any kind of market society . . . to an inequality of wealth and power that denies a lot of people the possibility of a reasonably human life'.⁶⁵ Therefore a democratic society must broaden the concept of property.⁶⁶

'If liberal-democratic societies are to be the guarantors of rights essential to the equal possibility of individual members using and developing their human capacities, the individual property right that is needed is not the exclusive right but the right not to be excluded from the use or benefit of those things (including society's productive powers) which are the achievements of the whole society'.⁶⁷

The very nature of human beings, according to Macpherson, requires that an individual's property is of two forms.

'Property . . . may take either or both of two forms: (a) an equal right of access to the accumulated means of labour, i.e., the accumulated capital of society, and its natural resources (with a consequent right to an income from one's work on them); or (b) a right to an income from the whole produce of the society, an income related not to work but to what is needed for a fully human life'.⁶⁸

It is Macpherson's idea that property can only be seen as a necessary human right if its definition respects both these distinctions. Only in this broader sense does it not contradict the democratic concept of what is to be called a human right. And he adds: 'indeed, it then may bring us back to something like the old concept of individual property in one's life, liberty, and capacities'.⁶⁹

The traditional basis for property, as an exclusive, unalienable right to all kinds of material things, was founded in a particular conception of labour. The postulate was that a man's labour was peculiarly his own (a point of view also found in Rothbard's and in Nozick's theories).

This labour justification of property was, according to Macpherson, reproduced uncritically in the history of liberal theory and became the biggest obstacle to the attainment of a truly democratic society.

One's main property is still, for most men, one's right of access to the means of labour; 'to see as one's property a right to earn an income through employment is to see as one's property a right of access to some of the existent means of labour, that is, to some of the accumulated productive resources of the whole society, no matter by whom they are owned'.⁷⁰

Here we may note the strong element of social cooperation that underlies Macpherson's ideas, stronger even than in Rawls' theory. Why should the human right to a full life be seen at all as a property right? This is due to the fact that, still according to Macpherson, 'property' plays such a central role in our present society that all rights which are *not* property rights are seen as secondary rights. Only if human rights are treated as property rights will they stand any chance of being realized.

If it is true that individuals have these rights, it is the state that creates them, and therefore the state that should intervene in the field of prevailing property rights.

VI.2. We now must ask how Macpherson sees the position to his right-side on the continuum. Has not Rawls, with his theory of justice, escaped the trap of bourgeois society and given the outlines of how a society in which everyone can realize a fully human life should be arranged?

In Macpherson's opinion, he has not at all. He remarks that Rawls has 'done a new service to political theory by sketching the lineaments of a har-

monious society of fully human beings'.⁷¹ But Rawls' mistake is that he wants to realize the liberal market freedom *and* the moral values of community at the same time. By doing this he has overlooked the fact that these are inconsistent. Why? Because of 'the inherently exploitive nature of the market freedom'.

This line of attack on Rawls' theory becomes even more apparent when Macpherson turns to the basic structure as described by Rawls.

[The] description of the basic institutions required for a just society are, except for one qualification Rawls inserts, in essence an advanced version of the current capitalist welfare state and regulatory state. The state intervenes to keep markets competitive, but the motor of the economy is the entrepreneur moved by incentives of gain. This is the classic capitalist welfare state'.⁷²

We note that it is especially the moral nature of man, as conceived by Rawls, that Macpherson finds unacceptable; man's inspiration fed by the incentive of material gain.

But what are the qualifications Rawls refers to? They lie in the repeated statement that in his conception it is not essential that there should be private ownership of the means of production; and that both a private-property economy and a socialist regime can satisfy his conception of justice.

In Macpherson's opinion this statement shows that 'there seems to be an extraordinary confusion', a confusion that 'increases when Rawls elaborates his notion of market society'.⁷³

Before elaborating on this point I give a quotation from Macpherson in which he describes Rawls' sketch of a just society. Nevertheless, it leads Macpherson to the conclusion that Rawls' theory is one that fails to guarantee a human life to everyone.

Rawls' just society is, in Macpherson's words,

'an elaborated version of a capitalist welfare state, with an extensive set of regulators designed to ensure equality of opportunity, prevent monopolistic restrictions, guarantee a social minimum of real income, correct for 'the failure of prices to measure accurately social benefits and costs' (R, 276), bring about reasonably full employment, prevent inequalities of wealth exceeding the limit at which they would jeopardize equality of opportunity and political liberties, and prevent one fairly small sector controlling the preponderance of productive resources'.⁷⁴

Rawls' major shortcoming is not that he tries to show that a socialist system can meet the requirements of his principles of justice. It lies in the fact that he does not see that this can only be done by the rejection of exploitive property institutions, and not by a modification of the capitalist market

system. Accordingly, as long as Rawls is unable to see the exploitative relations inherent in capitalism he will be unable to recognize that justice in capitalism, however much regulated, should be any more difficult than in socialism.

Translated into models of society, this means that Rawls relies mainly on a reformed capitalist model, and is able to treat a socialist model as a possible modification because his socialist model embodies considerable elements of normal capitalist motivations. Above all, it is important that Rawls' rational man is required to operate by the incentive of material gain.

VI.3. It has become clear in the foregoing pages that one of Macpherson's central objections against Rawls is the fact that he also makes use of the market, although constrained by the basic structure of society. This fact alone is enough to reject Rawls' position because in Macpherson's eyes the market is always the object that makes it impossible to reach a genuine democratic society. As John Dunn has remarked:

'Macpherson is right to emphasize that when we proclaim our enthusiasm for liberal democracy we are in danger of forgetting or of leaving discreetly unmentioned the fact that thus far an acceptance of liberal democracy has been accompanied by an acceptance – whether cheerful or resigned – of capitalist production'.⁷⁵

However, he adds:

'What he fails to give adequate weight to is the perfectly rational basis for anxiety that a firm repudiation of the market may – in the realm of practice if not that of theory – also turns out to include a number of equally unadvertised concomitants in the package'.

This seems to be a correct argument against Macpherson. The central question that should be answered is: is the market indeed *always* an objectionable instrument, even in a socialist society? All I want to say here is that Macpherson's attack on the market and his straight-forward identification of 'the market' with 'capitalism' is too simple a manner as a basis for outright rejection of Rawls' theory of justice.

VII. Property Rights, Morals and Markets

The welfare state in advanced industrial democracies is conceived as a type of state that pursues a guaranteed national minimum through intervention in market and property relations and which aspires to broaden market power

and to provide greater equality of life chances for all. The government intervenes to give legal rights to all its members, especially to the least advantaged. Society is seen as *obliged* to provide support and the individual is *entitled* to that support as of right. The welfare state has created 'new property', that is those welfare rights, which represent claims to public 'largesse'.⁷⁶

In the discussion of our five political philosophers it became evident that all, with the exception of Macpherson, favour the market in any way or another. We also have noted that, moving to the left-hand side of the continuum, the degree of intervention in the market and property rights was increasingly seen as both necessary and legitimate, even to the point where the market itself should be abandoned.

In *Rothbard* case the prime reason for the support of a free-market economy is not utilitarian, but moral. The central thrust of his libertarian thought is opposition to any aggression against the property rights of individuals in their own persons and against the material objects they have voluntarily acquired.

'It so happens that the free-market economy, and the specialization and division of labour it implies, is by far the most productive form of economy known to man, and has been responsible for industrialization and for the modern economy on which civilization has been built. This is a fortunate utilitarian result of the free market, but it is not, to the libertarian, the *prime* reason for his support of this system. That prime reason is moral and rooted in the natural-rights defense of private property . . .'

And he adds: 'Fortunately, as in so many other areas, the utilitarian and the moral, natural rights and general prosperity go hand in hand'.⁷⁷

It would lead us too far from our main argument to go into Rothbard problematic remark about the favourable link between utilitarianism and natural rights. As will be remembered, the central libertarian axiom of Rothbard was the natural right to self-ownership. A just society provides maximum scope for self-ownership and hence it is unjust to transgress upon rights in any way. Here we want to ask if, indeed, it is a realistic assumption that the market will function in the way Rothbard assumes it does, without any central arbitrator or regulator, without a central institution to protect property rights. Is it a realistic assumption that police, legal systems, judicial services, law enforcement, prisons, etc. can be provided in a free market?

Rothbard answer is, of course, that these services *should* be provided in that way; moreover that there are some examples from cultural anthropology which show that it could be done. However, the relevant empirical question is: could state-formation *not* have taken place, even if it should not have happened? As North and Thomas, who view government mainly as an organ-

ization that provides protection and justice in return for revenue, wrote in *The Rise of the Western World*:

'While we can envisage that voluntary groups might protect property rights on a narrow scale, it would be hard to imagine a generalized enforcement without governmental authority'.⁷⁸

This is especially due to the fact that governments 'were able to define and enforce property rights at a lower cost than could voluntary groups, and that those gains became even more pronounced as markets expanded'.⁷⁹

This is the reason why in *Nozick's* theory a minimal central government is legitimate. For him a strictly limited set of near absolute rights constitute the foundation of morality.

Again, like in Rothbard's case, the reasoning for the market is not a utilitarian one but rooted in the inviolable rights individuals have. It is the mechanism of the free market that supports individual freedom. The state – albeit minimal – can be defended on moral grounds (not to keep the market competitive) because it does not transgress upon individuals rights. On the contrary, the minimal night-watchman state is a state limited to protect persons against murder, assault, theft, fraud and so forth.

'People are choosing to make exchanges with other people and to transfer entitlements, with no restrictions on their freedom to trade with any other party at any mutually acceptable ratio'. (N, 186).

Rothbard and Nozick argue that if institutions violate rights, these institutions are unjustifiable, no matter how great their superiority may be in, for instance, producing happiness or alleviating pain. Both defend distribution of the social product through the market on the ground that this method does not violate rights. Alternatives such as government regulation of distribution in accordance with need, for instance, might do so. Both agree that market distribution is distribution in accordance with voluntary decisions of individuals to buy or sell goods and services, while government distribution involves the government taking resources from some individuals by taxation, to give to others. Any distribution can result from the market. So far as justice is concerned this is all irrelevant; any distribution is just if it has arisen from an originally just position through transfers which do not violate rights.

If one disagrees with this defense of the market, one should argue against the theories of justice that are formulated by Rothbard and Nozick, and especially against the interpretation that they give to 'natural' or 'inalienable' rights.

Buchanan is in favour of a protective state, a state that enforces property

rights and contracts and that gives institutional guarantees for a workable competitive order *and* a productive state. In his view, Nozick's minimal state is too minimal. However, he claims that his defense of a protective and a productive state is not based on any theory of justice. The analysis of the emergence of property rights is done in a 'positive' way. Buchanan does not want to give a description of principles that should regulate a 'good' society. That does not mean that he has not an opinion on what is to be labelled 'good': good is that which 'tends to emerge' from the free choices of individuals.

'It is impossible for an external observer to lay down criteria for "goodness" independently of the *process* through which results or outcomes are attained. The evaluation is applied to the means of attaining outcomes, not to outcomes as such'.⁸⁰

He emphasises the procedure; the starting point is the struggle between unequals and he defines as 'good' the agreement on the outcome of that struggle. He places

'ultimate value on process or procedure, and by implication . . . define(s) as "good" that which emerges from agreement among free men, independently of intrinsic evaluation of the outcome itself'.⁸¹

The outcome can only be evaluated through the means by which it has been attained, and in this case that is unanimous agreement. *Any* unanimous agreement is classified as 'good'. The reason for this argumentation lies in the – ethical – choice of Buchanan's starting point for his analysis: the Hobbesian state of nature. (The choice of the Hobbesian state of nature as a starting point and not, for instance, a Rousseauian state of nature, is evidently based on the idea that individuals are self-interested utility-maximizers.)

The existing order (the outcome of some prior contracting process) has recently shown features of instability. A symptom of this instability is, according to Buchanan, that the productive state (for which we can read the welfare state) is making intrusions into the domain of the protective state. The result is that changes are made in the basic arrangement of society *without* the unanimous agreement of all concerned. How should these symptoms of instability be evaluated?

The use of any conception of justice for this evaluative purpose is out of the question. Such a conception cannot give direction to an eventual change of the existing legal structure (and in the distribution of property rights) because Buchanan wants

'to the maximum extent that is possible to derive the logical structure of social interaction from the self-interested utility maximization of individuals and without resort to external norms'.⁸²

The reason the existing order has lost its stability is that people believe that if they were back in the state of nature right now, there would emerge *another* natural equilibrium and, consequently, another distribution of property rights.

With Buchanan's approach it is impossible to derive any set of 'universal' or 'inalienable' rights independently of the analysis of the emergence of property rights in the natural distribution. That means, independently of the distribution of power among individual persons.

In Buchanan's view 'there has been relatively too much emphasis on the normative function of property'. One may wonder, however, if this 'positive' theory about property rights makes sure that 'everyone counts for one, and for as much as any other'. If persons are defined by the rights they possess and one can get rights only by force, or, after the constitutional contract has been made, by gains from trade, some will count for much less than one!

In his economic analysis, contractual agreement is vitally important because it represents the means by which bundles of property rights are exchanged. Now, in the real world that Buchanan wants to analyse, the regulations pertaining to property rights are important in delimiting the welfare of the individual members of the system.

Everyone should count for one, and for as much as any other. How are we to assess this 'counting' in view of the origin and distribution of property rights? By conceiving rights only as rights in the market-place it is difficult to see how his idea that free men should have free relations among each other can be realized. We think Buchanan's analysis would have gained a lot if he had made a distinction between different kinds of rights. In the first place a distinction should have been made between, on the one hand, rights that are not to be obtained on a quid pro quo base and that recognise the equal worth of every citizen and, on the other hand, property rights. In the second place he should have recognised the complexity of property rights themselves. For instance, the right of ownership may be an exclusive right, but is it also an unrestricted right? Buchanan does not elaborate on such problems as to what one is allowed to do or not to do with one's property rights except, of course, trading them.

It is clear from his whole analysis that his dilemma in the provision of public goods (and therefore of the role played by the productive state) is an efficient provision of these goods while avoiding a build-up of the central government. He is more afraid of Leviathan than of private power based on exclusive property rights. Especially, he is afraid of methods of redistribution

that place too much power in the hands of the productive state. That would make expropriation of owners possible *without* their consent, because unanimous agreement is not necessary for the activities the productive state undertakes. Redistribution activities are an example of unallowable coercion and therefore these activities are conceptually not possible, within Buchanan's strict contractarian framework, in the realm of the productive state. To avoid intrusions into property rights by the productive state, bargaining (that should eventually result in unanimous agreement) is the only way by which the affluent can agree to a reduction of their property rights in return for a limit on state redistribution activities.

However, by defining rights only as economic assets, in which Buchanan follows the tradition of the New Political Economy and which is the conventional way to forestall an activist government, he leaves many problems unanswered. A foundation for rights other than the one given by Buchanan is the view that some 'goods' are especially important to individuals because these enable them to fulfil their own plan of life and to reach self-fulfilment, and should for that reason, be recognised as rights.

Rawls' theory can be seen as an example of this sort of justification of rights. In his view the starting point should be that men should be considered as moral equals. Like Buchanan, he recognises that people differ in their talents and capacities, but for Rawls these initial endowments of natural assets are arbitrary from a moral point of view. There is no moral sense in which talented people deserve their more favourable starting place in society. His two principles are a fair way of meeting the arbitrariness of fortune and can be seen as principles of redress. A distribution of property rights that is the result of force, and the use of one's ability to grab what one can, cannot create an order that will be stable. And what is more: 'To each according to his threat advantage is not a principle of justice at all'. In his theory not only are laws and institutions necessary, but the background institutions of society should be in accordance with the - contractually derived - principles of justice. The just basic structure will comprise legal rules for the just acquisition and transfer of property. Whatever rights to ownership of assets will be acceptable on the Rawlsian principles of justice, they will always be restricted so as to provide limits on the accumulation of property.⁸³

This is due to the fact that in Rawls' theory the goal is to:

'... encourage the wide dispersal of property which is a necessary condition, it seems, if the fair value of equal liberties is to be maintained'. (R, 277).

As for the market it will be remembered that Rawls is in favour of the market system:

'A market system – given the requisite background institutions – is consistent with equal liberties and fair equality of opportunity. Citizens have a free choice of careers and occupations. There is no reason at all for the forced and central direction of labor'. (R, 272).

Moreover, a system of markets decentralizes the exercise of economic power; when markets are truly competitive, firms do not engage in price wars or other attempts at monopolistic power.

The idea of the welfare state is based on specific principles of justice. The core idea is that the state is responsible for the situation that individuals have the same right to a full and satisfactory life, that they can fulfill their own plan of life and reach self-fulfilment. There can be no doubt about the fact that of the five authors on the continuum, Rawls is the one that generates a case for the welfare state. Indeed, of the theories in question only his theory seems capable of providing a coherent normative justification of the welfare state.

Although we have gone a long way with Rawls from the absolute inviolability of property rights and a free market to a situation in which fair background institutions are established that guarantee the human worth of each individual we have not, according to *Macpherson*, gone far enough. In his analysis it is especially Rawls' model of man that makes his conception of justice unacceptable. The welfare state is still the democracy of a capitalist society, no matter how modified that society may be by the rise of the welfare state. Evidently, in Macpherson's opinion, it can not create a humane society. The continuance of anything that can properly be called a liberal democracy should be a change to a *participatory democracy*. That requires, still according to Macpherson,

'a downgrading or abandonment of market assumptions about the nature of man and society, a departure from the image of man as maximizing consumer, and a great reduction of the present economic and social inequality'.⁸⁴

Or, as he has formulated those requirements earlier on in the same book:

'a downgrading of the market assumptions and an upgrading of the equal right to self-development'.⁸⁵

Macpherson's arguments against the welfare state look like the oldest conservative critique of the welfare state with its roots in the tradition of classical economics, *in reverse*. This critique asserts the interdependence of economic individualism and civil liberties: without lively free markets in goods, services, and labour, democratic liberties cannot flourish. In Macpherson's

case it is the opposite: the ideological sanctification of the market has become the root of all evil, suggesting that the free operation of the market maximizes individual and social utility, whereas *in fact* in the present days class society it leads to exploitation. But, as stated before, the central question that Macpherson should have answered is whether in fact the market *always* is an objectionable institution. (Besides it should be remarked that, of course, also the welfare state has 'downgraded' the market by removing whole areas from the market place, as for instance public health services.)

Macpherson might well agree that liberating man from economic exploitation, alienation and material dependence are necessary conditions for reaching a society in which members are equally free to realize their capabilities. However, one should be careful not to abandon the market too quickly as an institutional device in reaching these goals.⁸⁶

First of all, the market is not a capitalist invention; it came into being and it developed concurrently with the origins and development of the social division of labour. On the other hand, one can agree with Macpherson that the specific form of wage labour and exploitation could not exist without market relations. However, abandoning the market might well make it impossible at all to reach a type of society valued by Macpherson. The consequences of such an abandonment are sketched by Selucky:

'If the market is abolished, the autonomy of economic units disappears. If the market is abolished, horizontal relationship (i.e. exchange) among economic units also disappears. If the market is abolished, the information coming from the consumers (demand) is either fully cut or at least quite irrelevant for producers. Then, the central plan is the only source of supplying producers with relevant information for decision making. If this is the case, the structure of economic system must be based on the prevailing vertical type of relationship (i.e. subordination and superiority), with decisionmaking centralised in the planning board, without any outside control of central decisions'.⁸⁷

The market can be a useful device, even if one rejects capitalism. Macpherson rejects both, but hardly elaborates institutional devices necessary to reach his conception of a just society. For instance, he does not provide us with an elaboration of the institutional arrangements of property rights. His position is one at the extreme left of our continuum. However, such a position may not permit the emergence of a society which guarantees the equal right to self-development.

VIII. Concluding remarks

On the right-hand side of the continuum, liberty is defined as the right to

protection against the state, particularly in the realm of property and economic behaviour. Equality is only seen in a formal way as 'equality before the law'. It has no relationship whatsoever with the actual welfare of persons. This position is seen clearly in Rothbard's and Nozick's theories. Moving to the left along the continuum one should, however, be careful not to interpret this 'movement' in the sense that the value 'equality' is replacing the value 'liberty'.⁸⁸

When we move to the left, it is not equality *instead* of liberty that is pursued. These values are seen as more or less complementary and not as competitive. Indeed, not every ideal of equality constitutes a threat to liberty. Equality, instead of remaining a formal value in itself, is seen as a means to reach other values.⁸⁹

In Rawls' theory, for instance, equality is understood in a 'material' or 'distributive' rather than in a formal sense. He is less interested in formal justice than in distributive justice: the equal possibility of everyone of fulfilling his plan of life.

We have noted that, the further we move to the right-hand side of the continuum, the more we find that property rights are seen as inviolable, yet at the same time the resulting distribution (the outcome of the process of freely interacting individuals) is regarded as less and less of a problem. This is true whatever form this distribution may take! The assumption that there *is* a problem of distribution is, by the authors at this end of the continuum, considered as the fundamental mistake of all those theories of justice whose basic concern is with the problem 'who ends up with what'.

The right-hand side of the continuum, and its implied inviolability of property rights, seems in particular to lack a convincing foundation of these rights and can easily lead one to think that at that end of the continuum nothing but an ideological defense of capitalist society is to be found. In Nozick's and in Rothbard's case the welfare state is unacceptable because of its subversion of the overriding value of personal liberty which is linked with private property rights. But in Buchanan's eyes too the productive state makes unacceptable intrusions into persons' rights, as these intrusions take place without *unanimous* consent.

These remarks should not be read to imply that, moving to the left, we find no ideological bias underlying the theories in question. On the contrary. Rawls' theory, for instance, is embedded in the liberal tradition, and western democracies are his point of reference. As Pettit has remarked:

'the society for which Rawls provides a theory of justice is Western democracy, particularly in its twentieth century form - WD, for short. Rawls appeals to *our* intuition when WD nicely sums up what *we* have in common. Also he

takes as natural attitudes which, if not exclusive to WD, are at least characteristic of it'.⁹⁰

With Macpherson we have reached a qualitatively different approach: present day capitalism associated with the welfare state, may indeed permit a great deal of state interference, but such interference leaves its essential nature unaltered. It remains capitalism as long as individualism has not been replaced as its central concept.

The suggested relation between a theory of property rights and a theory of justice is that if you have a theory of justice it not only implies a just distribution but also gives an answer to the question how inviolable are property rights. A theory of justice and a theory of property rights will go hand in hand. A specific theory of justice will circumscribe the content of and the constraints on the related property rights.

No conception of property rights can stand on its own, in my opinion, without a well-founded theory of justice. Any criticism of a specific conception of property rights, must include criticism of the specific foundation of these rights and, therefore, of the related theory of justice.

Notes

1. Property rights are defined as legal rights to the possession, use, and/or disposal of things (material or immaterial objects such as 'claims') as well as the right to appropriate the returns from the things in question. Ownership is the most inclusive of property rights, embracing all the rights just mentioned.

Depending on the legal system, these rights, or combinations of them, can also be held separately. Compare: A. M. Honoré, in: A. G. Quest, (ed.), *Oxford Essays in Jurisprudence*, Oxford, 1961, pp. 108-47, pp.128-134.

2. For an extensive elaboration on these points: Norman Furniss and Timothy Tilton, *The Case for the Welfare State; From Social Security to Social Equality*, Bloomington and London, esp. chapt. 1.

3. Furniss and Tilton, *The Case for the Welfare State*, p. X.

4. See on this proprietarian account of justice: Philip Pettit, *Judging Justice: An Introduction to Contemporary Political Philosophy*, London, Boston and Henley, 1980.

5. This description of the left-right continuum is borrowed from: Anthony Downs, *An Economic Theory of Democracy*, New York, 1957, p. 116. In Thomas C. Grey, Property and Need: The Welfare State and Theories of Distributive Justice, *Stanford Law Review*, Vol. 28, 1976, pp. 877-902, also a continuum is introduced. In that case, however, it is one 'from extreme libertarianism to extreme egalitarianism'. The extremes are defined by liberty on the one hand and equality on the other. Grey stays 'within the framework of liberal capitalism'. (The extremes are taken, in fact, by Nozick and Rawls). He places himself 'somewhere in between' these two philosophers.

6. See Thomas Nagel, *Libertarianism without Foundations*, *The Yale Law Jour-*

nal, Vol. 85, 1975/6, pp. 136-149.

See also for critique on the libertarian ideas: Hugh La Follette, Why Libertarianism is Mistaken, in: John Arthur and William H. Shaw, (eds.), *Justice and Economic Distribution*, Englewood Cliffs, New Jersey, 1978, pp. 194-206.

7. I state explicit or implicit critique, because I have not in all cases found a reference to the problem posed in this article by each author to each other. The cases in which explicit references are found are given below.

| explicit references from: | on: | Rothbard | Nozick | Buchanan | Rawls | Macpherson |
|---------------------------|-----|----------|--------|----------|-------|------------|
| Rothbard | x | yes | yes | — | — | — |
| Nozick | yes | x | — | yes | — | — |
| Buchanan | yes | yes | x | yes | — | — |
| Rawls | — | yes | — | x | — | — |
| Macpherson | — | — | — | yes | x | — |

8. Lawrence C. Becker, *Property Rights; Philosophical Foundations*, London, 1977, p. 1.

9. Moss has remarked that: 'In terms if the breadth of his interests, the quantity of his writings, the scope of his research . . . Rothbard is, in a very fundamental sense to property anarchisms what Karl Marx was to socialism — its most powerful and prolific expositor'.

Laurence S. Moss, Private Property Anarchism: An American Variant, in: Gordon Tullock, (ed.), *Further explorations in the Theory of Anarchy*, Blacksburg, Virginia, 1974, pp. 1-31; p. 20.

10. One might ask how Rothbard imagines such a world would function. In *Power and Market; Government and the Economy*, Menlo Park, California, 1970, he remarks that there are hardly any writers on political economy who have not 'a priori assumed that a free market simply cannot provide defense or enforcement services and that therefore some form of coercive-monopoly governmental intervention and aggression must be superimposed upon the market in order to provide such defense services'. It is Rothbard's claim that this book is 'the first analysis of the economics of government to argue that no provision of goods or services requires the existence of government', p. VII.

One of those against whom this book is directed is James Buchanan. He has, according to Rothbard, brought economic analysis to bear on the action of government and of democracy. But by doing this he has taken a 'totally wrong turn' by assimilating State and market action and by seeing little or no difference between them, p. VIII.

11. Rothbard, *Power and Market*, p. 176.

12. Rothbard, *Power and Market*, p. 176.

13. Murray N. Rothbard, Justice and Property Rights, in: Samuel L. Blumenfeld, (ed.), *Property in a Humane Economy*, La Salle, Ill., 1974, pp. 101-123; p. 106.

14. There seems to be, strictly speaking, only one axiom (a) because b) follows from a).

15. Rothbard, *Power and Market*, p. 176.

16. Murray N. Rothbard, *For a New Liberty; The Libertarian Manifesto*, revised edition, New York, 1978, p. 41.

17. See for an elaboration: Carl Watner, *Towards a proprietary theory of justice*,

Baltimore, 1976, esp. p. 29.

18. Rothbard, *Power and Market*, p. 183.

19. Rothbard, *Power and Market*, p. 187.

20. Rothbard, *For a New Liberty*, p. 47.

21. Rothbard, *For a New Liberty*, p. 85.

22. Rothbard, *For a New Liberty*, p. 162.

23. See also: H. E. Frech III, The public choice theory of Murray N. Rothbard, A modern anarchist, *Public Choice*, Vol. XIV, Spring 1973, pp. 143-154; pp. 143-4.

24. Murray N. Rothbard, Society without a State, in: J. Roland Pennock and John W. Chapman, (eds.), *Anarchism*, NOMOS XIX, New York, 1978, pp. 191-207, p. 196.

25. Rothbard, Society without a State, pp. 199-200.

26. Rothbard, Society without a State, p. 203.

27. Robert Nozick, *Anarchy, State, and Utopia*, New York, 1974. In this article (N, . . .) refers to Nozick, op. cit.

28. See for a critique of Nozick's defense of the nightwatchman state: Eric Mack, Nozick's Anarchism, in: J. Roland Pennock and John W. Chapman, (eds.), *Anarchism*, NOMOS XIX, New York, 1978, pp. 43-62.

See also the special issue of *The Personalist*, Vol. 59, no. 4, October 1978 on "'Minimal government'" in Theory and Practice', in which the articles are for the most part critical of Robert Nozick's notion of minimal government.

29. Rothbard himself, however, is very critical of Nozick's theory. There are, according to Rothbard, 'several grave fallacies in Nozick's conception itself, each of which would be in itself sufficient to refute his attempt to justify the state'. There exists, for instance, a tension between Nozick's endorsement of the classical liberal position on self-ownership and his treatment of basic human rights as alienable.

Murray N. Rothbard, Robert Nozick and the immaculate conception of the state, *Journal of Libertarian Studies*, Vol. I, no. 1, pp. 45-57; p. 45.

30. In a note in *Anarchy, State, and Utopia* (note 4, pp. 335-6) on the literature on the working of private protective services, Nozick refers to Rothbard's *Power and Market*. He remarks: 'Since I wrote this work in 1972, Rothbard has more extensively presented his views in "For a New Liberty"'. That book has not, however, led Nozick to revise what he had said in *Anarchy, State, and Utopia*. I would add: of course not! The core of the ideas Rothbard develops in that book are in essence the same as brought forward in *Power and Market*.

31. See: Cheyney C. Ryan, Yours, Mine, and Ours: Property Rights and Individual Liberty, *Ethics*, Vol. 87, January 1977, no. 2, pp. 126-141; Thomas Scanlon, Nozick on Rights, Liberty and Property, *Philosophy and Public Affairs*, Vol. 6, no. 1, Fall 1976, pp. 3-25.

32. Thomas Nagel, Libertarianism, p. 37; see also: David Spitz, Justice for Sale; The justice of property vs. the property of justice, *Dissent*, Winter 1976, pp. 72-89, esp. 78 and: S. B. Drury, Robert Nozick and the Right to Property, in: Anthony Parel and Thomas Flanagan, (eds.), *Theories of Property; Aristotle to the Present*, Waterloo, Ontario, 1979, pp. 361-379.

33. Virginia Held, John Locke on Robert Nozick, *Social Research*, Vol. 43, 1976, pp. 169-195, esp. p. 181.

34. For an elaboration see: Nell Walton Senter, Nozick on property rights: to

each according to marginal productivity, *Arizona Law Review*, Vol. 19, 1977, no. 1, pp. 158-168.

35. Alan H. Goldman, The entitlement theory of distributive justice, *The Journal of Philosophy*, Vol. LXXIII, no. 21, December 2, 1976, pp. 813-835, esp. p. 823-5.

36. For an elaboration on this point: B. J. Diggs, Liberty without Fraternity, *Ethics*, Vol. 87, January 1977, no. 2, pp. 97-112.

37. James M. Buchanan, *The Limits of Liberty; Between Anarchy and Leviathan*, Chicago-London, 1975.

38. Buchanan, *Limits of Liberty*, p. 54.

In a note (p. 171, note 2), Buchanan remarks that Rothbard argues, as we have seen in part II of this article, that 'conflicts could be resolved by the protective associations or clubs that would be formed voluntarily in genuine anarchy'. However, according to Buchanan, this approach of Rothbard 'fails to come to grips with the problem of defining rights initially', the issue that is central to Buchanan's discussion.

39. Buchanan, *Limits of Liberty*, p. 55.

40. Buchanan, *Limits of Liberty*, p. 10.

41. James M. Buchanan, Utopia, the Minimal State, and Entitlement (A review of Nozick's *Anarchy, State, and Utopia*), *Public Choice*, Vol. XXIII, 1975, pp. 121-126; p. 125.

42. James M. Buchanan, The Libertarian Legitimacy of the State, in: James M. Buchanan, *Freedom in Constitutional Contract; Perspectives of a Political Economist*, College Station and London, pp. 50-63, p. 58. In this article (B, . . .) refers to Buchanan op. cit.

43. James M. Buchanan and Winston C. Bush, Political Constraints and Contractual Redistribution, *American Economic Review*, Papers and Proceedings, Vol. 64, no. 2, May 1974, pp. 153-157, p. 157.

44. James M. Buchanan, The Justice of Natural Liberty, *The Journal of Legal Studies*, Vol. 5, no. 1, January 1976, pp. 1-16, p. 16.

45. John Rawls, *A Theory of Justice*, Oxford, 1972. In this article (R, . . .) refers to Rawls, op. cit.

46. See on the problem of property rights in *A Theory of Justice*: Thomas C. Grey, Property and Need, pp. 880-1; Frank I. Michelman, In Pursuit of Constitutional Welfare Rights: One view of Rawls' Theory of Justice, *University of Pennsylvania Law Review*, Vol. 121, 1973, 962-1019, esp. 972-5.

47. Percy B. Lehning, Social Contract and Property Rights, A Comparison between John Rawls and James M. Buchanan, in: P. Birnbaum, J. Lively and G. Parry, (eds.), *Democracy, Consensus and Social Contract*, London and Beverly Hills, 1978, pp. 279-294.

48. John Rawls, The Basic Structure as Subject, *American Philosophical Quarterly*, Vol. 14, no. 2, April 1977, pp. 159-65; p. 159.

A considerably revised version of this article has been published in: A. I. Goldman and J. Kim, eds., *Values and Morals*; Dordrecht, 1978, pp. 47-71.

See for critical comment on this article: Hugo Adam Bedau, Social Justice and Social Institutions, *Midwest Studies in Philosophy*, Vol. III, Studies in Ethical Theory, The University of Minnesota, Morris, 1978, pp. 159-175.

49. Rawls, *A Theory of Justice*, p. 7.

50. Rawls, Basic Structure, p. 160.

51. Rawls, *A Theory of Justice*, p. 304.

52. Rawls, *A Theory of Justice*, p. 308.

53. Rawls, *A Theory of Justice*, p. 308.

54. Rawls, *A Theory of Justice*, § 42. In this he follows the ideas of J. E. Meade as developed in *Efficiency, Equality and the Ownership of Property*, London, 1964, esp. chapter V: 'A Property-Owning Democracy' which starts as follows: 'Let us suppose that by the wave of some magic wand . . . the ownership of property could be equally distributed over all the citizens in the community', p. 40.

55. Rawls, Basic Structure, p. 162.

56. See also John Rawls, A Well-Ordered Society, in: Peter Laslett and James Fishkin, (eds.), *Philosophy, Politics and Society*, Fifth Series, Oxford, 1979, pp. 6-20, pp. 16-17.

57. Rawls, Basic Structure, p. 163.

58. Rawls, Basic Structure, p. 163.

59. Rawls, Basic Structure, p. 164.

60. For instance, Robert Nisbet who remarks that 'A Theory of Justice' "is consecrated to as radical a form of equalitarianism as may be found anywhere outside the pages of the *Social Contract*". Robert Nisbet, The Pursuit of Equality, *The Public Interest*, Vol. 35, Spring 1974, pp. 103-120, p. 114.

61. Rawls, Basic Structure, p. 164.

62. Rawls, Basic Structure, p. 164.

63. C. B. Macpherson, A Political Theory of Property, in: C. B. Macpherson, *Democratic Theory, Essays in Retrieval*, Oxford, 1973, pp. 120-140, p. 120.

64. C. B. Macpherson, The Meaning of Property, in: C. B. Macpherson, (ed.), *Property; Mainstream and Critical Positions*, Toronto, Buffalo, 1978, pp. 1-13, p. 1.

65. C. B. Macpherson, Human Rights as Property Rights, *Dissent*, Vol. 24, Winter 1977, no. 1, pp. 72-77, p. 73.

66. See on this suggested change in the concept of property: K. R. Minogue, Humanist Democracy: The Political Thoughts of C. B. Macpherson, *Canadian Journal of Political Science*, Vol. IX, September 1976, no. 3, pp. 377-394, esp. 387-91.

67. C. B. Macpherson, Liberal-Democracy and Property, in: C. B. Macpherson, (ed.), *Property; Mainstream and Critical Positions*, Toronto, Buffalo, 1978, pp. 199-207, pp. 205-06.

68. C. B. Macpherson, Liberal Democracy and Property, p. 206.

69. Macpherson, Human Rights, p. 74.

70. Macpherson, Political Theory, p. 133.

71. C. B. Macpherson, Rawls' Models of Man and Society, *Philosophy of the Social Sciences*, Vol. 3, 1973, pp. 341-47, p. 347. See for a reaction on this article: Kai Nielsen, On the very possibility of a classless Society; Rawls, Macpherson, and Revisionist Liberalism, *Political Theory*, Vol. 6, no. 2, May 1978, pp. 191-208, with a rejoinder by Macpherson, pp. 209-211.

72. Macpherson, Rawls, p. 343.

73. Macpherson, Rawls, p. 344.

74. Macpherson, Rawls, p. 344.

75. John Dunn, Review article: Democracy Unretrieved, or the Political Theory of Professor Macpherson, *British Journal of Political Science*, Vol. 4, 1974, pp. 489-499, p. 497.

76. See on the 'New Property' Charles A. Reich, The New Property, in: *Yale*

Law Journal, Vol. 73, 1964, pp. 733-787.

77. Murray N. Rothbard, *For a New Liberty*, p. 40.

78. Douglas C. North and R. P. Thomas, *The Rise of the Western World: A New Economic History*, Cambridge, 1973, p. 6.

79. North and Thomas, *Western World*, p. 7.

80. Buchanan, *Limits of Liberty*, p. 6.

81. Buchanan, *Limits of Liberty*, p. 167.

82. Buchanan, *Limits of Liberty*, p. 80.

83. See for an elaboration on these points: Robert J. van der Veen, Property, Exploitation, Justice, *Acta Politica*, jrg. XIII, no. 4, November 1978, pp. 433-465, esp. pp. 443-447.

84. C. B. Macpherson, *The Life and Times of Liberal Democracy*, Oxford, London, New York, 1977 p. 115.

85. Macpherson *Life and Times*, p. 2.

86. It should be noted that on what Macpherson conceives to be necessary for reaching a humane society he is not quite clear. See for instance on the question if Macpherson should be considered a marxist: Victor Svacek, The Elusive Marxism of C. B. Macpherson, *Canadian Journal of Political Science*, Vol. 14, September 1976, no. 3, pp. 395-422. And also: Ellen Meiksins, C. B. Macpherson: Liberalism, and the Task of Socialist Political Theory, in: *The Socialist Register 1978*, London, 1978, pp. 215-240.

'If his political philosophy as outlined in *The Life and Times of Liberal Democracy* is intended to embody a socialist programme, that programme is contradicted by its theoretical underpinnings'. (p. 216).

'He often appears to be self-consciously addressing an audience that needs to be persuaded that socialism – a doctrine which, apparently, must parade in sheep's clothing as something called "participatory democracy" – is the last and best form of liberal democracy . . .' (p. 217).

87. R. Selucky, Marxism and Self-Management, in: Jaroslav Vanek, (ed.), *Self-Management: Economic Liberation of Man*, Harmondsworth, 1975, pp. 47-61, p. 57.

88. As in Grey's case, see note 5.

89. See on how imperative it is to think of how one form of equality is set up in opposition to another: Douglas Rae, The Egalitarian State: Notes on a System of Contradictory Ideals, *Daedalus*, Vol. 108, no. 4, Fall 1979, (The State), pp. 37-54.

90. As argued by Philip Pettit, A Theory of Justice?, *Theory and Decision*, Vol. 4, 1979, pp. 311-324, p. 311.

See also his *Judging Justice: An Introduction to Contemporary Political Philosophy*, London, Boston and Henley, 1980, esp. chapter 16.

The (non-) assertion of welfare rights: Hirschman's theory applied*

Freek Bruinsma

The contribution on the welfare state in the *International Encyclopedia of the Social Sciences* ends as follows: 'In any event, there are no signs, outside of marginal groups mostly centered in the United States, of a disposition to curb the welfare state. It rides the waves of the future.'¹

A few years later that is no longer the case. Many economists are worried about the growing costs of the welfare state. Most welfare policies cost money. The number of welfare recipients entitled e.g. to unemployment benefits, disability claims, old age pensions is increasing, the costs of medical care are growing, and educational facilities are more extensively used than ever before. Can we afford a welfare state? – that is the leading question in the economics of the welfare state.

But the problem is not only one of costs. The very desirability of the welfare state itself is at issue. There is a widespread feeling that the welfare state is not of much value. It is said to be more a promise than a reality: it cannot fulfil its pledge to create a human society. The redistributive effects of welfare benefits are rather minimal. Serious doubts exist about the operation of welfare institutions. Welfare politics impair the working of traditional and highly regarded political institutions. Parliament and other representative institutions have lost power to governmental bureaucracies and private interest groups. Moreover, the welfare state fosters an attitude of welfare consumerism in the public at large: nobody cares individually, since the states cares for everyone, from the cradle to the grave. The welfare state has introduced an explosive mechanism of rising expectations. At the same time there are rumours about welfare chiseling, and by exploiting this sense of discomfort some politicians succeed in unleashing a welfare backlash.

In short, there is growing criticism of the welfare state: it is said, *that it does not work, that it is too expensive for what it does do, and too destructive,*

* For comments on an earlier draft I am grateful to Guido Calabresi, Mauro Cappelletti, Marc Galanter, Albert Hirschman, Antonie Peters, Kees Schuyt, and Edward Wise.