

Chapter 3

Equal Rights to Natural Opportunities

The Range of Natural Opportunities

Natural opportunities are things of value that are not people and are not created by human effort. The most prominent natural opportunity is land. Among other natural opportunities are minerals, oil, gas, virgin forests, wild animals, fish in oceans and rivers, water, the frequency spectrum, and geosynchronous orbits. Since the earth has a limited capacity to absorb pollutants, the opportunity to dispose of polluting wastes into rivers or the atmosphere is a natural opportunity.

When a natural opportunity has been improved by human effort, as with a house on a plot of land or a mine shaft into a mineral deposit, the value that opportunity would have had if it had not been developed continues to count as a natural opportunity, conceptually separable from the value generated by the improvement.

These are the things to which all people on earth have equal rights.

Antecedents in Theories of Justice

In the first paragraph of the chapter on property in his *Second Treatise of Government*, John Locke wrote,

[I]t is very clear that God, as King David says (Psalm 115, v. 16), “has given the earth to the children of men,” given it to mankind in common. . . . I shall endeavor to show how men might come to have a property in several parts of that which God gave to mankind in common, and that without any express compact of all the commoners.

The reference in Psalm 115 is not as clear as Locke indicates, but what is important here is Locke’s understanding of common ownership. Locke went on to argue that “at least where there is enough, and as good left in common for others,” people have the right to exclusive use of the natural opportunities that they improve. Locke argued that the abundance of unclaimed land in North America meant that land was not scarce, so no one could justly complain about the appropriation of land in Europe. Whether or not there ever was a time when land was not scarce, it is certainly scarce today, so Locke’s argument for private ownership of land is

invalid. But Locke accepted, and appears to presume that his readers would accept, that in the absence of improvements provided by human effort, all persons have equal rights to land.

William Ogilvie, an 18th century Scottish scholar, offered a variation on Locke's position, without its presumption of land abundance. In 1781 Ogilvie wrote:

All the right of property is founded either in occupancy or labor. The earth having been given to mankind in common occupancy, each individual seems to have by nature a right to possess and cultivate an equal share. . . . No individual can derive from this general right of occupancy a title to more than an equal share of the soil of his country.¹

Thomas Jefferson specified that a person's rights to land last only as long as the person lives. In a letter to James Madison from Paris in July 1789, dealing primarily with whether a society can oblige its descendants to pay a public debt, Jefferson wrote:

The question, Whether one generation of men has a right to bind another, seems never to have been started either on this side or our side of the water. . . . The course of reflection in which we are immersed here on the elementary principles of society has presented this question to my mind; and that no such obligation can be transmitted. I think it very capable of proof. I set out on the ground which I suppose to be self-evident, "*that the earth belongs in usufruct to the living,*" that the dead have neither powers nor rights over it. The portion occupied by any individual ceases to be his when himself ceases to be, and reverts to the society. If the society has formed no rules for the appropriation of its lands in severalty, it will be taken by the first occupants. These will generally be the wife and children of the decedent. If they have formed rules of appropriation, those rules may give it to the wife and children, or to some of them, or to the legatee of the deceased. So they may give it to his creditor. But the child, the legatee or creditor takes it, not by any natural right, but by a law of the society of which they are members, and to which they are subject. Then no man can by *natural right oblige* the lands he occupied, or the persons who succeed him in that occupation, to the payment of debts contracted by him. For if he could, he might during his own life, eat up the usufruct for the lands for several generations to come, and then the lands would belong to the dead, and not to the living, which would be the reverse of our principle.

Thus Jefferson understood that a society cannot properly commit its members to abide by the wishes of someone who occupies land, regarding who should have rights to that land after the occupant dies. Assignments of land use rights are the

¹ Ogilvie, "An Essay on the Right of Property in Land," (1781) Sections 1 and 2.

product of a changeable social rule, and not a matter of personal entitlement in perpetuity. Land belongs fundamentally to society and not to individuals.

Thomas Spence was an 18th century Scottish schoolmaster and pamphleteer. In his 1793 pamphlet, “The Real Rights of Man,” he wrote,

That property in land and liberty among men in a state of nature ought to be equal, few, one would be fain to hope, would be foolish enough to deny. Therefore, taking this to be granted, the country of any people, in a native state, is properly their common, in which each of them has an equal property, with free liberty to sustain himself and family with the animals, fruits and other products thereof. Thus such a people reap jointly the whole advantages of their country, or neighborhood, without having their right in so doing called into question by any, not even the most selfish and corrupt. . . . [M]ethinks some are now ready to say, but is it lawful, reasonable and just, for this people to sell, or make a present even, of the whole of their country, or common, to whom they will, to be held by them and their heirs for ever?

To this I answer, If their posterity require no grosser materials to live and move upon than air, it would certainly be very ill-natured to dispute their right of parting, for what of their own their posterity would never have occasion for; but if their posterity cannot live but as grossly as they do, the same gross materials must be left them to live upon. For the right to deprive anything of the means of living, supposes a right to deprive it of life; and this right ancestors are not supposed to have over their posterity.

Hence it is plain that the land or earth, in any country or neighborhood, with everything in or on the same, or pertaining to, belongs at all times to the living inhabitants of the said country or neighborhood in an equal manner. For, as I said before, there is no living but on land and its productions, consequently, what we cannot live without we have the same property in as our lives.

In his 1796 pamphlet “Agrarian Justice,” Thomas Paine took an internationalist position. He wrote,

It is a position not to be controverted that the earth, in its natural, uncultivated state was, and ever would have continued to be, *the common property of the human race*. In that state every man would have been born to property. He would have been a joint life proprietor with the rest in the property of the soil, and in all its natural productions, vegetable and animal.

But the earth in its natural state, . . . is capable of supporting but a small number of inhabitants compared with what it is capable of doing in a cultivated state. And as it is impossible to separate the improvement made by cultivation from the earth itself, upon which that improvement is made, the idea of landed property arose from that inseparable connection; but it is nevertheless true, that it is the value of the improvement, only, and not the earth itself, that is individual property.

Every proprietor, therefore, of cultivated lands, owes to the community a *ground-rent* (for I know of no better term to express the idea) for the land which he holds; . . .

Paine proposed that this ground rent be collected publicly and be used to fund a guaranteed income for all citizens.

In the first edition of *Social Statics*, Herbert Spencer developed the idea that land cannot be private property because private property in land leads to the denial of human freedom. He wrote:

Given a race of beings having the claims to pursue the objects of their desires—given a world adapted to the gratification of those desires—a world into which such beings are similarly born, and it unavoidably follows that they have equal rights to the use of the world. For if each of them “has the freedom to do all that he wills provided he infringes not on any other,” then each of them is free to use the earth for the satisfaction of his wants, provided he allows all others the same liberty. And conversely, it is manifest that no one, or part of them, may use the earth in such a way as to prevent the rest from similarly using it; seeing that to do this is to assume greater freedom than the rest, and consequently to break the law.

Equality, therefore, does not permit property in land. For if *one* portion of the earth’s surface may justly become the possession of an individual, and may be held by him for his sole use and benefit, as a thing to which he has exclusive right, then *other* portions of the earth’s surface may be so held; and eventually the *whole* of the earth’s surface may be so held; and our planet may thus lapse altogether into private hands. Observe now the dilemma to which this leads. Supposing the entire habitable globe to be so enclosed, it follows that if the landowners have a valid right to its surface, all who are not landowners, have no right at all to its surface. Hence, such can exist on the earth by sufferance only. They are all trespassers. Save by the permission of the lords of the soil, they can have no room for the soles of their feet. Nay, should the others think fit to deny them a resting-place, these landless men might equitably be expelled from the earth altogether. If, then, the assumption that land can be held as property, involves that the whole globe may become the private domain of a part of its inhabitants; and if, by consequence, the rest of its inhabitants can then exercise their faculties—can then exist even—only by consent of the landowners; it is manifest, that an exclusive possession of the soil necessitates an infringement of the law of equal freedom. For, men who cannot “live and move and have their being” without the leave of others, cannot be equally free with those others.

While Spencer’s argument against property in land is understandable when property entails rights in perpetuity, it does not hold if each person’s “property” is no more than others can also have and it lasts only for the lifetime of the person.

In the second edition of *Social Statics*, Spencer drew back from the idea that land could not be private property, and he was called to account for this by Henry George in *A Perplexed Philosopher*.

In *Progress and Poverty*, George sought to derive the injustice of private property in land from the rights of persons to themselves. He wrote:

As a man belongs to himself, so his labor when put in concrete form belongs to him.

. . . The pen with which I am writing is justly mine. No other human being can rightly lay claim to it, for in me is the title of the producers who made it. It has become mine, because transferred to me by the stationer, to whom it was transferred by the importer, who obtained exclusive right to it by transfer from the manufacturer, in whom, by the same process of purchase, vested the rights of those who dug the material from the ground and shaped it into a pen. Thus, my exclusive right of ownership in the pen springs from the natural right of the individual to the use of his own faculties.

Now, this is not only the original source from which all ideas of exclusive ownership arise—as is evident from the natural tendency of the mind to revert to it when the idea of exclusive ownership is questioned, and the manner in which social relationships develop—but it is necessarily the only source. There can be to the ownership of anything no rightful title which is not derived from the title of the producer and does not rest upon the natural right of the man to himself. There can be no other rightful title, because (1st) there is no other natural right from which any other title can be derived, and (2nd) because the recognition of any other title is inconsistent with and destructive of this.

For (1st) what other right exists from which the right to the exclusive possession of anything can be derived, save the right of a man to himself? With what other power is man by nature clothed, save the power of exerting his own faculties? How can he in any other way act upon or affect material things or other men? Paralyze the motor nerves, and your man has no more external influence than a log or stone. From what else, then, can the right of possessing and controlling things be derived? If it spring not from man himself, from what can it spring? Nature acknowledges no ownership or control in man save as the result of exertion. In no other way can her treasures be drawn forth, her powers directed, or her forces utilized or controlled. She makes no discriminations among men, but is to all absolutely impartial. . . .

(2nd) This right of ownership that springs from labor excludes the possibility of any other right of ownership. If a man be rightfully entitled to the produce of his own labor, then no one can be rightfully entitled to the ownership of anything which is not the produce of his labor, or the labor of someone else from whom the right has passed to him. If production give to the producer the right to exclusive possession and enjoyment, there can rightfully be no exclusive possession and enjoyment of anything not the production of labor, and the recognition of private property in land is a wrong. For the right to the produce of labor cannot be enjoyed without the right to the free use of the opportunities offered by nature, and to admit the right of property in these is to deny the right of property in the produce of labor. When nonproducers can claim as rent a portion of the wealth created by producers, the right of the producers to the fruits of their labor is to that extent denied.

There is no escape from this position. To affirm that a man can rightfully claim exclusive ownership in his own labor when embodied in material things, is to deny that any one can rightfully claim exclusive ownership in land. To affirm the rightfulness of property in land, is to affirm a claim which has no warrant in nature, as against a claim founded in the organization of man and the laws of the material universe.

...
 The equal right of all men to the use of land is as clear as their equal right to breathe the air—it is a right proclaimed by the fact of their existence. For we cannot suppose that some man have the right to be in this world and others no right.

If we are all here by the equal permission of the creator, we are all here with an equal title to the enjoyment of his bounty—with an equal right to the use of all that nature so impartially offers.

These antecedents in theories of justice demonstrate that in the 18th and 19th centuries, the idea of equal rights to natural opportunities was widely regarded as an assumption that a writer could make and expect readers to accept it.

In the late 20th century, discussion of the idea of equal rights to natural opportunities was revived by Robert Nozick in *Anarchy, State and Utopia*. Nozick thought that the economic benefits of private property made it unnecessary to provide equal rights to natural opportunities. The possibility of having the benefits of private property while maintaining equal rights to natural opportunities invalidates his argument. But Nozick's argument brought the issue back under discussion.

In *Social Justice in the Liberal State*, Bruce Ackerman argued, in a manner reminiscent of justice theorists of earlier centuries, that the inherent equality of persons—their inability to justly claim either to be better than others or to have better conceptions of the good than others—make it possible for each person to justly claim as much in natural opportunities as others can also claim, but no more, at least when no one is genetically disadvantaged.

A number of other variations on equal rights to natural opportunities have been proposed as well.² Rather than review all of them and their limitations, I will explain the version of equal rights to natural opportunities that seems to me most sensible.

People Have Equal Rights to Natural Opportunities

People have rights to themselves. Our ability to converse with all people on earth requires us to recognize their rights to themselves if they recognize our equal rights. For people to have rights to themselves, there must be some place where they can exercise those rights. Thus, at a minimum, every person has some land rights, some rights to natural opportunities.

Some natural opportunities are valuable but not scarce—salt in the ocean, for example. Many forms of ocean life require it, but no one is capable of taking so much salt out of the ocean that we would miss it. Nitrogen and oxygen in the

²For good surveys, see Cunliffe (2000) and Vallentyne (2000).

atmosphere are similarly abundant. If any person wants to use such an abundant natural opportunity, he is free to do so. No one else's rights are in any way compromised. This is the valid version of the point that Locke made with his proviso.

Other natural opportunities are scarce. More for one person means less for others. For these natural opportunities, justice requires that appropriations take account of the rights of other persons.

The persons whose rights must be considered are all persons on earth with whom we might converse, and who recognize our equal rights. But how are these rights to be recognized? Does justice require us to submit to the rule of global majorities?

There are two simple, extreme answers to this question that do not make sense. The first asserts that because natural opportunities belong equally to all of us, no one is allowed to use any natural opportunity unless he has everyone's permission. You cannot have a drink of water without everyone's permission, because the water belongs to all of us. Perhaps you cannot help breathing, whether you have permission or not, but if you want to run, that will increase the amount of carbon dioxide in the atmosphere, so you cannot do that without everyone's permission. This nullifies the idea of people having rights to themselves.

At the other extreme, all natural opportunities are available for private appropriation, as long as no one takes more than their share. If you want to burn down an acre of rain forest or kill a whale, no one can justly stop you, no matter how strongly the preponderance of people feel about preserving these natural opportunities, as long as you leave as much rain forest and as many whales for others as you appropriate for yourself. This extreme ignores the claim that people can reasonably make for managing *some* natural opportunities in a collective fashion.

If some natural opportunities are going to be managed privately and some publicly, then there must be some criterion to determine which natural opportunities fall into each category. The sensible criterion is a measure of value, with the limitation that the extent of the natural opportunities that are managed collectively cannot be so great as to undermine the idea of people having rights to themselves.

When a single person or a single nation has exclusive access to a natural opportunity, value of that opportunity is the amount of money that that person or nation is willing to pay for exclusive use of the opportunity. When a natural opportunity is to be managed by the global community, the measure of value is a democratic one: What is the price at which most of the people in the world are willing to allow exclusive access. Since it is generally not practical to consult all persons individually, nations would speak for their citizens. Each nation would propose a price for potentially reserved natural opportunity, and the chosen price would be the lowest price such that nations with a majority of the world's population were satisfied with the price. If there is a natural opportunity such that

nations with a majority of the world's population would not agree to the harvesting of any of it at any price (perhaps whales), then no one can justly harvest any.

There is no basis in justice for any global authority to enforce its views regarding the value of all privately appropriated natural opportunities. What justice requires is what Ackerman suggested with his principles of Rationality and Consistency. That is, if anyone asks, "Why is it just that you have appropriated for yourself what you have," each of us must have an adequate answer. The form of an adequate answer is a variation on Locke's proviso: "It is just for me to have appropriated what I have because I have left as much for you (in value) and for everyone else as I have appropriated for myself." If you are questioned further regarding the basis for your assertion, you are behaving justly if you have an answer that is generally regarded as reasonable within the conversational community. You can meet your obligation to not appropriate more than your share either by restricting your appropriation or by compensating one or more persons who would otherwise have less than their shares for the excess of your share above what everyone else is able to appropriate.

If you live in a just nation, the national government can provide detailed answers for you. The national government can explain the basis for asserting that the appropriations of natural opportunities by the nation leave as much per capita for everyone else on earth as the nation appropriates per capita. If you live in a nation that is not just, you must provide your own answer. Justice requires you to count as part of your appropriation the benefits that you receive from your nation's appropriation of natural opportunities for public purposes, net of your share of any compensation that your nation offers to persons in other nations who have less-than-average appropriations of natural opportunities.

Some natural opportunities, like the location value of land, are doled out by nature in amounts of roughly equal value every year, making provision for those who will be here in the future automatic, provided that we have not assigned rights to land in perpetuity to this generation. Other natural opportunities, such as oil and gas, need to be used up to be used at all, making provision for those who will be here in the future not automatic.

Justice requires each of us to acknowledge the equal rights of every person we will meet in the future. Since those we meet in the future will need to answer to those whom they will meet in the future, our obligation is to behave in such a way that we can be reasonably confident that every person in every future generation will have total opportunities at least as valuable as our own. If oil and gas are more scarce in the future, this can be compensated either by providing every future person with a cash stipend or by providing sufficiently valuable technological opportunities that were not available to us. Thus those who appropriate oil and gas have an obligation to pay into a fund that will either finance technological innovations or provide stipends to all future persons, unless there is reason to believe that adequate compensating technological advance will occur without such special provision, in which case the only obligations of those who appropriate oil,

gas, and other natural opportunities that are used up are their obligations to the current generation.

The opportunity to bring children into the world is probably a scarce natural opportunity. That is, adding to the world's population will probably reduce average incomes. This is not certain, because adding to population makes us richer in a number of ways. An increase in the world's population increases the market for books, movies, computer software, new drugs, and every other new thing. Thus a greater global population can be expected to induce a greater rate of innovation and thereby add to everyone's well being. But a greater population also reduces the per capita share of natural opportunities.

If the world's circumstances are such that a greater population means lower per capita incomes, then the opportunity to bring children into the world is scarce, and those who appropriate for themselves above-average shares of this scarce natural opportunity owe compensation to those who appropriate below-average shares. This obligation to compensate need not be an individual obligation. Every nation is free to decide for itself how it allocates its national obligation among its citizens. The nation's obligation is to compare its population growth rate with the global population growth rate. If the nation's population growth rate is above the world population growth rate, then the nation has a obligation to compensate the nations with below-average population growth rates for the present value of the reduced incomes of all future generations that results from having an above-average population growth rate.

The things that a nation must do to determine how much compensation, if any, it owes to other nations for its appropriations of natural opportunities are:

1. Estimate the sustainable flow of global value of all scarce natural opportunities, (G);
2. Estimate the value of the flow of scarce natural opportunities that the nation appropriates for itself, (N);
3. Estimate the global population of citizens, (C);
4. Estimate its own population, (P).

If N/G is greater than P/C , that is, if the percentage of the sustainable global flow of value of natural opportunities that the nation appropriates is greater than the nation's share of world population, then the nation owes compensation to other nations. The amount of compensation that is owed is $N - GP/C$.

Among the things that are included in the flow of global value of natural opportunities are:

- A. The location value that land would have if it had not been developed
- B. The value of the loss of opportunity for the world because of exhaustible resources that are extracted, including:
 - a. Energy resources such as oil, gas and coal

- b. Metallic minerals and non-metallic minerals such as sulphur
- c. Gemstones
- C. The value of the loss of opportunity for the world because of renewable resources that are harvested, such as
 - a. Fish in oceans and internationally migrating birds
 - b. Virgin forests
 - c. River water to which other nations have access
 - d. Water in aquifers
- D. The value of the loss of opportunity for the world from polluting oceans, international rivers, and the global atmosphere
- E. The value of the loss of future opportunities from soil depletion, erosion, and pollution
- F. The value of lost opportunities for the rest of the world from international appropriations of the frequency spectrum
- G. The value of lost opportunities for the rest of the world from appropriations of geosynchronous orbits
- H. The cost to the world of accommodating the nation's above-average population growth rate, net of the benefits of a greater population
- I. The value (if positive) of the loss of opportunity for the rest of the world from the use of international flyways and narrow ocean passageways

Against the debits for these appropriations, a nation can claim credits for such things as:

- A. The increase in the value of land in other nations that results from activities that the nation undertakes
- B. The cost that the nation absorbs from harmful activities conducted by other nations
- C. The cost to the nation (if positive) of accommodating above-average population growth rates of other nations
- D. The benefit to other nations (if positive) of the nation's below-average population growth rate
- E. The value to the rest of the world of the new technology that the nation develops, the new discoveries of resources by the nation, and the literary and artistic works that the nation provides to the world.
- F. The value to the rest of the world from the setting aside of land as nature preserves
- G. The value to the rest of the world of the nation's contribution to global peacekeeping.

The difference between these debits and credits is the N that enters the computation described above, of a nation's obligation to compensate other nations for its appropriations of natural opportunities. The G of that computation is the

sum over all nations of their N 's. The general principle here is that to be just, a nation must compensate other nations in some form if it appropriates more value from nature than others can also appropriate on a per capita basis.

If a nation is not appropriating more than its share of natural opportunities, or if it compensates for the excess of its appropriation above what others are able to appropriate, and if the nation provides its citizens with an adequate opportunity to leave, then justice permits the nation to live by whatever rules its citizens wish. Anyone who does not like it can live somewhere else.

Objections to Equal Rights to Natural Opportunities

There are three principal objections to the idea of equal rights to natural opportunities:

1. The value from natural opportunities needs to be used first to compensate those who are genetically disadvantaged.
2. Natural opportunities are entirely the property of those who use them first.
3. It would be too disruptive to depart from the custom of private ownership of natural opportunities.

The first objection was developed in Bruce Ackerman's *Social Justice in the Liberal State*. Ackerman argued that a person can claim compensation in the form of an extra share of the value of natural opportunities for the disadvantage of a genetic endowment that does not permit him to pursue anyone's conception of the good as well as others can. My reply is first that there is no technology that permits us to ensure that every child that is brought into the world will not be disadvantaged. Genetic disadvantage is generally not anyone's fault, though it is a foreseeable risk of the decision to conceive a child. Second, if we were to assign responsibility for the fact that some children are disadvantaged, the logical persons to be assigned that responsibility are the child's parents. They had the power, by refraining from having children, to prevent the accident of a disadvantaged child.

A nation whose citizens believe that it is important for children to be compensated for genetic disadvantages is free to provide that compensation from their resources in whatever way they choose. If they wish, they can require all potential parents to buy insurance against having disadvantaged children. Or they can provide for disadvantaged children in any other way they choose. What would not be just would be to say to the rest of the world, "Our citizens have brought into the world a child who requires extra resources. Therefore we need to appropriate more than would otherwise be our share of natural opportunities." Whatever extra resources a nation wishes to provide for those who are disadvantaged are the responsibility of the nation itself, in whatever manner the nation wishes to allocate that responsibility.

Murray Rothbard argued that every natural opportunity is the full property of whoever uses it first. This is inefficient because it motivates people to engage in a “land rush,” wasting resources in the effort to be first. It is unjust because there is nothing about being second rather than first that makes a person less deserving of a share of natural opportunities.

What can be said for the rule of assigning property rights in natural opportunities to those who first use them is that this rule would be sensible if the rest of the world’s population was not harmed by the assignment of the property right to the first user, that is, if Locke’s proviso that there be “enough, and as good left in common for others” were satisfied. A discoverer of a natural opportunity can claim a reward for his discovery, but generally not a property right in perpetuity.

Richard Epstein has argued that a strong system of property rights is essential for human liberty, and that a rule of land ownership by first use and ownership of animals by capture are essential components of such a system of property rights.

I agree with Epstein that human liberty is paramount. But the form of property in land that is customary in Western nations is not required for human liberty. What is required is that there be a place where each person can exercise his liberty. This is provided by a rule of equal sharing of natural opportunities. In practice, the system that is supposedly one of rights for those who use resources first turns out to be one of rights for the descendants of those who have been powerful enough to seize land, with no land rights for a substantial portion of the population. Liberty for all requires that all have equal rights to natural opportunities.

This concludes the presentation of the principles that people have rights to themselves and that all people have equal rights to natural opportunities. The next chapters apply these principles to a variety of issues.