

USING AND COMING TO OWN: A LEFT-PROPRIETARIAN TREATMENT OF
THE JUST USE AND APPROPRIATION OF COMMON RESOURCES

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JUST USE AND APPROPRIATION OF COMMON RESOURCES

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CHAPTER ONE: INTRODUCTION

This dissertation will examine the conditions governing the *appropriation* and just *use* of common resources (privately¹ unowned resources) within the purview of a property-rights based theory of justice. Later I will clarify exactly what a common resource is but for now it will help to think of such resources as privately unowned natural resources such as a tract of land or a fresh water spring. This research topic can be broken up into two distinct questions. First, according to the most plausible version of a property-rights based theory of justice, under what conditions can agents *appropriate* common resources? And second, according to the most plausible version of a property-rights based theory of justice, under what conditions can agents justly *use* common resources? In the next chapter I will carefully unpack and clarify these two questions, but in this brief introductory chapter my goal is merely to say a few words motivating the importance of these two questions as well as engage in some stage-setting.

Proprietarian theories of justice consider just actions to be those actions which respect the property rights of others. Property may include both property in one's body or property in things external to the body (this essentially allows anything in the world to potentially count as an object of property). Further, property rights can be construed in a broad fashion to include rights that agents have to *use* commonly owned things such as public park benches, or such rights can be understood more narrowly to address

¹ The reader might ask why I invoke the qualifier of *privately*. As will become clearer in later chapters I invoke this qualifier because it is plausible that common resources are initially *commonly* owned by everyone and if this is the case then it would be overly limiting to discuss unowned common resources *per se* as such a discussion would rule out considering the just use and appropriation of *commonly* owned common resources.

appropriation (a way of coming to privately own). As I will later discuss, having ownership in some thing is to say that one has a bundle of rights in respect to the thing in question. This bundle of rights might be very robust, including for instance a right to transfer the thing to others, or the bundle of rights that an owner has over her property might be very limited to include only the right to use the object of property in some fashion.

An example of a very minimal set of property rights that include only the right to use would be the rights of *squatters*.² Squatters, typically, occupy a dwelling that has been effectively abandoned or neglected by its original “owner” and, in certain legal jurisdictions, are afforded very minimal property rights to use the property that they occupy.³ The rudimentary point here is simply that property rights might be very robust or rather weak and this in turn allows for a broad treatment of what having property rights in some thing amounts to.

Many proponents of proprietorism have focused their attention exclusively toward generally robust conceptions of *private* property-rights. For instance, Robert Nozick couches his influential proprietorian theory of justice as a theory concerned with the *appropriation*, transfer, and rectification of *private* property.⁴ As this project develops, however, it will become clear that offering an adequate account of the

² For an account of squatter’s rights, particularly in England, see Peter Vincent Jones, “Private Property and Public Order: The Hippy Convoy and Criminal Trespass”, *Journal of Law and Society*, 13(3) (1986), pp. 343-370.

³ Typically, in order to be afforded any protection of legally recognized property rights, a squatter must establish that she has permanently lived at a residence for some long period of time (sometimes many years).

⁴ Nozick, Robert (1974) *Anarchy, State, and Utopia*. New York: Basic Books. For an insightful and critical discussion of Robert Nozick’s proprietorian theory of justice and proprietorism generally see: Miller, David (1989) *Market, State, and Community*. Oxford: Oxford University Press, pp. 47-72.

conditions governing the just *use* of common resources is every bit as formidable and important a task, for a plausible proprietorship, as offering an account concerning the *appropriation* of such resources.

I will have more to say about proprietorship in the next chapter, but for now I merely gesture toward a sketch of what a proprietarian theory of justice amounts to and how proprietorship can address the property rights that agents have to use (as opposed to appropriate) common resources.⁵

Proprietarian theories of justice (such as libertarianism) have tended to focus on the conditions under which an agent can appropriate common resources. One of the central claims of this dissertation is that more attention needs to be given to the just use of common resources that are still “in the commons” and have not yet been privately appropriated. To see why the *use* of common resources is important, as a concern independent from the appropriation of such resources, consider the example of a desert community in which no one appropriates anything and nothing is privately owned. Would it be just for an agent “simply for the fun of it” to destroy, through her destructive *use*, the sole water hole (a common resource) in this desert community? In such a case it strikes me that an agent could unjustly *use* the water hole by depriving others of fair opportunities to use the resource. Later, I will consider a number of cases to better motivate this worry of *unjust use*. At this point, however, I merely wish to illustrate that *merely* using a common resource may well invoke concerns of justice.

⁵ Admittedly, it will sound very strange to some readers that a *property*-rights based theory of justice is utilized to address the issue of just *use*. In this project, as will be explored in greater detail shortly, I understand property rights to encompass a broad array of moral considerations which include the using of an object. Thus, while it might initially sound odd, a property-rights based theory of justice is well-suited to address concerns of just *use*.

Now, I will briefly discuss why the issues of the just use and appropriation of common resources are such important topics: they have important ramifications for the *survivability*, *autonomy*, and *well-being* of agents. I assume that survivability, autonomy, and well-being, are all important enough normative considerations to be taken seriously by any plausible theory of justice.⁶

Agents need to use common resources in order to survive. For instance, an agent might use a cave shelter to survive by protecting himself from the elements. In the most straightforward sense, without the use (consumption) of common resources, breathable air, for instance, an agent would perish. Here it is worth asking whether the consumption of common resources, e.g., eating an apple, constitutes a using or an appropriation. The answer to this question is a point of contention among political philosophers and I leave it open at this stage.

We need not, however, go so far as the survivability of agents to see the importance and far-reaching implications concerning the use and appropriation of common resources. The use or appropriation of, land, fresh air, food, and so forth, is undoubtedly an important element to the well-being of most all agents. For instance, our lives go well, or have a much better chance of going well, when we can use or appropriate the common resources (or things derivable from common resources) which we desire to use or privately own. If, for instance, an agent enjoys sailing then her life goes better when she has access to use (or privately own) a nice spot of a lake on which she can sail. Often times it will be the things *derivable* from common resources such as

⁶ Here one could ask whether survivability, well-being, and autonomy are important because agents treat them as important or because they just are important in some objective sense. While I don't have any set views on the question, I tend to think that such considerations are important, generally, independently from whether agents treat them as important. For instance, acting in a free and autonomous fashion is, plausibly, important even if the autonomous actor cares nothing about her autonomy.

houses as opposed to common resources *per se* such as pieces of wood that most contribute to an agent's life going better. I will discuss this issue further in the next chapter but here it suffices to say that discussing common resources *per se* is the best approach since all things derivable from common resources ultimately have a common resource base and hence discussing common resources as such breaches a more fundamental concern.

In some cases we can imagine that the mere *use* of some thing is adequate for a significant boost in well-being, but in other cases *appropriating* some thing might be needed for one to experience a significant boost in well-being. For example, *using* the trail at the public park might offer a significant increase in well-being (one might not have any desire at all to privately own the trail); while the private ownership of a toothbrush, plausibly, offers an agent much more well-being than merely using a communal toothbrush.⁷

The ability of an agent to use or appropriate the common resources (and things derivable from common resources) that she desires also contributes, in addition to contributing to well-being, to her autonomy or self-determination.⁸ Another way that we can put this point is to say that the ability to use or appropriate common resources (or things derivable thereof) allows an agent to better realize her plans and projects. Imagine, for example, that it is extremely important to Sarah that she sails for at least a

⁷ Of course, one could be the *only* user of a toothbrush, as opposed to merely being *a* user, without actually being the private owner of the toothbrush. For instance, an agent could be very good at hiding the toothbrush and as a matter of fact is, because of her stealth, the only user of the toothbrush. Having private ownership of the toothbrush, however, serves as a (moral) guarantee that one is the only user of the toothbrush.

⁸ Here one might suggest that one component of an agent's well-being just is autonomy and as such my separation of the two as discrete concerns is misguided. At this stage I don't want to become entangled in the debate over whether autonomy is a separate concern from well-being generally. I simply assume for simplicity here that the two are separable concerns.

few hours per month. In order for Sarah to bring this plan to fruition, by exercising her autonomous choice, she must have certain access to common resources. Sarah, however, is too poor to sail. There are many other activities that Sarah could choose to pursue, but Sarah doesn't want to engage in *these* activities at all. The reason why autonomy is valuable, to some extent, is not for the mere sake of "having many options." The ability to act in an autonomous fashion matters in so much as this ability allows an agent to act on her desires to engage in the plans and projects of her design and choosing. Access to use or appropriate common resources plays an important role in determining the extent to which we can live the life of our choosing.⁹

Given that the use or appropriation of common resources (and things derivable thereof) has important implications for the survivability, well-being, and the autonomy of agents, any robust theory of justice, be it utilitarian, egalitarian, Marxist, proprietarian, or some alternative theory, must both address this wide-ranging concern and advance plausible implications about its resolution. I will now turn toward a case to begin illustrating the view of appropriation which I shall defend as this project proceeds.

Imagine that a sizable number of agents would like to each *appropriate* a privately unowned lake. Each agent desires to be the private owner of the lake so that they may use the lake unencumbered by the plans or projects that others might have for the lake. (I assume for simplicity here that privately owning the lake would allow the owner to justly exclude others from using the lake, this assumption will be discussed further in the next chapter.) What rule(s) or principle(s) should govern the appropriation of the lake?

⁹ It is worth adding here that issues of use and appropriation also have important implications concerning the exploitation or oppression of agents. An agent might need access to a certain minimum of common resources so that she can avoid being oppressed or exploited by others.

Should the just principle governing the appropriation of the lake simply be that the *first agent to claim* private ownership of the lake may appropriate the lake, a type of “first come, first served,” principle governing appropriation? That is, should competing claims of appropriation simply be adjudicated by assessing who *first staked a claim* for the lake? As we will later explore this is precisely the principle of appropriation that some influential right-proprietarians favor, e.g., Israel Kirzner and Jan Narveson. The first agent to stake claim to the lake, that is, may appropriate it *all* for herself.

I will, after an expanded examination in chapters three and four, reject this right-proprietarian treatment of just appropriation because I agree with John Locke’s suggestion that appropriators of common resources are morally required, in a strict sense, to “leave enough and as good” for others. The position I will defend, consistent with an endorsement of the Lockean proviso, is *left-proprietarian* in character. As will become clear in the next chapter, left-proprietarianism is similar to left-libertarianism but with the important difference that left-proprietarianism does not assume (full) self-ownership.¹⁰ Broadly speaking, left-proprietarianism holds that a necessary condition governing the appropriation of common resources is that the appropriator must, in a fashion that takes egalitarian worries seriously, leave enough and as good for others. It would be unjust for an agent, *contra* the position endorsed by the right-libertarians noted above, to appropriate the entire lake simply because she was first to arrive and stake a claim to the lake.

¹⁰ For a collection of modern essays discussing left-libertarianism see; *Left-Libertarianism and Its Critics: The Contemporary Debate*, eds. Peter Vallentyne and Hillel Steiner (Palgrave, 2000); and for a collection of essays examining the historical roots of left-libertarianism see; *The Origins of Left-Libertarianism: An Anthology of Historical Writings*, eds. Peter Vallentyne and Hillel Steiner (Palgrave, 2000).

Of course, there is a lot of work to be done in making clear exactly what it means to “leave enough and as good” for others when we appropriate. I leave this tough work for chapters three and four.

And what should we say about the use, as opposed to the appropriation, of the lake? Let us assume that it is impossible for everyone to use the lake in the fashion they most desire. Should agents who use the lake be required, as a matter of justice, to share part of the lake (or the value of the lake) with others, in some equal fashion, or does the *mere* use of the lake fail to place any demands of justice on the part of the user? While the above mentioned right-prorietarians do not discuss the conditions governing the *just use* of common resources, it is a fair assumption to suspect that they would say similar things about the *just use* of the lake as they would about the appropriation of the lake, for instance a “first come, first served” principle of just use.

I suggest here, once again in broadly left-prorietarian fashion, that the demand of justice to leave others “enough and as good” which is placed on an agent when she appropriates a common resource(s), is also placed on her when she *merely* uses a common resource(s). Agents, I will argue, are bound by the same duty of justice to “leave enough and as good” for others irrespective of whether they use or appropriate common resources.

Enough with the introduction and stage-setting. I shall now proceed in the next chapter to cover some important background material and unpack the dual research questions which drive this project. In the third chapter I will offer a general defense of a left-prorietarian account governing the appropriation of common resources. This general defense of left-prorietarianism is further developed in the fourth chapter and a

specific left-propietary account of appropriation is defended. In the fifth chapter, then, I build upon the proposed account of appropriation defended in the fourth chapter and develop a left-propietary account of justly using common resources. I conclude, and offer a few remarks on related applied issues, in chapter six.

CHAPTER TWO: BACKGROUND AND UNPACKING

My primary goal in this chapter is to unpack and clarify the concepts in my two research questions. Again those questions are, (i) according to the most plausible version of proprietorship, under what conditions can agents *appropriate* common resources? And (ii) according to the most plausible version of proprietorship, under what conditions can agents justly *use* common resources? Like most important philosophical questions, these questions do not arrive nicely delivered ready, on their face, to be considered. They must be unpacked and clarified in order to make substantial philosophical progress. In what follows I unpack the following concepts: justice, proprietorship, common resources, appropriation, and use.

I shall be addressing the conditions under which individuals may appropriate or justly use common resources. Thus, the notion of justice clearly plays a central role in this project. But what is justice?

Political philosophers invoke several different notions of justice, each notion having its own meaning. Peter Vallentyne, for instance, identifies five ways in which political philosophers commonly invoke the notion of justice. These ways, according to Vallentyne, include understanding justice as: moral permissibility of legal structures, legitimacy in the sense of the impermissibility of forcible interference by others, comparative fairness, fairness, and the duties that we owe each other.¹¹ Vallentyne ends his list here but no doubt he could have continued. There is simply no uniform treatment of justice to be found amongst political philosophers.

¹¹ “Distributive Justice”, in *Companion to Contemporary Political Philosophy* edited by Robert Goodin, Philip Pettit, and Thomas Pogge (Blackwell Publishers, forthcoming, 2008).

When I invoke the notion of justice I have in mind the last of Vallentyne's proposed meanings. I take justice to mean the duties that we morally owe each other. Further, I will understand the duties that we owe each other to be a matter of respecting the rights of others. Thus, an agent acts justly when she respects the rights of others, and unjustly when she violates the rights of others. Our duties of justice, that is, are directly *correlated* with the rights of others.

I should caution that there are substantive views of justice that address justice in a sense different than I understand justice, e.g., any of Vallentyne's four alternative accounts of justice mentioned above. In what follows, I stipulate my use of 'justice' to mean the duties that we morally owe each other, where these duties owed are a matter of respecting the rights of others.

Justice then is a matter of respecting rights, but what are rights? A right is a *constraint* on the actions of others that morally protects the holder of the right. For instance, if an agent has the right that others (everyone) not kill her, then this right morally constrains others (everyone) from killing her. Others, that is, would have a duty not to kill the holder of such a right. Rights are *moral protections* that specify the *constraints* upon the ways we may treat others and the ways others may treat us.

Duties of justice are correlated with the rights of others and are owed specifically *to* the rights-holder, as opposed to being an impersonal constraint, (and thus can depend on the choices or interests of the holder of the right). Our duties of justice are *inter-personal* in nature. They are actions owed to other agents, and hence not actions owed to either ourselves or to no one at all in some impersonal fashion. An agent is derivatively just based upon the actions that she has performed or does not perform toward others. In

a world with only one agent, no just or unjust action can occur, as justice, in the fashion I will be employing the concept, is owed *to others*. Duties of justice are not impersonal constraints. When an agent is charged with acting unjustly this is a charge that ought to include a “list” of other agent(s) who were acted unjustly toward.

At least two important questions crop up here. First, what is it that rights protect? And, second, how stringent are the moral protections offered by rights? I will now address these questions in turn.

There are a number of plausible answers that have been offered to the question of what it is that rights protect. For instance, rights could protect choices, interests, desires, some combination of these possibilities, or perhaps nothing at all. At this juncture I leave open what it is that rights protect. The concept of “rights” is open to any of the above suggestions and any answer to the question of “what is it that rights protect” must be argued for and not merely settled by examining the concept of rights.¹² For simplicity, when discussing rights, I will typically speak of rights in a permission-giving or permission-receiving fashion which will, normally, imply that rights are choice-protecting as giving or receiving permission is often associated with one’s will or choices.¹³ When this language slips in note that I still remain neutral, until otherwise

¹² Note here that addressing what it is that rights protect is a different question than addressing what the purpose or ground of rights are. Rights are owed to agents and as such the fully specified content of a right will specify the conditions with which rights are no longer owed. For instance, when considering the content of a choice-protecting right we might say that, Jack has a right against Jill that she not kill him *unless* he gives Jill permission to kill him. Or understood as an interest-protecting right we can say that, Jack has a right against Jill that she not kill him unless her killing him would be in his best interest. The fully formalized content of a right makes clear what it is that rights protect, but again this is a separate question from considering the purpose or ground of rights.

¹³ Admittedly, permission-giving can be treated as an interest-protecting concern. For instance, permission-giving might be a key feature of an agent’s interests.

argued, as to whether rights protect choices or interests. It is just easiest, I find, to typically talk of rights as if they protect choices.

Noting that rights serve as constraints on the actions of others tells us nothing regarding the *stringency* of these constraints. For instance, rights could serve as merely *weak pro-tanto* constraints that are easily, very easily, morally outweighed by other considerations or, alternatively rights could serve as *absolute* constraints that can never be over-ridden by other (moral) considerations. Or alternatively, rights may be subject to thresholds so that they have *no* moral force when the benefits to others are sufficiently great. Still further, it could be that rights can be outweighed by competing moral considerations but still carry *some* moral force (it is just that this moral force is outweighed by other moral considerations). Much like the above treatment of what it is that rights protect, I leave open the stringency of the constraints offered by rights. I do not think that such an answer can be found by examining the concept of a right, and as such I will deal with the question of stringency as it presents itself.

It is worth noting that my above treatment of rights is quite broad in scope and thus is capable of being incorporated into many different theories of justice. In fact, my rights-based treatment of justice is capable of capturing all inter-personal morality. We have duties to act, or refrain from acting, toward other agents in certain ways and these duties correlate with the rights of other agents. The sense of justice I employ, however, does not include impersonal duties we might have, e.g., a general duty to promote the “good,” or intrapersonal duties we might have, e.g., the duty to one’s self not to commit suicide. The important point to stress here is that the rights-based treatment of justice on

the table is broad enough in construal to be rendered consistent with all accounts of interpersonal morality.

Further, I am concerned exclusively with the justice of *actions*. When some political philosophers, for instance John Rawls in his *A Theory of Justice*, discuss justice, they have in mind the justice of institutions or socio-political structures, where this is primarily concerned with procedural justice concerning a set of institutional rules. This is not the sense of justice which I mean to explore. I limit my evaluations of justice (unless stated otherwise) to the *actions of agents*. My own view regarding the justice of institutions is that an institution is just if and only if the institution's agents (those representatives of the institution, e.g., the Prime Minister) act in a manner which respects the rights of both citizens and non-citizens alike. As noted above, however, this project is concerned only with the justice of actions and not of procedural rules or socio-political structures generally.

I shall be addressing the conditions under which an agent can appropriate or justly use common resources according to the most plausible *proprietary* theory of justice. But what is a proprietary theory of justice?

As was briefly addressed in the introduction, a proprietary theory of justice holds that an agent acts justly if and only if her actions respect the property rights of others. Property rights cover a broad array of moral considerations and can take many different forms. For instance, they can include: liberties to use things in certain ways, claim rights that others not use things in certain ways, moral powers to alter the normative status of some thing, compensation rights, enforcement rights, transfer rights, and immunities to loss. Whenever an agent has *any* of these rights, powers, or

immunities in respect to a thing she has, to some degree, a property right in respect to the thing.

Here it will be helpful to formalize the Hohfeldian treatment of liberties and claim rights invoked above.

Liberty Rights – A has, with respect to B, a liberty right to X if and only if A has no duty to B not to X. For example, A has a liberty right to walk along a public trail because A has no duty owed to anyone not to walk to along the public trail.

Claim-Rights – A has a claim right that B not do X if and only if B has a duty to A not to X. For example, A has a claim right that B not kill her because B has a duty not to kill her.¹⁴

An agent has a property right in a thing, to some degree, if she has a liberty right to use the thing in certain ways or a claim right that others not use the thing in certain ways.¹⁵

Here it is worth stressing, as was noted in the introductory chapter, that a property right, given the above description, might be quite minimal or rather robust. For instance, an agent might have a very limited property right to use a spot of land in some designated fashion for a very short period of time. An agent's possessing a liberty right to use X merely means that she is at liberty to use X in *some* fashion, that is there is some fashion in which she can use X which doesn't violate a duty she owes another. Alternatively, an agent could have *full ownership* over a spot of land and hence be able to do anything (including destroy the land) with respect to the land as such.

The above treatment of property rights is broad in scope. For instance, it allows an agent to have a property right, to at least some degree, in a public trail that she has a

¹⁴ The above formulation of claim rights treats them as negative rights, but we can also formulate the definition of claim right to exemplify positive rights. We could say for instance that, A has a claim right that B do X if and only B has a duty to A to X. For example, A has a claim right that B feed her when she is starving to death because B has a duty to feed A when she is starving to death.

¹⁵ I mean 'or' in the inclusive sense here.

liberty right to walk along. This allowance of a property right to walk along a public trail is albeit much more minimal than a full property right in respect to the trail, but it is a property right nonetheless. In the section addressing appropriation later in this chapter I will discuss the notion of (private) ownership in greater detail, but here it is worth pointing out that I hold property rights generally to be understood broadly, ranging in scope from minimal to very robust.

Additionally, a Hohfeldian treatment of second-order *powers* to alter first-order normative conditions will become important as this project continues. A power, simply put, is one's moral ability to alter an existing normative situation.¹⁶ Powers can play an important role within a proprietarian theory of justice. For example, Sally might promise Bill that she will no longer use a car which they both previously shared together. This promise could, plausibly, alter the first-order normative situation which Sally and Bill initially had with respect to property rights over the car. Later in the chapter we will examine how appropriation is the exercise of a moral power.

Some political philosophers, for instance Hillel Steiner, have argued that *all* rights are property rights. Steiner, for instance, notes that:

the traditional Lockean view – that all rights are essentially property rights – far from being merely a piece of bourgeois ideology, actually embodies an important conceptual truth.¹⁷

Steiner reasons that all rights are property rights because if all rights constitute claims that agents use, or not use, their bodies in certain ways, then all rights turn out to be a

¹⁶ For simplicity I am treating these “existing normative situations” as first-order normative situations and powers as second-order alterations to these first-order conditions. However, it is worth point out that moral powers need not be second-order alterations. For instance, one could have a third-order moral power to alter a second-order normative situation, a power to alter a power.

¹⁷ Steiner, Hillel (1994) *An Essay on Rights*. Oxford: Blackwell, pp.93.

type of property (use) right that agents have in the body of other agents. Is Steiner correct? Are all rights, strictly speaking, property rights?¹⁸

Here, I want to avoid taking any strong position toward Steiner's claim that all rights are, strictly speaking, property rights (although the idea is plausible). The claim is interesting and has important ramifications for the breadth of proprietarianism generally; nonetheless its systematic evaluation is beyond the purview of this project. Further, the rights under consideration in this project are the rights that agents have to justly use or appropriate *common resources* and these are rights are, uncontroversially, properly classified as property rights.

Given that very few political philosophers invoke a theory of justice under the label *proprietarianism* it will be helpful to discuss a type of proprietarianism -libertarianism- to get a better understanding of the view. As I understand it libertarianism is simply a type of proprietarianism. Libertarianism is a theory of justice that endorses full, or something sufficiently close to full, *self-ownership*. The right of full self-ownership is the claim that agents fully own their selves. There are a number of different things that might be implied by the claim that an agent fully owns her *self*, but for my purposes here, I take the right of full self-ownership to imply that an agent owns (in the fullest sense of ownership possible) her *body and labor*.¹⁹ As I referenced earlier in respect to the full ownership of a spot of land, full ownership of the body (full self-

¹⁸ The best candidate of a non-property right would be the right that a certain states of affairs obtain. I doubt that this is a good candidate, but it is probably the best possible candidate of a non-property right. For instance, an agent might have a right that it rain, or not rain, tomorrow. Such a right need not correspond with the duties or actions of any agent. One could try to make the case that a farmer has the right that it rain because he deserves a good rain after the work he has put into the field. Such a right is not a property right. I thank Peter Vallentyne for bringing this example to my attention.

¹⁹ The content, and grounding, of the right of self-ownership is highly debated within libertarian theory.

ownership) would roughly mean that an agent is able to do anything (including destroy her body) with respect to her body as such.

Libertarianism is a type of proprietorism – a proprietorism which endorses the full self-ownership of agents. I will not be assuming that agents are (full) self-owners. Thus, I do not assume a libertarian theory of justice. It is plausible that agents have property rights, at least of some limited form, in their bodies. But such plausibility aside, this project’s focus is geared toward the use and appropriation of *common resources*, not the bodies of agents. As such an endorsement of self-ownership (and with it libertarianism) seems, at least at this stage, disconnected from the present project. The proprietor theory of justice I grant is open, at least at this juncture, on the question of self-ownership (bodily property rights), but assumes that agents have certain property rights in respect to the use and appropriation of common resources.²⁰

I shall be addressing the conditions by which an agent can justly use or appropriate *common resources* within the most plausible proprietor theory of justice. But what are common resources?

²⁰ Some political philosophers, certain libertarians for instance, would find the proprietorism offered above fundamentally flawed. They would suggest that an agent’s property rights to use or appropriate common resources are derived, somehow, from her property rights over her body. And as such we must first endorse self-ownership before discussing property rights over common resources. I reject this thought. First, there is no logical, or (plausible) conceptual, connection between property rights in one’s body and property rights to use or appropriate common resources. That is, an agent could, at least as an option in logical space, have no property rights in her body, but possess property rights in respect to other things, i.e., common resources. But what about a substantive moral connection between property in one’s self (body) and property in common resources? Michael Otsuka suggests that, “One might plausibly maintain that having the right to act at all is a precondition of having a right to make use of natural resources, and, moreover, that one cannot have a right to act if one has no right to make use of one’s body (which includes one’s brain).” This point is well-taken and I have maintained it is plausible that agents have property rights, at least of some limited form, in their bodies. My primary points in this note are that (i) the property right agents might have in respect to common resources need not be associated with the property rights agents might have in respect to their self (body) and (ii) one may endorse, in proprietor fashion, property rights that agents have with respect to common resources without also endorsing a notion of self-ownership strong enough to be classified as libertarian.

In order to better understand what common resources are and their place in the broader context of other things in the world, I offer a trichotomy in which every *material thing* in the world can be placed. Every material thing in our world can be placed within three categories²¹: (i) beings with moral standing, which I assume for simplicity to be autonomous beings, e.g., agents (ii) natural resources, or (iii) artifacts.²² This project is only concerned with how agents (which I assume to be autonomous beings) go about appropriating and justly using privately unowned things of the type that fall into the second, and in some cases third, category. This project is not directly concerned with how agents come to appropriate or justly use things in the first category.²³ Common resources, as we will see, will be things belonging to the second, and in some cases third, category.

Let us then begin by considering what natural resources are. Very simply, a natural resource is a non-agent resource in the world that was not created by any (non-divine) agent and exists in its *non-improved* form. Notice that natural resources are non-improved as opposed to non-altered. Consider for instance a case in which an agent walks upon a wooded path and alters the path but does not improve the path. In such a case the wooded path remains a natural resource even though it was altered in some

²¹ Here it is well worth pointing out that there are non-material things in our world that this trichotomy does not deal with. For instance, abstract objects such as ideas and propositions are not dealt with in this (material) analysis.

²² For the purposes of this project I put aside considerations of animals, children, and the mentally retarded. The address of such beings in any account of justice is a worthwhile pursuit, but in order to avoid complexity into an already complex issue I put aside their consideration here.

²³ One might think that it is *never* permissible to appropriate an agent. Appropriating an agent sounds like slavery, and slavery, at least of the involuntary type, is plausibly morally impossible. But what about “voluntary slavery”? Can I appropriate an agent if he voluntarily sells himself to me? I suspect the answer is that, under certain conditions, voluntary slavery is morally permissible and as such an agent can appropriate another agent. But as this interesting issue is not directly related with my research question it will not be explored further here.

fashion. Examples of natural resources include: land, air, minerals, a running spring of water, a cave shelter, and wild berries. It is worth pointing out that an agent, even in her non-improved form, is still not a natural resource.

Artifacts, things in the third category, can be understood as resources that have undergone improvements (of a value-additive nature) by agents.²⁴ When agents, by their labor, ingenuity, or other means, improve natural resources, then they *create* artifacts.²⁵ Thus, when an agent cuts down a tree (a natural resource) and builds a log cabin from the tree, then the log cabin is an artifact as opposed to a natural resource. The original tree used to build the cabin was a natural resource but the cabin is an artifact. Interestingly, if lightning had struck the tree in precisely the “right way” and a qualitatively identical “log cabin” were produced, then this lightning-created-log-cabin would be a natural resource as opposed to an artifact. Artifacts are created by agents who take action to improve natural resources and are never simply given by nature or God.²⁶

Where, then, do common resources fit into the discussion? They are, after all, the objects of property which are the focus of this project. Generally speaking a common resource is *a non-agent resource which no agent has any greater moral claim to than any*

²⁴ Brian Kierland offers the following counterexample to the above definition of an artifact. Consider that an agent makes a statue in a way that devalues the clay (say it is very valuable clay before it has hardened). Is the statue not an artifact? Admittedly, this is a good challenge to the above definition of an artifact. Intuitions might vary on the matter but I am not inclined to call the statue an artifact. But aside from this clash of intuition concerning what counts as an artifact Kierland’s example might suggest that we should have two categories of artifacts, (i) value-added artifacts, and (ii) non-value added artifacts. I am inclined not to recognize the second set of things as artifacts, but if one is compelled by Kierland’s example the above typology would be worth considering.

²⁵ An interesting notion here would be the idea of an accidentally created artifact. Here I am thinking of cases in which an agent unintentionally adds some value to natural resource and thereby unwittingly creates an artifact.

²⁶ Note that the value-added to a natural resource need not be done intentionally by an agent in order for an artifact to be created. For instance, note that a sleep-walking agent might create a log-cabin without intending to do so and yet he has nonetheless still created an artifact.

other agent. Defining common resources in this fashion is important because it makes clear that all agents start out initially on some type of equal moral par in respect to rights they have over common resources. That is, all agents initially begin from a position of equal moral property rights in respect to common resources. They are resources, in Lockean language, that can best be described as existing in some type of initial state of the commons.

Natural resources are clearly a good candidate of things that are common resources. No agent seems to have any greater moral claim to a non-improved non-agent resource than any other agent. For instance, there seems to be no good reason to think that any agent have a greater moral claim (more property rights) over a non-improved spring of fresh water than any other agent. No one, after all, took any action to create or improve the spring. We would be at a complete loss, I suspect, to offer any good reason to think that any agent has a greater set of property rights in respect to the spring than any other agent.²⁷ The spring is a clear example of a common resource.

Are, at least certain, artifacts, along with natural resources, also common resources? Yes, it seems they are. Consider an artifact, for example, that was *abandoned* by its original owner. It is plausible that abandoned artifacts are common resources. If the artifact is abandoned it seems as if no one has any greater claim, disproportionate property rights, over the abandoned artifact than anyone else. Abandoned artifacts are very plausibly common resources.

²⁷ G.A. Cohen also expresses his acceptance of the intuitive appeal of thinking that initially no agent has any greater claim to common resources than any other agent in his, “*Self-Ownership, World-Ownership, and Equality Part I*” in *Left-Libertarianism and Its Critics: The Contemporary Debate*, eds. Peter Vallentyne and Hillel Steiner (Palgrave, 2000), p. 250.

Here one might wonder why this project's focus is geared toward common resources to the exclusion of artifacts generally. After all, most of the things that we hold dear are artifacts as opposed to natural resources or artifactual common resources. In almost all cases the clothes we wear, the books we own, the houses we live in, and even the food we eat are artifacts as opposed to common resources. So why care about common resources *per se*? They do not seem to be all that important to us (or at least not as important as the artifacts they constitute).

The focus of my inquiries is directed toward common resources as opposed to artifacts generally because common resources are more fundamentally important to a theory of justice than are artifacts. This is because *all* material artifacts have a common resource base (more specifically a natural resource base). That is, all artifacts are composed by, or derived from, common resources. For instance, the artifactual log cabin from the above examples was composed from common (natural) resources (for example, wood). And as such to examine the conditions governing the appropriation or just use of artifacts (such as a log cabin) will only push the question back to one of how (whether in a just fashion or not) the common resources that constitute the artifact were either appropriated or used in a just fashion. Hence, the examination of the conditions governing the appropriation or use of common resources is a more fundamentally important task than the examination of the appropriation or use of artifacts created by such resources.

I shall be addressing the just *use* of common resources within the most plausible version of a proprietarian theory of justice. But what does it mean to use a common resource? Answering this question is especially pressing for this project because property

rights (liberty rights to *use* objects in certain ways, and claim rights that others not *use* objects in certain ways) are at base *use* rights. Thus, a critical element of a proprietary theory of justice must include a clear treatment of what it means to use a common resource.

At first glance, the concept of use seems intuitive and easy to grasp. Jimmy uses his little league bat when he steps up to the plate in hopes of hitting a home run. And, no doubt, examples like this could be given *ad nauseum* to illustrate the notion of using something. But if possible we should strive to go beyond a pre-theoretical treatment of use given its importance for a plausible proprietary theory of justice.

In what follows I shall not discuss a general concept of use (as I am highly skeptical that plausible necessary and sufficient conditions for the definition of use *simpliciter* can be offered). Instead, I shall only be considering the use *qua* the use of common resources. Consider the following two accounts of using a common resource.

- (1) *An agent uses a common resource X if and only if she physically impinges on X.*
- (2) *An agent uses a common resource X if and only if she makes X part of her plans and projects.*

Note that the physical impingement account of use can address clear cases of use where one sends a physical signal in order to use an object at a far distance. For instance, when an agent fires a bullet into the head of another, the shooter uses the head of his victim as he sent a physical signal impinging on another's head. The plans and projects view can also account for how the shooter uses the head of another by suggesting that by firing the bullet at the head of another the shooter makes the head of another part of her plans and projects.

Initially both accounts of using a common resource have plausibility. Consider that both of these definitions will often yield a plausible treatment of cases. Imagine an agent walking along a trail in the woods. The agent is using the trail. The agent physically impinges on the trail. The agent has, also, made the trail part of her plans and projects. I suspect that a more comprehensive evaluation of cases will yield the result that both the physical impingement view and the plans and projects view of use are plausible. But we should still press forward to ascertain whether one account is clearly preferable.

Consider the following case as a counterexample to the physical impingement view of using common resources.

Jon lives in a house with a rather high roof, fifteen feet from the floor. The roof offers Jon protection from the storm, but he doesn't physically impinge on the roof. Does Jon use the roof as the rain pelts his house?

The above case, as well as many other similar cases that we could contrive, challenge the thought that an agent uses a common resource X only if she physically impinges on X.

Granting that one finds intuitive appeal in the above case (or a similarly constructed case), can anything be said to rescue the physical impingement necessary condition of use? Can we say anything to temper the intuition that Jon uses his roof despite not physically impinging on the roof? Here is an attempt. When we think that Jon uses his roof we confuse the notion of "getting a benefit from X" or "enjoying X" with "using X". Jon, without doubt, receives a benefit from the roof. But does merely receiving a benefit from the roof imply that Jon uses the roof?

The plans and projects account of use is no by means immune from criticism. Let us assume for a moment (and I will discuss this further in the next section) that when an

agent appropriates a common resource X they gain a right that others not *use* at all X without the appropriator's permission. If this is the case then the plans and projects account of use could be charged with offering implausible implications. For instance, a plans and projects account of use would hold that I use my neighbor's house every time I gaze at it (from my own house) and enjoy the beautifully manicured lawn. If this is the case then I would be infringing a property right held by my neighbor (assuming she has the right that I not use her lawn at all) unless I obtained his permission to gaze at his lawn. A consequence of endorsing the plans and projects account of use is that it potentially "explodes" instances of property right infringements.²⁸

More could be said both in defense of, and challenge to, both the physical impingement account of using common resources and the plans and projects account of using such resources. While both accounts are plausible, each also is open to challenge. In what follows I shall leave open what it means to use a common resource, although I suspect that the correct answer can be found in one, or a blending, of the accounts of using common resources explored above.

One closing point about using common resources is in order. Irrespective of which account of using common resources we employ any plausible account will define such use in a non-normative fashion. Of course, the use of common resources can have *normative implications* as we can distinguish between the just and unjust use of common resources. I justly use a sword when I give a swordsmanship exhibition to friends; I unjustly use the sword when I use it to sever the head of an innocent agent.

²⁸ One reply that could be made to this charge by the defender of the plans and projects account is to maintain that not all uses of another's property without her permission are infringements of her property rights. That is, perhaps my "viewing use" of the lawn is not an infringement of property rights. Such a defense of the plans and projects account, of course, would have to provide a principled way in which to distinguish rights-infringing-use from the non-rights-infringing-use of another agent's property.

One of the main questions of this project is this: within the most plausible version of proprietarianism, under what conditions can agents *appropriate* common resources? To make progress on this question we must unpack the concept of appropriation. What then is appropriation?

I take appropriation to mean *coming to privately own*. In the literature, appropriation is generally reserved to mean “original acquisition,” e.g. coming to privately own something that was previously part of the commons or some other privately unowned state. Thus, I won’t be addressing how agents come to privately own common resources through: transfer, rectification, or means other than original acquisition. For the most part I shall be continuing this traditional treatment of appropriation. However, it is important to keep in mind that not all common resources, for example abandoned artifacts, will have been privately unowned at every point in their history. Thus, there will be some cases, e.g., appropriating an abandoned common resource, in which appropriating a common resource does not refer to the original acquisition of the resource.

Also, note that the appropriation of a common resource will involve a moral *power to alter* the normative status of the appropriated common resource. This is because initially common resources are privately unowned, thus in order for an agent to appropriate (come to privately own) a common resource she must exercise a moral power to alter the initial normative status of a common resource.

Ownership, in general, is best thought of as a “bundle of rights.”²⁹ Thus when an agent exercises a moral power and appropriates a common resource she comes to have a

²⁹ For the seminal discussion of ownership as a “bundle of rights” see Honoré, A. M. “Ownership.” In *Oxford Essays in Jurisprudence*, A. G. Guest, ed. Oxford University Press, London: 1961; pp. 107-147.

bundle of rights in respect to the appropriated resource. Earlier I offered a broad account of property rights, and proposed that one could have a property right, of some sort, in a public park even when this meant only the liberty right to walk along a public trail in the park during some short designated time. Appropriation, however, as I make use of the term, will pick out a set of *private ownership* rights over a thing. The rights of ownership that come *via* an appropriation, where X is the thing appropriated, are *at minimum*:

(1) The liberty right of the owner to use X in some fashion (i.e., the owner does not need anyone's permission to use X).³⁰

(2) The claim right that others not use X without the owner's permission.

The above two rights of private ownership, referenced above, can be labeled, to use a term coined by John Christman, *control-ownership*. When an agent has private control-ownership of her car, for instance, she may use the car without getting the permission of others and she may exclude others from using the car unless they first obtain her permission.³¹ The central idea behind control-ownership, Christman explains, is that, "the owner maintains primary say over what is to be done with the thing insofar as this

³⁰ Of course, this does not mean to suggest that private ownership allows *any* use of the object privately owned. For instance, one cannot use a gun they own to shoot innocent agents. One's liberty to use objects which they privately own will be limited by, or balanced against, the rights of others.

³¹ Christman makes a helpful distinction between control property rights and income property rights. Control property rights, as noted above, are rights that allow an owner to use an object without the permission of others and require others to get the owner's permission before anyone but the control owner may use the object. Income rights, on the hand, are rights to derive income from property. Christman argues that control rights are more central to autonomy of agents because as he puts it, "income rights are essentially tied to the distribution of goods. And more crucially, they cannot be said to be a manifestation of individual's liberty or autonomy, since income is a product of things over which an agent can claim no independent sovereignty." John Christman, "*Self-Ownership, Equality, and the Structure of Property Rights*" in *Left-Libertarianism and Its Critics: The Contemporary Debate*, eds. Peter Vallentyne and Hillel Steiner (Palgrave, 2000), p. 352.

affects only the owner.”³² When referencing appropriation I will be taking the associated bundle of rights to include, *minimally*, the two rights of control-ownership noted above.

Private ownership can, of course, be understood to include more rights than the rights of control-ownership. For instance, property rights can also include the: *right to destroy* one’s privately owned property, *right to transfer* private property, *right to compensation* if one’s private property rights are infringed, or perhaps other property rights. *Full* private ownership includes a larger bundle of rights than those of control-ownership.

Appropriators gain property rights over the things they appropriate, which at minimum include the rights of control-ownership noted above. But can we be more specific about the property rights gained by an appropriation than simply saying that an appropriator gains property rights ranging *somewhere* between control and full ownership? One way to address this specificity concern (which I shall explore at greater depth in the next chapter) is to maintain that the specific property rights that an appropriator gains, after meeting certain other conditions, are simply the property rights that she *claims* in respect to the thing that she appropriates. For example, if an appropriator claims, and meets other conditions that I shall discuss later, the rights of control ownership *and* the right to transfer a common resource to others via sell or gift, then these are the property rights that our appropriator gains with respect to the appropriated common resource.

³² John Cristman, “Self-Ownership, Equality, and the Structure of Property Rights” in *Left-Libertarianism and Its Critics: The Contemporary Debate*, eds. Peter Vallentyne and Hillel Steiner (Palgrave, 2000), p. 346-7. Cristman develops the idea of control-ownership in his *The Myth of Property: Toward an Egalitarian Theory of Ownership*. Oxford: Oxford University Press, 1994.

Notice that appropriation, unlike use, is a normative concept. To appropriate a common resource is to exercise a moral power and come to have certain property rights with respect to the resource. For this reason it is superfluous and mistaken to talk of “just appropriation,” because all appropriation is by definition just. The tyrant, for example, who steals everyone’s land, has unjustly taken the land but he has not appropriated it because he has not come to have rights over the land.³³

After having motivated the importance of the project, I will continue onward in the next chapter by beginning to address the question: under what conditions can agents *appropriate* common resources? In the next chapter I shall offer a general defense of a left-propietary answer to the question, then in chapter four I will build upon this effort by offering and defending a specific left-propietary account of appropriation.

³³ Here it is helpful to consider the distinction between *legal* and *moral* rights. In this project I am specifically concerned with moral rights. To appropriate a common resource simply means to come to have a certain set of moral rights over the appropriated resource. Legal rights, unlike moral rights, are a matter of legal, as opposed to moral, claims. A person might have a legal right to ‘legally appropriate’ a common resource that they have no moral right to appropriate. The tyrant, for example, might have the legal right to steal everyone’s land. After all, the tyrant may have written the law. But the tyrant has no moral right to steal the land and hence cannot appropriate the land in the moral sense which I am concerned with.

CHAPTER THREE: APPROPRIATION PART I: IN DEFENSE OF LEFT-PROPRIETARIANISM

This chapter addresses the question: According to the most plausible version of a proprietary theory of justice, under what conditions can an agent come to have private property in formerly common resources?

A fruitful and unassuming place to begin addressing this question can be found in a puzzle posed by John Locke in his *Second Treatise of Government* (1690).³⁴ Locke, in § 25 of his *Second Treatise*, presents the following worry:

It is very clear that God, as King David says (Psalm cxv. 16), “has given the earth to the children of men,” given it to mankind in common. But this being supposed, it seems to some a very great difficulty how any one should ever come to have property in anything. I will not content myself to answer that if it be difficult to make out property upon a supposition that God gave the world to Adam and his posterity in common, it is impossible that any man but one universal monarch should have any property upon a supposition that God gave the world to Adam and his heirs in succession, exclusive of all the rest of his posterity.

Locke’s worry is that, if the world initially belongs to everyone (is shared) in some common fashion, then it is either mysterious or simply wrong to suggest that an agent can appropriate any part(s) of the world all for herself. (I shall say more about the best way in which to interpret Locke’s claim that the world belonged to everyone in some shared sense.) In other words, if the initial normative status of the world is that it belongs to everyone in some common fashion, then how can anyone exercise a moral power and alter this initial situation and thereby come to appropriate parts of the world? Before delving deeper into Locke’s worry a few points of specification and clarification are in order.

³⁴ John Locke, *The Second Treatise of Government* (1690), ed. Thomas Peardon (Macmillan, 1986).

First, this chapter is specifically concerned with the appropriation of *common resources*, and as such I shall apply Locke's general worry concerning the initial normative situation of the world specifically toward the initial normative situation of common resources. Thus, when I reference Locke's worry concerning the move from the first-order "common-belonging" of the world to second-order appropriation, I will do so as a worry that applies specifically to *common resources*. This specification is not an important deviation from Locke's worry. The world, initially, consists of two types of material things, agents and natural resources and recall that all natural resources are common resources (there are no artifacts initially as artifacts only appear on the scene *after* agents improve natural resources). Locke, plausibly, didn't think that agents were the types of things that could be appropriated, and this leaves us with only the appropriation of common resources to consider. Thus, Locke's worry was a concern primarily directed toward the appropriation of common resources.

Further, Locke's thought that common resources belonged originally to everyone in a shared common fashion is unclear; hence we need to offer some clarification in order to assess the idea's plausibility. I take Locke to have meant that initially everyone had the liberty right, within certain parameters of normal use, to use any common resources. This view was also held by Grotius and Pufendorf, and more contemporarily by Allan Gibbard and Baruch Brody.³⁵ As Gibbard puts the point, "(initially) everyone has equal rights to use all things (common resources)."³⁶ No agent, or group of agents, *initially* had

³⁵ Gibbard endorses this view as a plausible assumption in his, "Natural Property Rights", *Nous*, 10 (1976), pp. 77-86. Brody argues for the view as true in his, "Redistribution without Egalitarianism", *Social Philosophy and Policy*, 1(1) (1983), pp.71-87.

³⁶ Allen Gibbard "Natural Property Rights," In *Left-Libertarianism and Its Critics: The Contemporary Debate*, eds. Peter Vallentyne and Hillel Steiner (Palgrave, 2000), p. 24.

a dominion over common resources that afforded them private property in common resources.

Noting that no agent initially had dominion over common resources has important ramifications for considerations of fairness and equality. Endorsing the view that everyone initially had equal property rights with respect to common resources is a clear way of affirming the importance of equality within a Lockean picture of common use and a proprietary theory of justice. Fairness demands, in its most straightforward treatment, that we treat, 'like cases alike.' Given that no agent is initially on any better moral footing than any other agent with respect to common resources it stands to reason that one important way of treating 'like cases alike' is to affirm the equal property rights that all persons initially have in respect to common resources. An analysis of equality and fairness can become a complicated matter and later I shall discuss equality at much greater length, but here I simply want to make explicit the point that the initial Lockean picture of the commons is very friendly to considerations of equality and fairness.

Henceforth, I will refer to Locke's treatment of the initial first-order normative status of common resources as a condition or situation of *equal common use*. A public park can be used to loosely illustrate the situation of equal common use. Everyone is at liberty to use, within certain parameters, the park. It is worth noting that the liberty right to use common resources is a weak property right in that it affords little protection to the rights-holder. For example, one's liberty right to use a shade tree doesn't prevent ten other agents from also using the same tree and creating a very crowded situation. Later, in the next chapter, I shall reconsider and modify this simple treatment of equal common

use. But for our purposes here of assessing Locke's worry the above treatment will suffice.

Now we are in a better position to phrase how Locke's worry applies specifically toward the appropriation of common resources. Here we can ask: *If initially everyone has a liberty right to use common resources, then how can any agent acquire the claim right that others not use (certain) common resources without her permission?* How is it possible for an agent to gain a right to exclude others (or gain other property rights over common resources) from a common resource which was initially in a state of equal common use? When an agent appropriates a common resource she acquires, minimally, (through the exercise of a moral power) a claim right which allows her to exclude others from the appropriated resource, but this newly acquired claim right (assuming that an agent can acquire such a right) is inconsistent with the liberty right that all agents initially have to use common resources. Somewhere along the way, if we are to find a way to justify appropriation, we must explain how it is that agents lose their initial liberty right to use common resources.

In order to best assess the implications of Locke's worry it is first worth addressing whether Locke's claim that, common resources were initially in a state of equal common use is more plausible than competing alternative accounts of the initial normative status of common resources. After all, if common resources were not initially in a state of equal common use, then Locke's worry concerning appropriation loses its force. I shall now proceed by examining a number of alternative possibilities to equal common use.

It could be maintained that, initially, agents lack even the liberty right to use common resources. We could label this the *no-initial-property-rights-whatsoever* alternative to Locke's suggestion of equal common use. According to this position no one has a liberty right to use common resources. This position, while possible, is wildly implausible.

Imagine, for instance, that two normal human agents, Mark and Bill, share a world with the same common resource base as our actual world. I can think of no plausible reason(s) to suggest that either Mark or Bill do something unjust when either *uses* common resources, e.g., when Mark occupies a privately unowned cave shelter for warmth. This is because, plausibly, agents have a liberty right to use (in at least some fashion) common resources. For example, Mark and Bill plausibly have the liberty right to use the ground by walking upon a path to a nearby spring. Mark does not violate the (property) rights of Bill, or *vice versa*, by walking along a privately unowned path in the forest. After all, no one owns the path and neither Mark nor Bill seem to have any greater claim to the path than the other. What plausible reason(s) could exist that would generally justly preclude an agent from *using* the path? I doubt any such reasons exist. Neither has a duty not to use the path in some normal fashion because neither has a right that the other not use the path in some normal fashion. The *no-initial-property-rights-whatsoever* alternative is simply not plausible.

Another alternative to equal common use is where a *special* agent, group of agents, or class of agents, *initially* privately owns some or all common resources. This alternative could be labeled the *initial-special-status-private-owner* alternative to equal common use. For example, Bill might be ordained from God, due to his morally superior

status, to enter the world with the claim right that all other agents get his permission before they use any common resources. That is, Bill could enter the world with rights of private ownership over all common resources. Such a state of affairs would be inconsistent with equal common use as a certain agent, group, or class, would *initially* have rights over the world that precluded a liberty right of everyone to use common resources. In fact, a defender of this position would likely deny the very notion of common resources altogether. Recall that a common resource is a non-agent resource which no agent has any greater moral claim to than any other agent. If some agents initially have a greater claim to the world's resources than others, then to even talk of common resources is mistaken.

This alternative to equal common use is also wildly implausible. I take it as a promising hallmark of the Western ethical tradition that all agents are, at least initially, moral equals, or as Kant put the point, “deserving of equal moral respect.” No agent is, at least initially, morally superior to another agent. As the proprietorian would put the point, *all agents initially possess the same set of property rights*. Here, aside from the very strong intuitive appeal of the above theses we can ask, what conditions would, *initially*, render one agent morally superior to another? Gender, no. Race, no. Socio-economic class, no. Intelligence, no. Past action, no (there aren't any past actions to consider yet). Of course we could keep listing, but I think the point is clear enough. No good reasons exist to suspect that, at least initially, agents do not possess the same set of (property) rights.³⁷

³⁷ Some might suspect that the denial of a moral equity thesis is a straw-man. Who would deny such a thesis? Well, actually many laypersons and philosophers seem to deny the thesis. For an influential philosopher who denies the thesis we need only look so far as Nietzsche and for a large group of people who deny the thesis we can look toward Protestant views of the elect. Or we need just look at the historical

Now, let us move along to consider the possibility that common resources were initially *jointly-controlled* by everyone.³⁸ The central idea behind *joint-control* alternatives to equal common use is that in the case of joint-control some form of collective approval (either unanimous or majority) is required for any of those with joint-control to use that which is jointly-controlled. Unlike equal common use individuals within a scheme of joint-control have no liberty right to use common resources

As we work through the differing forms of joint-control I purpose the following simple case to provide illustration. Imagine a world, much like our own in terms of a common resource base with three normally functioning agents, Sarah, Mark, and Bill, who, jointly-control a cave shelter. They are the only agents in the world.

According to the *unanimous-consent-joint-control* variant of joint-control, *all* individuals must have the permission of every other joint-controller to use an object which is jointly-controlled.³⁹ For example, Mark must get the permission of Sarah and Bill in order to use the cave shelter which they all jointly-control. If either Sarah or Bill fails to give Mark permission to use the shelter, then he may not justly use the shelter.

The unanimous-consent-joint-control model has the important disadvantage that in order for any joint-controller to even use an object that she jointly controls she must first receive the permission of every other joint-controller. This permission-receiving

(and contemporary) unfair treatment of women (specifically for our purposes here the unequal property rights of women) in many cultural traditions around the world.

³⁸ G.A Cohen assumes, for the sake of argumentation, a joint-control ownership view, *see: Self-Ownership, Freedom, and Equality*, pp. 94. Also, Cohen discuss the view in “Self-Ownership, World Ownership, and Equality, Part II”, *Social Philosophy and Policy*, 3 (2) (1986), pp 77-96.

³⁹ Earlier I made the assumption that the only agents in the world were joint-controllers. But if this assumption were relaxed to allow for “outsiders” the same rule would apply to these outside individuals. They would need the permission of all the joint-controllers in order to use common resources within a unanimous-joint-control model.

process is both extremely burdensome and inefficient for a joint-controller. Imagine, that Mark must obtain the permission of Sarah and Bill for every instance in which he wishes to use the cave shelter which he jointly-controls. One promising way to deal with this inefficiency and continual burden would be to revise the unanimous-joint-control variant to be understood as *unanimous-non-dissent-joint-control*.⁴⁰ In this variant, a joint-controller would have the liberty right to use what he jointly-controls just as long as no other joint-controller dissented to his use. Mark, for example, would have the liberty right to use the cave shelter *unless* another joint-controller dissented to his use of the cave.

While unanimous-non-dissent joint-control is much more efficient and less burdensome for a joint-controller than unanimous-consent-joint-control both models still suffer from, at least two, severe weaknesses. The first problem, with both variants, is that *one* mean-spirited or envious agent could simply unilaterally veto the other joint-controllers from using the jointly-controlled object. Of course, one could reply that typically no joint-controller will deny other joint-controllers permission to use joint-controlled objects as this would almost certainly precipitate like action from the other joint-controllers and, in kind, prevent the original objector's use. This, tit-for-tat retaliation from other joint-controllers will generally, so the thought goes, serve as a check against the possibility of (envious or mean-spirited) veto.

The problem with this reply is that we can easily imagine situations in which an envious joint-controller would rather have none of the joint-controllers use the object

⁴⁰ Another way in which the burdensome aspects of unanimous approval might be mitigated is by appealing to contracts which all joint-controls might agree to that would render permission to use things good over an extended period of time, thus removing the burden of every joint controller to continually receive unanimous approval before any using common resources.

(including herself) than see all the joint-controllers use the jointly-controlled object in some cooperative or shared fashion. It is not plausible to suggest that one mean-spirited joint-controller can justly prevent, by either her failing to grant permission or active dissent, all other joint-controllers from using an object which is jointly-controlled. Such a power by *one* joint-controller to deny all other joint-controllers access to use the jointly-controlled object is a significant, and unacceptable, restriction on the autonomy and survivability of agents.

The second problem with both variants is that registering dissent takes both an awareness of reason(s) to dissent and time to dissent. An agent might be able to use common resources very quickly before anyone has reason, or time, to dissent to her use. This problem, however, is not nearly as troublesome for the joint-control variants under discussion that the first problem discussed above. To help address this problem the non-dissent model could be augmented with an “opportunity to dissent” condition that would give joint-controllers an adequate opportunity to dissent to another controller’s use.

Another form of joint-control that might prove more promising than unanimous-non-dissent-joint-control, is *majority-joint-control*. In this majority model, an individual may use a common resource if and only if he first obtains the permission of a majority of the resource’s joint-controllers. For instance, Mark may use the jointly-controlled cave shelter provided that he obtains the permission of either Sarah or Bill (thus giving him 2/3 permission of all joint-controllers). For the same reasons of inefficiency and overburdensomeness cited in response to unanimous-joint-control, a more plausible version of the majority-joint-control is a *majority-non-dissent-joint-control* model: where, for

instance, Mark may use the jointly-controlled cave shelter just so long as a majority (Bill and Sarah) do not dissent to his use of the cave shelter.

How does the majority-non-dissent-joint-control model stand up to close scrutiny? The model, problematically, allows a majority of joint-controllers to oppressively and unfairly restrict the ability of a minority of joint-controllers to use a common resource which the minority jointly-controls. For instance, Sarah and Bill can dissent to Mark use of the cave on unfair grounds. Sarah and Bill may simply dissent to Mark's use of the cave shelter because of Mark's skin color or any other reason which most would, and should, find morally unacceptable.

But aside from morally nefarious practices of the majority to exclude a minority from using a jointly-controlled object there are also considerations of self-interest that speak against the moral plausibility of majority-non-dissent-joint-control. We could easily imagine that Mark and Bill agree to a pact to exclude Sarah from using the cave shelter not because of any obvious morally nefarious reason, but because each are self-interested and would simply rather share the cave with one other agent than with two other agents. It is the prudential self-interest of her co-controllers, in this case, that prevents Sarah from using the cave shelter which she jointly-controls. But this isn't fair to Sarah, and the unfairness here is significant enough, I offer, to render the majority-non-dissent-joint-control (at least when we assume the self-interest of the controllers) implausible.

Further, the problem of prudential self-interest might well speak toward a systematic injustice of the majority-non-dissent-joint-control model. If we assume that co-controllers are prudentially self-interested then why not suspect that they would try to

form majorities with other co-controllers to exclude as many other joint-controllers (in the minority) from using jointly-controlled objects? But this result is morally unacceptable as it implies that if a joint-controller finds herself in the minority she, on the basis of this status alone (a status which is either morally arbitrary or one that joint-controller may have no responsibility for bringing about), could be justly barred from using that which she jointly-controls. Such an unearned and (potentially) arbitrary status could not justly bar an agent from using that which she jointly-controls, accordingly we have a *reductio* against majority-non-dissent-joint-control.

Thus far we have considered a number of possible alternatives to equal common use including, no-property-rights-whatsoever, initial-special-status-private-owner, and various joint-control models. This consideration of alternatives to equal common use has failed to provide a plausible rival alternative. Thus, I offer that Locke was correct, in broad form, when he claimed that common resources initially belonged to everyone. That is, initially everyone had the liberty right to use, in some normal fashion, common resources.

Now, after endorsing equal common use as the best, approximation, in which to understand the first-order normative status of common resources, we are in a better position to continue examining Locke's puzzle: *given the initial, first-order, equal common use rights of everyone to use common resources how could, if at all, any agent, or group, have a power to alter this first-order condition and appropriate a common resource from this original condition?*

The first possible answer to Locke's question is that it is *never* permissible for any agent, or group of agents, to alter the normative situation of equal common use. That is,

agents simply lack the (moral) power to alter the initial situation of equal common use. This position can be accurately described as *perpetual-equal-common-use*.

The critical question to ask one who endorses perpetual-equal-common-use is: why would equal common use be unalterable? What morally bars agents from altering the initial condition of equal common use in a fashion that allows for the appropriation of common resources? Plausible answers to these questions are not forthcoming. After all, it seems as if we can offer cases in which the initial condition of equal common use can be justly altered in a way that allows for the appropriation of common resources.

For example, imagine that Mark and Sarah forfeit or waive their liberty right to use the cave shelter (and further agree not to use the cave shelter without Bill's permission) in exchange for services that Bill agrees to provide.⁴¹ Such an alteration to the first-order normative situation of equal common use would render Bill as the only remaining just user of the cave shelter. Mark and Sarah acquire a duty not to use the cave without Bill's permission and Bill is at liberty to use the cave without the permission of others. Bill, through the agreement he forms with others, has gained a claim right that everyone else (Sarah and Mark) not use the cave shelter without his permission. Bill gains control ownership over the cave shelter because he has a liberty right to use the cave and he has the claim right that others must get his permission before they use the cave. If we grant agents the ability to waive or forfeit their liberty right to use (certain) common resources, and as such the power to alter the first-order normative status of

⁴¹ Here, it is worth noting that the above example, with its mention of *voluntary* waiving or forfeiture relies upon the idea that rights protect choices. But the example could be altered to account for a conception of rights as interest protecting. For example, we can change the case to one in which it is in the best interests of Mark and Sarah to waive their liberty right and it is this feature of interest-protection as opposed to choice-protection that explains why it is that Mark and Sarah are no longer at liberty to use the cave and accordingly why Bill has private ownership of the cave.

equal common use, then we should make room for the possibility that a common resource could come to be privately owned through consensual agreement.

The rejection of perpetual-equal-common-use rules out the possibility that it is impossible to alter, in a fashion that allows for appropriation, the initial situation of equal common use.

The first possibility to address how agents may exercise the power to appropriate common resources is that such a power can occur only under the sanction or approval of some morally *special* agent or group of agents. This view can be labeled *special-second-order-moral-status*. This possibility is similar to the idea, examined earlier, that a special group of agents *initially* have a greater claim to common resources. The difference is that this position endorses first-order equal common use, but claims that this condition is justly altered to allow for appropriation, as a second-order matter, only under the approval or sanction from some morally special agent or group, e.g., the King.

This possibility should be rejected for the same reasons as were given to reject the view that some agents have a moral status that affords them disproportionate, first-order, property rights to common resources. We simply have no good reason to believe that anyone has a special status which affords them the moral power to be final arbiter as to when others are allowed to alter the initial situation of equal common use. Agents don't need to get permission from the "King," before the alteration of equal common use may justly occur.

To this point, I have maintained that both perpetual-equal-common-use as well as special-status-second-order alteration to equal common use are implausible ways to understand how the initial state of equal common use may be justly altered to allow for

appropriation. Now I shall consider whether *joint-ownership* is a plausible way of understanding how the initial state of equal common use may be justly altered to allow for appropriation.

Joint-ownership shares certain similarities with joint-control considered earlier. The important difference between the two views is that joint-control is a way, which was rejected as implausible, of understanding first-order normative conditions whereas joint-ownership is a way of understanding second-order normative powers to alter the first-order initial situation of equal common use.⁴² Joint-ownership holds that the initial conditions of equal common use can be justly altered; in a fashion that allows for appropriation, only by the unanimous or majority consent of all joint-owners.⁴³ This view has been endorsed as plausible assumption by Will Kymlica and as a plausible view by James Grunebaum.⁴⁴

A *unanimous-joint-ownership* model claims that every joint-owner of a common resource must consent in order for the common resource to be appropriated. For instance, Mark, Sarah, and Bill (all joint-owners) must *all* consent in order for the cave shelter to become appropriated. For reasons of efficiency and burdensomeness considered earlier I

⁴² Here, I suggest that one who endorses joint-ownership will also endorse equal common use (as a first-order matter). This suggestion merely follows from equal common use being the only plausible way to under the first-order normative situation, thus any view about second-order powers to alter the first-order normative situation must assume the first-order normative situation to be equal common use.

⁴³ Notice, importantly here that joint-ownership (a second-order normative consideration) is only concerned with *alterations* to the first-order normative condition of equal common use and is not concerned with how joint-owners use that which they joint-own. I assume that any plausible joint-ownership model would endorse equal common use.

⁴⁴ Will Kymlica, maintains that joint-ownership is plausible in, “*Property Rights and the Self-Ownership Argument*” in *Left-Libertarianism and Its Critics: The Contemporary Debate*, eds. Peter Vallentyne and Hillel Steiner (Palgrave, 2000), p. 295-321. James Grunebaum in “*Autonomous Ownership*” in *Left-Libertarianism and Its Critics: The Contemporary Debate*, eds. Peter Vallentyne and Hillel Steiner (Palgrave, 2000), p. 48-73. endorses the joint-ownership and democratic control over common resources. He argues that joint-ownership is the only way to respect the autonomy of agents.

take it unanimous-non-dissent-joint-ownership, with provisions that allow adequate opportunity for joint-owners to dissent, is more plausible than unanimous-joint-ownership.⁴⁵

The plausibility of unanimous-non-dissent-joint-ownership suffers greatly from an objection concerning the lack of autonomy within such a scheme. Unanimous-non-dissent-joint-ownership, in effect, allows *one joint-owner* the moral power to prevent every other joint-owner, or group of joint-owners, from appropriating any common resources whatsoever. The problem with this implication is that in order for an agent to be autonomous (in a morally meaningful fashion) it makes sense to think that, typically, he needs some common resources which he can call his own. That is, some resources which he can, in a sense which excludes others, incorporate into his own plans and projects. As Richard Arneson puts the point:

A salient fact bearing on the justifiability of appropriation is that people want to carry out projects that require secure possessions of land for extended periods of time. If A wishes to build and occupy a cabin, she needs assurances that the logs she chops on one day will lie where they fall until it is time to fashion them into cabin walls, and that once the cabin is completed, no one will occupy it without her consent. A's liberty to carry out such projects on a particular piece of land requires that B and all others not be at liberty to initiate their own projects on that piece of land which might interfere with A's project.⁴⁶

Agents pursue plans and projects of their own and, as illustrated by Arneson's example, common resources which agents incorporate into their personal and private plans and projects is often integral to pursuing autonomous aims.

⁴⁵ This non-dissent model should likely be augmented with a type of "opportunity to dissent" condition discussed earlier when considering joint-control. For instance, it seems wrong that one-joint owner could appropriate everything that is jointly-owned all for himself because no one dissented to his attempted appropriation because they had no opportunity to dissent (perhaps because all the other joint-owners were sleeping at the time of the attempted appropriation).

⁴⁶ Richard Arneson, "Lockean Self-Ownership: Towards a Demolition", *Political Studies*, 39 (1991), pp. 40-1.

Possessing merely the weak property right to use common resources offers little, if any, protection against others from interfering in our plans and projects. Rendering the moral power to appropriate contingent on the unanimous approval or non-dissent of others is too great a bar on autonomous action.

For example, consider that Bill plans to construct a log cabin and appropriate a small plot of land where he wishes to pursue a life of private seclusion and contemplation. Bill isn't happy to share the crowded cave shelter with Sarah and Mark. There are plenty (thousands) of easily accessible logs which everyone can use to construct their own cabins, and Bill only wishes to appropriate a small number of these logs to build a cabin of his own on a very small plot of land. Bill's appropriation does not reduce the well-being of the others, and further Bill leaves enough for the others to appropriate and improve their lives to the same degree as he did. Bill does not disadvantage anyone by appropriating a few of the thousands of easily accessible logs and a small plot on which he builds a log cabin. Nonetheless, Sarah, dissents to Bill's (attempted) appropriation, appealing to her liberty right to use *all* the logs.

Can Sarah's dissent justly prevent Bill from appropriating the logs and small plot? If Sarah's liberty right to use everything were *absolute*, then her dissent could prevent Bill's appropriation. But is Sarah's first-order liberty right to use all common resources absolute? I offer that such a right is not absolute and may, under certain conditions, fail to hold. The moral power to appropriate is important enough for the autonomy of agents that the liberty right of everyone to use all common resources may fail to hold when an appropriation *does not, at a minimum, disadvantage others*. As the chapter proceeds I shall spend substantial time discussing the notion of what it means to disadvantage others

by an act of appropriation. For now, however, I merely suggest that appropriating in a fashion that does not disadvantage others is necessary if one is to appropriate common resources.

Is majority-non-dissent-joint-ownership a more plausible alternative than unanimous-non-dissent-joint-ownership? Majority-non-dissent-joint-ownership is the claim that appropriation can occur only if the majority of joint-owners do not dissent to the appropriation.⁴⁷ That is, majority non-dissent is necessary for an appropriation to occur. The obvious advantage to this model of majority-non-dissent-joint-ownership as compared with unanimous-non-dissent-joint-ownership is that the majority model does not allow *one* envious or nefarious agent from vetoing all instances of appropriation. But the model allows a majority of envious or nefarious agents to veto agents from appropriating. Appropriation can allow agents to better live the life of their choosing and provided they do not disadvantage others when they appropriate it is difficult to see why majority non-dissent would be necessary for appropriation. If we grant that an agent engaging in an appropriation does not disadvantage others, then why think that a majority veto could justly prevent her appropriation? Anticipating no good answer to this question, I reject majority permission (or non-dissent) as a necessary condition of appropriation.

⁴⁷ It is implausible to suggest that majority permission (or non-dissent) is a sufficient condition for appropriation. Recall, that earlier a systematic problem to majority-joint-control was considered. That being: if we assume all joint-controllers to be rational then the controllers have a reason to form a majority which excludes a minority from *using* jointly-controlled objects. But we can find an analogue to this very troublesome result in the case of majority-non-dissent-joint-ownership. If we assume all joint-owners to be rational then the owners have a reason to form a majority which confers a power to the majority, or individual members of the majority, to appropriate objects. But notice that this power, of the majority, to appropriate would leave the minority in the same position of non-use they were left in by majority-non-dissent-joint-control. This is because the power to appropriate X means the acquisition of a claim right to exclude others from using X. Thus, if the power to appropriate is left in the hands of the majority, then those in the minority can find themselves in the position of not being able to justly *use* anything which the majority has appropriated. Hence, majority-non-dissent-joint-ownership turns out to have the same troubling implication of minority non-use as is had by majority-non-dissent-joint-control.

Thus far we have considered, and found implausible: perpetual-equal-common-use, special-second-order-moral-status, unanimous-non-dissent-joint-ownership and majority- non-dissent-joint-ownership, to explain how, if at all, agents have the moral power to appropriate a common resource. Here, I maintain that some sort of *unilateralism* is true. Unilateralism claims that an agent, or group of agents, may, under certain conditions, appropriate common resources without obtaining the permission of anyone. I shall now proceed to examine various models of unilateralism in route to uncovering the most plausible version of the view.

Before explicating various unilateralist positions I shall consider whether laboring, improving, or claiming (or some combination thereof) a common resource serve as necessary condition(s) of appropriation. After considering whether such conditions are necessary for appropriation, I will address whether these conditions are sufficient for appropriation.

Is an agent's mixing her labor with a common resource a necessary condition of her appropriating the resource? Locke devoted much his influential chapter on property in the *Second Treatise* attempting to provide a positive answer to this question. But many contemporary political philosophers have found good reasons to reject Locke's labor-mixing necessary condition for appropriation. For instance, Robert Nozick, asks:

If I own a can of tomato juice and spill it in the sea so that its molecules (made radioactive, so I can check this) mingle evenly throughout the sea, do I thereby come to own the sea, or have I foolishly dissipated my tomato soup?⁴⁸

Nozick's example is helpful because it demonstrates that mixing one's labor (if this is indeed what the soup-mixer does) with something can be a trivial and morally unimportant action. Pouring a can of soup into the sea seems as morally relevant in

⁴⁸ Anarchy, State, and Utopia, 173.

respect to appropriating the sea as doing jumping jacks in a boat traveling the sea. Why would *merely* mixing one's labor with a common resource serve as a necessary condition of appropriating the resource?

Imagine that Sarah is a quadriplegic who can alter nothing, or next to nothing, in the world. Sarah cannot effectively mix her labor with anything. Is Sarah's inability to mix her labor a plausible bar to her being able to appropriate common resources? It does not seem to be. Why would it matter if Sarah could suddenly hang drapes in a cave shelter that she wishes to appropriate? Sarah's inability to mix her labor with the cave shelter doesn't seem a bar to her appropriating the shelter.

We could imagine that Sarah is normally functioning but simply doesn't, for whatever reason, desire to mix her labor with the cave shelter. She likes the cave just the way it is. Demanding that Sarah mix her labor with the cave shelter in order to appropriate the shelter might well be little more than an unjustifiable restriction of her autonomy.

Perhaps a more plausible thought behind those who endorse labor as a necessary (or even sufficient) condition of appropriation is this: when agents improve, through their labor, common resources, then they have some claim to benefit from the improvement (added value) that their labor brought about.⁴⁹ This view has found support amongst some notable contemporary political philosophers, e.g., Baruch Brody and Hillel

⁴⁹ One could argue that improving a common resource gives the laborious improver a claim not only to the improved value but to the entire labored upon resource. For example, when an agent grows an apple tree, the grower would have a claim not only to the value of the improvements that he brought about but the entire apple tree. This view has been subject to the criticism that agents cannot gain a claim to the unimproved value of a resource by merely improving the resource. An agent, does not, for example gain a claim over an entire private unowned beach merely because she improves the beach by picking up a piece of litter.

Steiner.⁵⁰ But notice that this view, however plausible, does not speak toward appropriation. Even if we grant the suggestion that an agent “owns her labor” and is, in some fashion, entitled to the value which she adds to common resources through her laborious activity, this tells us nothing about how labor is connected, if it is at all, with appropriating such resources.⁵¹ One can consistently hold the following two theses:

- (i) Mixing one’s labor with a common resource is not a necessary condition of appropriating the resource.
- (ii) An agent is entitled to the improvement or value which she adds to common resources when she justly improves the base resource.

I remain open on (ii) although I find the view somewhat attractive. I merely point out that (i) and (ii) may be consistently held.

Further, it is implausible to hold that “laborious *improvement*,” (as opposed to labor *per se*) is a necessary condition of appropriating common resources. Imagine that a group of agents come to exist at the same time in a world that is a beautiful and pristine island paradise. As it turns out *all* laboring extended toward common resources would reduce the initial value of the common resources on the island. That is, all artifactual creates will be of less value than unaltered common resources. On the island there is no improvement brought about by the labor involved with artifactual creation. If laborious improvement were necessary for appropriation, then this would imply that no one can appropriate anything (since no laborious improvement is possible). But, as considered earlier, appropriation plausibly allows agents a greater degree of autonomy than arrangements not allowing for appropriation at all, and such a benefit should not be

⁵⁰ Brody endorses the view in, “Redistribution without Egalitarianism”, *Social Philosophy and Policy*, 1(1) (1983), pp.74-5. And Steiner endorses the view in, *An Essay on Rights* (1994), 244.

⁵¹ For a similar discussion see Miller, David (1989) *Market, State, and Community*. Oxford: Oxford University Press, pp. 55-6.

blocked merely because an agent lives in a place where common resources cannot be improved *via* labor.

Now that we have rejected mixing one's labor with and laboriously improving common resources as necessary for appropriating these resources, we can consider whether *claiming* ownership over a common resource is a necessary condition of appropriation. Appropriation, recall, is coming to own, where this ownership comes about by the *exercise* of a moral power to alter the initial normative situation of equal common use.⁵² In order for an agent to appropriate she must, at least, take positive steps to exercise a moral power. An agent cannot appropriate in her sleep. Of course, an agent might have to fulfill other conditions before she appropriates, but she must, at least, take positive steps to exercise a moral power.

It is plausible to suggest that claiming is one way, perhaps the only way, in which an agent may take a positive step to exercise the moral power of appropriation. Additionally, it is not obvious what, if anything, besides claiming ownership would count as exercising the moral power to appropriate.⁵³ When an agent, for instance, is accused

⁵² But what about the possibility of 'coming to own' a common resource in a fashion other than appropriation? Could an agent come to own a common resource in a fashion that did not require her exercise of a moral power? Here, I suspect that the answer is no. Coming to own a common resource X requires the exercise of a moral power. Before an agent comes to own X she stands in a certain moral relationship with respect to X, a non-owning relation. X might be owned by another person or X could be within conditions of equal common use. In order for an agent to come to own X an *alteration* in the previous moral relationship of non-owning is required. I find it plausible that such an alternation to the previous moral relationship between the agent and X must include the exercise of a moral power by the agent who is coming to own. Others cannot, absent our exercise of a moral power, alter our previous moral relationship to X. This is something that other agents lack the moral authority to sanction. And I suspect that 'facts about the world', absent the exercise of a moral power, likewise cannot alter an agent's previous moral relationship to X. What alters or transforms an agent's previous moral relationship with X from a state of non-owning to a state of owning must include her exercise of a moral power.

⁵³ One could suggest that laboring on a common resource is one way to exercise the moral power to appropriate. I doubt this suggestion is plausible because I fail to see the necessary connection between laboring on something and exercising a moral power to appropriate the thing. For example, one might labor on something "for the fun of it" and have no intention of exercising the moral power to appropriate the thing. A more promising suggestion; however is to maintain that under certain conditions laboring might somehow qualify as staking a claim to a common resource. I am unsure as to plausibility of such a

of exercising a moral power to alter a first-order normative situation, e.g., appropriating a common resource, an appropriate denial of this charge seems to be the denial of ever claiming such a power. Absent alternatives that would point to something other than claiming as a means to exercise the moral power of appropriation, I maintain that claiming is a necessary condition of appropriation.⁵⁴

But what does it mean to claim ownership over something? This is a complex question that I cannot give full attention to in this project; however a few helpful observations can be made. For instance, it seems that such a claim ought to have both a subjective and objective component. An agent who makes an ownership claim should understand the conceptual content of the claim. That is, the content of an ownership claim should be subjectively appreciated by the claimant.⁵⁵ Uttering an ownership claim in a language that one does not understand, for example, won't count as claiming in the relevant sense (even if others fully understand the content of the ownership claim).

suggestion but it is worth noting that even if correct this view would not hold that laboring *qua* laboring was necessary for appropriation.

⁵⁴ Brian Kierland has suggested that claiming is not necessary to appropriate and that alternatively, “using with the intention of exclusively using” could be sufficient to appropriate common resources (when others conditions such as leaving enough and as good for others are satisfied). For example, Kierland offers a case of slightly mentally impaired agent who builds and uses a log cabin with the intent of exclusively using this cabin, but never claims ownership rights over the cabin because he lacks the mental ability or imagination to do so. If claiming is necessary for appropriation, then this agent cannot appropriate the cabin. Kierland takes this interesting case to seriously challenge the view that claiming ownership rights over a common resource is necessary to appropriate a common resource. I am less convinced that Kierland that this case poses serious challenge to the idea that claiming is necessary for appropriation. The first thing to note about this case is that claiming can take many different forms. It might be that by taking certain actions in respect to his construction of the log cabin the builder has actually claimed ownership rights. For example, if this agent really did intend to exclusively use the cabin then he might have build a fence around the cabin or taken others steps to claim exclusive use (control private ownership) over the cabin. But let us say such actions didn't occur and consistent with Kierland's example the agent who has the intent of exclusively using the cabin never makes an “outward expression” of this intention to exclusively use the cabin he plans to exclusively use. If this is the case and no claiming at all has been made, then I am prepared to bite the bullet of Kierland's case and maintain that the cabin user cannot appropriate the cabin.

⁵⁵ One implication of this is that the more complex the ownership claim, e.g., the more property rights being claimed; the more difficult it will be to understand the content of the ownership claim.

Further, a claim of ownership should be more than an internal monologue with one's self. A claim must outwardly express to the world that ownership has been claimed. But what counts as an "outward expression to the world?" In some cases a verbal declaration might satisfy this demand. In other cases, it might be plausible that building a fence and enclosing a piece of land will satisfy the demand of making an outward expression to the world. Often times the contingencies of the world in question, i.e., social norms and customs will mandate the proper objective conditions one must satisfy in order to stake an ownership. In a very small world, for example, with few agents merely verbalizing a claim to everyone at the same time might suffice, but in a larger world where such a verbalization is unlikely to reach everyone it might be that one must label or somehow mark the object which they are claiming ownership over.

Given that claiming is a necessary condition of appropriation we can ask what, if any, (moral) relevance is had by being a *first-claimant* of a common resource. Does the status of being a first-claimant, as opposed to being a subsequent claimant, confer any greater moral advantage to appropriate? Pufendorf, nearly four centuries ago, made the astute observation that a first-user or claimant of common resource is morally different than subsequent claimants because this first-claimant, unlike his subsequent counterparts, did not *displace* the ownership claims of others.

When an agent stakes first-claim, as opposed to a later claim, to a privately unowned common resource, they are not making a claim which comes into the conflict or displaces the claim of any other agent. When an agent claims a common resource she will often invest her time, plans, and desires (her life) into the claimed common resource. Subsequent claimers would then often times be displacing, or attempting to displace,

these investments made by the first claimer.⁵⁶ Because first-claimants are not engaging in a displacement of a claim, and subsequent claims are, it is plausible to think that first-claimants have some, at least weak, moral advantage to appropriate not had by late comers.⁵⁷ I stress that the plausibility of assigning *some* moral importance to first-claiming is, as we will soon assess, of very limited moral importance. For instance, being a first-claimant plausibly won't license an agent to appropriate in a fashion that disadvantages others.

The upshot of the above discussion is that mixing one's labor with, or laboriously improving, a common resource is not a necessary condition of appropriation, but claiming is necessary for its appropriation. An agent cannot come to own what she does not claim to own. Further, being the first to claim a common resource does hold some moral significance. Now we will consider whether being the first to claim ownership of a common resource is sufficient for appropriation.

⁵⁶ Of course, not all acts of subsequent (displacing) ownership claims are on equal moral par. For instance, we could imagine a case in which a subsequent claimer claimed a common resource three second after the first claimer and before the first claimer made any investments of time, plans, or desire in respect to the claimed common resource. In such a case, admittedly, the morally troubling aspect of a "displacing claim" is either very minimal or non-existent.

⁵⁷ It is worth asking whether the moral advantage had by first-claimers implies that later-claimers may never come to own what first-claimers lay claim to and appropriate. One point to make here is that if a first-claimer does exercise a moral power and appropriate a common resource then by the exercise of this power the common resource loses its status as a common resource and becomes privately owned property. Subsequent claimers, those later than the first-claimer, are simply not claiming rights over a "common resource" at all, at most they would be claiming rights over the private property of another. As I noted earlier, however, abandoned property that was once privately owned by another reverts back to the commons and becomes (again) a common resource. My own view is that when an agent dies she abandons her private property (I deny that agents have a right of bequest) and it reverts back to commons where it has the status (again) of a common resource and at such time others are free to claim and appropriate the common resource.

The most straightforward unilateralist position is advocated by the *radical right-proprietarian*⁵⁸ (e.g., Jan Narveson, Israel Kirzner, and Murray Rothbard).⁵⁹ The radical right-proprietarian maintains that:

Radical Right-Proprietarianism: You can appropriate a common resource (unilaterally) if and only if you are the *first* to claim the resource.⁶⁰

One important shortcoming with the radical right-proprietarian's above treatment of appropriation is that it renders an agent's temporal proximity to claiming common resources *all-important* when considering whether an appropriation of common resources is just. According to this position, claiming ownership of a common resource is not only a necessary condition of appropriating the resource but is *necessary and sufficient*.

Consider the following example loosely borrowed from G.A. Cohen. Sarah and Mark are the only agents in the world. Sarah, for whatever reason, claims the entire world as her own *before* Mark claims anything. If the radical right-proprietarian is correct, then Sarah's act of *first-claiming* is both necessary and sufficient for appropriating the entire world. According to the radical-right-proprietarian, Sarah, in virtue of her first-claiming, privately owns *everything* in the world and may exclude others from using *everything* without her permission. Sarah may allow Mark, consistent

⁵⁸ Here it is worth noting that all the notable proprietarians that I will reference are, consistent with their endorsement of self-ownership, libertarians. But as I explained in the previous chapter, libertarianism is a type of proprietorship. Thus, all libertarians are proprietarians, but not all proprietarians are libertarians. I will address the endorsement of self-ownership only where it becomes directly relevant to addressing the appropriation of common resources.

⁵⁹ For Narveson's treatment of appropriation see his, *The Libertarian Idea*, 1988, pp. 79-93. Kirzner discusses his radical right-proprietarianism in "Entrepreneurship, Entitlement, and Economic Justice," *Eastern Economic Journal*, 4 (1978), pp. 9-25. Murray Rothbard discusses his radical right proprietorship in his *For a New Liberty: The Libertarian Manifesto* (New York: Libertarian Review Foundation, 1978) pp. 23-37.

⁶⁰ Some radical right-proprietarians would claim that the first to labor, improve, or use a common resource may, without fulfilling any other conditions, appropriate the resource. But as I have argued such views are not even plausible necessary conditions of appropriation much less necessary and sufficient conditions.

with radical-right-proprietarianism, to use some of her common resources (her breathable air for instance) on the condition that Mark perform a life of slave labor for her.⁶¹

The very serious problem with radical-right-proprietarianism is that it renders an agent's temporal proximity to common resources *all-important* when considering whether an appropriation of these resources is just. The view allows an agent the power to alter the first-order normative situation of equal common use very easily and with far too little ease (by merely first claiming) and with absolutely no consideration for others. An agent, that is, acquires no new moral obligations, whatsoever, to others when she engages in an appropriation of a common resources (which previously were within conditions of equal common use).

But it is implausible to suggest that agents acquire *no* new moral obligations to others when they appropriate common resources.⁶² After all, the appropriation of a common resource confers on others (all who didn't appropriate the resource) a duty to refrain from using the appropriated common resource without the new private owner's

⁶¹ Brian Kierland and Michael Otsuka have both suggested that radical right-proprietarianism is a more plausible view if instead of merely claiming a common resource agents must also labor, use, or improve the resource in some way in order to exercise the power to appropriate. Adding something like the above to a radical right-proprietarian account would rule out someone appropriating the whole world by merely claiming it. This point is well taken. The difficulty with adding such conditions to the radical right-proprietarian's account is that labor and improvement (and indirectly use by considering labor) have already been excluded as necessary conditions of appropriation. An agent doesn't need to labor upon, improve, or use a common resource in order to appropriate it. Could labor, improvement, or use serve as a jointly sufficient condition for appropriation along with claiming? I'm skeptical of such a move because I don't think that the laboring, improvement, or using a common resource plays a role, or helps play a role, in an agent's ability to exercise the moral power of appropriation.

⁶² The exception to this would be a view proposed by Brian Kierland in which an appropriator may appropriate *only* a non-disadvantaging share of common resources. If this view is endorsed then appropriators would not acquire new moral obligations because they are simply never permitted to appropriate in a fashion which would bring about new moral obligations.

permission.⁶³ This new duty on the part of non-appropriators will, often, serve to disadvantage them. This duty-creation for others (non-appropriators) on the part of an agent who exercises the moral power to appropriate creates a plausible reason to think that exercising the moral power to appropriate must be done in a fashion which doesn't disadvantage others. Clearly, radical-right-proprietarianism fails to adequately account for this condition on the moral power to appropriate common resources.⁶⁴

In order to better account for the plausible moral duty not to disadvantage others that accompany unilateral appropriation, John Locke (§27 of the *Second Treatise*), in what has been labeled the *Lockean proviso*, proposed that an appropriators must, *leave enough and as good for others*.⁶⁵ When an agent appropriates in a fashion that leaves enough and as good for others, then the appropriation won't disadvantage others in any morally important respect. After all, others have been left enough and as good. When an agent, however, attempts to appropriate and fails to leave enough and as good for others, then this (especially given the burden-creating aspects of exclusive use that arise *via* appropriation) will plausible serve as a morally objectionable disadvantage.

⁶³ As Nozick puts the point on pp. 175 of *Anarchy*, "For an object's coming under one agent's ownership changes the [moral] situation of all others. Whereas previously they were at liberty (in Hohfeld's sense) to use the object, they no longer are."

⁶⁴ In addition to its neglect of the duty-creation aspect of appropriation, radical right-proprietarianism also suffers from being an adequate view of appropriation. For instance, what if there is no *first* appropriator, but instead many *first-acts* of appropriation which occur simultaneously? That is, imagine a case in which everyone in the world claims the world at exactly the same time. I won't spend extended time developing the ways in which radical right-proprietarians might try to account for cases of "simultaneous first claiming." But it is worth noting that no radical right-proprietarian has considered such a challenge of adequacy to their view, and it is far from obvious that a radical right-proprietarian could offer a compelling response to the case which preserved her principle of first claiming as necessary and sufficient for unilateral appropriation.

⁶⁵ For an account that denies the tradition view, endorsed above, that Locke invoked "leaving enough and as good" for others as a necessary condition of appropriation see Jeremy Waldron's, "Enough and as Good for Others," *The Philosophical Quarterly*, 29:117 (1979), pp. 319-328.

One reason why such disadvantage is morally objectionable can be seen by reviewing our commitment to the initial condition of equal common use. As noted earlier, initially everyone, within conditions of equal common use, had equal property rights in respect to common resources. No one, initially with respect to rights over common resources, is at disadvantage to another. No moral justification exists for why initially any agent would have a greater share of rights with respect to common resources than another agent.

This commitment to initial conditions of equal common use wherein agents hold equal moral rights in respect to common resources would be almost meaningless if agents were allowed to appropriate in ways that disadvantaged others. To see why consider that earlier we found it widely implausible that a “King” is simply born with greater moral rights over common resources than others. But is it any more plausible to maintain that an agent can anoint himself “King” by simply exercising a moral power to appropriate common resources in such a fashion that serves him great advantage while disadvantages others? I doubt it. Our *self-made* King is every bit as morally objectionable as our King who was born possessing a greater set of rights over common resources than others. Allowing an agent the power to appropriate in a fashion that disadvantages others (especially when this is done easily by, for example, staking a claim) is no less morally objectionable than the rejection of equal common use and the endorsement of the King who by birth-right possess greater property rights over common resources. In order to take seriously the core idea of equal common use, that being all agents possess equal rights over common resources, agents are not allowed to exercise the moral power of appropriation unless their appropriation does not disadvantage others.

Agents lack the moral power to appropriate unless they do so in a fashion consistent with leaving enough and as good for others. Locke's thought of leaving enough and as good for others captures the spirit of appropriating in a fashion that does not disadvantage others. Agents are not permitted to appropriate all the valuable common resources and leave others less valuable common resources to appropriate or use. (And they clearly may not, as allowed by the radical-right-proprietarian, appropriate all common resources and leave others *nothing* at all.)

I take it that some version of the Lockean proviso is correct and hence I shall be endorsing some form of *Lockean proprietorism*. Where I understand Lockean proprietorism as endorsing claiming and, some version of, "leaving enough and as good" as necessary and sufficient for appropriating common resources.⁶⁶ I shall now proceed to address different accounts of Lockean proprietorism.

Our discussion of Lockean proprietorism shall begin by noting a distinction between 'payment Lockean proprietorism' and 'no payment Lockean proprietorism'.⁶⁷ All Lockean proprietor accounts demand that an appropriator leave enough and as good for others. One way in which an appropriator may satisfy the Lockean proviso is by appropriating *only* a share of common resources which leaves others enough and as good. For example, we might imagine a world with one hundred

⁶⁶ Brian Kierland suggests that the Lockean proviso can be challenged on the grounds that it allows, in principle, all things to be privately appropriated. But it plausible that (given certain facts about psychology) some things should be left in a condition of common use. After all, some people might want to live a life of using common resources within conditions of equal common use (perhaps some Marxists would wish to live in such conditions). I agree with Kierland's suggestion that plausibly people could get a benefit, perhaps great benefit, to some common resources remaining within conditions of equal common use. However, I don't think this speaks against Lockean proprietorism. The Lockean proprietor should happily admit that under many scenarios the disadvantage caused by an appropriation is so great that it places an effective bar against certain instances of appropriation. The Lockean proprietor endorses the view that, in principle, *every* common resource could be appropriated, but only when this 'total appropriation' does not serve to disadvantage others.

⁶⁷ I thank Brian Kierland for bringing this distinction to my attention.

qualitatively identical agents and one thousand acres of land. In a very simplistic fashion we might say that an agent may appropriate ten acres of land for herself leaving everyone else ten acres to appropriate. No payment is required of an agent who appropriates *only* ten acres because she takes no more than her 'enough and as good share'. One version of Lockean proprietorship, which I shall label 'no payment Lockean proprietorship', maintains that an agent may appropriate *only* her 'enough and as good share' and no more. An implication from no payment Lockean proprietorship is that, in our situation above, no agent is morally allowed to appropriate more than ten acres of land.

No payment Lockean proprietorship can be contrasted with payment Lockean proprietorship. Payment Lockean proprietorship accounts maintain that an agent may, in principle, appropriate as many common resources as she pleases just so long as she makes a *payment* which leaves enough and as good for others. Considering again our case with one hundred agents and one thousand acres of land, payment Lockean proprietorship accounts maintain that an agent is morally allowed to appropriate *more than* ten acres of land provided that she makes a payment which leaves enough and as good for others.

In the treatment of Lockean proprietorship which follows I shall only be considering various versions of payment, as opposed to no-payment, Lockean proprietorship. The reason for this is because payment Lockean proprietorship accounts are more plausible than no payment Lockean proprietorship views. An appropriator should be allowed to appropriate as many common resources as they desire so long as her appropriation leaves enough and as good for others.

To illustrate a case which makes this clear consider a scenario in which everyone ‘initial enough and as good share’ is very slight and as such everyone lives a life barely worth living. However, if one super-genius agent is allowed to appropriate most all common resources he can manage the land in ways which benefit everyone ten-fold as compared with their initial position. A no-payment view holds that this agent is morally barred from making this appropriation and greatly improving everyone’s life. A payment view, on the hand, maintains that our super-genius can appropriate most all the common resources so long as he leaves others enough and as good. And presumably if our super-genius improves the lives of others by ten-fold he will have left enough and as good for others. Plausible payment Lockean proprietorism in this, and many similar cases, gives us the right result that appropriators may appropriate as much as they desires provided that they leave enough and as good for others. The Lockean proprietorian accounts to follow will all be various versions of payment Lockean proprietorism.

Arguably, the most influential contemporary Lockean proprietorian is Robert Nozick. Nozick, in *Anarchy, State, and Utopia*, offers an account of appropriation that takes the Lockean proviso seriously but implies that the proviso is rather easy to satisfy. He argues that:

Nozickian Proprietarianism: You can appropriate a common resource if and only if you leave enough and as good of the remaining common resources for others, where leaving enough and as good is understood as leaving others enough such that their *overall condition* is no worse off as it would have been under the baseline of equal common use arrangement of common resources.⁶⁸

⁶⁸ This formulation was drawn from *Anarchy*, pp. 174-182. I emphasize *overall conditions* in my formalization of Nozick’s proviso because some has incorrectly interpreted Nozick as focusing, more narrowly, as making others no worse off in respect to *material conditions*. Will Kymlica, for instance, makes this mistake. In his *Property Rights and the Self-Ownership Argument*” in *Left-Libertarianism and Its Critics: The Contemporary Debate*, eds. Peter Vallentyne and Hillel Steiner (Palgrave, 2000), p. 295-321. Kymlica develops an often referenced line of attack charging Nozick’s proviso with ignoring the overall condition of agents within an arrangement of equal common use and focusing more narrowly on the material condition of agents with such arrangements. As was helpfully pointed out to me by Michael

Nozick assumes that the conditions within an equal common use arrangement are quite bad. Thus, measured against these bad conditions, it is fairly easy to satisfy the Lockean proviso. This is because satisfying the proviso, according to Nozick, merely mandates that one leave enough and as good such that the overall condition of others is no worse off than it would have been under conditions of equal common use. The ease at which an appropriator can satisfy Nozick's treatment of the Lockean proviso depends upon the condition of others within an arrangement of equal common use. And with the baseline of equal common use taken by Nozick to offer very poor conditions, the proviso becomes easily satisfied.⁶⁹

The most pressing criticisms lodged against Nozick's proviso, coming from G.A. Cohen and others; take aim at Nozick's endorsement of the comparative baseline of equal common use to assess whether an agent's appropriation has disadvantaged others (left others worse off than they would have been within conditions of equal common use).⁷⁰ Cohen, for instance, asks why we should use equal common use (the initial first-order condition Nozick endorses) as the baseline when assessing whether one has left enough and as good for others. Cohen suggests, though never substantively argues, that other

Otsuka, Nozick never in *Anarchy* places any narrow emphasis on making other no worse off with respect to only their material conditions within conditions of equal common use. And in fact Nozick explicitly mentions, in a footnote on pages 178-9 of *Anarchy*, considering an agent's overall "net loss" when evaluating whether an appropriation disadvantages another.

⁶⁹ As an empirical matter I take a much more positive outlook toward conditions of equal common use arrangements than does Nozick and as such maintain that his proviso will be much more demanding than he takes it to be.

⁷⁰ For a well-developed critique of Nozick's views on appropriation see G.A. Cohen's "Self-Ownership, World-Ownership, and Equality Parts I and II" in *Left-Libertarianism and Its Critics: The Contemporary Debate*, eds. Peter Vallentyne and Hillel Steiner (Palgrave, 2000), p. 247-289. Additionally, Will Kymlica further discusses some themes developed by Cohen critiquing Nozick's account in, *Property Rights and the Self-Ownership Argument* in *Left-Libertarianism and Its Critics: The Contemporary Debate*, eds. Peter Vallentyne and Hillel Steiner (Palgrave, 2000), p. 295-321.

possibilities such as joint-control or joint-ownership might serve as more plausible baselines to assess whether an agent's appropriation disadvantages others than Nozick's preferred baseline of equal common use. There are two questions worth addressing here. First why use a baseline for assessment at all, and second what, if a baseline should be used, should be the baseline?

The reason why using a baseline to assess whether an agent has left enough and as good for others is a reasonable approach is because when we ask, "did X leave Y enough and as good, or "did X disadvantage Y," these questions implicitly demand a comparison class. That is, "did x leave enough and as good for Y, *compared to what*" or "did X disadvantage Y *compared to what state of affairs*"? Thus, I do not, nor does Cohen, object in principle to Nozick's use of *some* baseline to provide a comparison class.

The relevant question then becomes: *which* baseline should be used to assess whether an appropriator has disadvantaged another or left another worse off. Cohen offers two alternative baselines that he argues are plausibly preferable to Nozick's preferred baseline of one's condition within an arrangement of equal common use. I shall now consider these alternative baselines offered by Cohen in turn. First, I will consider what I take to be his weaker alternative baseline suggestion and then continue to consider his more plausible alternative baseline suggestion.

Cohen suggests that we could employ a baseline of the initial normative situation other than equal common use, e.g. joint-ownership or joint-control. Nozick, Cohen charges, assumes without defense that the initial normative situation is one of equal common use, but this need not be the case, common resources could have been initially

jointly owed or controlled by everyone.⁷¹ And, as Cohen rightly suggests, if common resources were initially jointly owed or controlled by everyone then Nozick's equal common use baseline is flawed.

Cohen is correct to note Nozick's almost non-existent defense of equal common use as the correct way to understand the initial normative situation of common resources. But if my defense of equal common use earlier in this chapter is correct, then Nozick did *ala* his Lockean assumptions (despite his slight treatment) correctly identify the initial normative situation of common resources. Given earlier arguments in this chapter, I do not share Cohen's optimism regarding joint-ownership or other alternatives as plausible ways to the initial normative situation of equal common use. Nozick is correct to note that the initial first-order situation is one of equal common use and that others ways to understand this initial condition simply are not plausible.

The more plausible of Cohen's alternative baseline suggestions utilizes, not surprisingly, the notion of equal common use. Cohen asks us to imagine the following case where two agents (A and B) are the only agents in a world with arrangements of equal common use:

To see that Nozick's condition on appropriation is too weak, consider now a different counterfactual situation, not that in which common use persists but one in which B, perhaps concerned lest A do so, appropriates what A appropriates in the actual situation. Suppose that B is also a good organizer, and that had he appropriated *he* could have gotten an additional *q* (product) and paid A only an additional *p* (some price for A's labor). Then although A's appropriation in the actual situation satisfies Nozick's proviso, it does not seem that A has what he does have on Nozick's view, the right to force B to accept it. For why should B be required to accept what amounts to a doctrine of "first come, first served."? Perhaps B abstained from appropriating out of a regard for A. Ought A to profit

⁷¹ Cohen, 260-261 (Part I).

only because he is more ruthless than B. It should be clear now that Nozick's proviso is too weak.⁷²

Cohen's core idea above and in other similar cases he develops is that when we consider the relevant baseline to assess the disadvantage caused by an appropriation we should not focus on the "actual conditions" of others *remaining within* conditions of equal common use. This is the wrong counterfactual to focus upon. We should, instead, utilize different counterfactuals to establish a baseline assessing disadvantage including, especially, counterfactuals regarding *what the condition of others would be if common resources were appropriated by someone who did not appropriate the resource in the actual situation*. Should we utilize a different counterfactual situation (along the lines that Cohen suggests) than that offered by Nozick to assess the disadvantage to others brought about by an appropriation?

Cohen never directly tells us what the relevant counterfactual establishing a comparative baseline ought to be. He tells us, instead, that there seem to be cases (such as the case referenced on the last page) where Nozick's counterfactual fails to correctly assess the disadvantage brought about by an appropriation. This is because we could have situations in which disadvantage should we assessed not by the baseline of an agent remaining within an equal common use arrangement (Nozick's suggestion) but instead by considering what the situation of an agent would be if an agent different from the actual appropriator had appropriated common resources from conditions of equal common use.

Cohen's counterfactual, in order for his critique to succeed, must offer something stronger than Nozick's counterfactual. After all, Cohen thinks that Nozick's baseline is too weak in that it under-estimates the disadvantage brought about by an appropriation.

⁷² Cohen, 259 (Part I).

But what would this look like? Cohen, might, at this juncture offering the following counterfactual to establish the baseline of disadvantage brought about by an appropriation.

*the condition of A under *some arrangement* involving the appropriation of X that leaves him better off than he would be should he continue to live under conditions of equal common use.

Here I do not want to become entrenched in a debate concerning whether Nozick has the correct counterfactual or whether Cohen's proposed counterfactual is superior. I shall note, however, that Cohen has offered plausible reason for thinking that there do seem to be cases in which the Nozickian baseline is not stringent enough and hence fails to capture what it means for a person to appropriate in a fashion which leaves enough and as good for others (does not disadvantage others).

Before offering my own concerns with Nozick's account, I should say first what I find attractive about his account. First, his appeal to considering the *overall* conditions of agents who could be disadvantaged by an appropriation seems right. What we should be concerned about when assessing the disadvantage brought about by an appropriation is the negative impact on overall condition. Nozick is also correct to maintain that this impact on overall condition brought about by an appropriation should be assessed in relation to *some* comparative baseline.

Is Nozick's comparative baseline to assess the disadvantage brought about by an appropriation correct or is it, as Cohen and others have suggested, not stringent enough to adequately capture what it means to leave enough and as good for others? Nozick's account is I maintain, in a crucial aspect, monumentally incomplete. My core challenge

to Nozick's account of appropriation (which serves as the foundation for my account of left-propiertarianism defended in the next chapter) is that he fails to properly consider the ramification that very often the ownership rights over common resources will have a (substantial) competitive, market, value. That is ownership rights over, common resources, will often be worth a great deal of competitive value. The right of control-ownership over a stretch of beach-front, for example, would normally have a substantial competitive value. Nozick ignores the possibility, which I will consider at greater length in the next chapter and endorse, that all agents have an initial property right, against appropriators, to be left a share of the competitive value of the rights that appropriators claim and come to have over common resources.

Nozick's account of appropriation has the implication that the first to claim a common resource can reap *all the competitive value* from the common resource(s) she appropriate just so long as she does not disadvantage others consistent with his proposed baseline. Nozick's account would allow someone to reap a *huge benefit* from her appropriation (gain millions of dollars in competitive value) and leave others *very little* (no competitive value at all). Such an implication helps show us that Nozick's account of appropriation offers us a far too lax a treatment of what it means for an appropriator to leave *enough and as good* for others. I have suggested that first-claimers have a moral advantage to appropriate common resources, but this is a far cry from suggesting, as Nozick's view implies, that an appropriator may unproblematically gain (potentially) vast amounts of competitive value from common resources while leaving none of this value for others.

We can treat Nozick's proposed baseline as offering us a *minimum* of what an appropriator must pay to ensure that her appropriation does not disadvantage others. I shall refer to this minimum that an appropriator must pay, consistent with Nozick's proposed baseline, as a *minimum appropriation payment*. When, however, an agent's appropriation affords her competitive value *in excess* of this minimum appropriation payment she must pay others, in a fashion to be specified in the next chapter, the competitive value (given that this amount is greater than the minimum appropriation payment) of the rights she claims over the common resources she appropriates.

In the next chapter I shall develop a *left-libertarian* account of appropriation that offers greater specificity to and defense of the idea, sketched above, that in order to leave enough and as good for others an appropriator must pay⁷³ either the greater of the minimum appropriation payment or the competitive value of the ownership rights they claim over common resources.⁷⁴

⁷³ Note that if an agent appropriates only her 'initial enough and as good' share she need not pay anything other than merely leaving others their 'initial enough and as good' shares.

⁷⁴ It is important to note here that the left-libertarians, whose views I shall now consider, all tend to endorse the self-ownership of agents and also endorse some variant of *left-libertarianism*. But as I noted earlier libertarianism is a sub-species of proprietorship and as such these left-libertarian thinkers are, in a broader sense, left-libertarians.

CHAPTER FOUR: APPROPRIATION PART II: IN DEFENSE OF GEORGIST EQUAL INITIAL OPPORTUNITY FOR WELFARE LEFT- PROPRIETARIANISM

Arguably the most influential left-prorietarian has been Henry George.⁷⁵ An influential nineteenth-century American economist and social reformer, he argued in *Progress and Poverty* that the existent system of private property was the primary reason for poverty and social inequality.⁷⁶ Private property in, for instance, land allows the private owner of the land to *exclusively benefit* from the rental value of land as well as the *unearned* increase in the land's value. The rental value of land is simply the amount of money one can gain from renting her land to others and the unearned increase in the value of land is the increasing competitive value of land that results from market conditions as opposed to contributions by the land owner. This leaves non-private-owners of land and other common resources out in the cold (sometimes literally).

George argued that those who appropriate privately unowned land and other common resources are obligated to pay a rent (of 100%) on the competitive rent values of the *property rights* over the resources that they claim and appropriate. Competitive rent is the market clearing price of the rights, where that is the price at which there is no left supply and no unmet demand. George further argued that agents could appropriate up to

⁷⁵ George, despite having been raised in poverty and receiving only a seventh grade formal education, became one of the most recognized and celebrated American intellectuals of the nineteenth century. His most famous work, *Progress and Poverty* sold millions of copies throughout the world. Further, George's left-prorietarianism has influenced the tax code in Australia, parts of Canada, the United States, and numerous other countries.

⁷⁶ As an interesting historical point, George was not influenced, at all, by Marx. George's only fluent language was English and the works of Marx had not been translated into English at the time of George's writing. It would be inaccurate to consider George a Marxist. Where Marx found an intrinsic evil in the notion of private property, George did not. George did think private property owners were obligated to pay a 100% tax on the competitive rents on the rights claimed over common resources, but he did not think, unlike Marx, that private property was intrinsically bad.

an *equal share* of common resources without, *effectively*, owing others competitive rent. This is because George took the view, as we will see later defended by Hillel Steiner, that all agents have an initial right to an equal share of the competitive value of all common resources. If an agent, “over-appropriated,” more than her equal share of the competitive value afforded by common resources, only then did she effectively owe rent to others.

George’s own preference toward a type of equal-share model noted above aside we can formalize the general *Georgist proprietary* view toward appropriation as follows. Note that the below formalization (and further treatments of various Georgist accounts I shall consider) will utilize the idea of the minimum appropriation payment presented at the end of the last chapter in relation to Nozick’s account of appropriation. Shortly, I will speak toward the issue of why a plausible Georgist account would utilize the notion of a minimum appropriation payment (be it Nozickan inspired or otherwise).

Georgism (general model): You can appropriate a common resource X if and only if you are the first to claim the ownership rights over X and leave others the greater of (a) the full competitive rent value of the property rights you claim over X to *the appropriate agent(s)* or (b) the minimum appropriation payment.

Note that the competitive rent (value) that an agent must pay when she appropriates a common resource is over the set of *property rights* that she claims. Common resources *per se* do not have a competitive rent value, strictly speaking only a set of ownership rights in respect to common resources have a competitive value. Thus, whenever paying the full competitive rent value of common resources is referred to this reference will always be in respect to a set of property rights an appropriator claims over a common resource.

As discussed earlier, at a minimum the relevant right(s) that an agent claims when she appropriates common resources is the claim right that others must get her permission

or not act against her interests in order to use the object which she comes to privately own.⁷⁷ Of course, an appropriator might claim more ownership rights over a common resource than the above right conferring control-ownership, e.g., the right to transfer a common resource *via* sell or gift. An appropriator must pay the full competitive rent on *all* the rights they claim over common resources irrespective of whether this is the minimal ownership right of control-ownership or a more robust set of ownership rights.

Georgist proponents have traditionally held that agents need not pay any rents on common resources which they merely *use* and do not appropriate. Later, in the next chapter, we will see that this traditional treatment of use, or lack thereof, from the Georgist, is highly problematic. But in this chapter we shall not pay attention to this deficiency.

The idea motivating George's proposed rent is simple, yet quite powerful. Appropriators should leave others the full competitive value of the rights over common resources which (through their appropriation) they have removed from conditions of equal common use. Everyone, after all, has the same set of property rights in respect to common resources and if an agent *removes* a common resource from this condition and claims ownership rights (appropriates), then she must leave others the full competitive value of the rights she claims in order to leave others enough and as good.

Accordingly, I maintain that agents have an initial right to be left, a share (to be specified later), of the full competitive value of the rights over common resources that appropriators of such resources claim. And, consistent with my earlier treatment of

⁷⁷ Notice, however, that a more expansive set of ownership rights can also be incorporated into a Georgist model. An agent must pay the competitive value of the "bundle of property rights" she claims over privately unowned common resources. This could, of course, be extended to account for a greater set of property rights that I consider in this project.

rights, appropriators have a duty to leave others, a share (to be specified later) of the full competitive value of the rights over common resources that they claim ownership over. An agent cannot exercise the moral power to appropriate a common resource unless she fulfills her duty to leave others the full competitive value of the rights she claims over the resource.

Clearly, competitive rent value plays a central role in our general Georgist account. Hence, it is worth evaluating how the Georgist proposes that we should determine the competitive value of rights over common resources. There are many different ways in which competitive value might be determined.⁷⁸ One particularly promising way, which I favor, to determine competitive value is by utilizing the model of a hypothetical Vickrey auction. This model maintains that the parties to the hypothetical auction seal the highest bid which they are willing to pay for the item (in our case ownership rights over a common resource) and the highest bidder pays the second highest price for the auctioned item.⁷⁹ The second highest bid for the item represents the item's competitive value. A Vickrey auction gives agents an incentive to bid their true preferences because they know they will either be outbid for the item or (if they are the highest bidder) or pay a price less than the bid expressing their true preferences. For

⁷⁸ Two different ways of assessing how competitive value should be determined popular in the economic literature are by utilizing an assuming of either perfectly competitive markets or various auction models. The more plausible strategy, I suggest, for assessing how competitive value is determined is by employing some type of auction model. Employing an auction model allows us to ask what something (a common resource) would fetch at an auction in the specific cases we are examining (as opposed to relying on highly abstract constraints of "perfect markets," and as such seems like a better test of what the competitive value is of something in any particular scenario.

⁷⁹ A Vickrey auction has the advantage over a traditional auction (where the highest bidder pays their actual bid for the item) because it encourages agents to bid their true preferences. In a traditional auction one has no good reason to bid the full value of what the item is worth to them. If having an item is worth exactly ten units of value to an agent then that agent is indifferent to having the item or ten dollars and as such has no good reason to bid ten units. But if the agent knows that they will get the item at the second highest price bid then they do have good reason to bid the full price they are willing to pay for the item.

example, assume that an auction has two agents bidding on one item X, the first agent seals a bid of fifteen dollars for X and the second agent seals a bid of ten dollars for X. The competitive value of X is now set at ten dollars.

I should point out here that there are very complicated questions concerning the relation between a hypothetical auction model and real world agents. For instance, how is the hypothetical auction, which determines competitive value, related to the actual world with real world actors? Here, I maintain that the hypothetical auction should be thought to closely approximate real world conditions and agents. The agents bidding in the hypothetical Vickery auction, for instance, should be thought to be much like agents in the actual world we are concerned with. The hypothetical nature of the auction simply brings these agents together in an auction (which might not be possible in the actual world given distance and other pragmatic considerations) and addresses certain epistemic limitations of real world agents.

It is important to be clear about *what it is* that the Georgist demands appropriators leave the full competitive value of. The Georgist *only* demands that appropriators leave the full competitive value on the rights claimed over common resources which they appropriate. Appropriators are not obligated to pay rents on the *labor* or ingenuity which they opt to add to common resources once they appropriate such resources.⁸⁰ A payment is not required on what an agent *adds to* the world. A payment is only required when an

⁸⁰ In *Real Libertarianism* (1995) Philippe Van Parijs argues that in addition to Georgist rents paid over the property rights that an agent claims over privately unowned common resources, agents should also pay rents (to up to 100% of the value) over all assets that were “given” to an agent. Thus, Van Parijs would have no objection to agents having to pay the full value of the competitive rents over the labor which they add to common resources. An interesting proposal, which I won’t develop here, in the spirit of Van Parijs, is a version of quasi-Georgism which holds an agent must pay the competitive value over everything she claims ownership over which she is not morally responsible for bringing about. This view would likely imply that agents owe competitive rent on their bodies (at least in the case where an agent claims ownership of her body).

agent exercises the moral power to appropriate and *removes* a common resource from its initial condition of equal common use thereby depriving others of the moral liberty to use the appropriated common resource without the appropriator's permission.

Additionally, it is worth noting that the competitive value of common resources will be *contingent* upon technology and the preferences of agents. If, for example, more agents prefer to live on the beachfront rather than a barren desert (and claim, for instance, the right to exclude others from the beachfront when the other's use of the beachfront occurs without their permission or against their interest), then it will, given supply and demand pressures, cost an agent more to appropriate parts of the beachfront, than it will cost her to appropriate parts of the barren desert. The right to exclude others from a parcel of beachfront land will be worth more than the right to exclude others from a parcel of land in the barren desert. But if, for whatever reason, the preferences of agents flip-flop, then the competitive value of ocean fronts and barren deserts will also change. Technological abilities, moreover, could also influence the competitive value of rights claimed over common resources. For example, a remote desert island that can receive a satellite internet connection will be in higher demand, and hence have a higher competitive value, than a remote desert island that cannot receive a satellite connection.⁸¹

Here it is worth saying a bit to explain why the general Georgist account under consideration utilizes the idea of a minimum appropriation payment. What work is the minimum appropriation payment doing in our general Georgist account of appropriation? To see why a Georgist account should be supplemented with a minimum appropriation

⁸¹ Given the (strong) potential for changing competitive rents over time a Georgist model is likely to endorse a scheme of leasing, where agents pay for the competitive rent value over property rights contingent upon rent changing. The rent over one's private property could go up or down given changes in empirical conditions. Thus the competitive value that one must pay is not static over time.

payment consider the following case where A and B exist within conditions of equal common use. It means a great deal to A that common resource X remain within conditions of equal common use (If X were to remain within conditions of equal common use, then A will have 1000 units of well-being). A doesn't want to appropriate X (A *wouldn't pay anything* to appropriate X because if she were to appropriate X her well-being would be reduced from 1000 units to 500 units). Indeed, A would pay a great deal for others *not to* appropriate X. B, on the other hand, has a slight preference to appropriate X and would pay only ten units for the ownership rights he would like to claim in respect to X (B's well-being will increase from 1000 to 1010 if he appropriates X). B stakes his claim to X and leaves A, being the good Georgist he is, the competitive rent value of the rights he claims over X (for simplicity, let's say that the competitive rent value of the rights claimed over X is ten units). The ten units, however, which B leaves A does not being to compensate A's loss in well-being.

The above case suggests I maintain that an appropriator's leaving others the competitive value of the rights claimed over common resources will not always ensure that others are left enough and as good. This is because there could be cases in which an agent would pay a great deal (not to have ownership rights over a common resource) but instead to *keep* a common resource within conditions of equal common use. As discussed at the conclusion of the last chapter, an appropriator must ensure, consistent with the idea of a minimum appropriation payment, that his appropriation makes others no worse off that they would have been within conditions of equal common use. Of course, if agents have a right, as I maintain they do, to be left a share of the full competitive value of common resources, then the minimum appropriation will not

(typically) exhaust what an appropriator must leave others. For these reasons I maintain that a plausible Georgism must have a provision ensuring that an appropriate leave the *greater* of either the competitive rent value of the rights they claim in respect to common resources *or* the minimum appropriation payment.

The general Georgist view, specified above, is silent (although it was noted that George himself was not silent) as to who an appropriator must pay the full competitive value of the rights that she claims over common resources, it merely mentions making this payment to the *appropriate agent(s)*. Providing an answer to the question: who are the *appropriate agents* to whom Georgist rent is owed, will distinguish, and be used to assess the plausibility of, the various Georgist accounts we shall consider in this chapter. Further, all extant developed Georgist views are left-proprietarian in character.⁸² Thus the question of: who are the appropriate agents to whom Georgist rent is owed, will be of important significance as we proceed to uncover the most plausible version of a left-proprietarian account of appropriation. Of course, there are other non-Georgist left-proprietarian accounts of appropriation, for example Michael Otsuka's account of appropriation that I will address later in this chapter, but at this juncture I maintain that some Georgist, or closely related account of appropriation, is good place to uncover our most plausible version of left-proprietarianism.

The Georgist says that appropriators have a duty to leave the competitive value of the rights over the common resources which they appropriate, but what should be done with these rents? Who are the *appropriate agents* to whom Georgist rent is owed?

⁸² It is possible to imagine Georgist accounts of appropriation that are not left-proprietarian in character, but I will only be considering Georgist accounts of appropriation that are consistent with left-proprietarianism. I won't, for example, be considering Georgist models in which the rent on competitive value paid by appropriators is distributed, in full, to "the King".

Traditionally Georgists, e.g., George, Steiner, Tideman, Arthur, endorse an *equal share model* in which rents are split in an equal fashion amongst all agents. Other Georgists, such as, Vallentyne, endorse a distribution of Georgists rents that is, “divided so as to promote effective equality for a good life.”⁸³ I shall now proceed to discuss both of these proposed methods of distributing Georgist rent.

The Georgist *equal share model* maintains that everyone has a right to their share of an equal distribution of the full competitive rent value on the rights claimed over common resources. Hillel Steiner, an influential contemporary Georgist, is a proponent of the equal share model. Steiner argues that initially all agents possess a just claim (property right) to be left an equal share of the full competitive rent value on the rights claimed over common resources.⁸⁴ The duty to leave others a per capita share of the competitive rent value of common resources correlates with the right of all agents to be left an equal share of the competitive rent value of common resources.

Here we can formalize the equal share Georgist model, focusing on the appropriation of a single common resource, as follows:

Equal Share Georgism: You can appropriate a common resource X if and only if you are the first to claim the ownership rights over X and leave others the greater of (a) their per capita share of the competitive rent value of X or (b) the minimum appropriation payment.

To illustrate this model consider a world, housing only Able and Unable, in which the full competitive rent value of X (where X is the only common resource) is 1000 units

⁸³ Nic Tideman and Peter Vallentyne, “Left-Libertarianism and Global Justice,” in *Human Rights in Philosophy and Practice* edited by Bruton M. Leiser and Tom Campbell (Ashgate, 2001) 451.

⁸⁴ Steiner argues that when common resources are unowned agents have an initial right to an equal share of these resources, but that, “in a fully appropriated world, “each agent’s original right to an equal portion of initially unowned things amounts to a right to an equal share of their total value.” Steiner understands this value to be measured by Georgist competitive rent. For reasons of simplicity, I am treating Steiner as generally suggesting that agents have a right to an equal share of the *value of* common resources and not some equal share of common resources *per se*.

of competitive value. (In this case and in future cases where these labels are used, Able is a normally functioning human and Unable is a quadriplegic.) The equal share model maintains that the first to claim X may appropriate X provided that they leave the other 500 units of competitive value (assuming this leaving is greater than the minimum appropriation payment). Each is entitled to be left 500 units of competitive value by the other assuming that an appropriation of X occurs.

Consider the modification to our above case in which there are two common resources in our world housing Able and Unable, one common resource worth 900 units of competitive value and another common resource worth 100 units of competitive value. Here again, the competitive value of common resources is 1000 units of competitive value. Able opts to appropriate common resources worth 900 units of competitive value, leaving Unable common resources worth only 100 units of competitive value. Is this allowable according to the equal share model?

Steiner's answer is that Able's "over-appropriation" is allowable as long as he "redresses" Unable with a "total leaving" no less than her per capita equal share of the competitive value of common resources.⁸⁵ Unable has a right to be left 500 units of competitive value (her equal division of the competitive value of common resources) and if Able were to leave her *only* 100 units of competitive value then he would be infringing a property right she holds. But so long as Able finds some way, e.g., laboring, or transferring artifacts he owns to Unable, of leaving her a total of 500 units of competitive value, then his appropriation of the common resource that has a competitive value of 900 units is allowable.

⁸⁵ *An Essay on Rights*, 268.

One can, nonetheless, object to an equal share Georgist model on the grounds that it is problematically insensitive to egalitarian considerations.⁸⁶ The equal share model rendered the implication that the full competitive rent value of common resources should be distributed to leave each Able and Unable with an equal 500 units of competitive value. But imagine that these 500 units of value afford Able a truly fantastic life, but Unable, who is a quadriplegic, perishes with the 500 units she is left (she will perish unless she gets 600 units of value). The 500 units of value that Able leaves Unable are not enough to sustain her life. Further (and importantly), the differences in the enjoyment of the units of value are not the fault of (or result of choices made by) either Able or Unable. It isn't Unable's fault that 500 units of competitive value are not enough to sustain her life.

The equal division of the competitive value of common resources, mandated by the equal share model, is unfair to Unable because, through no fault of her own, her share affords her much less opportunity for well-being than Able's share affords him. Equal share Georgism endorses a distribution of competitive rent value that affords Able a wonderful life and Unable no life at all. The primary problem with equal share Georgism is its insensitivity to the well-being, or opportunity of well-being, of agents. The *equal* division of competitive rent value of common resources advocated by the equal share model, as we saw in our last case, has the very strong potential to ignore the unchosen special needs or disadvantages of agents.

⁸⁶ Steiner seems to be aware of this shortcoming and attempts to resolve, at least some of, this difficulty by endorsing the thought that genetic germ-line material is a common resource and that the parents of children must pay the competitive value of their offspring's genetic germ-line material. The result of this line of thought is highly controversial and I restrict my discussion of it to this note.

A minimal treatment of how Lockean proprietorship can be sensitive to the survivability and well-being of agents is found in a suggestion offered by John Simmons, in his *Lockean Theory of Rights*.⁸⁷ Simmons puts forward the suggestion, although he doesn't endorse it, that an agent who appropriates common resource(s) has the moral obligation to leave enough so that other agents can, at least, enjoy *subsistence*.⁸⁸ We can label this position *subsistence-proprietarianism*. Put formally:

Subsistence-Proprietarianism: You can appropriate common resource X if and only if you are the first to claim ownership rights over X and leave others the greater of (a) enough common resources or competitive value of common resources for others such that each may subsist (or, if there is not enough for everyone to subsist, one takes no more than a subsistence share) or (b) the minimum appropriation payment.

Subsistence-proprietarianism claims that an appropriator has a duty, if more than a subsistence share for others remains after he has appropriated a subsistence share, to *leave* a subsistence share for others. Unlike radical-right proprietorship, Nozickian proprietorship, and equal share Georgism, subsistence proprietorship maintains that appropriators have a duty to leave others (assuming there is enough to do so) a subsistence share.

This view, at least in the earlier case of Able and Unable, is an improvement because Able, according to subsistence-proprietarianism, has the obligation to leave Unable, at least, enough to subsist when she appropriates at least a subsistence share of common resources. Subsistence-proprietarianism better accounts than equal share

⁸⁷ A. John Simmons, *The Lockean Theory of Rights* (Princeton: Princeton University Press, 1992) pp. 291.

⁸⁸ Note that the appeal to subsistence here can be altered to account for more robust version of the general idea. For example, we could also invoke versions of minimally-decent-life proprietorship, or decent-life proprietorship.

Georgism for the duty that Able has to leave Unable enough and as good.⁸⁹ Unable dies under a scheme of equal share Georgism, but she, at least, enjoys subsistence within a scheme of subsistence-proprietariansim.

But noting that, in some cases, subsistence-proprietarianism is an improvement over equal share Georgism should not lead us to endorse subsistence-proprietarianism. Subsistence-proprietarianism is not morally demanding enough of appropriators. Consider, again our two agent world housing Sarah and Bill (two normal human agents). Sarah attempts to appropriate *all* common resources in a world flush with resources *except* a small subsistence plot that she leaves Bill. Sarah, very plausibly, hasn't fulfilled her moral duty to leave enough and as good for others (Bill). She gains a tremendous degree of well-being from her appropriation, and she leaves Mark only enough to subsist. Grant also, that the minimum appropriation payment would not afford Mark any greater leaving than a subsistence-share. We should reject subsistence-proprietarianism. We can, nonetheless, learn a lesson from the way in which the view does take into account, albeit minimally, how a leaving of common resources (or their competitive value) should take into account how this impacts the life-prospects of others.

To make equal share Georgism more plausible we can take a lead from subsistence-proprietariansim and augment equal share Georgism with a subsistence condition. Here let *subsistence adjusted equal share* be a share which affords everyone, where possible, a subsistence-share and where any remaining competitive value of common resources is divided so as to give agents as close to an equal share as possible.

⁸⁹ I stress that *generally* equal share Georgism will better account for the duty to leave others enough and as good than subsistence-proprietariansim. But a proponent of equal share Georgism should be very concerned that we can easily imagine cases, such as the present Able and Unable example, in which subsistence-proprietarianism seems quite plausible to better account for the duty of appropriators than equal share Georgism.

Consistent with this view we could say that agents have a right that appropriators leave them a subsistence-share of common resources and where the competitive value of common resources affords more than a subsistence-share for everyone they have a right to be left a share of the competitive value of common resources which best approximates an equal share. We can spell out a subsistence sensitive version of equal share Georgism in the following way:

Subsistence Equal Share Georgism: You can appropriate a common resource X if and only if you are the first to claim ownership rights over X and leave others the greater of (a) their subsistence adjusted equal share (or, if there is not enough for everyone to subsist, one takes no more than a subsistence share) or (b) the minimum appropriation payment.

To illustrate Subsistence Equal Share Georgism consider a world housing only Able and Unable which contains common resources worth 1000 units of competitive value.

Unable needs 600 units of competitive value to subsist and Able needs only one unit to subsist. Subsistence equal share Georgism informs us that Unable has a right to be left 600 units of the competitive value of common resources (if Able appropriates), while Able has a right to be left 400 units of competitive value (if Unable appropriates). Able has a right to be left the entire 399 units of competitive value in excess of subsistence-shares for himself and Unable as this leaving best approximates an equal share for everyone.

This new subsistence-sensitive version of equal share Georgism is an improvement to both subsistence-proprietarianism and traditional equal share Georgism. This hybrid view, however, is still problematic. For instance, let's add to our above example and consider what the units of competitive value actually signify in terms of life prospects for Able and Unable. Able lives a fantastic life with the 400 units of

competitive value from common resources that he has a right to be left, while Unable lives a life barely worth living with the 600 units of competitive value he has a right to be left. Able gains vast opportunities to live a good life from his appropriation but leaves Unable just enough to have opportunities to scrounge by.⁹⁰ Able, even though he has met the demands of subsistence equal share Georgism, has not left enough and as good for others.

The problem with subsistence equal share Georgism, like traditional equal share Georgism, is that the view is still squarely focused on appropriators leaving others some equal share of the competitive value of common resources without taking into account, beyond the notion of subsistence, how these resources actually impact the lives of agents. A resourcist approach toward understanding the duties of appropriators is flawed. When considering whether an agent has left enough and as good for others we should be primarily concerned with how her leaving impacts the opportunities and life prospects of others and not with the material amount of resources *per se* that an appropriator leaves others.

The question, when assessing whether an appropriator has satisfied her duty toward others, should not primarily be, “how much, in terms of material amount, did the appropriator leave others,” but instead, “how does the amount that the appropriator has left affect the life prospects of others or the opportunities of others.” The reason why the emphasis should be placed upon the condition of agents as opposed to a specific material amount of resources left is because, at base, what we should care about is how the leaving *actually impacts* the life of others. We shouldn’t become fetishistic about the *amount* of

⁹⁰ Or alternatively, if Unable appropriators he may only appropriate what amount to a subsistence-share of common resources and leave Able an amount of competitive value that affords Able a fantastic life.

resources that are left by an appropriator. Our emphasis should be on agents (how a leaving by an appropriator impacts *them*) and not ultimately concerned with the material amount of resources *per se* that an appropriator leaves others.

One reason in favor of adopting an approach that favors paying much closer attention to the *impacts* on agents of an appropriator's leaving as opposed to the *amount* of resources that an appropriator's leave others is to ask: why, at base, would an agent appropriate common resources? Ultimately, the reason(s) (in normal cases, maybe in all cases) will have to do with the positive *impact* that appropriation provides the agent, e.g., increased autonomy, increased well-being, and so forth. The bottom line is that agents appropriate, or would want to appropriate, common resources because appropriation provides a positive impact in their life (an increase in life prospects, autonomy, well-being, and so forth). It would be a gross disconnect if the duty of appropriators to leave others enough and as good focused primarily on something *other than* how an appropriator's leaving impacted the lives of others. The thought here is simply that when we assess what it means for an appropriator to leave others enough and as good we shouldn't stray far from the very reasons that motivate agents to appropriate common resources in the first place and these reasons will have, primarily, to do with impacts on life prospects and the such and not on a concern with *amounts* of resources *per se*.

Can the Georgist say anything to better address, than the Georgist accounts we have considered thus far, how the duty of appropriators to leave enough and as good should be sensitive to how such leaving impacts the lives of others? The answer here is, fortunately for the Georgist, yes. For example, Peter Vallentyne argues for a Georgist model in which, "the rent payments should be divided so as to promote effective equality

of opportunity for a good life.”⁹¹ Here I understand an *equal opportunity for a good life* to have no important differences with an *equal opportunity for welfare*. This is to say the greater an agent’s opportunities for a good life the greater her opportunities for welfare. Before developing a Georgist account of appropriation which is sensitive, in the fashion Vallentyne’s suggests, to agent’s being left a share of the competitive value of common resources which best promotes an equal opportunity for welfare a few cursory notes in respect to equal opportunity for welfare are in order.

Equality is a goal worth promoting and that the correct treatment of effective equality is focused toward the equalization of agents’ initial opportunities for welfare. But noting that equality is a goal worth promoting does not tell yet address the question: *equality of what* is worth promoting. When considering an answer to the question, equality of what: initial opportunity for welfare is a plausible reply.⁹² Focusing our attention toward the equalization of agents’ initial opportunity for welfare is not unwarranted. Earlier we considered an equal share Georgist model, and noted that the problem with this model was its narrow focus on equalizing the distribution of the competitive value of common resources (without any sensitivity for how this equal distribution affected agents’ lives). One move to avoid this problem, not considered explicitly here, is to move to equality of resources more generally, where this includes

⁹¹ Nic Tideman and Peter Vallentyne, “Left-Libertarianism and Global Justice,” in *Human Rights in Philosophy and Practice* edited by Bruton M. Leiser and Tom Campbell (Ashgate, 2001) 451. Vallentyne does provide the caveats that his model does not allow leveling down and it assumes Pareto optimal arrangements. I think these caveats are highly plausible.

⁹² We find many different well-developed answers the question: equality of what? For instance, a few of the highly debated answers we find include: - equality of social primary goods, e.g., Rawls; - equality of resources, e.g., Steiner, Dworkin; - equality of well-being, e.g., Temkin; - equality of opportunity of welfare, e.g., Arneson, Cohen. For defenses of equal opportunity for welfare (or well-being) as the correct metric of material equality see Richard Arneson, “Equality and Equality of Opportunity of Welfare”, *Philosophical Studies*, 56 (1989): 77-93. and G.A Cohen, “On the Currency of Egalitarian Justice”, *Ethics*, 99 (1989): 906-44.

both external and internal resources.⁹³ Although this is a controversial topic, I shall assume that equality of something related to well-being (welfare) is the relevant conception of effective equality.

Furthermore, we can distinguish between views that maintain that welfare *per se* should be equalized from views which maintain that initial *opportunities* for welfare should be equalized. The latter views are more plausible than the former. (Earlier, there were a number of occasions in which I spoke of an agent's welfare or her opportunities for welfare. I spoke in this fashion loosely to avoid being entangled in the broader debate that I now speak toward.) This is because, plausibly, the free choices that agents make should, for better or worse, influence their well-being.⁹⁴ It is only fair that agents should be held accountable (in terms of how well their life goes) for the choices that they can be held morally responsible for making. Placing an emphasis on equality of initial *opportunity* for welfare allows us to take the free choices of agents into account.⁹⁵

Equality of initial opportunity for welfare should be distinguished from *brute luck egalitarianism*. Brute luck is generally understood as luck the agent had no ability, in the relevant sense, to control. It is plausible to think that an agent should not be

⁹³ In his 1981, "What is Equality? Part II Equality of Resources," *Philosophy and Public Affairs*, 10: 185-245, Ronald Dworkin argues for an equality of resources model in which a hypothetical insurance scheme is used to compensate for unequal personal endowments. In addition Hillel's Steiner's endorsement of a tax on genetic germ-line information can be seen as a move to consider both the equalization of both external and internal resources.

⁹⁴ If, for instance, one has been given a competitive rent that equalized her initial opportunities for well-being and then she freely chooses to gamble her payment away, then she should have to live with the choices she has freely made. Her right is plausibly to a rent payment which affords her initial equal opportunities for well-being, not a rent payment which guarantees her equal opportunities for well-being regardless of what she freely chooses.

⁹⁵ I remain open on the question of whether, or how often, agents make choices for which they can be held morally responsible. For instance, it might be the case (although I doubt it) that no one ever makes a choice for which they are morally responsible, and in such cases there will be no good reason to prefer equalizing opportunity for welfare or welfare *per se*.

disadvantaged by bad brute luck. An agent, for example, shouldn't suffer a horrible life merely because she was born with a genetic disability. Equality of initial opportunity welfare require equalization of initial brute luck (initial opportunities) but does not always require compensation for later bad outcome brute luck.⁹⁶ By contrast, brute luck egalitarianism maintains that brute luck disadvantages should always be compensated irrespective of whether they occur initially or later in life. Adjudicating between equality of initial opportunity for welfare and outcome brute luck egalitarianism is a hotly debated issue and I will not attempt to adjudicate the matter here. Consistent with Vallentyne's suggestion of what we can deem *equal initial opportunity for welfare Georgism*, however, I shall limit my discussion to *initial* equal opportunity for welfare.⁹⁷

Now after having made a few cursory points to address the notion of equal opportunity for welfare, I shall now discuss, and ultimately endorse, a Georgist account of appropriation, equal initial opportunity for welfare Georgism, which is sensitive, in the fashion Vallentyne's suggests, to agent's being left a share of the full competitive rent value from common resources which best promotes an equal initial opportunity for welfare. Equal initial opportunity for welfare Georgism maintains that: *initially all agents possess a right, against appropriators, to be left a share of the full competitive*

⁹⁶ In "Brute Luck, Option Luck, and Equal of Initial Opportunities," *Ethics* 112 (2002): 529-557, Peter Vallentyne argues that equality of initial opportunity for advantage (welfare) is more plausible than outcome brute luck egalitarianism. He argues that justice does not always demand compensation for bad brute luck (after the initial conditions) because, "the net result of the administrative costs, incentive effects, and all other relevant factors may be that the initial opportunities for advantage are less valuable under the brute outcome luck compensation scheme that without it. If that is so, then justice, I claim, forbids equalizing for brute outcome luck." Vallentyne's point nicely illustrates that outcome brute luck schemes are, at least some of the times, implausible. This doesn't settle the debate between those who endorse equality of opportunity for welfare and those who opt for a brute outcome luck model, but it does add plausibility to the preference of an equal opportunity for welfare model.

⁹⁷ One variant of Georgism which I won't consider here is *outcome brute luck Georgism*, where the competitive value of common resources is used to compensate bad brute luck. If one finds outcome brute luck egalitarianism more plausible than (initial) equal opportunity for welfare then outcome brute luck Georgism would represent an option worth considering at further length.

rent value of common resources that best promotes an equal initial opportunity for welfare.

Notice, (as will become important later) this proposed right, against an appropriator, is to be left a share of the full competitive value of common resources that *best promotes* equal initial opportunity for welfare; it is *not* a right against appropriators that they leave others enough to *ensure* an equal opportunity for welfare *simpliciter*. The duty of an appropriator, according to the Georgist, is limited to leaving others, *in some fashion*, the full competitive value of the common resources which they chose to appropriate, and this leaving might not always be enough to *ensure* equal initial opportunity for welfare. Equal initial opportunity for welfare Georgism simply fills in the above *in some fashion* to be *in the fashion which best promotes equal initial opportunity for welfare*. As we will examine much closer as this chapter proceeds, there could be cases in which leaving others the full competitive value of common resources can only promote, but not *ensure*, equal initial opportunity for welfare. This is because we can imagine cases, consistent with the above proposed right, where an agent could have a right to be left the full competitive rent value of *all* common resources and still not, after this leaving, have equal initial opportunities for welfare. I will discuss such cases later, for now I merely wish to flag the importance of the issue.

We can specify equal initial opportunity for welfare sensitive Georgism in the following way concerning the appropriation of a common resource X:

Equal initial opportunity for welfare Georgism: You can appropriate a common resource X if and only if you are the first to claim ownership rights over X and leave others the greater of (a) the share of the full competitive value of X that best promotes an equal initial opportunity for welfare or (b) the minimum appropriation payment.

Equal initial opportunity for welfare Georgism can be described as a type of constrained egalitarian position. The view is clearly sensitive to appropriator's leaving others enough in the fashion which best promotes *equal initial opportunity for welfare*. But when addressing the question: *enough of what*, the view *limits* the means of the equalization of initial opportunity for welfare to the full competitive value of common resources.

Let us now evaluate, and in turn get a better sense of, equal initial opportunity for welfare Georgism. To illustrate how equal initial opportunity for welfare Georgism operates consider again a world with Able, Unable, and one common resource X worth 1000 units of competitive value. We can imagine that, because of unchosen *initial* differences, Able and Unable will have an equal initial opportunity for welfare if Able is left 100 units of competitive value and Unable is left 900 units of competitive value. Unable has a right against Able that he not appropriate in a fashion that fails to leave her 900 units of competitive value, and likewise Able has a right against Unable that she not appropriate in a fashion that fails to leave him 100 units of competitive value. Able may appropriate X on the condition that he is the first-claimer of X and leaves no less than 900 units of the competitive value for Unable, and Unable may appropriate X on the condition that that she is the first-claimer of X leaves no less than 100 units of the competitive value for Able. We are assuming here that such leavings are greater than the minimum appropriation payment of X.

One attractive feature of equal initial opportunity for welfare Georgism is that neither Able nor Unable (in the scenario just described), should be any happier than the other with their respective initial power to alter the first-order moral status of equal

common use.⁹⁸ Neither appropriator, it seems, has any unfair advantage, in respect to the other, to alter the conditions of equal common use and appropriate common resources. Each appropriator, after all, is obligated to leave other(s) with enough of the competitive value derived from common resources to promote (and in the above case ensure) equal initial opportunity for welfare. It is plausible to think that when an appropriator leaves *this much* for others she has satisfied her duty to leave others enough and as good.

At this juncture I shall address a general issue confronting Georgism that, as it will turn out, has significant ramifications for the account of equal initial opportunity for welfare Georgism presently on the table. Who, we should ask, ought to pay any associated fees with delivering the full competitive value owed by those who appropriate common resources? An appropriator could, for instance, live a far distance from others and delivering what he owes (the full competitive rent value payment of what he appropriates) might be very expensive. Here there seem to be two clear options. First, we could maintain that it is the appropriator's duty to pay any delivery fees associated with delivering his competitive rent value payment to others. Second, we could maintain that it is the duty of the recipients of the competitive value payment to pay any fees associated with delivering the payment.

It appears at first glance that how we address the question of who is to pay for the delivery of the competitive value payment will have wide-spread implications for equal initial opportunity for welfare Georgism (or any Georgist account for that matter). But this is deceptive. *On average*, it won't actually matter if the fees for delivery are paid by the appropriator or the recipients of competitive value payments. This is because the

⁹⁸ Of course, Able would have been happier with an equal share Georgist distribution and likewise Unable would have been happier if the distribution was 1000 for him and 0 for Able. But as things stand neither agent is on any better footing than the other, they both enjoy an equal initial opportunity for welfare.

bidders in the Vickery auction, determining the competitive value of the ownership rights in respect to a common resource, will lower their bids by the amount the delivery fee.

Consider the following two cases to illustrate why it won't typically matter who pays for delivering the competitive value payment. Jon and Sally are bidding for ownership rights over common resource X and both of them know that delivery costs are 20 units and will be paid by the recipients of the payment. Jon bids 60 units and Sally bids 50 units. The competitive rent value of X is now set at 50 units. Jon appropriates X and has a duty to leave (pay) 50 units of competitive value in the fashion which best promotes equal initial opportunity for welfare, but he need not pay delivery. The 20 units of delivery are paid by the recipients of Jon's competitive value payment. They receive a total of 30 units (after net of delivery costs).

Now consider a variation in which Jon and Sally know that it will take 20 units to deliver the second highest competitive value bid to others in the fashion which best promotes equal initial opportunity for welfare and that these costs will be borne by the appropriator. Given this information Jon and Sally adjust their bids downward, Jon bids 40 units and Sally bids 30 units. After all, the ownership rights over X are less attractive to Sally and Jon (by 20 units) is such ownership saddles them with a duty to pay 20 units to deliver the competitive value which they owe to others. Jon appropriates the resource and pays (leaves) 30 units of competitive value *and* delivery to others in the fashion which best promotes equal initial opportunity for welfare. The recipients receive 30 units (after Jon pays for delivery).

The preceding two cases show us that, *typically*, it will not, for the bottom-line of those owed payment, whether delivery of the competitive value payment owed to

others is paid by the appropriator or those owed payment. But there will be specific cases in which it will matter to others who pays delivery fees. For example, consider a case in which Jon and Sally have different costs for delivering a competitive value payment of 50 units to others. Instead of each having to pay 20 units to delivery the competitive value payment which they owe others, imagine that it costs Jon 10 units to deliver this payment and Sally 30 units to deliver this payment. If this is the case then the recipients will care very much who ultimately appropriates and pays for delivery. If the appropriator pays for delivery then they won't care who appropriates X. But if they must pay for delivery, then they would very much prefer Jon to appropriate and deliver payment because this will mean that they receive more (20 units more) than if Sally were to appropriate and make her competitive value payment.

Sometimes having the appropriator pay for delivery will be better for recipient and sometimes worse. Hence, there is no clear reason to worry about this in the aggregate. Still, it is an issue that must be settled. I shall now set this issue aside temporality to examine a second problem. It will turn out that the solution to this second problem solves the issue about delivery fees mentioned above.

The discussion of delivery fees highlights an important point concerning the actual impact of competitive value payments owed by appropriators. That point, is that our focus should be squarely concerned with how the payment of competitive value actually impacts the bottom-line of equal initial opportunity for welfare. With our focus on the *actual impact* that the payment of competitive value has toward equal initial opportunity for welfare we are in a better position to discuss the *currency* (what it is that

bidders are bidding with) of the auction determining the competitive value of rights over common resources.

Most Georgist, and indeed most anyone who utilizes the idea of auction bidding, assume that the bidders in the auction are bidding with some *public currency* such as dollars or euros or some physical good such as bushels of apples. An alternative, however, which I maintain is more plausible than the above traditional view, is to bid directly in terms of impact on the initial equal opportunity for welfare for the beneficiaries of the auction. According to this alternative suggestion the currency which bidders would be using to bid would be directly in terms of impact on the initial equal opportunity for welfare of others. I shall now consider, at greater length, this alternative account of bidding currency.

Perhaps, it is best to broach the issue of bidding currency with a more familiar case and then extend our results to encompass the focus of this project. Consider a case in which the private owner of a car wants to auction off his rights over the car to the highest bidder. What the owner wants to gain from this auction is simple, *the offer that will best increase his welfare*. Of course there are a lot of practical reasons to run the auction in terms of dollars or the like, but if we had full information, then it would be most natural to have the auction run (bids made) in terms of the owner's prospects for welfare. Bidders would commit to achieving a given welfare impact for the owner.

In highly integrated modern economies agents could make this "offer of welfare" to the owner of the car in terms of some public currency such as dollars. Here, the dollar, for example, is merely a placeholder for an "offer of welfare." Public currencies such as dollars, however, hold no special have no privileged status as placeholders for an "offer

of welfare.” For instance, in our car auction someone might bid one million dollars for the ownership rights over the car and another might bid with the promise to give an exceptional hour long massage one a week for a year. Both bidders are making the owner of the car an offer of welfare (if they weren’t doing this then they wouldn’t be serious bidders). One bidder is offering some amount of public currency and the other is offering her labor services but each are employing the currency of an “offer of welfare”.

Now let’s return to the auction determining the competitive value of rights over common resources. Here it might help to imagine a hypothetical common resource auctioneer who manages the auction and is foremost concerned with how the bidding for ownership rights over these resources will, bottom-line, best promote an equal initial opportunity for welfare. Just as the owner of the car was first and foremost interested in the bid which increased *his* prospects for welfare, our hypothetical common resource auctioneer is first and foremost concerned with bids that best promote an equal initial opportunity for welfare. This concern seems most natural under the equal initial opportunity for welfare view under consideration. What the auctioneer wants to know is: bottom-line how will your bid for common resource X actually impact equality of initial opportunity for welfare. Nothing else matters to our common resource auctioneer. The currency of bids will then be in the form of *offers that promote equal initial opportunity for welfare*. For a useful shorthand we can call this currency, equal initial opportunity for welfare unit bidding.

One promising way of thinking about the currency being used to bid in our common resource auction is to imagine that bids are essentially offers that commit the bidder to bring about a certain distribution of equal initial opportunities for welfare. For

example, imagine that three agents in a common resource auction bid offerings of the following distributions of initial opportunity for welfare.

(A): 2-2-2

(B): 9-7-3

(C): 9-6-8

How should our auctioneer concerned with equal initial opportunities for welfare rank these bids in terms of most to least attractive (from highest to lowest bid)? Our auctioneer, I maintain, should be concerned with both equality and efficiency. If equality were the auctioneer's only concern, then distribution (A) would be the best or highest bid. But this seems seriously flawed since both distributions (B) and (C) leave everyone better off than distribution (A). For often, and aptly, referenced reasons of leveling down our auctioneer should employ standards of Pareto efficiency and prefer bids which were Pareto Superior. Distribution (B), for instance, is Pareto Superior, to distribution (A) because everyone is better in (B) than in (A). It would be, for lack of a better word crazy, to think that (A) should be preferred to (B). But what should we say about comparing distributions (B) and (C). Neither is Pareto superior to the other. When neither option is Pareto superior I suggest that our auctioneer, again concerned with equal initial opportunities for welfare, should opt for the more egalitarian distribution which in our present case is distribution (C).

Consistent with the above analysis we can say that the bid pledging to bring about distribution (C) is the highest bid, the bid pledging to bring about distribution (B) the second-highest bid, and the bid pledging to bring about distribution (A) is the lowest bid. Incorporating the idea of a Vickery auction in which the second-highest bid determines

the competitive value, we can say that the competitive value of the ownership rights over the common resource up for bid is set at the commitment to bring about the equal initial opportunity for welfare distribution of 9-7-3. The payment which an appropriator owes others is the leaving of a 9-7-3 distribution of equal initial opportunities for welfare.

Here, it is worth addressing the issue of opportunity costs to agents in an auction. The opportunity cost to a bidder in an auction is simply the cost of choosing one option rather than another. When, for instance, an agent bids 100 units for an acre of land the opportunity cost to her might include not using the 100 units to invest in a corn flake factory. It makes sense to think that an agent making informed bids in an auction should have a good idea of the opportunity costs she incurs. If an agent bids with cash or some other public currency she will likely have a good idea of her opportunity costs. She might well know what the cash could 'get her' if she used in some activity other than bidding for an item in an auction. However, in an auction that utilizes 'offers which promote equal opportunity for welfare' it is less clear that the bidders will know the opportunity costs of their bids. In response, I maintain that agents in the hypothetical Vickery auction will know the opportunity costs to them of having to pay certain equal opportunity for welfare distributions. For example, the agent who bids the 9-7-3 distribution, from our example above, will know facts about the world which allow her to appreciate the opportunity costs of her bid. Just as a an agent appreciates what bidding 50 dollars of public currency will know her opportunity costs so to, I envision, that a bidder of a 9-7-3 equal opportunity for welfare distribution will know her opportunity costs.

The above stance concerning the proper currency to use in our auction determining the competitive value of rights over common resources also nicely address the issue of delivery fees. The bid in the form of an *offer that promotes equal initial opportunity for welfare* will include how such an offer is impacted by associated delivery fees. A bid understood as a commitment to bringing about a certain distribution of initial opportunities for welfare will take into account the bidders delivery of this commitment. After all, a bid is a commitment to bring about a certain distribution and this will include all costs to the bidder of bringing about the distribution.

The upshot of our recent discussion is that the version of equal initial opportunity for welfare Georgism currently under discussion renders the *currency* of the bidding on ownership rights common resources, which sets the competitive value of these rights, to be commitments to bring about a certain distribution of equal initial opportunity for welfare. This view of the currency involved in an auction determining a common resources competitive value is non-standard, but I think aptly in the spirit of a concern for the equal initial opportunities for welfare of agents.

Before considering the most formidable challenge to equal initial opportunity of welfare Georgism, I shall now re-visit, with our focus toward equal initial opportunity for welfare, the issue of the minimum appropriation payment. Up to this point, I have been treating the minimum appropriation payment essentially as an appropriator's duty to leave others, *at least*, as much as Nozickian proprietorism demands. But consider the following, attractive, alteration to this treatment of the minimum appropriation payment.

Revised Minimum Appropriation Payment: You can appropriate a common resource X only if (\neq if and only) your appropriation leaves the distribution of equal initial opportunity for welfare no worse than the distribution would have been had X remained within conditions of equal common use.

To illustrate the revised minimum appropriation payment consider that the distribution of equal initial opportunity for welfare if X remains within conditions of equal common use is 10-10-10. Now, consider that if X were appropriated the new distribution of equal initial opportunity for welfare would be 12-2-2. This appropriation would fail to meet the demands of the minimum appropriation payment as the new distribution is neither Pareto superior or more equal than the distribution if X had remained within conditions of equal common use.

Here it is worth noting an important respect in which the proposed revised minimum appropriation payment deviates from Nozickian proprietorism. Consider a situation in a two person world in which the distribution of equal initial opportunity for welfare within conditions of equal common use was agent A one unit and agent B twenty units. Now, let us imagine that agent A appropriates a common resource in a fashion which leaves a distribution of (15,15). Nozick would rule this impermissible by maintaining that A engaged in an appropriation which lessened the condition of B below what B's condition would have been within conditions of equal common use and as such failed to leave enough and as good for others. The revised minimum appropriation payment, however, allows such an appropriation because a distribution of (15,15) is to be preferred over that of (1,20). This is arguably one place in which a Nozickian could raise a challenge to the proposed minimum appropriation payment.

I should stress that the above new treatment of the minimum appropriation payment, is still just that, a *minimum* payment that appropriators owe others. One helpful way to think of the minimum appropriation payment is as a minimum bid (or reserve) price that bidders in the auction determining the competitive value of the rights over a

common resource must first meet in order to offer legitimate bids. A legitimate bid must be at least, no lower, than the minimum appropriation price. And given that both the currency of the bids as well as the minimum appropriation price are cast in terms of a distribution of equal initial opportunity for welfare there should be no problem integrating both the minimum appropriation payment and the currency of bidding into our auction determining the competitive value of common resources.

Equal initial opportunity for welfare Georgism, plausibly, better accounts for the duty of appropriators to leave enough and as good for others than the alternatives we have considered thus far. I shall now compare equal initial opportunity for welfare Georgism with another left-proprietary alternative which is also keenly sensitive to appropriating in a fashion that leaves others enough and as good, where this leaving is focused toward the impact on other's equal initial opportunities for welfare. This alternative left-proprietary proposal will, as we shall see, places pressure on the Georgist commitment to utilizing *only the full competitive value* of common resources to promote equal initial opportunity for welfare.

Taking a lead from Michael Otsuka in his *Libertarianism Without Inequality* we can suggest that: *initially all agents possess a right against appropriators, to be left (to the extent possible) enough to ensure equal initial opportunity for welfare.*⁹⁹

⁹⁹ Otsuka's develops a view of appropriation in *Libertarianism Without Inequality* (Clarendon Press: Oxford, 2003), which maintains that In order to clarify what it means to appropriate privately unowned common resources in a fashion that does not disadvantage others, Otsuka proposes the following egalitarian proviso:

Egalitarian Proviso: You may acquire previously unowned world resources if and only if you leave enough so that everyone else can acquire an *equally advantageous share* of unowned world (common) resources (pp. 24 emphasis mine).

Otsuka argues that shares are equally advantageous, "if they are such that each is able to attain the same level of welfare as anybody else given the combination of her worldly and personal resources (25)." According to Otsuka's interpretation of the Lockean proviso an appropriator leaves enough and as good for others only if she leaves others enough to acquire, at least, the same level of opportunity for welfare.

Appropriators, according to this newly proposed property right, have a duty to leave others enough to *ensure* (to the extent possible) initial equality of opportunity for welfare. The (to the extent possible clause) is meant to address cases where it is not possible to improve the initial opportunities for welfare of others. For example, imagine that an appropriator has *only* two options, (i) appropriate common resources which afford him 50 units of initial opportunity for welfare and leave others fifty units of initial opportunity for welfare, or (ii) appropriate common resources which afford him 100 units of opportunity for welfare and leave others fifty units of initial opportunity for welfare. In such a case the appropriator may justly pursue the second option. In either case the appropriator is only able to leave others fifty units of initial opportunity for welfare and it is implausible to suggest that he is duty-bound to enjoy only fifty units of initial opportunity for welfare.

Here we can specify an account of *pure initial opportunity for welfare appropriation* as follows:

Pure equal opportunity for welfare appropriation: You can appropriate a common resource X if and only if you are the first to claim X and you leave others enough to ensure (to the extent possible) equal initial opportunities for welfare.

According to pure initial opportunity for welfare appropriation if an agent's appropriation affords her twenty-five units of initial opportunity for welfare, then she must leave others enough such that they also possess twenty-five units of initial opportunities for welfare. To put the point a slightly different way, the price an appropriator must *pay* for her appropriation is that she must take no greater opportunities for welfare than she leaves

others.¹⁰⁰ (For an extended discussion of issues related to self-ownership and Otsuka's treatment of pure equal opportunity for welfare appropriation *see* the first appendix.)

Equal initial opportunity for welfare Georgism and pure initial opportunity for welfare Georgism are quite similar. For clarity sake here what the two views look like (side by side):

Equal initial opportunity for welfare Georgism: You can appropriate a common resource X if and only if you are the first to claim X and you leave others their equal initial opportunity for welfare share of the greater of (a) the competitive value of rights claimed over X or (b) the minimum appropriation payment.

Pure equal opportunity for welfare appropriation: You can appropriate a common resource X if and only if you are the first to claim X and you leave others enough to ensure (to the extent possible) equal initial opportunities for welfare.

I shall now proceed to make some comparative points and in turn evaluate the relative strengths of these promising left-propietary proposals.

Before locating and assessing differences between the two proposals it is worth first pointing out an important implication *shared* by both views. Notice that where the competitive value of common resources is enough to *ensure* equality of opportunity for welfare, then the two views won't differ.¹⁰¹ In worlds, that is, where the competitive value of common resources is enough to ensure, as opposed to merely promote, equality of initial opportunity for welfare both views share the implication that an appropriator must leave a share that affords others an equal (initial) opportunity for welfare.

¹⁰⁰ Here it is important to note that Otsuka's view is a form of payment Lockean proprietorism but not Georgist in character. The payment which Otsuka demands that an appropriator must pay is the amount which leaves others an equal opportunity for welfare. Note that Otsuka's view is not a Georgist approach. This is because Otsuka's view does not suggest that an appropriator pay the competitive value of what she appropriates.

¹⁰¹ It is worth noting that where an equal initial opportunity for welfare exists within conditions of equal common use an appropriator's leaving the minimum appropriation payment would also yield the same result as pure equal opportunity for welfare appropriation.

In order to identify scenarios in which the two proposals yield different implications we must consider cases in which the competitive value of common resources is not enough to *ensure* equality of initial opportunity for welfare. In such cases, the Georgist proposal, given that it limits the duty of appropriators to paying no more than the full competitive value of the rights over common resources they appropriate, implies that an appropriator's duty will fall short of leaving enough to *ensure* that others have equal initial opportunities for welfare. But the same is not true of pure initial opportunity for welfare appropriation. Pure initial opportunity for welfare appropriation maintains that an appropriator has a general duty to leave enough to *ensure* equality of opportunity for welfare, and if the fulfillment of this duty means that an appropriator must leave more than the full competitive value of common resources then so be it. The conflict, if we are to locate an area of disagreement with real consequence, is found in answering the question: Is an appropriator ever duty bound to leave others more than the full competitive value of common resources? Pure equal opportunity for welfare appropriation renders a positive answer and equal initial opportunity for welfare Georgism renders a negative answer to this central question.

Here, I think a number of things can be said to support the Georgist contention that an appropriator's duty to leave others enough and as good should not exceed leaving the full competitive value of the rights over common resources which he appropriates. First, consider the feasibility point that typically an agent will not purchase a good that is priced above competitive value. They will just walk away without buying the good. I suspect the same consideration will generally be true of those appropriating common resources. If the rights over common resources are "priced" about full competitive value,

the prospective appropriators will simply opt *not* to appropriate the common resource. The rights over a given common resource simply won't be worth more than full competitive value to a prospective appropriator. Notice that if a common resource goes *unappropriated*, then there won't be any leaving by an appropriator of the common resource that can contribute to the equal initial opportunities of others (for either account of appropriation on table). The point here is that agents can always opt not to appropriate common resources (when, for example, the price to appropriate –the mandated leaving– exceeds full competitive value).

It would be a mistake to suspect that generally one could garner *more than* the full competitive value of common resources by prospective appropriators of such resources. This point is not to be overlooked because unless appropriators of common resources would leave (pay) more than full competitive value in order to appropriate common resources, then views, such as pure equal initial opportunity for appropriation, lack any real strength to bring about equal initial opportunity for welfare not already had by the equal initial opportunity for Georgist account of appropriation. In other words, in order for the pure equal initial opportunity for welfare account of appropriation to distinguish itself as a feasibly stronger egalitarian account from the Georgist account under consideration we must imagine cases in which prospective appropriators would pay more than the full competitive value of common resources in order to appropriate. As I have suggested these cases will be, at most, non-typical.

But for the sake of argument let us grant that there will be cases in which a prospective appropriator of a common resource would pay *more* than full competitive value in order to appropriate a common resource. What should we say about such cases?

First, we should note that in such cases appropriators of common resources are being subject to *monopoly pricing*. The payment for common resources that appropriators must make is not competitive value instead it is whatever it takes to bring about equal initial opportunity of welfare. Admittedly, the goal behind this monopoly pricing (to ensure equal initial opportunity for welfare) is much more noble than the typical picture of monopoly pricing involving a price gouger that preys on the desperation of agents for the sake of sheer selfish economic advantage. But still something seems suspicious about monopoly pricing (even with the intent of using the proceeds to best ensure equal initial opportunity for welfare).

Two concerns drive my suspicion toward the monopoly pricing which is needed to distinguish pure equal initial opportunity for welfare appropriation from its Georgist rival. First, related to a recent concern, it is difficult for me to imagine anyone paying monopoly prices, those above competitive value, unless they were swindled into doing so. Agents just don't knowingly and voluntarily pay more than competitive value for things (rights over common resources included). Second, it strikes me as unfair to make agents pay more than competitive value for something *even if* this payment in excess of competitive value is used to fund ensuring equal initial opportunity for welfare. Again, this assumes (which I think is highly suspect) that an agent would even be willing to knowingly and voluntarily pay more than competitive value to appropriate a common resource.

Even if, nonetheless, we put aside any concerns we might have with the feasibility of agent's engaging in appropriation if this means paying more than the competitive value for the rights they claim over common resources and with monopoly pricing generally. I

maintain that we would still have good reason to favor equal initial opportunity for welfare Georgism over pure equal initial opportunity for welfare appropriation. For example, consider a case in which Able and Unable are bidding within a Vickrey auction for a set of ownership rights over a small strip of land (the land is a common resource). Let us grant, importantly, that Able and Unable both have *fair bidding power*. The issue is extremely important and deserves attention. Here, I just assume that Able and Unable have fair bidding power. (See appendix #2 for a discussion of fair bidding power.)

Able bids twenty units for the rights over the land, and Unable bids fifteen units for these same rights. The competitive value of the land is now set at fifteen units, the second highest bid. Able appropriates the land and pays the full competitive value of the rights she claimed (fifteen units) to others in a fashion which best promotes equality of initial opportunity for welfare. In this case, equality of initial opportunity for welfare Georgism informs us that Able is to pay the *entire* competitive value of the rights she claims to Unable.¹⁰²

Able has, when we allow competitive value to be determined by a Vickrey auction, made a payment (left) Unable for the *entire amount* that Unable bid for the land.¹⁰³ How can Unable legitimately complain about Able's appropriation of the land if he leaves her the entire amount that she bid for the land herself? In such a case, Unable doesn't have any legitimate complaint that Able's appropriation disadvantaged her because Able has left her what she bid for the land. It seems odd, to say the least, to

¹⁰² Recall, that Unable is so badly disabled that he has a right, according to the Georgist proposal on the table, that others leave him the full competitive value of all common resources. And Able has done this.

¹⁰³ Here, issues arise when we introduce more than two agents into a Vickrey auction. I will consider such issues in the last chapter, but here I utilize only two agents in order to keep things simple and more clear-cut as a general account of appropriation is developed.

think that (within conditions of fair bidding power) Able could have a duty to leave Unable *even more* than what she bid for the land. In fact, to maintain that Able is obligated to leave Unable *even more* than she bid would be tantamount to allowing Unable to engage in monopolistic price-making. And this isn't fair to Able. Able, when he pays Unable what she bid for the land (the full competitive value of the land when we incorporate a Vickrey auction scheme) does not disadvantage Unable in any morally objectionable fashion.

Of course, it could be the case that Able derives twenty-five units of initial opportunities for welfare from his appropriation of the land and the competitive value which he leaves Unable only affords her twenty units of initial opportunity for welfare. But how troublesome is the implication that Able gains more initial opportunity for welfare from his appropriation of the land than Unable is able to garner from what she is left (the entire amount of the full competitive value of the land)? The implication doesn't seem very troubling (especially since Unable was paid exactly what the land was worth to her). Able did, after all, pay Unable what she bid for the land. It seems very plausible that an agent is left enough and as good by an appropriator when she is left the amount which she was willing to pay for the appropriated common resource (even when this payment doesn't ensure equal initial opportunity for welfare). And this is precisely, in our current case, the amount which the Georgist maintains ought to be left.

Able doesn't bear the burden of ensuring that everyone else (Unable) have the same opportunities for welfare as he derives from appropriating common resources. Able doesn't acquire the duty, in virtue of his appropriation, to *ensure* that Unable's opportunities are as valuable as his. Able's duty, alternatively, is to pay for what he *takes*

away and deprives Unable of within, some understanding of, the conditions of equal common use. Able took away, deprives Unable, of common resources worth, *established by Unable's own bid*, fifteen units and he is obligated to pay this amount to Unable in a fashion which best promotes equal initial opportunity for welfare. But he need not pay a price greater than this for his appropriation of the strip of land. Able has no duty, *contra* pure equal initial opportunity for welfare appropriation, to leave Unable even more than she bid to appropriate the strip of land.

After defending the general plausibility of equal initial opportunity for welfare Georgism against its best left-proprietary rival, pure equal initial opportunity for welfare appropriation, I shall now consider a pressing objection against the view.

The best objection against equal initial opportunity for welfare Georgism makes the challenge that according to the view the means to achieve effective equality is contingent upon the full competitive value of common resources, and this contingency can lead to very inegalitarian implications. To see how such an objection would work, imagine a case in which the competitive value of common resources is very low (say five units). And we have two familiar actors, Able and Unable. If Able appropriates common resources worth just five unit of competitive value, then he will live a wonderful life (have 1000 units of initial opportunity for welfare), and even if Unable is left the full competitive value of common resources –five units- then she will live an awful life (have one unit of initial opportunity for welfare).

Equal initial opportunity for welfare Georgism does indeed allow for the extremely inegalitarian implication noted in the above example. Should the view be rejected because of this implication? Arguably not. As considered above, the Georgist

demands that an appropriator pay for what she takes away and deprives others of by leaving others the full competitive value of the common resources she appropriates. In the above potentially problematic case where Able leaves Unable the entire competitive value of his appropriation, he does just this. Able leaves Unable the entire competitive value of all common resources, he has no duty to leave her more than this. Able need not pay others for the benefits which he derives from his appropriation, her need only pay for what he takes away and deprives others of (and he does this when he leaves Unable the full competitive value of all common resources). Further, again consider that Able might simply (and in all likelihood would) opt not to appropriate if the price of appropriation (what he must leave) is set above full competitive value. Admittedly, the inequalitarian implications of equal initial opportunity for welfare Georgism that might possibly arise are troubling, but they do not substantially threaten the plausibility of the view.

As I stressed, however, at the outset of comparing pure equal initial for welfare appropriation and equal initial opportunity for welfare Georgism, both plausible left-proprietarian accounts, are similar and will yield the same results in all cases in which the full competitive value of common resources is enough to ensure equal initial opportunity for welfare. In scenarios where the two views differ, the infeasibility and unfairness of demanding that an appropriator leave another more than the competitive value of the appropriated resource to others is a reason to prefer the Georgist proposal.

At this juncture I shall now transition from the comparative discussion of equal initial opportunity for welfare Georgism and pure equal opportunity for welfare appropriation to consider some general objection to the proprietarian account and approach I have endorsed thus far.

A proprietorian concerned with egalitarian considerations, might suggest that agents have a right against others (whether they appropriate or not) to bring about an equal initial opportunity for welfare. The defended Lockean proprietorian account (equal initial opportunity for welfare Georgism) might be charged with being inconsistent with such a right against others that certain egalitarian conditions are brought about. But this charge would prove false.

It is true, as discussed earlier in this chapter, that equal initial opportunity for welfare Georgism will not serve as a guarantee that conditions of equal initial opportunity for welfare are brought about. However, equal initial opportunity for welfare Georgism is consistent with a general ‘whole-hog’ egalitarian right against others to bring about conditions of equal initial opportunity for welfare. Recall that equal initial opportunity for welfare Georgism is open on the question of whether or not agents possess the right of self-ownership. Accordingly, one could endorse equal initial opportunity for welfare Georgism as applied to the appropriation of common resources *and* maintain that the bodies or labor of persons should be used to address any inequities concerning the equal initial opportunity for welfare of agents. For example, if agents have a right that others bring about conditions of equal initial opportunity for welfare generally it could be the case that sighted agents have a duty to give one of their eyes to blind agents. Such a duty to transfer an eyeball is not inconsistent with equal initial opportunity for welfare Georgism. This is a possible position to hold which my discussion of proprietorianism does not rule out. Thus, given the open status which I have assigned the right of self-ownership the suggestion that my views on appropriation are inconsistent with robust egalitarian rights are out of place.

Nonetheless, some people concerned with egalitarian considerations might still take aim at my general proprietary approach in this project. Consider the following example.¹⁰⁴ Imagine that instead of being a pioneer for social justice Gandhi allowed himself to perish at a young age in a hunger strike. Gandhi never becomes the prolific figure of social justice and the world is a worse place because of this. Has Gandhi done anything wrong by allowing himself to die? I am inclined to say no. I think it is plausible that egalitarian considerations only attach to duties and that agents acquire these duties *via* their interaction with, e.g., appropriation of, common resources.

The possible counter-intuitive result of my proprietary approach is that it maintains that Gandhi, acting as he did for many decades was not any morally better than he would have been had he decided to starve himself. This result does not strike me as counter-intuitive. I am not convinced that we have duties owed to others to ‘make the world a better place’ or ‘help bring about egalitarian goals *simpliciter*’. Alternatively, I maintain that the duties which we owe to others are generated from our appropriation (and in the next chapter I will maintain *use*) of common resources. It is when an agent removes a common resource that she acquires egalitarian duties toward others (she has no such duty based upon any other reason such as the needs of agents). All agents have a stake in the value of common resources and it is the removal of these resources that should raise a skeptical eyebrow from an egalitarian. An agent ‘acquires’ an egalitarian duty to others based upon her removal of the common stock, she doesn’t simply ‘have’ such duties as a brute fact or comes to gain such a duty based upon the needs of other agents. I am an egalitarian, but I am simply not swayed by the intuition that Gandhi would have done anything morally worse by letting himself die than by engaging in the

¹⁰⁴ I thank Brian Kierland for bringing this example to my attention.

life which he chose to lead. This will likely desire some (perhaps most) egalitarians, but it is the curious position in which I find myself.

My left-proprietarian treatment of the conditions under which an agent may appropriate common resources is now complete. I began the last chapter with a Lockean puzzle concerning how *any* appropriation of common resources could be justified if the first-order normative status of such resources is that they “belong to all in some equal fashion.” After defending the initial normative status of common resources as being in some initial condition of *equal common use*, I defended the unilateral moral power, under certain conditions, of agents to appropriate common resources. The most plausible version of the conditions under which agents can appropriate common resources was found to be some version of left-proprietarianism. After considering various left-proprietarian accounts of appropriation I settled on a version of equal initial opportunity for welfare Georgism which specifies that:

Equal initial opportunity of welfare Georgism: You can appropriate common resources if only if you leave others their equal initial opportunity for welfare share of the greater of (a) the competitive value of rights claimed over X or (b) the minimum appropriation payment.

I shall continue in the next chapter to evaluate the conditions under which agents may justly *use* common resources. As we are soon to see, while a neglected topic, the just use of common resources is every bit as formidable and important to a proprietarian theory of justice as the appropriation of such resources.

CHAPTER FIVE: JUSTLY USING COMMON RESOURCES

This chapter addresses the question: According to the most plausible version of a proprietary theory of justice, under what conditions can an agent justly use a common resource? Recall from the second chapter that use was defined, for the purposes of this project, as either taking on the form of a ‘physical impingement’ account or a ‘plans and projects’ account. An agent, that is, uses a common resource either when she physically impinges on it or when she incorporates the resource into her plans and projects. Thus, our question, more precisely specified, asks: According to the most plausible proprietary theory of justice, under what conditions can an agent justly physically impinge upon or a common resource or under what conditions can an agent justly incorporate a common resource into her plans and projects?

In the introductory chapter, I noted that political philosophers have traditionally ignored, or failed to systematically consider, the conditions under which an agent can justly use common resources. They have, instead, focused their attention toward examining the conditions under which such resources can be appropriated. The neglect that political philosophers have shown toward just use is, as I shall demonstrate in this chapter, an important mistake. This is because, generally, the same reasons that led us to embrace the Lockean suggestion that *appropriators* have a duty to leave others enough and as good is a suggestion that *also*, plausibly, applies to *users* of common resources.

I shall argue in this chapter that users of common resources have a duty, just as appropriators do, to leave others enough and as good. If this observation is correct, then an important implication that follows is that our most plausible proprietary theory of

justice should maintain that the Lockean proviso applies to *both* the use and appropriation of common resources.

In the last chapter I defended the Lockean claim that the initial normative status of common resources was one of *equal common use*. The *simple* treatment of equal common use, introduced there, maintained that initially, *everyone has a liberty right to use common resources in some normal fashion*. This treatment of equal common use (while sufficient to ground a discussion of appropriation) is incomplete. For example, consider the question: do agents have claim rights against others from using common resources in monopolistic or destructive ways? A clear answer to this question is not provided by the simple account of equal common use. I shall now, as promised in the last chapter, more carefully examine the initial normative status of common resources within conditions of equal common use.

Perhaps the most unassuming place to begin carefully considering the normative status of common resources within conditions of equal common use is by considering the possible position that within such conditions all agents possess an *unrestricted liberty right* to use all common resources. That is, within conditions of equal common use, everyone has an unrestricted liberty right to use all common resources. Agents, according to this account, have no claim rights against others from “using as such” common resources. An agent, that is, simply doesn’t have duties toward others concerning her use as such of common resources. The language of “use as such” in the description of the unrestricted liberty account is important. The unrestricted liberty account maintains that agents have no claim rights against others *merely* using common resources. The account does not rule out the plausible possibility that agent’s have

certain claim rights against others which may have moral implications concerning particular uses of common resources.

For example, it might be that agent's possess the right of *control self-ownership* and as such others are not permitted to use the body of another without her permission or against her interests. The unrestricted liberty account can maintain, if it also endorses the right of control self-ownership, that it is a breach of justice to *use* a rock to hit the body of another. In such a case the 'hitter' has used a common resource in a fashion that uses the body of another and the unrestricted liberty account need not allow *this*. The important idea here is that the unrestricted liberty account can place restrictions on use in virtue of *other* moral rights, for instance some variant of self-ownership, that agents might possess. Such an account would hold that one is permitted to use common resources in any way that one wants as long as such use violates no property rights in agents or other things held by others. Is this unrestrictive liberty account of equal common use plausible?

In order to test the plausibility of the unrestricted liberty account of equal common use, I shall offer five cases involving five different types of use: *destructive use*, *degrading use*, *overuse*, *general access-restricting use*, and *specific access-restricting use*. These cases will demonstrate the implausibility of the unrestrictive liberty account of equal common use and begin to motivate the plausibility of applying the Lockean proviso toward the use of common resources.

In each of the five cases below assume that the agents involved have not appropriated anything. If it helps simply assume that, due to lack of imagination, none of the agents in the following examples ever claimed ownership rights over any common

resources. And given that claiming ownership is necessary to appropriate then no appropriation has occurred.

If agents have an unrestrictive liberty right to use common resources, then they are (barring the inclusion of additional moral constraints) at moral liberty to destroy common resources for the fun of it, even when this destruction places the very survival of others in jeopardy. Consider the case of Toxic Jack and Sarah. Both share a life-sustaining spring of fresh water. Toxic Jack decides, for the fun of it, to empty toxic sludge into the spring and thereby ruin the water source which is necessary to sustain both his and Sarah's lives. Does Toxic Jack act unjustly in such a case? The answer seems to be yes. It is highly plausible that Toxic Jack transgresses a duty he owes to Sarah when he uses the spring they share, within conditions of equal common use, in this destructive fashion. Sarah, plausibly, has a claim right against Toxic Jack, that he not use the spring in this destructive fashion. If this suggestion is correct, then agents have claim rights against others from using common resources in, at least certain, destructive ways, and hence the unrestricted liberty account of equal common use is flawed.

Destructive use need not be as dramatic as the above case to be morally problematic. Imagine, for example, that Toxic Jack doesn't want to completely destroy the entire spring but instead only wants to destroy half of the spring. We would still, I maintain, rightly suspect that Toxic Jack violates a duty he owes to Sarah by partially destroying or depleting the spring. Toxic Jack has not, in such a case, completely destroyed the water supply, but he has taken an action which depletes the spring which he and Sarah share. Acts of morally problematic destructive use need not be *completely* destructive in order to invoke concerns of justice.

Here it is worth noting that *consuming* common resources is a type of destructive use. When, for example, Sarah consumes an apple by eating it, she engages in a type of destructive use. She engages in an action which destroys the apple. The consumption of common resources can be as morally problematic as other types of destructive use. After all, it doesn't matter to others if Sarah destroys a common resource by consuming it or by destroying it in some other fashion – in either event the common resource has been used in a fashion that deprives others from gaining (any) benefit from the use of the resource.

Related, closely, with destructive use is *degrading use*.¹⁰⁵ When an agent engages in the degrading use of a common resource she uses in a fashion that reduces the value of the resource without destroying it even partially. Imagine, for example, that Toxic Jack doesn't destroy the spring, but instead pollutes the spring with a chemical that ensures Sarah will become seriously ill whenever she drinks from the spring. Toxic Jack's polluting actions, while not sufficient to destroy the spring, degrade the value of the spring. We would still, I maintain, rightly suspect that Toxic Jack violates a duty he owes to Sarah by dumping this less than lethal chemical into the spring. Acts of morally problematic use need not destroy, or remove *all* the value from, a common resource in order to invoke concerns of justice.

Cases of destructive and degrading use highlight the distinction between renewable and non-renewable common resources. A *renewable common resource* is a resource which can be replaced on a scale comparative to its consumption in a relatively short amount of time, e.g., sun, wind, ocean tides. Alternatively, a *non-renewable*

¹⁰⁵ I thank Peter Vallentyne for helping me see the clear distinction between degrading-value use and destructive use.

common resource is a resource which cannot be replaced a scale comparative to its consumption in a relatively short amount of time, e.g., petroleum and natural gas.

If an agent destroys or depletes a renewable common resource that is quickly replenished or replaced by nature, then such consumption, depending on how quickly replenishment occurs, is not obviously morally problematic. In such a case the removal of common resources has been replaced very quickly and hence others not deprived of the common resource (or value derived from common resources). On the other hand this is not the case when we consider non-renewable resources. When an agent destroys or depletes a non-renewable common resource they remove in a fashion that nature does not quickly replace and hence has the much stronger potential to disadvantage others through deprivation. It is typically much more difficult for users of non-renewable resources to leave others enough and as good than it is for users of renewable common resources to leave others enough and as good.

Aside from concerns of destructive use and degrading use, considerations of *overuse* also give us good reason to suspect that the unrestricted liberty account of equal common use is flawed. The overuse of a common resource occurs, generally, when an agent disproportionately uses, to the exclusion of others, the resource in question. If agents have an unrestricted liberty right to use common resources, then they are at moral liberty to overuse common resources for any reason, even when this places the survival of others in jeopardy. Consider a scenario with Paranoid Bill and Mark. Both must touch an energy stone once a day, for ten seconds, in order to survive. Paranoid Bill is first to grab the stone, but he refuses to share the stone, for any length of time, with Mark. Being stronger than Mark, Paranoid Bill, holds on to the stone and Mark perishes as he is unable

to touch the stone. This case provides us with good reason to suspect that Paranoid Bill doesn't have the right to use the energy stone in any monopolistic fashion he pleases. This is because Mark, plausibly, has a claim right against Paranoid Bill from overusing the stone which they share within conditions of equal common use. Of course, the issue of what counts as overuse is complex, but it seems clear that there is some relevant sense in which an agent can overuse a common resource.

To see the ramifications of overuse more clearly consider that an agent's physical impingement (use) of a common resource often prevents others from physically impinging (using) the same common resource, and *a fortiori* from enjoying the benefits that using resource provides. If, for example, an agent stands on the only spot of shaded land, then others cannot stand in the same spot unless the agent moves (or is moved by others). The simultaneous use of *this* spot of land by multiple agents at the same time is not possible.¹⁰⁶ In such a case the user of the spot of land (a common resource), gains a benefit from his use (a nice shaded spot to escape the sun), but, in virtue of his use, others are denied, for the duration of his use, the benefits afforded by using the spot of shaded land. The agent using the shaded spot of land has effectively removed it, for the duration of his use, from others. His action prevented others, deprived them, from using the shaded spot of land.

In addition to concerns of destructive use, degrading use, and overuse, cases of *restrictive use* also lend good reason to suspect that the unrestricted liberty account of

¹⁰⁶ Here there is an important distinction to be made between instances of use that, because of physical limitation bar simultaneous use and instances of use that because of the specific instantiation of use employed bar simultaneous use. It is, for example, possible for Paranoid Bill and Bob to both physically impinge on different parts of the energy stone at the same time, but it is not possible for both of them to stand in the same shared spot of land at the same time. Accordingly, I am not making the general claim that the simultaneous use of a common resource is impossible or that more than one agent can, in many instances, use a common resource.

equal common use is flawed. Restrictive use occurs, generally, when an agent takes an action which prevents others from using either a particular common resource or a broader set of such resources. There are, at least, two different types of restrictive use, *general access-restricting use* and *specific access-restricting use*. I shall now consider these types of restrictive use in turn.

To illustrate general access-restricting use consider a scenario, borrowed from Eric Mack, with Wally Wall Builder and Jon.¹⁰⁷ Wally Wall Builder enjoys, as a hobby, building impenetrable walls around others without their knowledge or permission. While Jon is deeply sleeping, Wally Wall Builder builds, without touching Jon, a forty-foot tall six feet by six feet wall around him. Jon awakes to find that he is trapped with no possible way to escape from the walled structure. Wally's wall-building (an instance of his using common resources) is morally problematic because his actions restrict Jon's ability to generally use common resources which they share within conditions of equal common use. Jon can use the bottom of the "trap" by banging his fists against it, but he is restricted, in virtue of Wally's actions, from using almost all other common resources.¹⁰⁸

¹⁰⁷ Eric Mack in his (1995) "The Self-Ownership Proviso: A New and Improved Lockean Proviso," *Social Philosophy and Policy* 12: 186-218, offers this and similar cases of restrictive use. Mack argues that restrictive use is unjust (a rights-violation) because such use violates self-ownership. He argues that an agent's self-ownership affords them what he labels *world interactive powers*, and that restrictive use is a violation of an agent's effective world interactive powers. While Mack and I agree that restrictive use constitutes a rights-violation, we disagree about what right is violated by such action. Mack suggests the right of self-ownership is violated, alternatively I suggest that the relevant right being violated is the right against users from using in a fashion which fails to leave enough and as good. Mack, I think, over-estimates the moral work that self-ownership can do when he directly ties the rights-violation resulting from restrictive use to a violation of self-ownership.

¹⁰⁸ Another case of general access-restricting use might involve an agent burning (a using) of a natural bridge, for example a log, that renders it impossible for others to cross over and use the desirable side of an island.

To illustrate specific access-restricting use consider a case involving Hiding Helen and Bob. Hiding Helen doesn't build impenetrable walls around Bob; instead she hides, in a very effective fashion, the most valuable common resources from him. When Bob goes to sleep Hiding Helen uses the very valuable common resources and before Bob awakes she hides the resources before he has a chance to use them.¹⁰⁹ Some might suspect that specific access-restricting use is less serious a concern than general access-restricting use. But this is not necessarily the case. Hiding Helen could, for example, be restricting Bob's use of a particular common resources by hiding an energy stone which he needs to touch once a day in order to survive.

The above examples illustrating cases of destructive use, degrading use, overuse, general access-restricting use, and specific access-restricting use of common resources inform us that the unrestricted liberty account of the normative status of equal common use is implausible.¹¹⁰ An agent's use as such of a common resource within conditions of equal common use can invoke concerns of justice. A plausible proprietarian theory of justice must address the use, and not merely the appropriation, of common resources. This is because agents, plausibly, have claim rights against others from *using*, in certain ways, common resources within conditions of equal common use. This leads us to ask:

¹⁰⁹ Here I leave open whether Jon is aware that Hiding Helen is hiding the valuable common resources. Jon's knowledge of Hiding Helen's hiding might matter to the case but I doubt that it does. I tend not to think, for the purposes of evaluating the justness of Hiding Helen's actions, that it matters if Jon knows of her hiding. Her action is depriving Jon of the resource irrespective of whether he is aware of this deprivation.

¹¹⁰ It is worth pointing out that in none of the above cases did anyone physically impinge on (use) the body of another agent. Thus, we cannot explain the unjustness in the actions of Toxic Jack, Paranoid Bill, Wally Wall Builder, or Hiding Helen by appealing to how these actors used the bodies of others. They simply did no such thing. If unjust action took place in the cases presented above, as it plausibly has, then this unjustness must be explained by appealing to something other than the violation of a right to bodily non-interference.

What claim rights do agents have against others using, in certain ways, common resources?

One possible reply is to maintain, in Lockean spirit, that *agent's have a right against users of common resources to be left enough and as good of common resources generally*. For instance, we could maintain, as I will endorse and clarify later in the chapter, that users of common resources have a duty, similar to that of appropriators, to leave others a share of competitive value that best promotes equal initial opportunity for welfare.

One note is in order before I turn toward assessing the plausibility of extending the Lockean proviso to encompass the *use* of common resources. I shall leave, at this stage, the specific content of the Lockean proviso open. Later in this chapter I will incorporate my already developed Georgist interpretation of the Lockean proviso into an account covering the just using common resources, but for now I leave the specific content of the Lockean proviso open. Leaving the specific content of the Lockean proviso open will help demonstrate an important general claim. That being, *any account of Lockean proprietorship must address how it is that users of common resources must leave enough and as good for others*. If it can be demonstrated that *users* of common resources have a duty to leave enough and as good (in a general sense) then this will have important implications for *any* proprietarian theory of justice which is sympathetic to some specific account of the Lockean proviso.

I shall now proceed to defend the claim that *agents, within conditions of equal common use, have a right against users of common resources to be left enough and as good*. An effective strategy to assess the plausibility of this claim is by asking if the

reasons offered earlier, in the last chapter, for thinking that appropriators of common resources have a duty to leave others enough and as good apply equally well to thinking that users of common resources have a similar duty.

Consider the following argument from analogy:

- (1) Appropriators of common resources have a duty to leave others enough and as good.
- (2) The reasons for thinking that appropriators of common resources should leave others enough and as good are, in analogous fashion, equally as convincing for thinking that users of common resources should leave others enough and as good.
- (3) Therefore, users of common resources have a duty to leave others enough and as good.

The strength of this argument rests in the idea that if a person was attracted to the reasons for applying the Lockean proviso to the appropriation of common resources, then she ought (by parity of reasoning) to be equally attracted to the reasons for applying the Lockean proviso to the use of common resources.

In order to best assess this argument let us first reconsider the morally problematic aspect of appropriation which led us to endorse the view that appropriators of common resources have a duty to leave others enough and as good. Initially, recall, no agent has any greater claim to common resources than any other agent. No agent, that is, has any initially greater claim to benefit from common resources than another. When an agent appropriates a common resource she, by claiming the rights of private (control) ownership, *removes* the resource in a manner that prevents others, deprives them, from using the resource without her permission or against her interests. The appropriation of common resources, as we gleaned from considering the implausibility of radical-right proprietorism, can place others at a (severe) disadvantage and is morally unallowable *unless* the appropriator leaves others enough and as good.

The morally problematic feature of appropriation was the *removal* of a common resource, or the removal of certain liberties to use common resources, from conditions of equal common use. But notice that this same morally problematic feature of appropriation can be equally as problematic when we consider the *use* of common resources. For example, Toxic Jack, Paranoid Bill, Wally Wall Builder and Hiding Helen all, *via* their use, removed common resources. Their actions, like those of appropriators, deprived others from using common resources. It doesn't seem to matter, in respect to their duty to leave others enough and as good, that they did not appropriate, and instead used, common resources.

If this is correct then it is the *removal*, in some sense, of common resources from conditions of equal common use, irrespective of whether this removal takes the form of an appropriation or a using, which places a moral demand on the *remover* to leave others enough and as good. A plausible proprietarian account should maintain that any *removal* of common resources incur the *remover* with the duty to leave others enough and as good. It doesn't matter, for example, if the *removal* is done *via* an appropriation or a use of common resources. An agent, for example, should not be able to morally evade his duty to leave others enough and as good by opting to *use*, as opposed to appropriate, common resources. To maintain that *only* acts of appropriation require the satisfaction of the Lockean proviso is an implausible position to embrace.

It would be quite odd to suggest that Toxic Jack owes Sarah a duty to leave her enough and as good *if* he appropriates the fresh water spring, but owes her no such duty if he *merely* uses the spring in a destructive or degrading fashion. Toxic Jack's destructive use of the spring disadvantages Sarah to, at least, the same degree as would have his

appropriation of the spring. Sarah perishes either way (assuming that Toxic Jack does not grant her permission to use the spring in the case where he appropriates).

Consider again the case of Paranoid Bill and Mark. Let us imagine that Paranoid Bill decides that he would like to exercise a moral power and appropriate the energy stone which is necessary to sustain Mark's life. We would, rightly, demand that Paranoid Bill leave Mark enough and as good. If the price of this leaving is more than he is willing or able to pay, then he is barred from appropriating the energy stone. He simply cannot *remove* the energy stone unless he leaves Mark enough and as good. Quite clearly, Paranoid Bill's removal of the energy stone by means of his overuse is every bit as disadvantaging to Mark than would have been his appropriation of the energy stone. The duty, to leave enough and as good, which Paranoid Bill owes Mark is not contingent on the means of removing common resources which he opts to pursue. How it is that Paranoid Bill goes about removing common resources, by means of appropriation or use, is of no moral consequence to the duty he owes to leave Mark enough and as good.

This same strategy of reasoning works, I maintain, equally well when we consider cases of either general access-restricting use or specific access-restricting use. Wally Wall Builder and Hiding Helen each removed common resources from conditions of equal common use in a fashion that failed to leave Jon and Bob respectively enough and as good. Again, there seems to be no good reason to maintain that leaving enough and as good for others is demanded by Wally Wall Builder and Hiding Helen *only if* they remove common resources by means of appropriation. Wally and Helen acquire the moral duty to leave others enough and as good whenever they, regardless of the means they employ, remove common resources from conditions of equal common use.

Here it is worth returning to a criticism lodged against the radical-right proprietor. The radical-right proprietor, recall, was wrong to suggest that being a first-claimer was necessary and sufficient to appropriate common resources. This was because such an account, without invoking the satisfaction of the Lockean proviso as a necessary condition of appropriation, allowed an agent to appropriate far too easily with far too little regard toward other agents. But the same reasoning applies equally well toward first-users, or for that matter subsequent users, of common resources. A user of common resources who fails to leave others enough and as good is, as we have seen from earlier examples, as open to the charge of far too easily disregarding others as the appropriator who fails to leave others enough and as good. If a necessary condition of appropriating common resources is leaving others enough and as good, then such a condition is also necessary for the just use of common resources.

Earlier I noted that political philosophers have, almost completely, ignored the just use of common resources and instead set their sights on the appropriation of such resources.¹¹¹ But if my arguments in this chapter have been successful, this has been a glaring mistake (or at least a significant oversight). What explains this? It isn't as if political philosophers are a slow or unimaginative lot. The oversight can be explained by noting that appropriation is, often, a much more obvious and disadvantaging means of

¹¹¹ In his, "When is Original Appropriation Required," *Monist* 73:4 (1990), pp. 504-519, David Schmitz argues that those who do appropriate natural resources are bound by a duty to future generations not to use their appropriated resources in certain ways. He also maintains that given the overuse of natural resources in the commons (brought about by a 'tragedy of the commons') the appropriation and care of natural resources for future generations is, in certain cases, not merely permissible but *obligatory*. Schmitz's points are well taken, but his second point relies upon the standard assumption that *only* appropriators (and not users) of natural resources must leave others enough and as good. If, however, *users* of natural resources have a duty to leave others enough and as good, then there is no reason to mandate appropriation as means of conserving natural resources for present and future generations. Applying the Lockean proviso to the use of natural resources serves to conserve for present and future generations without maintaining that the appropriation of natural resources is morally obligatory.

removing common resources from conditions of equal common use than is *using* such resources.

As a matter of contingent fact the use of common resources is less likely, than the appropriation of these resources, to remove in a disadvantaging fashion. To offer a simple case, the appropriation of a trail in woods has the strong potential to disadvantage others, but using the trail by walking along it, typically, will not. After all, if we assume a choice-protecting model of rights, the appropriator of the trail can exclude others, at her will, from using the trail. The user of the trail has no right to do this. By considering such cases, we can think of many instances of using a common resource, for instance when an agent uses a trail in a walking-fashion, where a user's duty to leave others enough and as good is either non-existent or trivially satisfied.

Appropriation is a type of removing common resources, or more specifically the liberties that others have to use common resources, which is *typically* more disadvantageous to others than removal by means of use. This observation, nonetheless, doesn't challenge the plausibility of the claim that both appropriators and users of common resources have a duty to leave others enough and as good. The observation does, however, explain why the use of common resources has been a neglected concern.

Also, it is worth stressing the contingent nature of the empirical observation that appropriation is *typically* a more disadvantaging type of removal. There is no reason why the appropriation of common resources *has to* be generally more disadvantaging to others than the use of common resources. For example, what if an *appropriator*, simply granted permission, which the appropriator never revoked, to others to use the appropriated common resources to the degree "which was necessary to leave others enough and as

good,” while a *user* of common resources engaged in destructive use and failed to leave others enough and as good. If this were the case then the appropriation of common resources wouldn’t be morally problematic (or not obviously problematic), but the use of such resources would be. After all, the appropriator has granted others permission, which they never revoke, to use her resources to whatever degree is necessary for her to leave others enough and as good, while the use of common resources would be morally problematic because the user failed to leave others enough and as good.

The first section of this chapter is now complete. I have argued for the claim that users of common resources, within conditions of equal common use, have a duty to leave others enough and as good. This claim is general in scope and this generality is important as it has significant implications for *any* Lockean proprietary theory of justice. It is a claim that, if my arguments have been successful, should be dealt with and incorporated into *any* Lockean proprietary theory of justice. If one accepts the Lockean proviso as binding on an appropriator of common resources, then she should also offer an account of how the proviso is, likewise, binding on users of such resources. This is an observation that applies to *all* Lockean proprietary theories of justice irrespective of *how* they interpret the duty of agents to leave others enough and as good.

In the last chapter I offered an account of equal initial opportunity for welfare Georgism which I defended as the best interpretation of the Lockean proviso concerning the appropriation of common resources. I shall assume that the Georgist account defended in the last chapter is the correct account of appropriation and that this account, properly understood, is also the correct account of how best to interpret the Lockean proviso concerning the just use of common resources. The remainder of this chapter will,

hence, be focused on developing the best way in which the duty of *users* to leave others enough and as good can best be incorporated into the previously defended account of equal initial opportunity for welfare Georgism.

Before considering the best way in which to incorporate the just use of common resources into an account of equal initial opportunity for welfare Georgism, it will be worthwhile to reconsider the Georgist account defended in the last chapter. Recall the following version of equal initial opportunity for welfare Georgism defended, as applied to the *appropriation* of common resources, in the previous chapter.

Equal Initial Opportunity For Welfare Georgism: You may *appropriate* a common resource X if and only if you leave others their equal initial opportunity for welfare share of the greater of (a) the competitive value of the ownership rights claimed over X or (b) the minimum appropriation payment of X.

We can refer to the competitive value determined in an appropriation auction, where the competitive value of rights of ownership over a common resource is established, as *ownership competitive value*. And, consistent with the defense of Georgism offered in the last chapter, it stands to reason that those claiming rights of ownership over a common resource should leave others the ownership competitive value, consistent with the rights of ownership they claim, in order to appropriate the resource. An agent should leave the competitive value of what she removes from conditions of equal common use. And if, for instance, an agent appropriates a common resource and hence removes the durable moral liberty of others to use the resource (without the appropriator's permission or against her interests), then the appropriator must pay the competitive value of *this* removal.

The above summary analysis of the duty owed by appropriators to leave others enough and as good, however, won't form an exact fit with the duty that *users* of

common resources have to leave others enough and as good. Users, as opposed to appropriators, make no claim of ownership over common resources and hence do not come to have durable rights of ownership over these resources. Accordingly, it seems wrong to suggest that users of common resources should pay, in the fulfillment of the Lockean proviso, ownership competitive value over common resources they use.

Users of common resources generally remove the effective, as opposed to durable, moral liberties of others. When, for instance, Hiding Helen hides common resources from Bob which he and Sarah share within conditions of equal common use, she removes Bob's effective moral liberty to use the hidden resources. Hiding Helen's actions, however, do not remove any durable moral liberties that Bob might have to use the hidden resources. He is, after all, morally free to use the hidden resources. Bob would not, alternatively, be morally free to use the hidden resources had Hiding Helen appropriated the hidden resources and refused to grant him permission to use the hidden resources. What users of common resources potentially remove, and accordingly what they should pay for removing from conditions of equal use, are the effective moral liberties of others to use common resources.¹¹²

Recall the original appeal of Georgism discussed in the previous chapter. Agents should pay the competitive value of rights over common resources which they remove,

¹¹² One could challenge whether the above appeal to users removing the effective liberties of others is correct in cases of degrading and destructive use. In cases of overuse, general access-restricting use, and specific access-restricting use, the idea that a user has removed the effective liberty of others to use some, or a class of, common resources seems clear. But the removal of an effective liberty to use is less clear in cases of destructive or degrading use. After all, it is true that Sarah can use the spring which is polluted by the Toxic Jack's polluting actions. It is just that if she uses the spring she will die or get very sick. But her liberty to use 'the spring' has not been removed. In such cases the appeal to a user removing an effective liberty can still make sense if the common resource being removed is carefully specified. For instance, what Toxic Jack removes would be a 'clean spring suitable for healthy drinking' or the effective liberty of others to use a clean spring suitable for healthy drinking. When the common resource or liberty to use the common resource is properly specified an appeal to the removal of effective liberties to use can be applied to all five types of morally problematic use.

resources which no one has any greater claim to than another. Georgists have, traditionally, only considered paying the competitive value over claimed durable ownership rights over common resources. And I have defended such a paying (in a fashion which best promotes equal initial opportunity for welfare). But notice the same Georgist appeal to paying the competitive value for what is removed, and others deprived of, works equally well to account for the duty of users to leave others enough and as good. We can, in Georgist spirit, employ the idea of competitive value to explain how it is that users of common resources can pay the price of removing the effective liberty of others to use common resources. This is because just as ownership rights over common resources have a competitive value, so too does the effective moral liberty to use a common resource.

To demonstrate that the effective moral liberty to use a common resource can have a competitive value consider that multiple agents would often be willing to pay for the effective moral liberty to use, as opposed to not using at all, a common resource. Using, as opposed to not using, a common resource is often worth something to an agent because using compared with the non-use of a common resource, allows for the fulfillment of one's plans and projects.

Both Paranoid Bill and Mark, for example, would likely be willing to bid, quite a bit, to have the effective liberty to use the energy stone for some specified ten second period during the course of a day. Neither, notice, is bidding, in such a scenario, for rights of ownership over the stone, instead both are bidding for the effective liberty to use the stone during some designated time. What such a case demonstrates is that the effective liberty to use a common resource can, when more than one agent is interested in

using the resource, have a competitive value. The notion of competitive value should not be reserved solely for ownership rights over common resources, but can naturally be extended to encompass the effective liberty to use a common resource.

Given that the effective liberty to use a common resource can have a competitive value we are now prepared to extend our extant account of equal initial opportunity for welfare Georgism to encompass the just use of common resources. I shall now offer and defend the best way in which to incorporate the duty that users of common resources have to leave others enough and as good into the extant account of equal initial opportunity for welfare Georgism. Consider the following proviso governing the just use of common resources.

Equal Initial Opportunity For Welfare Georgism Use Proviso: You may justly *use* a common resource X if and only if you leave others their equal initial opportunity for welfare share of the greater of (a) the competitive value of the liberty right to use X (b) the minimum use payment of X.

The above proviso governing just use is very similar in structure to the proviso governing appropriation. Notice that the first clause again allows an agent to justly use a common resource if such use is the minimum necessary to ensure that the user has a life worth living. I shall not say anything further to defend this clause than I have already said in defense of the idea within a plausible account of appropriation. The second clause maintains that if the use of a common resource is consistent with the user having a life worth living then the user is obligated to leave others their equal initial opportunity for welfare share of the greater of either the competitive value of the maximal liberty right to use X or the minimum use payment of X.

In order to clarify the proviso governing just use I shall first discuss how it is that the competitive value of the effective liberty to use a common resource is determined.

Then, I shall clarify and explain the role of the minimum use payment in the proviso governing just use. As a foreshadowing, the minimum use payment for using a common resource X is the amount which leaves equal initial opportunity for welfare no worse than compared with a baseline of *universal non-use* of X. The minimum use payment will serve a similar role in the proviso governing use as the minimum appropriation payment serves in the proviso governing appropriation. But I shall reserve discussion of the minimum use payment until after the question of how to determine the competitive value of the effective liberty right to use a common resource.

How, then, is the competitive value of the effective liberty to use a common resource determined? Here, we can return to the idea, considered in the previous chapter, that competitive value is determined by an auction. Relying, again, on the idea of a Vickery auction, I suggest that the use competitive value of the effective liberty to use a common resource X is determined by the second highest bid on the effective liberty to use X. The competitive value of the effective liberty to use a common resource is determined in the same auction format as is the competitive value of ownership rights over common resources, but *what is being bid on* is quite different. As opposed to bidding on rights of ownership over common resources, bidders in a use auction bid on the effective liberty to use a common resource.

One problematic aspect of a use auction is clearly specifying *what is being bid on* in such a way that all bidders are bidding on the same effective liberty to use the common resource up for bid. We can set the common resource X and time T across bidders fairly easily. For example, all bidders could be bidding on the effective liberty to use a shaded

spot of land between noon and one on a specified day. Setting the X and the T in such a way that all bidders are bidding on the same thing is not overly problematic.

Problems arise, however, when we consider that bidders will, often, be bidding on different effective liberties the common resource up for bid. Consider, for instance, the differing effective liberty that two agents might wish to have over a spot of shaded land. One agent, for instance, might wish to have the effective liberty to *sit in the shaded spot and read a book*, while another might desire to have the effective liberty to *jog in place in the shaded spot*. Agents will, in many cases, want to use common resources in different ways. Given the likely divergence of desired effective liberties to use the shaded spot of land between noon and one how should the effective liberty to use the common resource be specified so as to ensure that all bidders in the auction are bidding on the same thing?

The best answer to this question is to maintain that bidders in a use auction are bidding on the *effective liberty as such* to use a common resource. Bidding on the effective liberty as such to use a common resource allows all the particular liberties to use that bidders might have in mind to count under the same description. For instance, both the bidder who desires the effective liberty to use the shaded spot of land for jogging and the bidder who desires the effective liberty to use the shaded spot of land for sitting and reading are bidding for the same thing if they both are bidding for the effective liberty *as such* to use the spot of land.

In many instances it could be the case that effective liberty to use a common resource may have no competitive value at all. For example, imagine a two agent world with two normal agents. When bidding on what they would pay for the effective liberty to use as such a walking trail from noon until two during a specified day, one agent bids

one unit and the other agent bids nothing. Thus, the competitive value of the effective liberty to use the walking trail from noon until two, assuming a Vickery auction scheme, is 0. Neither need pay any competitive value for using the path from noon until two since *a fortiori* the liberty to use the path has no competitive value. It could well turn out as a matter of contingent fact that many cases of the effective liberty to use a common resource has little or no competitive value.

In the previous chapter I argued that appropriators of common resources have a duty to pay the competitive value of the ownership rights they claimed *in a fashion which best promotes equal initial opportunity for welfare*. In like fashion, users of common resources must pay the competitive value of the effective liberty rights they remove in a fashion which best promotes equal initial opportunity for welfare. It is worth noting that it could turn out (as we saw that it could turn out in the appropriation case concerning control-ownership competitive value) that the full payment of competitive value is owed to one individual. Such a situation can occur, for instance, in a two agent world where one agent is normal and the other badly disabled. I mention this case to highlight the tight parallel between the duty of both appropriators and users of common resources to leave the competitive value of what they remove in a fashion which best promotes equal initial opportunity for welfare.

My discussion of how to best determine use competitive value and other related issues is now complete, I shall now continue by discussing the role of the minimum use payment in the proposed proviso governing the just use of common resources.

Recall that the proposed proviso governing just use maintains that a user of a common resource X at time T, assuming this use leaves the user's life worth living, must:

leave others their equal initial opportunity for welfare share of the greater of (a) the use competitive value of the maximal liberty right to use X at time T or (b) the minimum use payment of X at time T.

But what is the minimum use payment? The minimum use payment, taking a lead from the minimum appropriation payment, for using a common resource X is the amount which leaves equal initial opportunity for welfare no worse than compared with a baseline of *universal non-use* of X. A user of a common resource X must pay for any reduction in equal initial opportunity for welfare that her use brings about as compared with the universal non-use of X. Of course, the payment to use a common resource could be greater (and as an empirical matter often will be greater) than the minimum use payment if the competitive value of the liberty right to use the common resource exceeds the minimum use payment.

Here it is worth pointing out that in all the morally problematic cases of using common resources discussed earlier, destructive use, degrading use, overuse, and restrictive use, an agent used a common resource in such a way as to make initial equal opportunity of welfare worse than a baseline of universal non-use of X. Thus, irrespective of the competitive value of the effective liberty to use a common resource, the minimum use payment would be applied to destructive or monopolistic users of common resource X where the use in question reduced initial equal opportunity of welfare below of baseline of the universal non-use of X.

It is worth stressing that the minimum use payment is based on the effect that the *actual use* of a common resource X has toward initial equal opportunity for welfare as compared with the baseline of the universal non-use of X. The minimum use payment cannot be ascertained without assessing the actual use of the common resource in

question. For instance, the minimum use payment of Toxic Jack's destructive use of the spring will be much greater than that of Sally Swimmer who uses the spring merely for a swim. This is because Toxic Jack's destructive use of the spring has a much greater potential to reduce equal initial opportunity for welfare, as measured against a baseline of universal non-use, than does Sally Swimmer's use of the spring. Here we see that just as the competitive value of the effective liberty to use the spring might have no competitive value, the actual use of the spring at time T might also incur no minimum use payment (or in the case of Toxic Jack a very high minimum use payment).

The minimum use payment provides users of common resources with an incentive to use common resources in a non-destructive or non-monopolistic fashion. For example, consider that the competitive value of a liberty right to use a spring is very low. Sally Swimmer, assuming that here actual use of the spring does not reduce equal initial welfare below of baseline of universal non-use of the spring, has the duty to pay only the very low competitive value of the effective liberty to use the spring in the fashion which best promotes equal initial opportunity for welfare. Toxic Jack, on the other hand, would have to pay *much more* than the very low competitive value for the effective liberty to use the spring because his actual use of the spring significantly reduced equal initial opportunity for welfare as compared with a universal baseline of the non-use of the spring.

Here it is worth asking, why would the universal non-use of a common resource X be of any value at all to an agent's welfare? After all, universal non-use means that *no one* is using X (at the time T of use). The universal non-use of X might contribute to the welfare of an agent for, at least, two reasons. The first reason is because a common

resource can benefit an agent even when he doesn't, nor does anyone else, use the resource in question.

Consider a case involving a two agent world housing James and Eric which utilizes the physical impingement account of use. James lives below a high canopy of tress (the canopy is one hundred feet from the ground). James receives a benefit of shade from the canopy even though he is not using (physically impeding on) the canopy. Having no physical access to the canopy and hence no access to use the canopy James would not pay anything, say within the confines of a Vickery use auction, for the effective liberty to use the canopy. Eric, however, lives on a ledge overlooking the canopy. Eric is tiered of looking down at the canopy everyday and would like to destroy it (by say burning the canopy). In such a case the competitive value of the maximal effective liberty to use the canopy at time T would be nothing (since the second highest bid is 0). Nonetheless, if Eric uses the canopy in a destructive fashion his minimum use payment could be very high consistent with how his "burning use" reduced James's opportunities for welfare as compared with the universal non-use of the canopy of trees.

Second, the particular way in which a common resource is used might be in conflict with the future plans one might have to use the resource. For instance, Toxic Jack's destructive or degrading use of the fresh water spring would likely be inconsistent with the future uses which Sarah plans to pursue with respect to the spring. Thus, even though Sarah might not pay anything for the maximal effective liberty to use the spring from noon until one on a specified day, she would, however, pay a large sum for the spring to be in a condition of universal non-use rather than used in a destructive way by

Toxic Jack. Toxic Jack's use of the spring from noon until one makes thing much worse for equal initial opportunity for welfare than does the universal non-use of the spring.

Two final points of clarification are worth noting before concluding our discussion of just use. First, the duty of a user of a common resource X is to pay *the greater* of the competitive value of the effective liberty to use X *or* the minimum use payment of X. In some cases the competitive value might be greater than the minimum use payment and in other cases *vice versa*. Which is the greater of the two will simply be a question settled by the contingencies of the competitive demand to use X (in the case of assessing competitive value) and an assessment of how a particular use of X impacts initial equal opportunity for welfare as compared with a baseline of the universal non-use of X (in the case of assessing the minimum use payment). Second, irrespective of whether a user of a common resource X has a duty to pay competitive value or the minimum use payment of X she must make this payment in a fashion which best promotes equal initial opportunity for welfare.

In this chapter I argued that the Lockean proviso should be applied to the use of common resources within conditions of equal common use. I argued for this claim by maintaining that the same reasoning which led us to rightly apply the Lockean proviso to the appropriation of common resources works equally well for applying the proviso to the just use of common resources. I then offered an account of how the just use of common resources could be incorporated into a model of equal initial opportunity for welfare Georgism. The following proviso was offered to best account for the incorporation.

Equal Initial Opportunity For Welfare Georgism Use Proviso: You may *use* a common resource X if and only if you leave others their equal initial opportunity for welfare share of the greater of (a) the use competitive value of the liberty right to use X or (b) the minimum use payment of X.

CHAPTER SIX: CONCLUSION

This dissertation set out to accomplish two primary objectives. First, it strove, within the confines of a proprietary theory of justice, to give a better description and treatment of the Lockean proviso concerning the unilateral appropriation of common resources than can be found in the extant literature. My left-proprietary treatment of the Lockean proviso rendered the result that you may appropriate a common resource X if and only if:

you leave others their equal initial opportunity for welfare share of the greater of (a) the competitive value of the rights claimed over X or (b) the minimum appropriation payment of X.

I defended the plausibility of this left-proprietary Georgist account of appropriation against right proprietary accounts, e.g., radical-right proprietorism and Nozickian proprietorism, competing Georgist accounts, equal share Georgism, and other left-proprietary accounts, e.g., pure equal initial equal opportunity appropriation.

The second primary objective I sought to accomplish in this project was to impress and develop the curiously overlooked point that the Lockean proviso, also applies, in some fashion, to the *use* of common resources. I argued that any plausible Lockean left-proprietary account must find a way to incorporate considerations of justly using common resources into its theory of justice. The specific account of just use which I offered built upon my treatment of appropriation and maintained that you may use a common resource X if and only if:

you leave others their equal initial opportunity for welfare share of the greater of (a) the competitive value of the liberty right to use X (b) the minimum use payment of X.

It is no longer enough for *any* Lockean based theory of justice to merely discuss appropriation and neglect issues of use. The just use of common resources should no longer remain the neglected red-headed step child of a Lockean left-propietary treatment of just property acquisition.

Where do we go from here, both theoretically and applied? First, I shall address some of the more important applied ramifications involving time and space that are directly related with the conclusions I have drawn and then I will continue by discussing some theoretical issues surrounding the development of a full left-propietaryism.

Concerning the issue of time, this project has implications concerning the duty to leave enough and as good that is plausibly owed to *future generations* of agents. For instance, we can ask: would it be just for a presently existing generation of agents to fully consume (in a fashion which left all presently existing agents enough and as good) nearly all the common resources the world has to offer and leave future generations of agents no such resources and hence miserable life prospects?¹¹³ The issue of duties to future generations is very complex (how can, for example, a duty be owed to an *agent* who doesn't exist), but I maintain that such a consumption of common resources would plausibly violate a duty owed to leave future generations of agents enough and as good.

One rough gesture toward an answer of what the duty to leave future generations enough and as good might amount to would be to maintain that future generations have a right to be left a world with the same prospects for well-being (equivalent value) as were

¹¹³ For a recent contribution considering the relation between the Lockean proviso and duties owed to future generations see Clark Wolf's, "Contemporary Property Rights, Lockean Provisos, and the Interests of Future Generations," *Ethics*, 105:4 (1995), pp. 791-818.

had by the previously existing generation.¹¹⁴ The rough idea is that presently existing generations of agents have an obligation to leave the future generation a world of “equivalent value”. This approach would allow an existing generation to use non-renewable common resources so long as they left the next future generation, perhaps through technological development, a world with equivalent value. For example, a presently existing generation could use petroleum if they left the next future generations a technology, perhaps advanced hydrogen fuel cells, which leaves the world that the future generation inherits no worse than the one had by the presently existing generation. As I note this is a rough gesture toward a solution to a very difficult and complex problem. Nonetheless, something roughly like the above solution of “leaving equivalent value” is probably on the right track.

The duties owed to future generations of agents is an issue which has found its way into the applied political arena. Norway, an oil rich country, has decided to take the duty owed to leave future generations enough and as good very seriously. The Norwegian government has placed over 300 billion dollars gained by the sale of petroleum (a non-renewable common resource) in an investment account earmarked for future generations of Norwegians (even the interest and capital gains from the oil-fund is earmarked for future generations of Norwegians). A minority in Norway have taken issue with this plan and asked that the government spend more oil-revenues on presently existing Norwegians. The strong, and I suspect correct, response from the Norwegian

¹¹⁴ Here there is a tough question concerning whether the leaving owed to future generations is a *per capita* leaving or an *absolute* leaving of the value of common resources. Both views have problems and I merely wish to point out the difficulties of each in this footnote. If the leaving is a per capita leaving then existent generations would suffer a tremendous burden if the future generations of agents were to increase by a great number. However, if the leaving is an absolute leaving then if future generations of agents increase by a great number agents born to these later generations might suffer from a very small leaving. My inclination is to side with the per capita approach and simply note that the burden to future generations might well be very demanding, but the issue is very complicated.

government has been to dismiss such appeals citing Norway's already exceptional standard of living and responsibility to future Norwegians.

In addition to leaving future generations enough and as good this project also has ramifications for issues of space, and in particular global poverty. I assume that an agent's country of origin does not affect the right that she has to be left enough and as good. This is important because presently 800 million agents live in conditions of desperate poverty where battling starvation is of constant concern and often this poverty is most prevalent in the world's developing countries. The situation is dire for many. In India, to offer just one country for example, conditions of poverty are so horrendous that some have opted to cut off their arms or legs so that they appear more pitiful and are able to beg for a few extra coins. Examples such as this demonstrate the desperate situation confronting many of the world's poorest agents.

If my arguments have been successful agents, including the desperate poor, are owed a payment by those who appropriate and use common resources such as petroleum. In this spirit, Thomas Pogge, suggests a Global Resources Dividend tax that would be applied to sale of common resources (such as petroleum) and the revenue from such taxes could be used to alleviate global poverty. According to this suggestion:

States, while retaining full control over the natural resources in their territory, would be required to pay a dividend proportional to the value of any of these resources they decide to use or sell. The word 'dividend' is meant to suggest that all human beings, including those now excluded, are viewed as owning an inalienable stake in all limited resources.¹¹⁵

The core idea motivating the GRD is that all agents have some type of claim in natural (common) resources (or the value derived thereof), an idea that is very friendly to this

¹¹⁵ Thomas Pogge "Migration and Poverty," In *Contemporary Political Philosophy: An Anthology*, eds. Robert Goodin and Philip Pettit (Blackwell, 2006), p. 715.

project. How much would such a tax or payment on common resources yield to help alleviate global poverty? Pogge estimates that the money provided to the poor from oil revenues alone (in 1997, sure to be substantially more today) would be fifty billion (U.S.) dollars annually.¹¹⁶ And of course this amount would be much higher if we incorporated payments on the appropriation and use of all common resources. That the world has common resources of so much value, while hundreds of millions of agents (who have some stake in these resources) die of starvation is, if my left-propiertarianism account is roughly correct, a horrific yet curable gross violation of rights on a mass scale.

Moving along to some final theoretical considerations, I shall now briefly address how this project fits into the development of a full left-propiertarian account. Even granting that this project has offered the most plausible propriertarian account of the appropriation and just use of common resources, much more would need to be said to develop a full propriertarian theory of justice. One issue which I left unresolved is the status of self-ownership. A full propriertarian theory of justice would have to invest substantial time sorting out the most plausible treatment of self-ownership. If this most plausible treatment of self-ownership turns out to be full, or near full, then libertarianism would emerge as the most plausible form of propriertarianism. If some lesser robust notion of self-ownership turns out to be more plausible than full self-ownership, then some variant of propriertarianism other than libertarianism would prove to be the best propriertarian account. The propriertarian account of appropriation and just use of common resources I defended is consistent with a wide variety of treatment of self-ownership.

¹¹⁶ Pogge calculates this number assuming a 2\$ per barrel GRD (and this was when 1993 oil was roughly 18\$ a barrel). Presently oil is valued at roughly 100\$ per barrel.

Further areas of future research in developing a full proprietary account of justice would also involve saying much more about rights to transfer property and rights to compensation if one's property rights are, in some fashion, infringed. For example, what should be said about rights to transfer property from dead agents, bequest? This issue was not addressed in this project, but it would have to be in a full defense of proprietary theory of justice. Circling back to a point astutely made by Robert Nozick at the start of this project, that being: a full proprietary account of justice would have to speak to the *appropriation, transfer, and rectification* of private property. I have written directly to only the first of these essential elements of a full proprietary theory justice in this project but have, upon the way, added and addressed a new issue that a full proprietary account must address, the just *use* of common resources. There is much more to be done to develop the theoretical underpinnings of a full proprietary theory of justice. I leave it for a future time to do this additional and important work.

APPENDIX ONE: ROBUST SELF-OWNERSHIP

Now I shall continue by considering a further condition on appropriation which Otsuka invokes in his treatment of appropriation. Even though I have adjudicated the conflict between pure equal initial opportunity appropriation and equal initial opportunity for welfare Georgism in favor of the Georgist position this further condition on appropriation is both interesting and, as we will see, plausible leads to a result that is generally applicable to any plausible treatment of appropriation.

Otsuka (by relying on a notion of self-ownership we won't specifically consider here) proposes a *robustness condition* in which an appropriator should be morally permitted to appropriate a *substance-share* of common resources without having to leave enough and as good for others, where this leaving would require the appropriator to labor or transfer bodily resources. An appropriator should *never*, according to Otsuka, be forced to sacrifice life, limb or labor in order to appropriate a subsistence-share of common resources.¹¹⁷ The robustness condition cancels out or overrides any duties which an appropriator might have to labor for, or leave bodily resources to, others. We can specify the robustness condition as follows:

¹¹⁷ Otsuka never clearly commits himself to idea that the robustness condition is to take priority over (or override) his egalitarian proviso, i.e., the right of agents to be left an equally advantageous share. But such an overriding of his egalitarian proviso is the only way in which the robustness condition is more than merely trivial. Either Otsuka's robustness condition is trivial or it does the work of rendering the right of robust self-ownership to take moral priority over the rights of agents to be left an equally advantageous share. This dilemma results because if the world has enough common resources for everyone to subsist and everyone is able to unilaterally convert common resources into subsistence, i.e., are able-bodied, then everyone will *trivially* leave others enough and as good (a subsistence share) when they appropriate only a subsistence share for themselves. There is simply no need for Otsuka to add a robustness condition to self-ownership if everyone is able-bodied and the world confers a subsistence-share of common resources for everyone. The robustness condition only does, non-trivial, work to protect self-owners if it protects subsistence-share-appropriators from having to labor to satisfy the demands of pure equal initial opportunity for welfare appropriation.

Robustness Condition: You can appropriate a subsistence-share of common resources in a fashion which does not demand you to labor for, or transfer bodily resources to, others.

Considering Otsuka's proposed robustness condition is important because neither equal initial opportunity for welfare Georgism or, for that matter, pure equal initial opportunity for welfare appropriation rules out the possibility than an appropriator might have to labor for, or transfer bodily resources, e.g., fingers and toes, to others in order to appropriate even a *subsistence-share* of common resources. In all the cases we have considered thus far an appropriator could fulfill her duty toward others in a manner which required leaving other a certain amount of resources or competitive value in a fashion which did not necessitate her to labor for, or transfer bodily resources to, others. As I shall now illustrate, however, equal initial opportunity for welfare Georgism can, in certain cases, place demands on appropriators that they labor for or transfer bodily resources to others.

Imagine that Unable and Able simultaneously pop into existence in a world containing common resources that have a full competitive value of 1000 units. Unable's disability is so severe that, consistent with equal initial opportunity for welfare Georgism, Unable has the right to be left to the *entire* competitive value of common resources. The world, having never been previously occupied by agents, contains no artifacts and *a fortiori* has no artifactual value.

Able opts to appropriate common resources worth 100 units of competitive value, his subsistence-share. Able, according to equal initial opportunity for welfare Georgism, must leave Unable the entire competitive value of common resources which will include the competitive value of the common resources he appropriated. How can Able fulfill his

duty to Unable? Able can, of course, leave Unable the remaining 900 units of competitive value to be found in common resources that he has not appropriated, but this leaving puts Able 100 units of competitive value shy of fulfilling his duty owed to Unable. Able cannot leave Unable artifacts he has produced as a way to fulfill her duty because there are no artifacts yet. It seems as if the only way in which Able can leave Unable the entire competitive value of common resources that she has a right to be left is if he provides labor or bodily resources to Unable. Able has no other way of promptly satisfying the duty he owes Unable.¹¹⁸ Equal initial opportunity for welfare Georgism renders the implication that in order for Able to leave enough and as good for others (Unable), consistent with the subsistence-share appropriation he has chosen to make, will demand that he labor for or transfer bodily resources to Unable.¹¹⁹

The robustness condition would allow Able, to appropriate a subsistence-share of common resources without being bound by the duty to leave enough and as good, where such leaving would require labor or the transfer of bodily resources. If a robustness condition is plausible then we should amend our previous specification of equal initial opportunity for welfare Georgism to allow agents (such as Able) to appropriate a

¹¹⁸ The mentioning of Able's *promptly* satisfying his duty to Unable is important. If Able could simply write Unable an "I owe You" and leave Unable the 1000 units of competitive value that Unable has a right to be left, then Able could avoid laboring or transferring bodily resources to Unable at the time he appropriates because he could simply wait until that time which he could leave artifactual value that he could create from the common resources which he appropriated. I think the most promising way to treat this suggestion is to maintain that Able must immediately, or in an extremely quick fashion, leave Unable the 1000 units of competitive value which she has a right to be left. Thus, I am skeptical that Able can simply write Unable an "I owe you" and satisfy his duty in a non-prompt fashion.

¹¹⁹ Here, it worth distinguishing between a duty to leave others a certain amount of the competitive value of common resources where this necessitates laboring or transferring bodily resources to others, and having a duty to labor or transfer bodily resources to others *per se*. Equal initial opportunity for welfare Georgism can demand, in certain cases, the first of appropriators, but it does not demand the later. The Georgist holds, as was noted earlier, that an agent need only pay the competitive value of the common resources that she chooses to appropriate, no payment (no duty owed to others) is required on the competitive value of one's body or the competitive value of what one adds to the world, e.g., labor. Equal initial opportunity for welfare Georgism does not stray from this important Georgist tenement.

subsistence-share without being bound by justice to labor for or transfer bodily resources to others.

I shall now proceed to examine the plausibility of the robustness condition and in turn discuss what if any alterations should be made to the version of equal initial opportunity for welfare Georgism currently under consideration.

One could try to defend the plausibility of the robustness condition on the grounds that demanding that Able labor for, or transfer bodily resources to, others, to *any degree*, in order to appropriate a mere subsistence-share of common resources is to grave a cost to Able's. Such a demand, one could argue, is too great a restriction of Able's autonomy. He shouldn't have to labor for another just so she can appropriate a subsistence-share of common resources. Able's just options have been restricted to either labor or death. Thus, equal initial opportunity for welfare Georgism should be augmented with a robustness condition.

This defense of the robustness condition is weak because certain types of labor or transfer of bodily resources from Able as a means to satisfy his duty toward Unable are simply not an unacceptable or unreasonable restriction of his autonomy. Imagine, for instance, that in order for Able to satisfy his duty to Unable he must labor, on one occasion, for ten non-strenuous minutes. We could also imagine instances of bodily transfers that also do not seem to represent an unacceptable restriction to Able's autonomy, e.g., Able's having to part with his toe-nail clippings in order to promptly satisfy his duty to leave Unable the full competitive value of common resources. Requiring such laboring by Able to satisfy a duty he owes Unable doesn't seem as if it is an unreasonable restriction of his autonomy. Able's ten minutes of labor does not present

any serious threat to the plans and projects that he might have, nor does it seem to be an unacceptable interference to her life or body, it is simply a short and fairly trivial annoyance that is, plausible, necessary for him to fulfill a duty owed to another.¹²⁰ Not all instances of requiring subsistence-share appropriators to labor for, or transferring bodily resources to, others in order to satisfy their duty to leave others enough and as good are morally objectionable.

I should stress that autonomy or self-determination is, as is equality of initial opportunity for welfare, a moral consideration worth caring about. In fact, recall that considerations of autonomy were invoked, earlier, as very strong reasons to allow the unilateral appropriation of common resources. I would be remiss to discount the importance of autonomy at this juncture. The point I wish to demonstrate in the above discussion is not that considerations of autonomy are unimportant but instead that not all instances of having to labor for another or parting with bodily resources for others will be unacceptable hindrances of an agent's autonomy. Put another way, it will not always be the case, *contra* the robustness condition, that an appropriator's duty to leave others enough and as good will fail to hold if such a leaving demands that an appropriator labor for, or transfer bodily resources, to others.

Further, the robustness condition has the troublesome implication that, when others are not concerned with appropriating more than a subsistence-share, it renders

¹²⁰ One could argue, Otsuka seems sympathetic to this view, that requiring Able to labor in this situation, even for ten minutes, is a violation of the Kantian prohibition against using another solely as a means. Without entrenching myself deep in Kantian interpretation, I suspect such an argument would fail. This is because if equal initial opportunity for welfare Georgism is accurate and as such Able has a duty owed to Unable which requires him to labor for *only* ten minutes then it seems that far from Able being used solely as a means that he, if she failed to fulfill the duty where the fulfillment is of trivial cost to her, is using another solely as a means. Thus, it is plausible that instead of Able being on the receiving end of the Kantian prohibition he could well be dishing out such prohibited treatment to others by failing to fulfill a duty he has (especially when the fulfillment of the duty is of little cost to her).

Unable's survivability too dependent, nearly contingent, upon her temporal proximity to claiming common resources. Unable could, according to equal opportunity for initial welfare Georgism (and pure equal initial opportunity for welfare appropriation for that matter), appropriate *all* the common resources in the world, e.g., all the breathable air and water in the world, and leave Able nothing at all. Unable's appropriation of *all* common resources would pass the test of leaving others (Able), consistent with either equal initial opportunity of welfare Georgism or pure equal initial opportunity for welfare appropriation, enough and as good. In this case, where Unable is the first-claimer, Able would have to bargain (presumably by providing labor) in order to trade with Unable for a subsistence-share of *her* common resources.

But now consider the scenario where Able is the first-claimer. If we grant the robustness condition, he may appropriate a subsistence-share of common resources without contributing the labor which is necessary to leave enough and as good for Unable. Here, if Able doesn't want to bargain for common resources beyond subsistence-sustaining resources (and doesn't assist Unable for other reasons), then Unable dies. Unable lives if she appropriates first (and Able is interested in bargaining so that he may subsist) and perishes if Able appropriates first (and is not interested in appropriating more than a subsistence-share and is not interested in assisting Unable for other reasons). Rendering the very survival of Unable dependent upon her temporal order of appropriation is morally unacceptable. Unable's survival shouldn't depend on whether he is first to appropriate. But this morally unacceptable implication, given certain empirical assumptions, is implied by the robustness condition. Thus we have reason to reject the robustness condition.

Yet another criticism of the robustness condition involves a concern about the unfairness of the bargaining positions of Able and Unable that is brought about by the condition. Here we can ask: why maintain that an appropriator need not strictly fulfill her duty to others when she appropriates *subsistence-sustaining* common resources? Why not, alternatively suggest, that agents be allowed to appropriate the common resources necessary for a *minimally decent life* (assumed to be above subsistence) before they must leave enough and as good for others? The answer, motivated by Unable's right against others from appropriating in a fashion that fails to leave him enough and as good, seems to be that such an *ultra-robustness-condition* would be unjust as it places agents like Unable (those who through no fault of their own cannot unilaterally subsist) in unfair and unequal bargaining position. An ultra-robustness-condition is objectionable because it allows Able to far too easily escape her duty to leave enough and as good for Unable.

But the same objection can be, aptly, applied to the chosen point that the robustness condition utilizes of subsistence-sustaining resources. So long as Able is satisfied with appropriating *only* subsistence-sustaining resources, then Unable is at a severe and unfair disadvantage brought about by the infringement of her right to be left enough and as good. If an ultra-robustness-condition concerns us because it affords Able *too much* moral power to appropriate common resources immune from having to leave enough and as good, then the robustness condition should worry us for exactly the same reason. The difference between the robustness condition and an ultra-robustness-condition is one of *degree not of kind*. The robustness condition is problematic in *fewer cases* than is an ultra-robustness-condition, but the theoretically motivated core worry is

just as damning. We have good reason to reject augmenting our most plausible version of the duty owed to others by appropriators with the robustness condition.

Despite having good reasons to be skeptical of the robustness condition, Otsuka's notion of offering appropriators *some protection* against having to strictly fulfill their duty to others is plausible. Again, autonomy is an important moral consideration and, quite admittedly, there will be some conditions under which, because of an affront to her autonomy, an appropriator should not be duty bound to leave enough and as good. For reasons already discussed it is too broad to cast this net to include any conditions under which an appropriator must, for the sake of appropriating a subsistence-share, labor for or transfer bodily resources to others in order to satisfy her duty to leave others enough and as good. How then, if at all, should we construct a robustness condition that would allow one to appropriate without being duty bound to leave others enough and as good?

To address this question it is first worth pointing out that a mere subsistence living to be the worst life possible. We might take a base subsistence living to represent zero welfare for an agent. But an agent can live a *life not worth living* and have a level of welfare (or prospects of welfare) below this zero point of base subsistence. For example an agent who lives at base subsistence has a better life than an agent who is horribly tortured for her entire existence. There are worse fates than subsistence-living.

On this score, I propose a *revised robustness condition* that allows an appropriator a *life worth living* before she is bound by the duty to leave enough and as good for others.

Revised Robustness Condition: An appropriator need not leave enough and as good for others if doing so renders his life not worth living.

Consistent with the proposed robustness condition an appropriator could be duty bound to leave enough and as good for others in a fashion that necessitated her labor or transfer of

bodily resources and this would be allowable so long as this leaving did not render the appropriator's life not worth living. The newly proposed robustness condition does not, as the previous condition did, allow an appropriator to appropriate a subsistence-share and never have to labor for or transfer bodily resources to others if doing so is necessary to leave enough and as good for others. Here, an incorporation of a *life worth living* condition with equal initial opportunity for welfare Georgism can be specified as follows:

Equal initial opportunity of welfare Georgism (with life worth living condition): You can appropriate common resources if only if (i) such resources are the minimum necessary to provide you with a life that is worth living, or (ii) you leave others their equal initial opportunity for welfare share of the greater of (a) the competitive value of rights claimed over X or (b) the minimum appropriation payment.

Why think that a revision to equal initial opportunity for welfare Georgism containing a life worth living clause is on any better footing than a revision incorporating the original robustness condition? One reason is that plausibly no agent, at least no innocent agent, should be burdened with having to live a life not worth living. Such a burden is too grave a restriction of autonomy. No innocent agent should have a duty that implies that its satisfaction would leave the innocent a life not worth living.

An appropriator of common resources should leave enough and as good for others, but when the fulfillment of this duty means that the appropriator must live a life not worth living it seems plausible that the duty, at least *here*, should be relaxed. Agents do have a strong property right against appropriators that they leave enough and as good, but this right is not absolute. And when this right against an appropriator would cause her to live a life not worth living then I suggest the right carries a moral force which fails to hold.

On a more pragmatic, but theoretically important, point, consider that if a rational agent has a life not worth living, then they will commit suicide. Rational agents kill themselves when their lives are no longer worth living. Notice how this observation affects Able and Unable. If Able is expected to abide by the demands of equal initial opportunity for welfare Georgism even when this renders his life not worth living then he will kill himself and Unable will die as there will be no one to assist her. Thus forcing Able to abide by the duties implied by equal initial opportunity for welfare Georgism when this renders his life not worth living is of no material help to Unable. All we achieve by forcing Able to strictly abide by the demands of equal initial opportunity for welfare Georgism when it renders his life not worth living is a world with two dead agents. To require Able to abide by such a demand, even when it renders her suicide rational, would constitute leveling-down in its most vicious and objectionable form.

APPENDIX TWO: FAIR BIDDING POWER

The defense of Georgism offered thus far maintains that the competitive value of rights in respect to a common resource is determined by the second highest bid in a hypothetical auction for a designated set of rights over a common resource. One pressing question that this Georgist model must address is: how are we to set the initial bidding power of agents within our hypothetical auction? Below I attempt to sketch out one way in which the Georgist can effectively address this pressing question.

There are clearly arbitrary and very poor ways of setting the initial bidding power of agents within a Georgist auction. For instance, people with blond hair could be given 100 units of bidding power which red heads are given 20 units of bidding power. But, of course, there is no good reason to suspect that color of hair should be the condition which sets an agent's bidding power. What we need is a non-arbitrary criterion by which to base an agent's initial bidding power.

Consider the suggestion that the initial bidding power of agents should be set at *what an agent is able to pay for the item up for bid* (again, in our case of interest, the item up for bid is a set of rights over a common resource). If we focus on sources of payment independent of the resource being auction an agent could pay for common resources by committing her labor or body parts. To see how such a suggestion would operate imagine a two person world with equally able agents, Rex and Mike. Rex and Mike are both bidding for a small strip of land. Rex is willing to bid a commitment of laboring to produce 30 bushels of apples. Mike is willing to bid a commitment of laboring to produce 25 bushels of apples. In such a case the initial bidding power is set by what each agent is

willing and able to produce and pay for the land. Further, if we invoke the idea of a second highest bid auction the competitive value of the land is set at the equivalent of a commitment to produce, through labor, 25 bushels of apples. An agent may appropriate the land only if they pay (leave) in a fashion which best promotes equal initial opportunity for welfare the equivalent of 25 bushels of apples.

I reject the above account of bidding power because it relies upon an “ability to pay” that fails to take into the transferability of rights over common resources. Consider a scenario in which the agents involved are not equally able. Imagine that Rex is a normal agent, but Mike is very severely disabled and cannot feasibly make a commitment to pay for common resources based upon a contribution of his labor. Does this mean that Mike has no bidding power since he cannot make a feasible commitment of his labor? Notice if Mike has no bidding power, then given a second bid auction the competitive value of common resources will always, in this two person world, be 0. The troubling implication from this would be that competitive value payments owed by appropriators which are to be used to promote equal initial opportunity for welfare would be 0 and hence equal initial opportunity for welfare would be promoted by competitive value payments since common resources would have a competitive value of 0.

Luckily, the amount that an agent is willing *and able to pay for an item up for bid* in our Georgist auction is not exhausted by her feasible commitment of labor. This is because it is plausible that the rights over a common resource which an agent gains via her appropriation are *transferable*.¹²¹ If an agent may transfer her rights over common resources, then she can generate income from such a transfer and hence due to this income generation has a means to *pay* for the resource in question. To illustrate the

¹²¹ I thank Peter Vallentyne for bringing the importance of transferability squarely to my attention.

importance of granting transferability, consider again that Mike and Rex are bidding for a strip of land. Each of them makes a bid for the land consistent with an initial bidding power that is equivalent to their respective willingness and ability to pay for the land. Mike bids 100 units for land (say this is a representation of his willingness and ability to produce 50 bushels of apples). Rex bids 99 units for the land. Here, Mike might protest saying, "Wait Rex, that is an illegitimate bid, given your disability how are you feasibility going to pay those 99 units?" If we assume transferability of rights Rex has the following reply ready in hand, "Well Mike, I could pay the 99 units for the land by transferring the rights to you for a price of 99 units. After all, Mike you were just willing to bid 100 units for the land surely you would buy the land from me for 99 units." Rex then has a bidding power just marginally less than 100 units because this is the amount (assuming transferability) that he is willing and able to pay for the land under auction. Initial bidding power need not be "payment in hand." After all, initially no one has any payments in hand to make. Instead, bids can represent leans on commitments of labor or loans on the transfer value of rights. Notice, that when we grant transferability of rights the second highest bid (Rex's bid) in our auction is 99 units and this (the competitive value of the land) becomes the amount that an appropriator must pay in the fashion that best promotes equality of initial opportunity for welfare.

The above picture of initial bidding power maintains that agents may make bids for rights over common resources on the condition that they can pay back the amount they bid. If rights are not transferable such bids would be limited to an agent's commitment of labor or body parts (after all she would have nothing else by which to pay the bid). But if rights are transferable, as I maintain is plausible, then a person's ability to

bid (based on an ability to pay) includes her ability to generate income from the transfer of rights over common resources which she appropriates.

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