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Libertarianism and Original Appropriation

Libertarianizm i pierwotne zawłaszczenie

• Abstrakt •

Artykuł poświęcony jest problemowi struktury libertariańskiej teorii sprawiedliwości. Prezentuje on mapę głównych pojęć i zasad tej teorii oraz bada jej możliwe uzasadnienia. Artykuł wyjaśnia takie fundamentalne pojęcia jak posiadanie, własność, pierwotne zawłaszczenie, laborystyczna czy posesoryjna teoria własności. Artykuł analizuje mocne i słabe strony alternatywnych zasad libertariańskiej teorii sprawiedliwości rządzących pierwotnym nabyciem oraz kreśli szkic oryginalnego uzasadnienia posesoryjnej teorii własności.

Słowa kluczowe: libertarianizm, pierwotne zawłaszczenie, laborystyczna teoria własności, zmieszanie pracy, posesoryjna teoria własności, pierwsze posiadanie, prawo niesprzeczności, kompozybilność uprawnień, teoria sprawiedliwości

• Abstract •

The article is devoted to the problem of the structure of libertarian theory of justice. It tries to present a map of the main concepts and principles of this theory and to investigate its possible justifications. It explains such fundamental concepts as original appropriation, homesteading, labour theory of property or first possession theory of original appropriation. The article shows merits and drawbacks of alternative libertarian principles of justice in first acquisition and proposes a sketch of an original justification for the first possession theory of original appropriation.

Keywords: libertarianism, original appropriation, homesteading, mixing labour, first possession, occupancy, non-contradiction law, rights compossibility, theory of justice

Introduction

The present paper tries to provide a road map of main accounts of original appropriation within libertarian political philosophy. It explains what first appropriation is and what sorts of principles of justice are candidates for governing the processes of property titles distribution. The paper proceeds in accordance with the following order. In § 2 we distinguish between possession and ownership and explain what original appropriation is; in § 3 the idea of a principle of justice in original appropriation is introduced and main principles are presented and juxtaposed; in § 4 we analyse and criticise the labour principle of justice in original appropriation; in the last substantive section – § 5 – we investigate the first possession principle of justice in original appropriation and propose our justification thereof, trying at the same time to indicate its relative merits. The aim of this paper is to give a sketch of libertarian theory of justice, particularly its theory of justice in first acquisition.

Possession, Ownership and Original Appropriation

In order to explain what original appropriation is, we first have to draw a crucial distinction between possessing a thing and owning it. To possess a thing is to have a possibility to deal with it at will, to control it for oneself or as an owner and therefore to exclude others from dealing with it. As von Savigny points out, “by the possession of a thing, we always conceive the condition, in which not only one’s own dealing with the thing is physically possible, but every other person’s dealing with it is capable of being excluded” (1848). Although analytically differentiated by von Savigny, elements of one’s own dealing with a thing and of excluding others are indispensably interdependent since it is impossible to do the former without being able to do the latter. Hence, the concept of possession “refers to either or both «control» and «exclusion of others». But it is clear that, where the former is used, it is intended to be synonymous with the latter. That is to say, one *controls* (in the sense of *possesses*) a thing inasmuch as what happens to that thing – allowing for the operation of physical laws – is determined by no other person than oneself” (Steiner, 1994). Possession is thus a threefold, factual relation between the possessor, the thing possessed and the rest of mankind such as the possessor can control the thing to the exclusion of others. Possession is therefore a descriptive concept.

Ownership¹, or property, on the other hand is a normative concept. To own a thing is to have a right to possess it, i.e. to be in such a juridical position that one's claim to deal with the thing at will is a justified claim whereas claims of other persons are unjustified or less justified than the owner's. As Barnett puts it, "rights are those claims a person has to legal enforcement that are *justified*, on balance, by the full constellation of relevant reasons, whether or not they are actually recognized and enforced by a legal system" (2004). To recognise someone's ownership is therefore to assert that his possession of a thing is just, rightful, lawful, licit or reasonable etc., is to conclude that he ought to possess the thing if such is his will, even if he actually does not possess it. As Kinsella writes, "ownership is the *right* to control, use, or possess, while possession is *actual* control" (2009). Thus, ownership is a threefold normative or juridical relation between the owner, the thing owned and the rest of mankind such as the owner may control the thing to the exclusion of others because he has the best title to do it. Hence, the distinction between possession and ownership is a distinction between factual and normative relation.

Having drawn the above distinction between possession and ownership, we are ready to define original appropriation. Thus, original appropriation is acquiring ownership of unowned things. To originally appropriate is to establish property rights, i.e. justified claims to physical things that at the moment of acquisition are unowned. What is important to underline again, is that original appropriation is not about taking factual possession of things that are unpossessed or unowned – this process is called occupation and can be conceived as one of the possible investitive facts that can result in original appropriation but should not be confounded with the latter. Neither is it about acquiring ownership of things already owned. It is about instituting new property rights to unowned things. As Nozick puts it, the topic of "*original acquisition of holdings*, the appropriation of unheld things includes the issues of how unheld things may come to be held" (2014), i.e. come to be owned. Hence, original appropriation is about creating normative relations between persons and things.

Principles of Justice in Original Appropriation

When we already know what original appropriation is, we can ask a further question: How may original appropriation come about? What facts may invest

¹ On the exact and detailed account of ownership see Honore (1961).

us with property titles? What must happen and in what kind of situations we ought to find ourselves for original appropriation to take place? How to become an owner of an unowned resource? Answering all these and similar questions is a subject-matter of a theory of justice and principles that determine which facts are investitive facts or how to originally become an owner are principles of justice in original appropriation. In words of Nozick, “the process, or processes, by which unheld things may come to be held, the things that may come to be held by these processes, the extent of what comes to be held by a particular process, and so on” are governed by the “principle of justice in acquisition” (2014).

By the same token, a theory of justice preoccupies itself with identifying principles of justice in two other realms of human action. The second one is a sphere of transferring already existing property titles. Principles of justice in property transfers concern such issues as the ways in which an owner may transfer his property title to other persons, facts that may invest a new owner with the title, possible constraints on types of titles that may not be transferred etc. Again, the subject-matter of principles of justice in transfers is not a factual, physical act of transferring things between persons but identifying licit transfers of existing property titles to these things; a thing or possession thereof can be transferred without the title to it being transferred as e.g. in the case of theft when even though possession is transferred, the title is only violated and stays where it was. As Nozick puts it, “the second topic” within a theory of justice “concerns the *transfer of holdings* from one person to another. By what processes may a person transfer holdings to another? How may a person acquire a holding from another who holds it? Under this topic comes general descriptions of voluntary exchange, and gift and (on the other hand) fraud, as well as reference to particular conventional details fixed upon in a given society. The complicated truth about this subject we shall call the principle of justice in transfer” (2014). Libertarian theory of justice identifies consent and title transfer theory of contracts as principles of justice in transfers and argues against alternative theories such as the will theory or the promised expectations model of contracts.

These two subject-matters of a theory of justice (original appropriation and transfers) are fields of interest of distributive justice. The third sphere of a theory of justice lies beyond the scope of distributive concerns and pertains to the question of rectification of committed injustices. In this area relevant questions include issues connected with forfeiture of rights, kinds of liability, sorts of rectification, viz. retribution, restitution, compensation or deterrence, etc. “The existence of past injuries (previous violations of the first two principles of justice in holdings) raises the third major topic under justice in holdings: the rectification of injustice

in holdings... what, if anything, ought to be done to rectify these injustices? What obligations do the performers of injustice have toward those whose position is worse than it would have been had the injustice not been done? Or, than it would have been had compensation been paid promptly? How, if at all, do things change if the beneficiaries and those made worse off are not the direct parties in the act of injustice, but, for example, their descendants? Is an injustice done to someone whose holding was itself based upon unrectified injustice? How far back must one go in wiping clean the historical slate of injustices? What may victims of injustice permissibly do in order to rectify the injustices being done to them, including the many injustices done by persons acting through their government?" (Nozick, 2014). There are discussions going on within libertarian scholarship between proponents of retributivist and restitutive theories of rectification and between strict liability and negligence accounts of responsibility.

Also within the purview of our main topic, i.e. original appropriation, libertarianism identifies competing principles of justice in first acquisition. Three theories can be mentioned here. The first one is a conventional-contractarian theory of first appropriation. According to this approach, principles that decide when property rights are acquired by individuals are established conventionally or through social contract. Therefore, there must be some community acceptance for property rights to be instituted and this common or contractual recognition of property rights is their ultimate justification. Amongst libertarian scholars this conventional-contractarian theory of acquisition is represented by Jan Narveson (2001) for whom libertarian property rights are the implication of the social contract (Nowakowski, 2016). In the present paper we will not elaborate on the conventional-contractarian theory of original appropriation because of its so-far limited impact and atypicality within libertarianism. We will focus instead on two main libertarian theories: labour theory of original appropriation and first possession (or occupancy) theory of original appropriation.

According to the labour theory of original appropriation, the investitive fact consists in mixing one's labour with an unowned thing. This investitive process of mixing one's labour with a thing is also called homesteading (Block, 2008). Thus, the principle of justice in original appropriation is named the homestead principle. The idea that mixing one's labour constitutes investitive fact comes from John Locke and is espoused by such prominent libertarian scholars as inter alia Murray Rothbard (1998) or Walter Block (2008). In Locke's own original words the homestead principle is explained as follows: "every man has a property in his own person: this no body has any right to but himself. The labour of his body, and the work of his hands, we may say, are properly his. Whatsoever then he re-

moves out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property. It being by him removed from the common state nature hath placed it in, it hath by this labour something annexed to it, that excludes the common right of other men: for this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good, left in common for others. He that is nourished by the acorns he picked up under an oak, or the apples he gathered from the trees in the wood, has certainly appropriated them to himself. No body can deny but the nourishment is his. I ask then, when did they begin to be his? when he digested? or when he eat? or when he boiled? or when he brought them home? or when he picked them up? and it is plain, if the first gathering made them not his, nothing else could. That labour put a distinction between them and common: that added something to them more than nature, the common mother of all, had done; and so they became his private right” (1980).

The labour theory of original appropriation should not be confused with the first possession theory of original appropriation. As we said in the second paragraph, possession is a possibility to deal with a thing at will to the exclusion of others. What is important to notice about this definition is that to have such a possibility, it is not necessary to even touch the thing, let alone to expend or mix one’s labour with it. One can be in a position to deal with a thing at will when there is no physical obstacle (like crossing a river or climbing a mountain) to deal with it and when there is no other person in such a position. So, for instance, if one sees a gold bar before him and intends to deal with it for himself and there is no other person in a similar position, he has already taken possession of the gold bar without even touching it. Nor mixing one’s labour with a thing is sufficient for taking possession of it. As Epstein (1979) shows by quoting *Pierson vs. Post*, in the case of the hot pursuit of wild animal, mixing hunter’s labour with the game is something different than taking control of the wild creature and therefore it is not sufficient for acquiring property rights in that thing. Although the plaintiff, Post, expended labour in the pursuit of a fox and in this sense mixed this labour with the worn out animal, it was not enough to take a control over still running beast. The defendant, Pierson, came to the spot and caught the tired animal. The problem for the court was to confront with the assumption that “each person is entitled to ownership and control over his own labor. Where the pursuer by his efforts has worn down the fox, the late capture by the rival in effect amounts to an inadmissible appropriation of labor which the law should prevent. The justification for the hot pursuit rule does not, however, explain all the recurrent features

of the law. Some labor goes unrequited when two pursue and one loses. Again, if A has given up the chase when confronted with sudden perils, B may capture with impunity even though his task was made immeasurably easier by A's prior labors. Conversely, there are some things acquired not through labor but only by chance or good fortune and one who so acquires takes full and indefeasible title even though there was, except in a metaphorical sense, no expenditure of labor in either acquisition or cultivation" (Epstein, 1979). Thus, the court adjudicated that mixing labour with a thing in the case of the hot pursuit did not equal taking possession of the fox and that even "the wounding of the animal when in hot pursuit did not amount to possession because of the many events that could have occurred between the original wounding and the eventual capture. The court in deciding for the defendant Pierson took the middle position, holding that the mortal wounding of such beast, by one not abandoning his pursuit may, with the utmost propriety, be deemed possession of him" (Epstein, 1979). Therefore the property rights to the fox were acquired by the defendant who took first control over the fox, not by the plaintiff who mixed his labour with the animal.

Hence, according to the first possession theory of original appropriation the investitive fact consists in taking an unowned thing in first possession, i.e. in coming to the position in which it is possible to deal with the thing at will to the exclusion of others. Thus, the principle of justice in first acquisition is called occupancy principle or first possession principle. The idea that taking first possession constitutes investitive fact comes from Roman Law and is espoused by such prominent libertarian scholars as inter alia Hans-Hermann Hoppe (e.g. 2015), Richard Epstein (1979) or Stephan Kinsella (2008). As the latter says, "the focus on creation distracts from the crucial role of first occupation as a property rule for addressing the fundamental fact of scarcity. First occupation, not creation or labor, is both necessary and sufficient for the homesteading of unowned scarce resources. One reason for the undue stress placed on creation as the source of property rights may be the focus by some on labor as the means to homestead unowned resources. This is manifest in the argument that one homesteads unowned property with which one mixes one's labor because one «owns» one's labor. However, as Palmer correctly points out, «occupancy, not labor, is the act by which external things become property». By focusing on first occupancy, rather than on labor, as the key to homesteading, there is no need to place creation as the fount of property rights, as Objectivists and others do. Instead, property rights must be recognized in first-comers" (2008).

Ramifications of the Labour Theory of Original Appropriation

There are sundry ways of justifying labour theory of original appropriation. Each of these ways reveals moral or logical appeal of the labour theory. One of these justifications has just been mentioned in the above quotation. Labour as investitive fact refers to human creativity, ingenuity or rationality as values and virtues that are cherished in themselves. Then, because property rights are instituted by labour, they reflect these values and virtues; what is more, they promote them. Property rights viewed in this light can be construed as necessary conditions for reaching human fulfilment and happiness. In this manner for instance Randy Barnett can picture property rights as conducive to human flourishing and happiness: “*if* human beings are to survive and pursue happiness, peace and prosperity while living in society with others, *then* their laws must not violate certain background natural rights” (2004). Similarly, labour refers to the concept of desert and effort. It opens the possibility of justifying one’s claims to control particular resources as deserved claims, based on effort put into the discovery or production of these resources. If he who expended his labour, who devoted his resources, who created an economic good from useless and hostile environment, who transformed an unowned waste land into fertile fields before anyone else wanted to invest the time and energy to do so, does not deserve the fruit of his effort, who does?

But the most important justification for property claims provided by the labour theory consists in a logical chain of steps by which something that is already owned is annexed to something that belongs to no one, thereby rendering the latter also a part of one’s estate. The chain unfolds in the succeeding links: 1) A owns A’s body; 2) because A’s labour is just a specific purposeful movement of A’s body, then A must also own A’s labour; 3) A can transform an unowned resource only by his labour; A transforms it by attaching his labour to it; 4) now, when the transformed resource is mixed or permeated with A’s labour which was A’s property, it must also be A’s property.

An ample criticism has been issued against this line of argument. Actually, each of the consecutive steps in the above chain of reasons has been attacked as unjustified and untenable. According to Stephan Kinsella, it is the second link in the chain that is broken. For it is impossible to own one’s labour. Only tangible things can be owned because conflicts can arise only over tangible things and the function of property rights is to avoid conflicts. If intangible things were rendered ownable, then conflicts over them would become possible. Such alleged property rights to intangible things would then generate conflicts, what would effectively

make them anti-rights rather than rights: norms that “contradict the very purpose of norms” (Hoppe, 2012). Apparently, labour is not a tangible object; it is not an object at all but a type of human action. Actions in turn, as not tangible objects, cannot be owned. So, Kinsella writes: “there is no need to maintain the strange view that one «owns» one’s labor in order to own things one first occupies. Labor is a type of action, and action is not ownable; rather, it is the way that some tangible things (e.g., bodies) act in the world” (2008).

A problem involved in this criticism was pointed out by Hillel Steiner who noticed that labour as a kind of purposeful movement of a body is from the physical point of view nothing else than an energy expended by the body and attached to external objects. Because matter (tangible things) and energy are translatable into each other, there is no fundamental obstacle for adding and owning labour – labour is just a different state of matter. As Steiner puts it, “our bodies produce energy. They convert body tissue into energy, some of which gets expended in our acting. A good deal of this expended energy is simply abandoned by us in the course of this acting. It is absorbed into parts of the external environment that we make no consequent claim to. Other portions of our expended energy are infused into parts of the external environment, transforming their features in various ways. Sometimes we claim these things for ourselves as the fruits of our labour. And sometimes, where such transformation violates another’s rights, it forms the basis of a claim against us” (1994).

Steiner, on the other hand, criticises the third and fourth link in the above chain of reasons. He points out that if a thing which is undoubtedly owned by us, like our labour, is attached to an external object that is also undoubtedly owned by us, then the resultant object is perforce our property. If element A belongs to the set X and element B belongs to the set X, then A + B must also belong to the set X. The problem is, that if we attach a thing we own to the thing that we do not own, the conclusion that the latter thing becomes our property does not perforce follow. Quite to the contrary, if element A belongs to the set X and element B does not belong to the set X, then A + B cannot belong to the set X. Is there then any other reason for which one should conclude that it is B that became an element of X rather than A which ceased to be an element of X? “The answer, as we know only too well, is uncertain. For any claim, to the effect that its being infused with my labour makes this land mine, can be met with the counter-claim that, in so infusing the land, I was relinquishing my title to that labour” (1994). To the same result asks Nozick: “Why isn’t mixing what I own with what I don’t own a way of losing what I own rather than a way of gaining what I don’t? If I own a can of tomato juice and spill it in the sea so that its molecules mingle evenly throughout

the sea, do I thereby come to own the sea, or have I foolishly dissipated tomato juice?” (2014).

To this it is possible to answer two things. It is true that mixing one's labour with an unowned resource does not perforce render it owned as it is the case with mixing one's labour with already owned object. However, it does not have to do it to provide sufficient justification for the claim of the homesteader because when this allegedly unowned resource is infused with and contains homesteader's labour and is then taken by someone else, this labour is willy nilly taken with it and there is no doubt that this labour is a property of the homesteader. Hence, even though the resource might not be perforce owned, taking it from the homesteader without his consent is tantamount to involuntary taking of homesteader's labour which is his property, i.e. it is tantamount to theft. As Eric Mack points out, “If John has so mixed his labor with a bit of raw material – transforming, let us say, a branch into a nicely shaped and useful spear – the resulting spear embodies John's non-abandoned rightful held labor. Hence, if Tom comes along and makes off with that spear, Tom violates John's retained right over that invested labor. Since Tom cannot make off with that spear without making off with John's invested labor, we naturally say that John has a right to the spear vis-a-vis Tom” (2009). Second of all, it is always a problem to say when particular condition is fulfilled in a given case, regardless of the theory that is actually presupposed. Is mixing a can of juice enough? Certainly not. Ten cans, twenty, one hundred...? This is classical continuum problem and therefore it is up for the courts to decide and to establish some convention. The same problem emerges on the first possession theory. Is chasing a wild animal enough to possess it? Wounding it, mortally wounding it, killing it...? There is no principled way of solving such questions – regardless of the theory of justice in original appropriation. We always need conventions to seal up our theoretical system.

Finally, also the first step in the above chain of reasons has been contested. As Richard Epstein pointed out, obviously labour theory is not an independent theory of original appropriation because it presupposes that we own our bodies. However, it cannot be the case that we own our bodies because we mixed them with our labour – this reasoning would result in *regressus ad infinitum* since then we would have to explain “our labour” as produced by our bodies and so on, and so forth. Hence, the labour theory must presuppose some other, more fundamental theory of original appropriation of our bodies that justifies and constitutes *raison d'être* of the labour theory. If the labour theory is contingent upon this more fundamental theory, then the question arises whether the labour theory is not redundant. That should be sufficient to have only one, fundamental theory of original

appropriation that would explain both ownership of our bodies and ownership of external resources. According to Epstein, this theory is the first possession theory of original appropriation: “Why does labor itself create any rights in a thing? The labor theory rests at least upon the belief that each person owns himself. Yet that claim, unless it be accepted as bedrock and unquestioningly, must be justified in some way (leaving aside the question of to whom the justification must be made). The obvious line for justification is that each person is in possession of himself, if not by choice or conscious act, then by a kind of natural necessity. Yet if that possession is good enough to establish ownership of self, then why is not possession of external things, unclaimed by others, sufficient as well? The irony of the point should be manifest. The labor theory is called upon to aid the theory that possession is the root of title; yet it depends for its own success upon the proposition that the possession of self is the root of title to self” (Epstein, 1979).

Ramifications of the First Possession Theory of Original Appropriation

In this last paragraph we would like to focus on what we claim is the best justification for the first possession theory of original appropriation and what are the ramifications of both this theory and its justification. We suggest that the ultimate justification of this theory is not usually evoked avoidance of conflicts – although it is a necessary consequence of the justification we are going to present here – but a necessary condition of rationality of a conceptual system (it is good to remember that rights have form of deontic propositions and therefore they also form a conceptual or theoretical system). Let us present a sketch of our argument.

For a conceptual system to be rational it is necessary to be non-contradictory (Popper, 2002). Nothing that violates the law of non-contradiction can be true, justified or for that matter rational (Łukasiewicz, 1987, 1988). In a system of rationally justified rights – so-called natural rights – existence of contrary rights and duties, let alone contradictory ones is *ex definitione* off limits since contrary rights violate the law of non-contradiction. As Steiner puts it with reference to rights as such, although his argument seems to work impeccably only with natural rights, “mutual consistency – or *compossibility* – of all the rights in a proposed set of rights is at least a necessary condition of that set being possible one. A set of rights being a possible set is, I take it, itself a necessary condition of the plausibility of whatever principle of justice generates that set. Any justice principle that delivers a set of rights yielding contradictory judgements about the permissibility of

a particular action either is unrealizable or (what comes to the same thing) must be modified to be realizable” (1994). Hence, systems of rights in which there are contradictory or contrary rights is off limits insofar as its rational justification is concerned. Basically, such a system can never be rationally justified. It is obvious on the other hand that one of the most important and direct ramifications of a system of non-contradictory rights is avoidance of conflicts. It is the case because for a person who abides by the norms of such a system it is impossible to find himself in the situation of conflicting rights or duties. So, on our account it is not so much that property rights are justified functionally or teleologically as being conducive to conflict avoidance as that their function of conflict avoidance is a logical consequence of their fundamental vindication as rational (non-contradictory) allocations of individual jurisdictions (Barnett, 2004) or spheres of freedom (Steiner, 1994).

Now the question is: What set of rights can be a set of non-contradictory rights? Following Steiner we can say that rights predicate about human action. Because each action-token always takes place in a specific time and space, it can be given an exhaustive description in extensional terms of its spatio-temporal components. We can therefore say that two action-tokens are impossible when they share at least one physical component; on the other hand, action-tokens are compossible when they do not have any physical components in common. Now, rights that “oblige” people to perform two or more action-tokens that share at least one physical component are perforce contradictory rights – they “oblige” people to do what is impossible to do; whereas rights which oblige people to perform action-tokens that do not have common components are non-contradictory rights. How to make sure that rights never become contradictory? It is necessary and sufficient to construe of rights as rights to exclusive control of physical components of actions, i.e. as rights to possess tangible things. If physical components of actions are unequivocally distributed amongst people, if each and every physical component is unambiguously and exclusively assigned to one and only one person, then there can never be rights to action-tokens that share physical components with each other and therefore there can never be rights that oblige people to perform impossible action-tokens (Steiner, 1994). As Steiner points out, “a set of categorically compossible domains, constituted by a set of property rights, is one in which each person’s rights are demarcated in such a way as to be mutually exclusive of every other person’s rights... we will interpret this to mean that no two persons simultaneously have rights to one and the same physical thing” (1994).

Because the nature of possession is such that it is impossible for two or more people to possess the same thing at the same time – although it seems possible for

two or more people to simultaneously mix their labour with the same thing (e.g. when two people chase the same wild animal) – then assigning rights to people who took first possession of a thing, who are first-comers, perforce avoids non-contradictoriness of rights and conflicts between people since the dawn of time. For it is always and from the very beginning clear who has title to which physical resource as well as which resources are still up for appropriating and which are not so available. As Hans-Hermann Hoppe writes, “with regard to the purpose of conflict avoidance, no alternative to private property and original appropriation exists. In the absence of prestabilized harmony among actors, conflict can only be prevented if all goods are always in the private ownership of specific individuals and it is always clear who owns what and who does not. Also, conflicts can only be avoided from the beginning of mankind if private property is acquired by acts of original appropriation (instead of by mere declarations or words of latecomers)” (2012). It is by definition inconceivable for more than one person to be in a position in which it is physically possible to deal with a thing at will to the exclusion of others. Neither is it conceivable for more than one person to simultaneously come to such a position. Thus, taking first possession of scarce resources as basis of title and as principle of justice in original appropriation guarantees non-contradictoriness of rights and avoidance of conflicts since the dawn of time.

Conclusions

In the paper we presented main accounts of original appropriation within libertarianism. We contrasted two dominant theories of first acquisition of property rights: labour principle of justice and occupancy principle of justice in original appropriation. Some of the main problems of respective theories – especially labour theory – were investigated. We argued that first possession principle of justice in original appropriation finds its justification not in teleological and functional account of conflict avoidance but in inherent rationality and non-contradictoriness as well as – drawing on Steiner – categorical compossibility which naturally result in conflict avoidance.

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