

# Land and Human Endowments<sup>1</sup>

By Damon Gross

Robert Nozick has been taken to task yet again for his entitlement theory of justice. Stated very roughly, Nozick's entitlement theory of justice is the following. Supposing that we have an adequate principle of justice in acquisition and an adequate principle of justice in transfer, any distribution of goods that actually results from any number of repeated iterations of just acquisitions and just transfers will itself be just. Any claims that the state may make for the sake of distributive justice on any of the goods we have so acquired are unjustifiable. We are entitled to our holdings absolutely.<sup>2</sup> Barbara Fried has crafted an ingenious argument against this theory by using the notion of "surplus value," which is "that portion of market price that reflects scarcity rents, whether accruing to land or other natural resources, financial capital, market opportunities, or natural talents."<sup>3</sup> She argues that Nozick's justice in transfer "smuggles the problem of surplus value out of the 'justice in acquisition' portion of his argument, where it rightly belongs, without ever resolving it."<sup>4</sup> Fried does not analyze "the problem of surplus value" directly, but by comparing two examples: the first, a famous one of Nozick's about Wilt Chamberlain; and the second, an example of Fried's pertaining to the appreciation of land. She claims to find these two examples to be exactly analogous.

In the process of Fried's (indirect) analysis of "surplus value," she raises doubts that are apparently quite general about "the justice of market-based distribution,"<sup>5</sup> the view that "people have a right to the exchange value of their labor or property,"<sup>6</sup> and the view that "we can derive a buyer's right to keep what she gets in a market exchange from the seller's right to give it to her."<sup>7</sup> Indeed, it would seem that the point of discussing "the problem of surplus value" in terms of the comparison Fried uses is just to generalize such doubts as far as possible. Moreover, Fried argues from within the framework of a "Lockean labor theory of ownership."<sup>8</sup> Fried's analysis is both surprising and important because, both the views that she challenges, and the Lockean framework within which she argues, are apparently held by Nozick and others, as she notes.<sup>9</sup>

Fried's analysis of the problem of surplus value is also important because her idea that there is such a problem, and that it is one problem and not several diverse problems,

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<sup>1</sup> I thank Professor Emeritus Robert V. Andelson of Auburn University and Professor Ronald G. Alexander of Wartburg College, who read earlier drafts of this paper, for their comments and encouragement.

<sup>2</sup> Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, Inc., Publishers, 1974): 150-182.

<sup>3</sup> Barbara Fried, "Wilt Chamberlain Revisited: Nozick's 'Justice in Transfer' and the Problem of Market-Based Distribution," *Philosophy and Public Affairs* 24, no. 3 (Summer 1995): 230.

<sup>4</sup> *Ibid.*, p. 229.

<sup>5</sup> *Ibid.*, p. 227.

<sup>6</sup> *Ibid.*, p. 226.

<sup>7</sup> *Ibid.*, p. 227.

<sup>8</sup> *Ibid.*, p. 228.

<sup>9</sup> Fried cites "the writings over the past twenty years of Richard Epstein, Ellen Frankel Paul, Eric Mack, Tibor Machan, and Jan Narveson, among others." *Ibid.*, p. 226.

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has gained a great deal of currency in the literature.<sup>10</sup> The terms “surplus value” and “scarcity rent” are to be found frequently and even the term “economic rent” has come to be used synonymously with “scarcity rent.” If there is a general problem with surplus value, and if that problem undercuts one’s right to the exchange value of one’s labor and one’s property, then surely Nozick’s entitlement theory of justice is irremediably mistaken. However, if “the problem of surplus value” is not a problem or is more than one problem, then it might turn out that something like Nozick’s entitlement theory of justice could be salvaged, even if, in its present form, it does not deal properly with surplus value. I will therefore leave Nozick aside, except for his Chamberlain example, and refer to him only briefly later in my paper. I will concentrate my attention not on Fried’s charge that Nozick mishandles surplus value but on her analysis of surplus value by means of her comparison between the examples of Chamberlain and land appreciation. Thus I will concentrate not on Fried’s argument against Nozick, but on the argument within the argument, so to speak.

Nozick’s example is well enough known by now that it may be paraphrased very briefly. One million people pay Chamberlain 25 cents apiece to see him play basketball. Each of these one million people earned her 25 cents fairly and none was coerced or defrauded into paying her money to Chamberlain to see him play. Therefore, on Nozick’s view, Chamberlain is justly entitled to keep the quarter of a million dollars he has thus acquired, and no third party, i.e. the public, has any claim on any portion of this income for the sake of distributive justice.<sup>11</sup>

Fried’s example is as follows:

Imagine that in the 1950s WC had bought a parcel of vacant land in a sparsely populated county adjacent to New York City for \$5,000 in cash, which cash he had saved from his earnings as a day laborer. Over the ensuing twenty years, economic, demographic, and other social changes spurred large numbers of people who worked in New York City to emigrate to the suburbs, driving real estate prices up 500-fold or more. By the early 1970s, WC’s land is worth \$250,000. What are WC’s Lockean rights to the market value of the land?<sup>12</sup>

In a footnote Fried explains the reference to Locke:

In the discussion that follows, for simplicity’s sake I ignore Locke’s additional proviso that “enough, and as good” be left for others, focusing solely on what a labor theory of ownership implies about surplus value. I assume a stylized argument between a hypothetical Right Locke and Left Locke, both of whom start from the premise that labor is the moral foundation of ownership, but

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<sup>10</sup> See, for example, David P. Gauthier, *Morals by Agreement* (Oxford: Clarendon Press, 1985): 96-99, 272-275. Although John Rawls says nothing about land in *A Theory of Justice* (Cambridge, Mass.: Belknap Press of Harvard University Press, 1971), his view on natural talents, p. 315 and pp. 101-102, suggests that he might take the same view of surplus value as does Fried. Also see John Christman, “Distributive Justice and the Complex Structure of Ownership,” *Philosophy and Public Affairs* 23 no. 3 (Summer, 1994): 233-249. Also see Scott Gordon, *Welfare, Justice, and Freedom* (New York: Columbia University Press, 1980): 98-99.

<sup>11</sup> Nozick, p.161.

<sup>12</sup> Fried, pp. 235-236.

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reach different conclusions about the scope of rights implied. Left Locke thinks labor is significant because it establishes moral desert. Why Right Locke thinks it is significant (desert, autonomy/personality, or something else) is ambiguous, as it is for the real Locke.<sup>13</sup>

Although Fried is noncommittal with regard to whether she favors Right Locke, Left Locke, or some entirely different view, what is important for what I will have to say is that she does commit herself to the view that her example of the appreciation of land is analogous to the value of Chamberlain's natural talent. She says:

How does all of this apply to Nozick's example of the hypothetical exchange between Chamberlain and a representative fan X? It applies exactly, once one makes the necessary translations from financial capital (WC's land) to human capital (Chamberlain's basketball talent).<sup>14</sup>

And again:

...the core Lockean question is structurally identical: whether, by virtue of having been born with great talent to which he added his labor, Chamberlain becomes entitled to whatever the market will pay him for exploiting that talent.<sup>15</sup>

And yet again:

But at least in theory, we could tax him [Chamberlain] on the value of that income-earning potential at the moment of birth, with appropriate adjustments each year to reflect changes in its value. Such a tax, which economists and tax theorists call an endowments tax, would be exactly analogous to a tax levied annually on appreciation in the value of WC's land.<sup>16</sup>

Fried hastens to add that "there are many reasons why no sane person would seriously suggest levying such an endowments tax on human capital...Perhaps the most serious [such reason] is the libertarian concern that when we tax people on the full market value of their assets if put to their highest market use, we indirectly pressure them to put those assets to such use."<sup>17</sup> Despite her disclaimer that it would be a bad idea to tax natural talents, Fried maintains that from the point of view of a labor theory of ownership the moral justification for such a tax would be exactly on a par with that for a tax on the appreciation of land. Surplus value is surplus value. Scarcity rent is scarcity rent. In this view Fried takes her cue from "the Fabian Socialists and British New Liberals [who] generalized the Ricardian attacks on land rents to all factors of production, to

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<sup>13</sup> Ibid, p. 236.

<sup>14</sup> Ibid. p. 240.

<sup>15</sup> Ibid. p. 241.

<sup>16</sup> Ibid., pp. 242-243.

<sup>17</sup> Ibid., p. 243. Robert V. Andelson has suggested to me that such a tax might actually discourage highest use, presumably because people would try to hide their natural endowments in order to minimize their tax liabilities.

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conclude that *any* factor that was in short supply---land, labor or capital---could command a scarcity rent, a moral captured in their 'law of three rents.'"<sup>18</sup> While the Fabian Socialists were surely right in contending that any factor that is in short supply can command a scarcity rent, it does not follow from this alone that the public has exactly the same justification for a claim on all forms of scarcity rents. There may be other differences between and among land, labor, and capital besides scarcity that are relevant to the legitimacy of any claim on any one of them that the public may entertain. Those differences, if such there be, must, of course, be identified and their relevance argued for. I will identify and argue for just such a difference between land and natural talents. My only point here is that the mere identification of a certain portion of income as "scarcity rent" does not go very far in telling us what claim the public may justifiably place on it.

What, then, is Fried's argument that natural talents are analogous to the appreciation of land? Fried structures her argument as a disagreement between her Right Locke and her Left Locke, presumably to give a Lockean labor theory of ownership, *in some form or another*, a fair run for its money. I will follow her lead. In the case of WC's land, Fried's Right Locke "would say that because WC bought the house with the fruits of his labor (\$5,000 in earnings), he owns it absolutely, as against any claims by the state."<sup>19</sup> Notice the shift in the example. Less than a page earlier, when Fried introduced WC's purchase it was "vacant land." I take this to mean "bare" land, that is, no buildings or other improvements on it. Now it has a house on it. Of course the difference makes no difference for Fried because, for her, scarcity is scarcity. However, that is just what is in question. I will therefore hold Fried to her first statement of her example. Doing so does not prejudice the case against Fried except for one point, which I shall note, and it greatly simplifies the exposition. But Fried's Right Locke is not the one who deserves most attention at this point, because he does not recognize any claim by the public to any portion of the value of his land. Let us turn, then, to her Left Locke.

Fried's Left Locke would argue that WC is entitled only to his "actual cost, or sacrifice, in acquiring it (\$5,000), plus perhaps a fair return on that cost."<sup>20</sup> The reason is that "any appreciation above that amount is purely fortuitous so far as WC is concerned."<sup>21</sup> It is as though the state were a "silent partner"<sup>22</sup> in WC's concerns and "could justly exercise its right as a silent partner under the Left Locke view by taxing WC on the increase in value as it occurs."<sup>23</sup> Thus Fried's Left Locke would argue that WC is due an amount in proportion to his exertion, \$5,000 plus a fair return, established by the moral desert of his labor. The public is due all value above this because all value over and above this results from "the intersection of a naturally constrained supply of land in commuting distance from New York City, and increasing societal demand for such land."<sup>24</sup> Thus WC is entitled to an amount of value proportionate to his labor and society is entitled to any additional value, termed surplus, presumably arising from scarcity and demand, and held by WC due to luck. It is worth noting at this point that Fried thinks that

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<sup>18</sup> Ibid., p. 231.

<sup>19</sup> Ibid., p. 236.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid., pp. 236-237.

<sup>22</sup> Ibid., p. 237.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

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her Left Locke is the “the Locke of the Ricardian socialists, Henry George, early (unreconstructed) Spencer and others.”<sup>25</sup>

Now to the comparison with natural talents. Fried’s Right Locke would say that Chamberlain is entitled to the full market value of his basketball talent without the state having any claim on it.<sup>26</sup> We need not dwell on the details. On the other hand, Fried’s “Left Locke ... would say that Chamberlain’s natural talent is the result of pure luck, which creates no moral desert on his part.”<sup>27</sup> Of course Chamberlain may have worked hard developing and exercising his talent, but no harder than “the typical day laborer who earns 1/1000th”<sup>28</sup> as much, so Fried’s Left Locke would hold that Chamberlain is entitled only to the amount that the typical day laborer earns with the same amount of labor.<sup>29</sup>

The idea that Chamberlain is not entitled to the income he receives over some baseline set by what a typical day laborer can earn with the same amount of labor will bear a moment’s reflection. Does Chamberlain’s choosing to play basketball rather than dig ditches entitle him to anything? Apparently not. Does the fact that the public wants Chamberlain to spend his labor playing basketball more than it wants him to spend it digging ditches do anything for Chamberlain when he accedes to the public’s wishes and plays basketball? No. What about the occupations of “ordinary” folks. Are any of them entitled to a premium for choosing occupations in which, because of their natural talents, the market value of what they produce is higher than the market value of what the typical day laborer produces with the same amount of labor? I don’t see how, on the Left Locke view. What if Chamberlain worked as hard as the typical day laborer, but spent his time digging a hole and filling in the same hole, digging it out, filling it in, etc., endlessly, accomplishing nothing of any market value? Would Left Locke credit him with a paycheck? He would have to on a view that the quantity of labor, as such, independently of market value or anything else, determines entitlement to earnings.<sup>30</sup>

At any rate, Fried’s Left Locke estimates the baseline to which Chamberlain is entitled at \$1,000. The remainder, \$249,000 out of the \$250,000 Chamberlain receives, Left Locke regards as “monopoly rents he can extract because of the combination of peculiarly strong demand for spectacular basketball playing, and the natural scarcity of talent to supply it at this level.”<sup>31</sup> This is taken to be exactly analogous to the value WC can receive for his land on account of the peculiarly strong demand for land within commuting distance from New York City and the natural scarcity of such land. Thus Fried has made her case, that, for Left Locke, Chamberlain is no more entitled to what

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<sup>25</sup> Ibid., p. 236.

<sup>26</sup> Ibid., p. 241.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid., p. 242.

<sup>29</sup> Left Locke is not the (standard?) labor-desert theory of, for example, Lawrence Becker, *Property Rights*, (London: Routledge & Kegan Paul, 1977): 50-51. On Becker’s labor-desert theory the market value of what one contributes by one’s labor, not the quantity of one’s exertion, is the measure of the value for which one deserves to be paid.

<sup>30</sup> Eric Mack also compares Chamberlain’s earnings with what he calls “Universal Labor” in an interesting discussion in “Gauthier on Rights and Economic Rent,” in *Economic Rights*, ed. Ellen Frankel Paul, Fred D. Miller, Jr., and Jeffrey Paul (Cambridge: Cambridge University Press, 1992): 181.

<sup>31</sup> Fried, p. 242.

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the market will pay for his talent than WC is to what the market will pay for the land he holds.<sup>32</sup>

On Fried's analysis, whether one takes the Right Locke view or the Left Locke view, the appreciation of land and Wilt's remarkable earning power belong in the same category. Either society has a legitimate claim on neither or on both. It must be kept in mind that Fried is not defending either Right Locke or Left Locke<sup>33</sup>, but she is committed to the analogy between the appreciation of land and Chamberlain's earning potential, and that is exactly what I will investigate. I must first make three preliminary comments.

*Comment One.* Initially, from a perhaps superficial point of view, one wants to say that Wilt Chamberlain earns his \$250,000 by providing a service with his labor whereas WC does not so earn his \$250,000, even minus the \$5,000 he spent to buy the land (and a fair return on the \$5,000), by providing a service. For what service could WC possibly be providing merely by virtue of holding the land? The land was there eons before he came along and will still be there eons after he is gone. As to its appreciation, WC could have spent the twenty years he held the land lying in bed and the land would have appreciated just as much as it did. This is unlike the case of Chamberlain who at least must exercise his talent to get paid. To rest the case at this point, however, would not do, because it would be simply to ignore Fried, rather than to confront her argument.

*Comment Two.* Consider the appreciation of the land. Fried's Left Locke would say that the public has a legitimate claim on WC's \$250,000 minus the \$5,000 WC paid for it and a fair return on that \$5,000. Why not the entire \$250,000? The value of land is entirely appreciation. There is no cost of production whatsoever. Its entire value is "surplus value."<sup>34</sup> The only answer I can think of is that WC earned the \$5,000 he paid to the previous holder of the land. But if there is a reason to say that the public has a claim on the \$245,000 that the land has appreciated after WC bought it, then that reason would surely be as good a reason to say that the public has a claim on the \$5,000 that it appreciated before WC bought it, unless the mere transfer of the land somehow quits the claim that the public has on its appreciation. But to say that the transfer of land has this consequence would surely be to covertly vest in the principle of transfer a power that requires a principle of acquisition, the very thing Fried accuses Nozick of doing. If the public has a legitimate claim on the appreciation of land, then the public has that same claim on the entire value of land.

*Comment Three.* For any amount of "capital" I have, say \$1,000, there is a corresponding income stream that I can derive from it, say \$100 per year (assuming an interest rate of 10%). For any income stream that I have, say \$100 per year, there is a corresponding amount of "capital" that it is worth, \$1,000 in this case (again assuming an interest rate of 10%). \$1,000 is the "capitalization" of my income stream. The \$250,000 value of WC's land is a capitalization, but the \$250,000 that Chamberlain takes in is an income stream. To make a fair comparison, either one would have to compare the value

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<sup>32</sup> Since Henry George did not generalize his attacks on land rent to the other factors of production, and did derive one's right to the produce of one's labor from one's right to one's person, *Progress and Poverty* (1879; New York: Robert Schalkenbach Foundation, 1966): 334-336, I find it unaccountable why Fried would attribute her Left Locke view to George.

<sup>33</sup> One might well wonder whether Fried is being entirely candid when she says "it is not my purpose to defend either of these views in preference to the other," (Fried, p. 242) because only her Left Locke view, and not her Right Locke view, questions one's right to the market value of one's holdings.

<sup>34</sup> If there was a house on WC's land when he bought it then this comment may not apply.

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of WC's land to the capitalized value of Chamberlain's talent, presumably a much larger figure than his income in any one year, or one would have to compare Chamberlain's income with the income WC could receive from his land.

Fried could very well concede the points made in these last two comments and yet press her argument that the public has a claim on the surplus value of Chamberlain's talent that is exactly on a par with the public's claim to the (entire) value of land. What is key to her argument is that the returns on the appreciation of land and on the surplus value of Chamberlain's talent are both "scarcity rents." This may be true but there is a morally relevant difference between land and natural talents that goes considerably deeper than mere scarcity, even though the difference that I shall identify makes a difference only when land is to some degree scarce.

I will argue that as land becomes scarce, and therefore comes to have value, private property rights with respect to land come into conflict with what I shall call the principle of equal liberty.<sup>35</sup> I will then discuss the significance of this conflict. And I will finally argue that Chamberlain's talent does not conflict with the principle of equal liberty.

At the outset I hasten to acknowledge that there is a serious general problem with arguing about property rights from concerns about liberty. The problem is that any system of property rights (that I can think of) restricts someone's liberty in some way.<sup>36</sup> For example, private property rights in an object restrict the liberty of all but the owner to use the object without the owner's permission. On the other hand, common property rights with respect to an object restrict the liberty of any one of the common holders to prevent any of the others from using the object. Still further, joint property rights with respect to an object restrict the liberty of any of the joint holders from disposing of the object without the permission of all of the others. It might seem therefore that the choice among property systems is dependent on a prior choice among which particular liberties are to be preserved and which are to be restricted in any particular case. And indeed in many cases this may be true, as the swimming pool in my neighborhood is common property but the checking account held by a husband and wife may be joint property.

I too shall emphasize certain rights and not others. However, I will be arguing solely from concerns about the equality of rights I discuss. I hope that by arguing strictly from the concern for equal liberty I will avoid the problem of merely trading off one set of restrictions for another. The notion that we should all have the greatest possible liberty consistent with the equal liberty of all others has a long and distinguished pedigree in the Anglo-American tradition. I need only a somewhat weaker principle of liberty, that is, the principle that whatever liberty one person has, it is to be limited by the equal liberty of all others. I hereby avoid whatever counter-examples to the stronger principle, the principle of greatest equal liberty, that one might generate from so-called victimless crimes. I make no attempt to defend the principle of equal liberty. I regard it as a principle that anyone who has any concern whatsoever about liberty will immediately concede, and

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<sup>35</sup> C. B. Macpherson has argued that private property rights in land conflict with "human rights," but on somewhat different grounds. See C. B. Macpherson, "Human Rights as Property Rights," reprinted in C. B. Macpherson, *The Rise and Fall of Economic Justice and Other Essays* (Oxford: Oxford University Press, 1985): 78-80.

<sup>36</sup> Cheyney C. Ryan, "Property Rights and Individual Liberty," in *Reading Nozick*, ed. Jeffrey Paul (Totowa, New Jersey: Rowman & Allanheld, 1981): 340.

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anyone who has no concern whatsoever about liberty is not likely to be impressed by Fried's concern with surplus value either.

We must first get clear about what equal liberty, in the relevant sense is, and what it is not. To do so, let us consider the following three scenarios.

*Scenario 1:* On a sunny Sunday afternoon a friend and I take a walk in Hartman Nature Preserve, a public wilderness area near my home. We come upon a stand of apple trees that are loaded with ripe apples. There are more apples within our easy reach than the two of us put together could eat in a month of Sundays. Since there is no prohibition against picking apples in Hartman, I pick one and eat it. By eating this apple I deprive my friend of the liberty of eating that identical apple. However, I do not deprive her of equal liberty, because there are plenty of apples left for her to pick, and she and I are indifferent with regard to any differences that may exist among the many apples within our reach. My picking and eating the apple does not deprive my friend of equal liberty.

*Scenario 2:* The same as Scenario 1, except that almost all of the apples are out of the reach of either of us. I spot one that is within the reach of both of us, pick it, and take a bite out of it. My friend quickly sees that there are no more apples at all within the reach of either of us and entreats me, "No fair! You got the last one! Let me have a bite!" Suppose that I do not heed the entreaty of my friend and consume the entire apple. My action has deprived my friend of equal liberty. She could have done what I in fact did, enjoy the apple, had I not done it. To be sure, there are still plenty of apples to be picked if my friend is willing to risk skinning her knees climbing a tree, or spend her time going to get a ladder, but this is not equivalent to the liberty I enjoy. Her right to equal liberty has been compromised. Bear well in mind that my friend's right to equal liberty has been compromised by my picking and eating the apple that I did, *even though* there is still a superabundance of apples for her to pick.

*Scenario 3:* My friend (if she still is my friend) and I go to the Nature Preserve as in the previous scenarios. However, in this scenario she is considerably shorter than I am, and there is an abundance of apples within my easy reach and none within hers. I pick one and eat it. By picking and eating this apple have I deprived my friend of equal liberty? No. I have not deprived her of doing anything that she could have done had I not been on the scene. Indeed, my friend may be glad I am there, because my presence on the scene actually increases the number of options my friend has. For now, in addition to the options of skinning her knees or fetching a ladder, she has the option of asking me if I would please pick her an apple, or even the option of offering me some sort of compensation in return for my picking her an apple.<sup>37</sup> To drive the point home let us turn the tables. Let us suppose that my friend can, and sometimes does, write beautiful poetry. I can, and sometimes do, write poetry, but not beautiful poetry. Neither her ability to write beautiful poetry, nor her actually writing it, deprives me of equal liberty or of anything else. This should make clear, I hope, what equal liberty is and what it is not.<sup>38</sup>

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<sup>37</sup> There is a temptation here to say that, by increasing the number of options my friend has, my presence in this scenario increases my friend's liberty, but to say this would, I think, be to invite confusion, for liberty in the sense of not being deprived of what one could otherwise do is not a matter of maximizing the number of options open to someone or even the total number of options open to all persons.

<sup>38</sup> In all three scenarios I limit my universe of discourse to myself and my friend, ignoring what effects my action may have on the liberty of some hypothetical person who might come along later. This greatly



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Now for a general point about property. In any system of property that I can think of, to say that A owns X is to say that there is a particular bundle of rights that A has with respect to X and in some cases correlative duties that all other persons have to A with respect to X. In the case of private property one of the rights in the bundle that A has if he owns X is the *exclusive* right to use X. Correlative with this exclusive right of A to use X is the duty of everyone else *not* to use X without, at the very least, the permission of A. I need not trot out the rest of the analysis of private property rights, as it is readily available in the literature<sup>39</sup> and exclusive use is the only right among those in the bundle that I will make any direct appeal to. The pertinent question now becomes: does the exclusive right of one person to use a particular parcel of land deprive other persons of equal liberty?

It is perhaps obvious that in some extreme cases the exclusive right of one person to use land can deprive others of equal liberty. Becker, for example, cites a particularly striking passage from Henry George:<sup>40</sup>

Place one hundred men on an island from which there is no escape, and whether you make one of these men the absolute owner of the other ninety-nine, or the absolute owner of the soil of the island, will make no difference either to him or to them.<sup>41</sup>

Becker cites this passage in the course of showing that one particular form of the labor theory of ownership cannot justify private property in land. In the context of Becker's analysis of that theory of ownership Becker talks as though the failure to justify private property in land were a defect of that particular version of the labor theory of ownership. However, Becker cannot have viewed the matter so narrowly because in the final chapter of his book, in a section on "exhaustibility," he writes:

It is unlikely that any sort of property right could be justified whose implementation entails (or makes highly probable) the exhaustion of a significant resource by a subset of the total population. Such exhaustion would very likely constitute a loss to those left out, or be subject to prohibitive penalties for the losses caused, or amount to an interference with their liberty, or produce a net disutility, or perhaps all four...

Goods such as space (in land, sea, or air) and matter can be exhausted simply by appropriation - that is, given the requisite system of property rights, a subset of the population can come to own all that is available.<sup>42</sup>

Thus Becker recognizes that when there is imminent danger of the exhaustion of land, then private property in land conflicts with equal liberty. What I will show, however, is that the conflict between exclusive rights to land and equal liberty is much more general than Becker imagines.

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simplifies the exposition and does not do any harm as long as it is kept in mind that I have so limited my universe of discourse.

<sup>39</sup> See, for example, Becker, pp. 18-22, or Christman, p. 227.

<sup>40</sup> Becker, p. 34.

<sup>41</sup> George, p. 347.

<sup>42</sup> Becker, p. 109.

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To the extent that land has any value at all, its exclusive use by one person conflicts with the equal liberty of all others. This I must show. Let us compare land with the apples in Hartman Preserve. To be sure, land in most forms is continuous whereas apples, until made into sauce, are discrete. Also land is generally not consumed when used whereas apples usually are used by being consumed (but I could use an apple without consuming it, say as a paper weight). The comparison is close enough in other respects, however, for my purposes. Both land and the apples in Hartman Preserve are there to all of us for the using (prior to the imposition of some specific property system). Moreover, whatever value the apples I have eaten in my three scenarios would seem to be gratuitous on my part in the same sense that the value of land is gratuitous on the part of its holder.

When land has no market value whatsoever it is like the apples in Scenario 1. My exclusive use of any parcel of land cannot come into conflict with the equal, but non-identical, liberty of anyone else. However, when even the first parcel of land in the whole world that comes to have value, does in fact come to have value, we are immediately thrust into Scenario 2. A parcel of land simply cannot come to have market value unless its use offers some relative advantage, or perceived relative advantage, over land that can be had for free. Land comes to have value by coming to be the low hanging fruit, so to speak. But in Scenario 2 my use of the low hanging fruit to the exclusion of my friend deprives her of equal liberty. So it is with land. As soon as any land has any value its exclusive use by one person conflicts with the equal liberty of other persons.

Consider WC's land. Imagine the land that WC now holds sometime in the distant past before it had any market value. It could have had no market value only because it provided no advantage over land that could also have been had for free. Supposing that someone at that time held the land WC now holds, he could not have been depriving anyone else of equal liberty by excluding others from using the land he held because other equally advantageous land could at that time have been had for free. But suppose that some time later, demographic changes began to give even the slightest advantage to being in the location where WC's land is. Notice that this does not require anything like exhaustion of all land. It could just be that WC's land is within half an hour's commute to New York City and the best land still available for free is at least thirty-five minute's drive from New York City. At this point, the holder of WC's land is, by his exclusive holding of it, depriving those who do not hold such land of the equal liberty that any one of them could have had if the holder had not held it. The equal liberty of which the non-holders are deprived is the liberty of getting to New York City five minutes more quickly. To the extent that WC's land has any value at all, its value is a result of someone's deprivation of liberty. There is no need for land to be exhausted or in imminent danger of being exhausted for the value of land to be representative of deprivation of equal liberty.

Of course there is a very long and indefinite list of factors that might give land value, from its actual tangible characteristics and spatial relations, to the suspicion that the mineral deposit that was discovered a mile away might be rather widespread or the mere rumor that a new high school will be built nearby. How do we estimate how much the non-holder of WC's land is being deprived of by the holder's exclusive holding of it? We philosophers don't estimate. We don't need to. The market does that job for us. Through the exchanges that actually occur, the market value of land is the estimate of the participants themselves of what it is worth not to be deprived.

Despite what has been said so far about land, there are very strong, perhaps compelling, reasons that people should be allowed exclusive use of parcels of land. For

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example it is unlikely that holders of land will put their land to the best use if they do not have the assurance that they can exclude others from stepping in and taking over what they have put their work into. Or to be really primitive, as soon as I and my closest neighbor have accumulated enough material things that we cannot carry all of them with us on our persons we need places to put our possessions where they will not get mixed up. There are many other reasons. I will not rehearse the entire litany here. The real Locke, who repeats the slogan “God gave the earth to all mankind in common” like a mantra, seemed particularly vexed by the difficulty of preserving any semblance of a labor theory of ownership without allowing exclusive rights to the land that one’s labor is “mixed with.”<sup>43</sup> Locke was apparently thinking of agriculture, but the building trades have the same difficulty. Let us call this problem Locke’s Dilemma: It seems that either one must give up equal rights to land and thereby give up equal liberty; or one must give up the benefits of exclusive ownership of land, and particularly the benefit of the assurance of one’s right to the exclusive use of the fruits of one’s labor.

One need not throw up one’s hands in despair in the face of this dilemma and arbitrarily pick one horn or the other.<sup>44</sup> There have been four attempts to solve Locke’s Dilemma that are relevant for our purposes. The first, of course, is Locke’s own attempt, his famous proviso that one “leave enough, and as good” land for others. In a footnote Fried quite correctly points out that Locke’s proviso is futile:

We leave “enough, and as good” for others only when what we take is not scarce. But when it is not scarce, it has no value. So Locke’s theory, with a strict proviso, amounts to saying that we can appropriate land for ourselves out of the commons only when it would be of no value to do so because there is land in superabundance whenever we want it. Locke believes he can avoid that paradox by supposing an England with scarce land (making appropriation valuable) and a fictive America with land in superabundance (leaving “enough, and as good” for all others deprived of the opportunity to appropriate land in England). But those two conditions (scarcity in England and abundance in America) can coexist only because, due to its locational disadvantages, land in America is not an economic substitute for land in England.<sup>45</sup>

The second attempt, not second historically of course, is by Nozick. He replaces Locke’s proviso with a weaker one, that the appropriation of any unowned object not worsen the situation of others.<sup>46</sup> The question with Nozick’s weakened Lockean proviso is, of course, “worsen the situation of others compared to what?,” as Nozick acknowledges.<sup>47</sup> On Nozick’s view “the baseline for comparison is so low as compared to the productiveness of a society with private appropriation that the question of the Lockean proviso being violated arises only in the case of catastrophe (or a desert-island

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<sup>43</sup> John Locke, *Second Treatise of Government*, Chapter V, “Of Property.”

<sup>44</sup> If one gives up and picks the first horn then I think one quite naturally arrives at Fried’s Right Locke. Whether one arrives so naturally at Fried’s Left Locke from the second horn of the dilemma I cannot say, but if one does, then what I have to say in the next few paragraphs about Spencer and George should be of interest.

<sup>45</sup> Fried, p. 230.

<sup>46</sup> Nozick, p. 175.

<sup>47</sup> *Ibid.*, p. 177.

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situation).<sup>48</sup> It has been argued convincingly that Nozick's proviso does not preserve equal liberty but merely substitutes his favorite system of property with its inherent restrictions on liberty for less favored (by him) systems of property with their inherent restrictions on liberty.<sup>49</sup> In any case it is hard to imagine how one can solve Locke's dilemma by replacing his already futile proviso with an even weaker one.<sup>50</sup>

The third attempt is by the early (unreconstructed) Herbert Spencer.<sup>51</sup> Spencer argues against private property in land on the basis of the equal liberties principle.<sup>52</sup> He proposes that ownership of land be assumed by the state, and that the present holders of land be compensated for the buildings and other improvements, such as fences and driveways, that they have attached to the land, but not for the value of the land itself.<sup>53</sup> The land would then be leased out to the highest bidders, parcel by parcel.<sup>54</sup> He summarizes his argument in the following way:

Briefly reviewing the argument, we see that the right of each man to the use of the earth, limited only by the like rights of his fellow-men, is immediately deducible from the law of equal freedom. We see that the maintenance of this right necessarily forbids private property in land.

...

And we find lastly, that the theory of the co-heirship of all men to the soil, is consistent with the highest civilization; and that, however difficult it may be to embody that theory in fact, Equity sternly commands it to be done.<sup>55</sup>

Whatever one may think about the practicality of Spencer's proposal, it is clearly an attempt to solve Locke's Dilemma.

The fourth such attempt was by Henry George. His proposal comes down to much the same thing as Spencer's from the point of view of equity, but without the nightmare of the state taking over ownership of land and leasing it out. He proposed simply that the rent of land be collected by the state in taxation, without the state interfering with the present tenure of land.<sup>56</sup> The only place in all of his writings where Henry George explicitly mentions Locke is (coincidentally?) in Chapter IV of the book

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<sup>48</sup> Ibid., p. 181.

<sup>49</sup> Ryan, pp. 337-340.

<sup>50</sup> I may be being charitable to Nozick in interpreting his proviso as an attempt to solve Locke's Dilemma. He may not have seen Locke's Dilemma or he may have seen it but not have been properly impressed by it. If I am being charitable in interpreting Nozick as trying to address Locke's Dilemma when he had no such intention, then I am being very UNcharitable in criticizing him for failing to solve Locke's Dilemma, and I apologize.

<sup>51</sup> Herbert Spencer, *Social Statics* (1850; New York: Robert Schalkenbach Foundation, 1995): 103-113.

<sup>52</sup> Ibid., pp. 103-108.

<sup>53</sup> Ibid., pp. 106-108.

<sup>54</sup> Ibid., p. 9. On this point I interpret Spencer as George did in Henry George, *A Perplexed Philosopher* (1892; New York: Robert Schalkenbach Foundation, 1965): 13-16, and not as George did thirteen years earlier in *Progress and Poverty*, pp. 359-360.

<sup>55</sup> George, *A Perplexed Philosopher*, p. 10.

<sup>56</sup> To be perfectly accurate, Henry George advocated the collection of all land rent except for a very small percentage which would be left to the land holder as a sort of collection fee. George, *Progress and Poverty*, p. 405.

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George wrote about Herbert Spencer.<sup>57</sup> That George's land tax proposal was an attempt to solve Locke's Dilemma is abundantly clear from a reading of the entirety of this chapter. I will quote just a portion.

As to land that has no value, or, to use the economic phrase, bears no rent, whoever may choose to use it has not only an equitable title to all that his labor may produce from it, but society cannot justly call on him for any payment for the use of it. As to land that has value, or, to use the economic phrase in the economic meaning, bears rent, the principle of equal freedom requires only that this value, or economic rent, be turned over to the community. Hence the formal appropriation and renting out of land by the community is not necessary: it is only necessary that the holder of valuable land should pay to the community an equivalent of the ground value, or economic rent; and this can be assured by the simple means of collecting an assessment in the form of a tax on the value of land, irrespective of improvements in or on it.

In this way all members of the community are placed on equal terms with regard to natural opportunities that offer greater advantages than those any member of the community is free to use, and are consequently sought by more than one of those having equal rights to use the land.<sup>58</sup>

(It must be kept in mind that, since George did not generalize the Ricardian attack on rent to the other factors of production, when George uses the term "economic rent" he is referring only to land rent.) It seems clear that the great proposer of the land tax, Henry George, is morally motivated by a concern for equal liberty.<sup>59</sup>

The point of all this is not to defend Henry George.<sup>60</sup> The point is to show that what is at stake, both structurally and historically, regarding a land value tax is equal liberty.<sup>61</sup> The point is that the "problem of surplus value," in the case of land, goes as deep as the problem of preserving equal liberty within a system of property rights. The land value tax was proposed to preserve equal liberty without giving up the advantages of holding land privately.

To summarize:

(1) WC's parcel of land is something that it is possible for anyone to hold.

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<sup>57</sup> George, *A Perplexed Philosopher*, pp. 26-33.

<sup>58</sup> *Ibid.*, p. 32.

<sup>59</sup> J. R. Kearl has an intriguing argument according to which "the maximum rightful claim [by the state] is the rent accruing to previously common property." I take it that previously common property would include land but not Chamberlain's talent. J. R. Kearl, "Do Entitlements Imply That Taxation is Theft," *Philosophy and Public Affairs* 7, No. 1 (Fall 1977): 80.

<sup>60</sup> For a comprehensive defense and updating of George's views see the entirety of Robert V. Andelson, ed., *Critics of Henry George* (London: Associated University Presses, Inc., 1979) It is also worth noting in passing that Nozick does make one fleeting reference to Henry George. Nozick says that "no workable or coherent value-added property scheme has yet been devised, and any such scheme presumably would fall to objections (similar to those) that fell the theory of Henry George." (Nozick, p. 175.) However, Nozick does not favor us with so much as a clue as to what the objections are that he believes "fell the theory of Henry George."

<sup>61</sup> Robert V. Andelson makes a similar point about the structural connection among the views of Locke, Nozick, and George in Robert V. Andelson, "Neo-Georgism," in *Critics*, pp. 387-391. In fact, in a footnote Andelson goes so far as to conjecture that "increasing familiarity with George will in time move Nozick to acknowledge their affinity." *Ibid.*, p. 391.

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(2) WC's parcel of land has value only insofar as it has some advantage over the most advantageous land still available for free.

(3) The exclusive holding of WC's land deprives those who do not hold it of the equal liberty of whatever advantage any one of them could have enjoyed had it not already been held exclusively.

I have shown, I hope, that there is a conflict between full private property rights to land and equal liberty. If I have stretched the notion of equal liberty too far for some readers, then substitute for it, "the equal right of all for the opportunity for self-preservation, for someplace to live, for some place to work, for someplace to play." To make the point with a familiar formula, WC's good fortune necessarily "comes at the expense of those less fortunate."

We turn finally to Chamberlain's talent. By now it is probably obvious that I want to say that Chamberlain's having his talent is like my being able to reach the apples in Scenario 3 or like my friend's being able to write beautiful poetry.<sup>62</sup> I want to say that his actually playing basketball (for a price that is mutually agreeable among him and his fans) is like my sharing my apple with my friend or picking an apple for her (for a price that is mutually agreeable to my friend and me). I want to say that neither his having the talent nor his exercising it deprives anyone else of equal liberty or of anything else, just as neither my having the ability to reach the apples in Scenario 3 nor my exercising that ability deprives my friend of equal liberty or of anything else. I want to say that Chamberlain's good fortune in being talented does not come "at the expense of those less fortunate;" that his talent is not something that anyone else could have had had Chamberlain not come to exist, and that we may well be glad for his presence on the scene, because it gives the rest of us options that we would not have had had there not been a Chamberlain. Are there any reasons why I should *not* say these things? I can think of four possible reasons, that is, four ways to construe the Chamberlain example in such a way that it might appear that someone is deprived of something.

The first such reason is that Chamberlain deprives his fans collectively of a quarter of a million dollars. This is a bad reason. First, all of the exchanges are voluntary. One is not deprived of what one gives up voluntarily. Second, this reason does not distinguish the Chamberlain example from my Scenario 3 except that more money is involved. Third, this reason implicitly depends on the assumption that, in an exchange of money for a good, particularly when the good is intangible, the person who gets the money wins and the person who gets the good loses. This assumption is simply groundless. The fans may have gotten more than their money's worth (in the sense that each of them may have been willing to pay fifty cents to see the awesome display of power and grace that they actually saw).<sup>63</sup>

The second reason to believe that Chamberlain, with his talent, may be depriving someone of something is this. If there had been no Chamberlain, then someone else, or perhaps several someones, would have won the Most Valuable Player Award in the years that Chamberlain won it. Someone else would have set the rebounding record or

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<sup>62</sup> For other comments about human endowments along the same vein as mine see Robert V. Andelson, "Vive La Difference? Rawls' 'Difference Principle' and the Fatal Premise upon which it Rests," *The Personalist* Vol. 56, No. 2 (Spring 1975): 212, or Robert V. Andelson, "Seligman and His Critique from Social Utility," in *Critics of Henry George*, p. 280.

<sup>63</sup> What I believe to be essentially the same point is made in a very elaborate fashion by Mack, p.183.

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the scoring record, or whatever record you care to name that Chamberlain set. Without having had to play against Chamberlain someone else might have gone down in history as one of the greats. At the very least, Chamberlain's absence would have left a spot in the line-up of some team, so someone has been deprived by Chamberlain of getting to play in the NBA.

To counter this reason one must point out that basketball, including all its honors, records, hoopla, and even the process by which its players are selected, is a game. When one voluntarily chooses to participate in a game then one is thereby committed to its outcome, as long as no one has broken the rules of the game. If I choose to play a game of chess against Gary Kasparov, then I cannot complain that I have been deprived of equal liberty, or of anything else, when I lose.

The third line of reasoning goes like this. Quite aside from basketball, Chamberlain and the rest of us are involved in competitive situations. Chamberlain and I may want to buy the same Rolls Royce, or the same yacht. Because of Chamberlain's wealth he can simply outbid me. As Becker puts the point, "in a competitive situation the loss of competitive equality, or any deterioration of one's competitive position, *is* necessarily the loss of a good."<sup>64</sup> So it does seem to be possible for Chamberlain to deprive me of something: competitive equality.

Even if one takes this concern for competitive equality seriously it does nothing to help Fried's position. Outside of basketball Chamberlain has a competitive advantage only because he has actually accumulated a fortune and/or has a track record of high actual earnings. Even if Chamberlain borrows the money with which to outbid me, the lending institution from which he borrows it will require either collateral or a record of actual past earnings commensurate with the loan amount. Fried, however, compares Chamberlain's talent itself with appreciated land. She argues that an endowments tax, not a tax on actual income or accumulated wealth, is analogous to a tax on the appreciation of land. Latent basketball talent alone does not give one a competitive advantage off the basketball court.

The fourth reason that it may be felt that having a Chamberlain around might deprive the rest of us of something is this. It has been argued that when the gap between the (few) wealthy people, like Chamberlain, and the (many) relatively less wealthy people becomes too great, then society tends to become unstable. More often than not, when a society becomes unstable it is taken over by a repressive regime. Therefore allowing the Chamberlains of the world to keep their huge incomes without a re-distributive tax risks depriving all of us, including Chamberlain, of any number of our cherished liberties.<sup>65</sup>

To the contrary, this reason is rather implausible unless taken to an extreme, and we have seen that the case for a land value tax arises as soon as land has value at all. Second, and more important, this reason is vulnerable to the same objection that I have made to the third reason. Even if taken seriously the appropriate response to it would be a steeply graduated income tax or a tax on accumulated wealth, not an endowments tax. Talent alone does not tend to destabilize society.

There may be legitimate problems with wide disparities in wealth and power, no matter how those disparities have come about. They have no special connection with

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<sup>64</sup> Becker, p. 43.

<sup>65</sup> This point is made by so many people that it does not need specific attribution.

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surplus value. These concerns do not indicate that there is a problem with surplus value but, if anything, that there is a problem with disparities in wealth and power. I have not said that there is no reason for the public to lay claim to some portion of wealth in general, but only that there is a case for a very special claim on land rent that does not apply to Chamberlain's talent. This I think I have shown.

What relevance does all of this have to Nozick's entitlement theory of justice? If what I have argued is correct then *either* there is one class of holdings, to which land belongs, for which the holder's entitlement is nothing like as absolute as Nozick believes, *or* an adequate principle of justice in acquisition must prohibit the acquisition of land or at least must prohibit the acquisition of exclusive rights to land. On the other hand, for all that has been said in this paper, there may be another class of holdings, to which natural talents belong, for which the holder's entitlement is more nearly absolute. Of course there are many more kinds of things, besides land and natural talents, that are held. Whether any or all of these belong with land or with natural talents, or in some third or fourth, etc., class(es) with respect to entitlement is a matter for further research.

To conclude, the problems we have found in our investigation of surplus value<sup>66</sup> are these. First, there is a general problem with full private property rights to land that goes as deep as the principle of equal liberty. Second there may be general problems with extreme disparities of wealth and power, but these problems have no special connection with surplus value. But we have not found a general problem with market-based distribution. Moreover, because the right to the exclusive use of land conflicts with the principle of equal liberty when land comes to have value, it would seem that land value is an especially apt candidate for a re-distributive tax for the sake of distributive justice. Since neither the possession nor the use of natural talent conflicts with the principle of equal liberty the same case cannot be made for an endowments tax. Wilt Chamberlain's talent is not like the appreciation of WC's land. An endowments tax is not analogous to government collection of land rent.

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<sup>66</sup> It is by now obvious, but I will say it anyway, that I believe that the notion of surplus value does more to befog morally relevant considerations than to elucidate them.