

PROPERTY AS A BASIS FOR POLITICAL LEGITIMACY

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Abstract: This paper investigates the linkages between the fundamental moral principles proposed by different theories of justice and the implications these principles have for real-world institutional design. Right-wing libertarianism presents us with a rather clear match between its moral principles and its prescriptions for institutional design. Its moral principle is the defense of self-ownership, its institutional design is that of a capitalist economy. Alternative theories of justice all in some way want to organize a more solidaristic economy, but the linkages between their principles and their institutional prescriptions seem much less obvious. The paper zooms in on three of these alternative theories: left-libertarianism, luck egalitarianism and relational egalitarianism. These theories are strong on ‘why to organize solidarity’, but relatively weak on ‘how to organize solidarity’. In each case, the paper diagnoses why the distance between principles and institutions is much greater for these theories, and how this distance can be overcome. The concept of property is central to the diagnosis. The main reason for the direct link between moral principles and institutions in right-libertarianism is that the concept of property figures pivotally in both its more theoretical parts and in its institutional implications. Whatever theory is to challenge right-libertarianism, it will have to take a clear stance towards the question of property, just as much as right-libertarians do. The reason for this is that property rights play a pivotal role in structuring economic production and exchange (which is, itself, a core part of social life). A theory that is unable to trace a convincing link from its moral principles to prescriptions about legitimate forms of property, cannot offer a convincing defense of an institutional alternative for libertarian capitalism. Existing egalitarian theories have difficulty to live up to this desideratum – the paper improves our understanding why this is the case.

Introduction

This paper investigates the linkages between the fundamental moral principles proposed by different theories of justice and the implications these principles have for real-world institutional design. More specifically, it starts from the diagnosis that one type of theory of justice, i.e. right-wing libertarianism, presents us with a rather clear match between its moral principles and its prescriptions for institutional design. Its moral principle is the defense of self-ownership, its institutional design is that of a capitalist economy. Alternative theories of justice all in some way want to organize a

more solidaristic economy, but the linkages between their principles and their institutional prescriptions seem much less obvious. The paper zooms in on three of these alternative theories: left-libertarianism, luck egalitarianism and relational egalitarianism. These theories are strong on ‘why to organize solidarity’, but relatively weak on ‘how to organize solidarity’. In each case, the paper diagnoses why the distance between principles and institutions is much greater for these theories, and how this distance can be overcome.

In tackling this question, I focus on the concept of property. As will appear from the discussion, the main reason for the direct link between moral principles and institutions in right-libertarianism is that the concept of property figures pivotally in both its more theoretical parts and in its institutional implications. Whatever theory is to challenge right-libertarianism, it will have to take a clear stance towards the question of property, just as much as right-libertarians do. The reason for this is that property rights play a pivotal role in structuring economic production and exchange (which is, itself, a core part of social life). A theory that is unable to trace a convincing link from its moral principles to prescriptions about legitimate forms of property, cannot offer a convincing defense of an institutional alternative for libertarian capitalism. Moreover, existing egalitarian theories have difficulty to live up to this desideratum – we want to understand why.

In section 1, I start by setting up three axes of classifying property rights: the possible subjects and objects of property and the scope of property rights. Using this classification, a fully capitalist economy appears as a scheme for ‘maximally extensive property rights’. Right-libertarianism can then be described as the defense of capitalism, on the basis of self-ownership and its extension into the world through labor. In section 2, I summarize the main features of left-libertarianism, luck egalitarianism and relational egalitarianism. Section 3 continues the investigation into these three theories by focusing on the extent to which they make use of a concept of property. Section 4 illustrates these matters by considering how these three theories would relate to the normative and regulatory challenges posed by the newly emerging ‘sharing economy’. The conclusion that emerges is that the relational egalitarian theory has the best potential to address these challenges, even if on a theoretical plane it exhibits the greatest conceptual distance to the concept of property. This is a somewhat paradoxical conclusion, which confirms that much more work is needed to bridge the gap in egalitarian theorizing between theory (moral principles) and practice (institutional prescriptions).

1. Capitalism, Private Property and Right-Libertarianism

Let's start on the institutional side, by considering the conceptual link between a capitalist economy and the right to property. After that, we can turn to right-libertarianism, to show how it is conceptually linked to the defense of capitalism.

We may start from an idea put forward by Gerald Gaus, that capitalism can be understood as the system of 'maximally extensive property rights', along two dimensions (Gaus 2010). First, property rights involve a number of different rights: rights to use an object, to exclude others from use, to modify or destroy an object, to sell the object, to earn an income from letting others use the object etc. Lawyers call these the 'incidents' of ownership, and they consider full private property rights to be given where a person has the full bundle of all incidents of property (Honoré 1987; Becker 1977, 18–20). The government can limit each of these rights. A capitalist society grants as many rights to property owners as possible. Second, property rights can range over more or less objects. A capitalist economy brings as many objects as possible into the system of private ownership. Here there are key roles for the commodification of natural resources (preventing tragedy of the commons), and the commodification of labor. In addition, all kinds of controversial goods (such as the commodification of body parts) can be brought into the realm of private property.¹ Using these two dimensions, one can plot economic systems by the extent to which they choose to restrict or expand property rights with respect to the bundle of rights and the objects of property (Gaus 2010).

This scheme needs to be extended. Gaus' two-dimensional definition is symptomatic for a lot of writing in political philosophy, in its focus on property as private property (Munzer 1990; Christman 1994; Waldron 1988; Ryan 1984). His second dimension conflates the question whether something can become the object of property arrangements (of whatever kind) with the question whether this must be private property. It is one thing to argue that natural resources should be the object of some kind of property arrangement, it is quite another thing to assign this property to the state, a corporation, an individual etc. Disentangling these two questions, we should recognize *three* dimensions on which to plot economic systems: the subjects of property, the objects of property and the scope of property rights. Capitalism is the system where property is held privately, every object can become property, and the bundle of rights is maximally extensive for the private owner (see table 1).

Given its importance later in this paper, a few words are necessary on the classification of subjects of property. In the legal literature, it is conventional to think in terms of an ideal-typical trichotomy of private, common and state property. Private property assigns the power to make decisions about the object to a particular

¹ To be more precise, Gaus defines capitalism as the conjunction of three institutional elements: maximally extensive property rights, efficient markets and firms led in the interests of their owners. However, the latter two elements he derives from the idea of maximally extensive property.

individual, in exclusion to others. Common (or joint) property belongs to a group of people who can all make use of the object, without being able to exclude the other members of the group. Collective (or public/state) property also belongs to a group, but here decisions about the use of the object are made in the interest of the group as a whole. Individual members do not have free access to the object (Waldron 1988, 38–42; Dagan and Heller 2001, 555–558; Lehavi 2008, 139). These are ideal types, and different regimes may be chosen for different objects, as will ordinarily be the case in mixed economies. Nonetheless, the ideal types provide organizing ideas. Jeremy Waldron even linked preferences for these types to distinct political positions: ‘To put it crudely: socialists argue for a system of collective property, radicals for something like common property, and capitalists and their liberal ideologues for private property.’ (Waldron 1988, 44). As we will see later, the mapping of normative theories with institutional preferences is much more problematic than this quote suggests.

Table 1: Dimensions of property	Question	Possible answers
<i>1a. Subjects</i>	who is allowed to hold property?	Private, common or state property
<i>1b. Objects</i>	what can become object of a property right?	Controversies include: human beings (slavery), but also human organs (kidneys), ideas (intellectual property), plants, natural processes, etc.
<i>1c. Prerogatives</i>	what are owners allowed to do?	A ‘bundle of rights’’: using, selling, managing, etc. one’s property

Let’s now, however, turn to the one position that does exhibit a relatively straightforward link between moral principles and institutional prescriptions: right-libertarianism, which provides the philosophical defense of capitalism (as defined in the three dimensional space above).

The traditionally most influential argument for maximally extensive private property is in terms of self-ownership and its extension into the world through labor. Right-libertarians invariably defend self-ownership: a person is the owner of his own body, energy, and talents (Nozick 1974; Narveson 2001; Mack 2002). This idea implies a direct rejection of any claims of others upon one’s body, energy and labor. Self-ownership is widely accepted in so far as others should not be allowed to infringe upon our bodily integrity (through assaults such as rape). For present purposes the more relevant question is whether self-ownership also has consequences for the

ownership of our talents and our labor, and from there to ownership of the fruits of our labor (the products we make exerting our talents upon some object). This question inevitably brings in the ownership of material things external to ourselves: self-ownership is a necessary but not sufficient condition for the justification of full private ownership in worldly objects. With respect to these external things, libertarians start from the idea that they are originally either owned in common by all men (e.g. as a gift from God, as in Locke) or unowned. Which of these two points of departure is chosen doesn't really matter – in both cases the libertarian theory defends a transition to individual ownership. Normally this step is defended by arguing that anyone mixing his labour with the resource comes to own it (Locke 2003; Nozick 1974).² Taking self-ownership and labour acquisition together gives one the libertarian case for maximally extensive property rights in the sense discussed above.³ This close alignment between moral principle and institutional conclusions results because in its moral theory, libertarianism makes an argument about the rightful ownership both of one's own internal endowments (self-ownership) and of external objects in the world (world-ownership). The concept of property plays the crucial role. Combining a libertarian stance on both gives us a moral theory, which leads more-or-less directly to an institutional defense of capitalism.

Libertarianism is not merely a theory of justice. It also defends a view of political legitimacy. The institutional program is one in which there is a clear separation between a public sphere and a private sphere. Individuals have a natural right to their private property and the state exists for the protection of these private property rights. Hence, the defense of private property is the criterion for judging political legitimacy as well. This public/private distinction has been the heritage of the Lockean property theory embraced by libertarians, and is deeply embedded in the self-image of liberal societies. It is a theory that does not just legitimize private property holdings; it legitimizes a certain view of the state's role, by defining it against this private sphere of action (Benn and Gaus 1983). The legitimation of the basic regulating principles in the political and the economic sphere go hand in hand. Judging alternative theories, we have to keep in mind whether they are to fulfill this double role, both of giving a theory of just property holdings and of judging the legitimacy of political institutions. Given the prevalence of the private/public distinction, this is not an easy task.

² As an alternative, first-occupation instead of labour-mixing may be the justificatory ground. (Narveson 2001, 79). Conceptually, these appear close cousins, since 'grabbing' an object may be treated as mixing one's labour with it in a rather minimal sense.

³ N.B. Here I merely present the libertarian position, I am not arguing this case is convincing, even on its own terms. Most importantly, a defense of capitalism doesn't follow as straightforwardly as presented here in the main text to the extent that 1) the libertarian theory includes a Lockean proviso, and/or 2) the principle of rectification is applied to rectify wrongful transfers. Many libertarians downplay these potential problems.

With this combination of right-libertarian moral principles and capitalist institutions as a benchmark, we can now ask: which moral/institutional combinations can act as challengers of this theory?

2. In Search of Solidarity: Three Alternative Theories

In this section I introduce three alternative theories: left-libertarianism, luck egalitarianism and relational egalitarianism. Although there are obviously many more theories, I restrict my attention to these three, which have proven themselves as important types of normative theory to challenge right-libertarian conclusions. Each of them can be used to argue in favor of institutional schemes that in one sense or the other realize more ‘solidarity’ amongst the members of the relevant society.

The first position, *left-libertarianism*, concurs with right-libertarianism on the question of self-ownership, but diverges from it with respect to world-ownership (Steiner 1994; Parijs 1995; Otsuka 1998).⁴ Individuals may not simply appropriate external resources as much as they can mix their labor with. Instead the ownership of external resources must be divided according to some egalitarian principle. Different variations are possible in terms of the exact principle used for the distribution of external resources, for example one might think in terms of strictly equal (or equally valuable) shares, or one might think in terms of joint ownership. This egalitarian position on world-ownership is due to left-libertarians taking more seriously than right-libertarians the Lockean proviso on the acquisition of resources: individuals can appropriate natural resources only under the condition that ‘enough and as good’ is left for others. What is enough and as good can differ, but it leads to a more egalitarian distribution of property than right-libertarians would allow.

The second position, *luck egalitarianism*, goes one step further than left-libertarianism in its divergence with right-libertarianism. Luck egalitarians concur with left-libertarians that every individual deserves an equal share of all external resources. For example, in Ronald Dworkin’s island thought-experiment, all inhabitants get an equal bundle of clamshells (Dworkin 2000). However, they diverge from both in their position on self-ownership. Luck egalitarianism – like relational egalitarianism, see hereafter – rejects the idea of self-ownership. Instead, the theory starts from the idea that the ‘natural lottery’ produces differences in talents which, from a moral point of view, are arbitrary. This forms a basis for claims to compensation: unchosen differences are unjust and must be collectively insured. Luck egalitarians differ on whether all differences in talents are unchosen, hence whether

⁴ There has been debate about the coherence of the acceptance of self-ownership and the defense of an egalitarian distribution of world-ownership (Fried 2004). However, let’s assume a coherent position is possible.

all economic differences arising from the exertion of talents should be equalized (Cohen 1989: 722). Here I will for simplicity's sake assume that they are.

The third position, *relational egalitarianism*, focuses on equality of standing between citizens as its fundamental moral principle. I use the label 'relational egalitarian' here somewhat broader than is customary in the literature, as the main sort of non-luck egalitarian brand of egalitarianism. Relational egalitarians reject self-ownership; this is what both forms of egalitarianism have in common, in contrast to both forms of libertarianism. However, relational egalitarians also reject luck egalitarians' obsession with compensating for bad brute luck as the central focus of injustice (Anderson 1999; Anderson 2010). Their basic intuition is that justice is not a matter of compensating for bad fortune, but of providing citizens with equality in some other dimension, i.e. the intersubjective dimension of their standing or status in society. In practical terms, this is not coupled with strict equality in ownership for external resources, but in some other distributive principle, which can be more or less egalitarian. For example, some would defend a sufficientarian principle, which focuses on a threshold level of resources or capabilities for all citizens (Anderson 1999; Nussbaum 2000), while other theorists would focus on a principle which maximizes the position of the worse off (Rawls 1999). In the following, I will for the sake of argument use a sufficientarian principle to exemplify the relational egalitarian position.

In each of these three theories we find a moral argument for a more egalitarian distribution of external resources than is typically found in right-libertarianism. This implies a less-than-fully-capitalist scheme of property rights. However, these theories present very different groundings for this claim. Left-libertarians work from the intuition that *external* resources, being originally owned by no one, belong to everyone equally. Their claim is primarily about the resources 'out there' and their rightful distribution. Luck egalitarians work from the moral arbitrariness of *internal* endowments. Their claim is primarily about individual responsibility and its limits, conceptualized along the lines of the choice/chance distinction. Relational egalitarians focus on the necessity of redistribution in order to attain equality of standing between citizens. Their focus is on an *intersubjective* state of equality (akin to republicans: being able to 'look each other in the eye'), and the necessary agential preconditions for that intersubjective state.

This all-too-brief overview is an ideal-typical reconstruction. In actual political discourses, as well as in academic writing, we often find mixtures. Let's briefly revisit one example of such a mixture, which also connects our discussion to the theme of solidarity. Margaret Kohn has recently drawn attention to an important strand of French early-20th-century left-republican theorizing, known as 'solidarism'. She presents it as charting a middle path between laissez-faire capitalism (in the terms

used here: right-libertarianism) on the one hand and either welfare state capitalism (which bases its claims for redistribution on the satisfaction of basic needs) or socialism (which argues for collectivizing property) on the other hand. Solidarism recognizes private property, but emphasizes the social, collective nature of economic production. In Kohn's words, it rests on the claim that

‘the division of labor creates a social product that does not naturally belong to the individuals who control it as their private property. This claim provides the foundation for the principle that the wealthy have a quasi-contractual debt to society that they are obliged to repay.’ (Kohn 2015, 2)

Here I want to draw attention to the fact that this solidarity claim can be cashed out in two very different ways, however, and both are found in solidarism.

One justification is basically left-libertarian. This appears in Kohn's rendition of Alfred Fouillé's argument. He argued that Locke's argument for private property had to be modified. The fact that a person mixes his labor with an external resource implies only private ownership to the extent of the labor one has invested. The external resources have value, and this value remains social. Hence we need to recognize both individual and social property in the product which is mixture of labor and nature. If the individual appropriates all, he dispossesses others of a part of nature that they can rightfully claim as theirs. This in turn becomes the basis for a claim to social rights funded by all (Kohn, 5-8). It is not difficult to see in this argument the left-libertarian scheme, combining the self-ownership of my labour with the shared ownership of external resources.

However, as Kohn explains, the solidarists also argued that ‘the self’ should be seen as a social construction. Growing up to become a participant in society requires the caring work of others, thus one is born with a ‘debt’ to society. Also in many other ways, one's own productivity depends on the linkages one has with others (externalities). All of these factors also form a basis for accepting an obligation to pay off one's debts to society (Kohn, 8-10). This is a very different line of argument, which is based on a luck-egalitarian intuition: that one cannot fully claim the fruits of one's own talents, since they were not under one's control.⁵ This should be kept distinct from the idea that the common or equal ownership of external resources, even after labor has been used upon it, forms the proper basis for collective redistribution. Both lines of argument can of course be run in tandem (as luck egalitarians do when they also accept equality of external resources), but they are nonetheless distinct.

⁵ Later in her article, Kohn argues that one of the solidarists (Bourgeois) used an explicitly luck egalitarian argument about choice and chance (Kohn, p. 14). I would argue that luck egalitarianism is implicit in the larger stance on the socialization of the fruits of individual productive labor.

3. Moral Theories and the Concept of Property

Let's now connect these three normative theories to the question of property. For right-libertarianism, we saw that there is a more or less direct link with a capitalist economy of maximally extensive property rights. How about the left-libertarian and both egalitarian theories?

A first thing to note is that these theories exhibit an *increasing conceptual distance* to the concept of property, starting from left-libertarianism through luck-egalitarianism and finally relational egalitarianism. Left-libertarianism like right-libertarianism is conceptually organized around the concepts of self-ownership and world-ownership. It is the same strong ties to the literature about property as right-libertarianism has. Luck-egalitarianism occupies a middle position. On the one hand, its argument about internal endowments is not couched directly in terms of property rights, since it doesn't claim that internal endowments are collective property, even if no one can help being born with more or less of them. Nonetheless, its treatment of internal endowments is akin to property, since differences in them do become the subject of claims of redistribution (via insurance). Although differences in endowments cannot be redistributed as property, monetary compensation for differences in endowments can. The relational egalitarian claim does not have any direct implications for property. Its normative focus is on the structure of intersubjective relations. Of course claims to resources can be related to this normative claim by way of empirical conjecture, but the link is more distant in conceptual terms.

The reason for these differences, I suspect, is that libertarian and egalitarian theories differ in one crucial respect: the former start from a puzzle about the ownership of resources, whereas the latter start from a normative conception of persons. This has profound consequences. Libertarian theories, both in their right-wing and their left-wing forms, give pride of place to the problem of 'how to divide the pie'. They presuppose a picture in which persons with moral standing confront the fact that there are both internal and external assets whose rightful possession has to be assigned to individuals. The possible disputes about the ownership of these assets forces upon the agents the question 'who gets what?' Hence the question about property is central to these theories from the start. The central topic of a theory of justice simply is how to solve the problem of assigning property rights. The very different conceptualizations of original property (self-owned, unowned, commonly owned) as well as the different conceptualizations of just property assignments (where left- and right-libertarians split ways) should not detract from this underlying similarity.

By contrast, egalitarian theories take off from a different description of the problem of justice. For them the problem is not about the ownership of resources as such, but about ‘what persons owe to each other’. Here the idea is that being a member of the same group (political community) involves certain duties towards other persons in the group. Luck egalitarians argue that it is essential that no inequalities that were not under a person’s control arise in a political community. Relational egalitarians argue that citizens in the same political community should stand in relations of equality with one another, which may, for example, be interpreted as requiring a threshold level of basic capabilities for each citizen. In both cases an idea of the person’s attributes compared to other person’s attributes sets the theory in motion.⁶

Parallel to these differences, these theories, and especially the egalitarian theories, are *indeterminate* in their recommendations for how to deal with property. This is a point also noted by Kohn, who argues that the solidarists’ moral arguments can be used for arguing in favor of very different institutional schemes, such as providing public goods, a minimum income, property-owning democracy, etc. (Kohn p. 14, 17). In a society characterized by a social division of labor, the rich must discharge their social debts to society. But *how* this must be done, remains an open question. This was not merely a problem for French 20th century solidarism. In the analytical context, it is for example familiar also from the discussions in and about Rawls’s principles of justice. His principles of justice can be instantiated in a variety of institutional regimes. He discusses several of them: liberal socialism, the welfare state, laissez-faire capitalism and a property-owning democracy (Rawls 2001, 135–140). Despite the title of the last system, for which he eventually opts, no knock-down arguments can however be found why his principles must be realized through such a system. The arguments he uses are tentative, and many authors have argued that some other system is needed to realize his own principles (e.g. Schweickart 2012). In general, then, it seems to become a largely *contingent and empirical* matter which institutions are best suited.

⁶ Of course, this does not mean that libertarian theories do not contain a conception of the person, or that egalitarian theories do not contain ideas about the distribution of property. To argue for conclusions about self-ownership and world-ownership, libertarians resort to some ideal of negative freedom. The person is seen as an independent individual who can claim non-interference from others. Property should be arranged so as to defend this claim. Reversely, egalitarians do argue about property. For example, Dworkin’s conclusion about equality of external resources is an institutional translation of this moral view about the relevance of luck between persons. Nonetheless, the order is different. For libertarians the problem of property comes first, and the conception of the person is used in answering the question of property. For egalitarians the problem of justice is about persons, their attributes, and mutual relations. The distribution of property serves to realize the desired outcome in terms of these attributes and relations. The distinction I am drawing here may seem to coincide with the distinction between ‘end-state’ (egalitarian) and ‘historical’ principles of justice. However, this is not the same.

Let me propose the following hypothesis about this institutional indeterminacy of these theories. They all work – albeit in very different ways – with a dichotomy between ‘individual’ versus ‘social’ claims. All of them argue (on a different moral basis) that individuals have a claim on society to receive some resources, even though they haven’t worked for them. This anti-capitalist social claim, however, is an undifferentiated category, which may point to various institutional alternatives, with very different effects. It functions more like a metaphor, a stand-in for various alternatives, than a conclusion about the forms that anti-capitalist property would need to take. This is true for all three dimensions of property mentioned in section 1: who should be owning property, which rights should be given to property-owners, and which things should be allowed to be objects of property rights. These questions seem to be orthogonal to the luck egalitarians’ choice/chance distinction and the relational egalitarians’ concern for sufficient intersubjective conditions for citizenship (one would expect the left-libertarian claim seems to fare somewhat better – here I would argue, however, that its egalitarian principle of world-ownership can also be instantiated through various property arrangements).

An important confusion needs to be avoided at this point. My claim here is *not* that it remains indeterminate for each of these theories what the relative size or strength of the social claim vis-à-vis the individual claim is. Of course this strength is also something that needs to be made more determinate. For example, relational theories when they adopt a sufficientarian principle of distribution need to develop an account of how high or low this threshold is, for this determines the line between individual and social responsibility for certain resources. Similarly, luck egalitarian theories need a more elaborate account to determine when an outcome is under the control of an individual and hence a matter of individual choice responsibility (a notoriously difficult issue, which touches upon the metaphysics of free action). Left libertarians, as already mentioned, differ amongst each other about how egalitarian world-ownership needs to be. These problems however, should be resolvable within normative theory. By contrast, the indeterminacy I want to draw attention to is *institutional*. It touches upon the form of the property scheme, in its various dimensions, which is supposed to implement the social claim.

To illustrate, consider various important alternatives to the capitalist scheme of maximally feasible private property:

- A socialist state, which owns the means of production as collective property, the benefits being channeled to citizens.
- A welfare state, which gives citizens free access to important public goods, like health care and education.

- A tax-and-transfer state, which equalizes individual property holdings (i.e. Rawls's property-owning democracy)
- An economy relying on common property arrangements in smaller (sub-state) groups, by which citizens pool resources and/or risks.

Each of these schemes provides a way of honoring the social claim; but each does so in very different ways. To see the force of these differences, let's connect this point to the public/private divide. Above, I stated that right-libertarianism lies at the basis of liberalism's tendency to think of the private and public sphere as relatively sharply distinct, with the role of the state to protect individuals' private sphere of action, as constituted through their private property. Each of the institutional alternatives is very different in how it relates to this liberal structuring principle of society. A socialist state abolishes the divide, at least to the (very significant) extent that it abolishes private property. A welfare state largely leaves the dichotomy intact, but increases the relative weight of the public sphere by bringing more goods and services under collective provision. A tax-and-transfer state also leaves the dichotomy intact but it does so by re-ordering the property holdings with the private sphere. The state here is merely a hub and the fundamental solution is that 'everyone becomes a capitalist' on an equal footing. Finally, an economy consisting of strong common property resources also abolishes the private/public divide, but not (like a socialist state) by abolishing the private sphere but by abolishing both the private and the public sphere in favour of 'intermediate' groups and associations of production. The choice between such alternatives (or more realistically: different mixtures of them) can hardly be seen as a pragmatic one; each of them implicitly contains a very different vision of society. Nonetheless, it seems that the three egalitarian theories could all accept each of these alternatives, and do not give reasons for preferring one to the other.

One objection at this point might be that many of these theories explicitly talk about taxation and transfers to illustrate the claims being made. For example, Dworkin talks explicitly about taxes to implement the results of his hypothetical insurance scheme (REF). Similarly, many left-libertarians propose a basic income or basic capital grant to be financed out of taxation (REF). This may seem to indicate that a tax-and-transfer state would be the kind of property arrangement that follows out of the internal logic of these theories. Despite this, however, there is (as far as I can see) no convincing reason why taxation would be the only way to realize the social claim for which these theories argue. The ubiquitous references to taxation and transfers seem to me to be primarily motivated by expository simplicity. They are the least complicated way to illustrate the implications of the moral principles being defended (or alternatively, perhaps many authors simply have not considered

alternatives, following the spirit of our times which points to strengthening private holdings over more communal solutions).

Another objection might be that the vagueness of egalitarian theories is actually a virtue. By separating normative and institutional matters, one can leave it to empirical considerations which institutional arrangement is to be defended. This allows for great flexibility in time and space. In different historical phases as well as different places around the world, one could couple the same principle of justice to very different property arrangements. Why not allow for this flexibility?

In response, I would emphasize that there is a peculiar political strength to framing one's moral claims as *property-claims*. Kohn argues that the solidaristic theory, with its emphasis on social property and social debt, provides an alternative justification to the 'welfare-as-state-charity-model' (Kohn, p. 20). In contrast to the latter, it shows why taxation so as to provide social rights is not a matter of forcing charity upon the rich (those who pay the taxes), but reparation for what the rich have taken from the rest by their disproportionate appropriation of resources within the capitalist production process. In contrast to claims about charity, claiming that something is one's property has strong political effects. This is true both for those who argue in favor of unrestricted private property rights and those who would like to see more socialized forms of property. This vagueness is, compared to libertarian theorizing, a considerable weakness when egalitarians enter the political arena. One need only think of the normative theory that I have omitted so far from my overview, Marxism, to realize the size of the deficiency. Despite all the vagueness about what a communist society would look like, Marxists had a counter-idea about property: the pooling of property in the hands of a collective of all citizens. Common property was to replace private property, and this institutional idea had an enormously attractive power, in addition to the underlying normative principles (about alienation, exploitation, etc.).⁷ We need not share all Marx's conclusions to see the force of this point.

Nonetheless, perhaps the circle can be squared. Perhaps it is possible to start theorizing justice from some conceptual distance to the concept of property (perhaps there is even merit in doing so) and bridge the gap so as to come to convincing conclusions about property arrangements. Doing so would certainly help to bring egalitarianism closer to political reality. In order to investigate what would be needed, let's investigate a concrete case to test the potential of the three alternative theories in this regard.

⁷ It is probably not a coincidence that Marxism accepts self-ownership. Its central claim of exploitation is that workers do not get compensated for all the labour they supply to capitalist. Hence, Marxism can be interpreted as a form of left-libertarianism. See Cohen. NB Cohen shows that Marxism faces exactly the problem as other forms of libertarianism: it has nothing to see about persons with frailties in the constitution of their person (Cohen 1990).

4. Property and Solidarity in the Sharing Economy

In recent years new technological platforms like Airbnb and Uber have gained enormous traction. Together these new companies have come to be known as the ‘sharing economy’. Some authors have claimed that they challenge the capitalist logic, because they provide sites for sharing of resources. This would provide important opportunities for solidarity and also for sustainable production. Others have challenged these claims. Let’s first give a brief overview of the phenomenon and the claims about the (de-)merits of the sharing economy, and then see how our normative theories can relate to these questions.

Sharing will here refer to the use of an object (asset) between several persons. Many assets are generally shared between members of the same household, even if one of them is the legal owner of the asset. In this sense sharing is nothing new. In legal terms sharing is based on a disentanglement of the bundle of rights: one person remains the owner, someone else has temporary access to the object for its use (Zale 2016, 511). Such sharing can be analyzed around several dimensions: whether it is formal or informal, monetary or non-monetary, personal or commercial, gratuitous or non-gratuitous (Zale 2016, 516). The most important dimension here is the latter: whether a particular act of sharing is done for profit or without the expectance of reciprocation (which will most often be monetary). Some discussions of new technologies have been centered on gratuitous sharing, i.e. the kind of sharing found when individuals contribute freely to the development of new software. This has been described as ‘commons-based peer production’, and it has been analyzed as an important site of the development of moral virtues such as benevolence and altruism (Benkler and Nissenbaum 2006). However, the term sharing economy (and its main examples such as Airbnb and Uber) is now mainly used for for-profit sharing. If there is solidarity here, it is not in the spontaneous and altruistic sense of the word. The motivations of participants on the supply and demand side are economic in nature. This is ‘capitalist sharing’ (Dyal-Chand 2015, 250).⁸ What is new here is 1) the technology of online platforms, which enables access to capacity which would otherwise be lying idle, and 2) the fact that this technology enables peer-to-peer production, rather than business-to-consumer production (Schor 2014; Zale 2016, 527–541).

Several normative concerns have been raised about the sharing economy. I focus on two issues that seem to be the two most important ones: distributive justice

⁸ For a discussion of the motivations for both sellers and buyers to engage in the sharing economy, see (Dyal-Chand 2015, 256–259).

towards the producers *within* the sharing economy, and distributive justice *between* the sharing companies and their non-sharing competitors.

Within the sharing economy, confusingly enough, there seem to be two opposed problems of distributive justice. On the one hand we find the claim that it is mainly those who own assets who profit from the expanded opportunities to sell access. Only those with attractive apartments have something to offer on Airbnb and similar platforms. Thus the sharing economy would strengthen the position of the (upper-) middle class compared to the lower socio-economic classes (Zale 2016, 531–533). This is a classic example of the Matthäus effect. On the other hand, there is the objection that sharing companies exploit the producers connected to them, just like a regular company might do with its workers in the absence of regulation. These burdens fall on those who are less well-off economically (especially after the 2008 financial crisis). They are included in the sharing economy, but they are included in a manner which is highly problematic (Dyal-Chand 2015, 263). These arguments are only seemingly contradictory. The first argument is about the sharing of physical assets (which richer people have to a greater extent), the second one is about the sharing – or rather simply offering – of one’s labor time (which poorer people have as much as richer people).

The last point connects the sharing economy to the rest of the economy. Many people, it is argued, participate in the sharing economy precisely because they cannot find better jobs in the rest of the economy. The Uber taxi drivers who only offer their services to make ends meet are the archetypical example of this point. Participation for them is the result of a desperate choice (Zale 2016, 520). Hence the rise of the sharing economy can be portrayed as to a large extent the result of a background injustice in the economy as a whole. In both segments, the sharing economy exacerbates existing inequalities. As so often, however, exploitative working conditions also give rise to competitive advantages. The same problem of lower working conditions puts regular hotels, taxi drivers and others in the non-sharing economy at a competitive disadvantage. They have protested that the lack of regulation of the sharing economy results in unfair competition. From this perspective ‘the ultimate losers are the businesses in the nonsharing economy’ (Dyal-Chand 2015, 265). A consequence of accepting this argument would be that the playing field should be levelled, by subjecting sharing companies to the same standards in terms of licensing requirements, consumer safety requirements, working conditions, etc.

In conclusion, the sharing economy presents two normative problems. One is the existence of *background injustices*, which translates into exploitative labor conditions and widening inequalities due to the inequalities in asset ownership. The other problem is *unfair competition*. Arguably, the latter problem would persist even if all background injustices could be removed. One can imagine that much less people

would be interested in participating in the sharing economy if they had better financial options elsewhere (in terms of well-paid jobs and/or more generous social benefits). Still, it remains the case that the technologically innovative platforms operating the sharing economy present efficiency gains (due to economies of scale) that would remain interesting to a large number of sellers and buyers. Hence the question of how to regulate these platforms would persist as well, even if all background injustices would be resolved. The main regulatory choice with respect to the latter is whether to assimilate sharing companies to regular companies or not.

Dyal-Chand makes an interesting argument that this would be a mistake. In his view, instead of integrating producers into sharing companies as regular workers (so as to give them the same working conditions), it would be better to enhance their bargaining power as *independent* producers, which share a network which performs certain functions. The sharing economy's market structure according to him is potentially structurally similar to that found on a larger scale in coordinated market economies (such as Germany). There companies compete, but they also cooperate on a number of functions, within intermediary institutions (such as trade unions, business associations). In the sharing economy cooperation between independent producers fulfills several important market-making functions as well. The intermediating companies (Airbnb, Uber, etc.) help bring consumers together, set standards for the market as a whole, monitor participants and sanction them when necessary (Dyal-Chand 2015, 280–283).⁹ Instead of enforcing vertical integration by bringing the independent producers within these firms, the other regulatory option is to accept the *sui generis* structure of these horizontal networks, but make sure that participants have sufficient bargaining power towards the platforms. The intermediaries should work for the sake of the independent producers, not the other way around.

Faced with the regulatory choices that the issue of the sharing economy raises, let's now finally consider whether and how the normative theories introduced earlier can relate to this issue.

With respect to the problem of background injustice, injustices in the distribution of income and wealth in the economy as a whole can be diagnosed along the lines of these theories and remedies proposed. As we saw in the previous section, however, it is generally unclear which kinds of property arrangements would flow from these theories. The normative arguments of these theories establish no clear preference for collective, common or (more widespread) private property. Since I have already treated this issue above, I will not repeat this here. Even assuming

⁹ In terms of functions, companies do pool functions, then, even if they do not pool property directly (check REF on this). This does not take away the fact that the debate about the sharing economy remains within the parameters of private (not common or collective) property. The debate is – in terms of the three dimensions from section 1 – about the incidents of property: about the conditions for the use of assets by non-owners.

background justice in place, the specific problem of the sharing economy relates to the question whether to allow these as platforms of independent producers, or force them onto the same playing field as their nonsharing counterparts. Let's focus on this issue.

It seems to me that both left-libertarianism and luck egalitarianism cannot say much about this issue. Both of these theories seem to be exhausted by what they say about what I here called background justice. Once everyone has a fair share of external resources, and once all corrections have been made for bad luck beyond everyone's control, these theories would be agnostic about the organization of economic production. They can endorse a liberal market economy in which collaborative activity must be organized within firms or is otherwise outruled by competition law. They can equally endorse a coordinated market economy in which collaboration between market actors is allowed. There seem to be no normative reasons to prefer one option to the other, from the perspective of fair shares of external resources or fair compensation for misfortunes. If this point is correct, this would confirm the conclusion in the previous section, that there are serious limitations to the use of these normative theories for bridging the gap to institutional design in general, and property arrangements in particular (of course, left-libertarians and luck egalitarians might argue that their agnosticism is not problematic: they might say that when background justice is established, there are indeed no further questions of economic justice – the rest is up for grabs. I would disagree, but cannot argue this here).

By contrast, relational egalitarianism seems to me to have more potential for addressing the regulatory issues raised by the sharing economy. The reason for this is that its main desideratum – equality of standing between citizens – also provides a criterion for thinking about the relations between producers, and between producers and consumers, within the economic sphere. From the relational egalitarian perspective, for example, one question *laissez-faire* regimes on the labor market, which use the freedom of contract as an argument to establish severe hierarchies at work. Instead, the ideals of freedom and equality of workers vis-à-vis their employers requires legal protections of workers, maybe even something akin to a 'representative democracy' at work (Anderson 2015, 61). This argument is about governance within firms. However, similarly, in a situation like the sharing economy, where capital assets are dispersed, one could argue that relational egalitarian considerations favor empowering independent producers instead of bringing them into a corporate hierarchy. I cannot develop this argument here, but merely want to point out how the relational egalitarian's normative focus on equality of standing can be helpful in

evaluating the diversity of regulatory arrangements possible for the emerging sharing economy.¹⁰

Conclusion

If the conclusion in the previous section is correct, then the (perhaps surprising) conclusion is warranted that out of the three normative theories on which I focused in this paper, it is the theory that has the greatest conceptual distance to the concept of property, which is most useful in evaluating property arrangements. This paradoxical conclusion may be no coincidence. Precisely because it starts from normative claims about intersubjective states between persons, not (quasi-)property claims about internal endowments or external resources, a relational egalitarian perspective can be used to judge the fairness of a wide variety of property arrangements. Its normative criterion functions as an independent benchmark to judge these institutional configurations, hence its scope is wider than the other two theories. However, this optimistic conclusion needs to be immediately balanced against the pessimistic one I reached in the previous section; viz. that egalitarian theories exhibit a certain indeterminacy about the property arrangements they would settle on to counterpose the right-libertarian defense of maximally extensive capitalist property rights. What remains to be done, then, is to provide a more thorough account of how to argue from the normative basis of a relational egalitarian theory to a narrowed (or even unique) set of property arrangements. In bridging this gap between moral principle and institutional prescriptions, egalitarians face an intellectually heavier task than their right-libertarian opponents. This paper has sought first of all to diagnose and understand that predicament. Overcoming it remains a working program that will take much more work in the future.

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¹⁰ In a similar vein, elsewhere I have argued how questions of market regulation can be dealt with by conceptualizing them in terms of the interests of free and autonomous agents (Claassen 2016d) and the capabilities of such agents (Claassen 2016c). The normative background for this position is defended in (Claassen 2016b) and my monograph in preparation (Claassen 2016a).

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