

## Form and content of rights

### 1 Needs limit property rights in the natural law tradition

“there are four kinds of “community of goods,” corresponding to four different sources of right. The first kind of community is derived from the right of *natural necessity*: anything capable of sustaining natural existence, though it be somebody’s private property, may belong to someone who is in the most urgent need of it. This kind of community of goods *cannot be renounced*. It derives from the right that naturally belongs to man as God’s image and noblest creature, on whose behalf all other things on earth were made.”(St. Bonaventure, “A Defense of the Mendicants” (ca. 1269).)<sup>1</sup>

“If ... there is so urgent and blatant a necessity that the immediate needs must be met out of whatever is available, as when a person is in imminent danger and he cannot be helped in any other way, then a person may legitimately supply his own needs out of another’s property, whether he does so secretly or flagrantly. And in such a case there is strictly speaking no theft or robbery.” (St. Thomas Aquinas, “On Justice” (1265-74))<sup>2</sup>

### 2 Needs limit property rights in Locke

“But we know God hath not left one man so to the mercy of another, that he may starve him if he please: God the Lord and Father of all, has given no one of his children such a property in his peculiar portion of the things of this world, but that he has given his needy brother a right to the surplusage of his goods; so that it cannot justly be denied him, when his pressing wants call for it. And therefore no man could ever have a just power over the life of another by right of property in land or possessions; since it would always be

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<sup>1</sup> in *From Irenaeus to Grotius: a sourcebook in Christian political thought, 100-1625*. Edited by Oliver O’Donovan and Joan O’Donovan, (Grand Rapids, MI: William Eerdmans, 1999), p. 317

<sup>2</sup> *Summa Theologiae* 2a2ae.57-122, in *From Irenaeus to Grotius*, p. 359.

a sin in any man of estate, to let his brother perish for want of affording him relief out of his plenty. As justice gives every man a title to the product of his honest industry, and the fair acquisitions of his ancestors descended to him; so charity gives every man a title to so much out of another's plenty, as will keep him from extreme want, where he has no means to subsist otherwise: and a man can no more justly make use of another's necessity to force him to become his vassal, by with-holding that relief God requires him to afford to the wants of his brother, than he that has more strength can seize upon a weaker, master him to his obedience, and with a dagger at his throat, offer his death or slavery." (Locke, *First Treatise of Government*, §42.)

### 3 Nozick on form and content

"we have a promising sketch of an argument from moral form to moral content: the form of morality includes *F* (moral side constraints); the best explanation of morality's being *F* is *p* (a strong statement of the distinctness of individuals); and from *p* follows a particular moral content, namely, the libertarian constraint." (Nozick, *Anarchy, State, and Utopia*, p. 34.)

### 4 Could a more expansive set of welfare rights limit property? Could they have the form of side constraints?

"every person has a natural right to a sufficient share of every distributable good whose enjoyment is a necessary condition of the person's having a reasonable chance of living a decent and fulfilling life, subject to the following qualification. No person has a natural right to any good which can only be obtained by preventing someone else from having a reasonable chance of living a decent and fulfilling life."<sup>3</sup>

<sup>3</sup> Samuel Scheffler, "Natural Rights, Equality, and the Minimal State," *Canadian Journal of Philosophy*, 6 (1976), p. 64.