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A Reformulation of the Structure of a Set Compossible Rights

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Abstract

Hillel Steiner argues that a necessary and sufficient condition for the compossibility of a set of rights is that those rights be extensionally differentiable. However, given that two or more actions can extensionally overlap without thereby being mutually unperformable, if such actions are specified in the relevant rights, then those rights will not be impossible, notwithstanding their extensional overlap. The set of compossible sets of rights then is greater than the subset of extensionally differentiable rights, and extensional differentiability is a sufficient but unnecessary condition of compossibility.

Key words: Rights; Compossibility; Hillel Steiner; Intentional action; Interference

Introduction

Imagine a large group of people assembled in the street, trying to get their voice heard on some pressing issue of the day. They block up the street such that no traffic can pass through. This is fine for most drivers because they can take another route to wherever they are going. However, for someone who needs to access this particular street to make a delivery, the protest is obstructive. Imagine this takes place in a society in which the right to free speech and public assembly is a right guaranteed by law, entailing correlative duties on each person to respect the same right in every other.¹ Imagine, moreover, that in this society law also permits one to take on duties to others by one's own free choice in the form of contracts. The delivery driver agreed to be bound by a duty to deliver goods to an address in the middle of this street at the time of the protest, in exchange for payment. The delivery driver has, due to the way others have exercised their respective rights, ended up in a position wherein she has two duties she is unable to simultaneously fulfil – the duty to respect the right to free speech and assembly, and the duty to honour her contract. This renders the rights of the protestors to protest and the right of the customer to her delivery at a certain time incompatible. For one to have their right protected, would be for the other to have theirs violated.²

The problem in this case is that not all duties can be complied with, and therefore not all rights can be respected. It needs to be the case that whatever range of actions are permitted under a set of rights, that none of them conflict with any other actions permitted under that set. When they do, persons are faced with situations in which the fulfilment of one duty constitutes an action which makes the fulfilment of another duty impossible. In the society imagined above, the overall set of rights accorded to each person under law is not structured in a way that ensures persons are enjoined from engaging in activities that conflict with other persons' execution of their duties. This means that persons can violate the legal rights of others (and their own duties toward those others) whilst remaining within their own legal rights, hence rights can conflict. This gives rise to a legal and moral state of affairs that H. L. A. Hart refers to as *The Nightmare*.

¹ Throughout this paper, except where otherwise specified, I use 'rights' to refer specifically to claim rights, as per the Hohfeldian taxonomy (Hohfeld 1913; 1917).

² For a similar but far more detailed version of this example, see Steiner (1994: 78-85).

The Nightmare is this. Litigants in law cases consider themselves entitled to have from judges an application of the existing law to their disputes, not to have the law made from them... The Nightmare is that this image of the judge, distinguishing him from the legislator, is an illusion... that judges make the law which they apply to litigants and are not impartial, objective declarers of existing law... [but rather exercise] what Holmes called the “sovereign prerogative of choice.” (Hart 1985: 126-34; cf. Steiner 1994: 81)

Where a decision as to whose right is more important is made by a judge, as opposed to whose right was in fact violated, it is the judge that has the ultimate right. The rights of the litigants are not rights to engage in the actions they did, but rather, rights to have a decision made as to what they may and may not to be made by the judge. (Gray 1921: 102, 125, 172; Hart 1985: 129; Steiner 1977: 769)

Hillel Steiner takes it as his task to construct an account of the structural conditions rights must conform to in order to avoid The Nightmare. This is achieved, Steiner argues, when persons’ respective rights are delineated so as to guarantee that there is no overlap between the domain in which each person rightfully acts, meaning that where a right has been violated, it is because someone failed to deliver on their duty to that rightholder. The ultimate decider of who may do what is not determined by a judge, but rather by the rights of the individuals. It is the judge’s job to discover the facts of the matter as to who violated whose rights, rather than whose purported rights deserve higher moral standing.

Steiner’s worry is, in a sense, stronger than Hart’s. On his view, for rights to actually *be* rights, they cannot be subject to conflict. It is not that it would be morally, politically, or legally problematic for judges to be empowered to make such decisions (although it may well be). It is that any moral doctrine that might be appealed to in order to determine which right ought to be protected at the expense of the other will be what in fact has the fundamental authority on who may do what. Hence, what we started out thinking were rights were not rights at all. The actual set of rights turns out to be, at least in part, delimited by the aforementioned moral doctrine. (Cf. Mack 2018: 52).

Steiner’s view is that rights must *necessarily* be structured so as to never permit persons to engage in actions that obstruct the fulfilment of any person’s duties. Which means they must be compatible, given the different ways in which they could permissibly be exercised. Since rights

necessarily entail correlative duties in third parties, a situation in which the right of the delivery driver's customer conflicts with the rights of the respective protestors would entail that the delivery driver had two conflicting duties, and hence a duty to violate a duty. This, Steiner, contends is a logical contradiction, and therefore any set of rights which permits this, is not in fact a set of rights at all. Indeed, a set of conflicting rights is a contradiction of terms, on this view. Rights have ultimate moral finality or 'primacy' (Steiner 2013; cf. 2017b: 380), so for them to lead to a situation in which some other moral standard needs to be appealed to in order to overcome a moral impasse would mean that they were not really rights after all. Rather, whatever are appealed to overcome the impasse are strictly speaking rights, since these are what tell us what we may and may not do.

A set of rights in which the actions therein permitted are all compatible with each other, as well as the actions required by their correlative duties is categorically *compossible*. Compossibility means that respect for each right is co-possible with respect for every other right, no matter how each person chooses to act within her rights (cf. Nozick 1974: 106). What specifically does compossibility call for, then?

In order to be compossible, Steiner argues, a set of rights must be extensionally differentiable. This means that all rights are, at bottom, rights to time-indexed physical objects – or physical components of action – and none of the physical components that feature in one person's rights may also feature in any other person's right.³ As such, all rights are property rights.⁴ So long as the actions that we are entitled to engage in under a set of rights do not spatio-temporally overlap with the actions that anyone else is entitled to engage in under that set, then that set is compossible.

Steiner's basis for the requirement that rights be extensionally differentiable is that when two actions simultaneously share one or more physical components, they are mutually unperformable. Hence no time-indexed physical component can feature in more than one person's set of rights at any time. However, this is mistaken. It is possible for two actions to simultaneously share physical components without thereby being mutually preventative. In order to know whether

³ Therefore, when Steiner says rights must be 'extensionally differentiable,' we ought to understand that as meaning that they must extensionally *disjoined*. I will, however, continue to use Steiner's term so that my remarks can more readily be mapped onto his own.

⁴ Therefore any injustice – a violation of natural rights – is also a *distributive* injustice. Hence, Steiner controversially denies any distinction between commutative or private justice on the one hand, and distributive or social justice on the other (1977: 775; 2017a). What I say here, however does not attempt to cut against that aspect of his theory, but only to reformulate the conditions under which sets of rights can count as contenders for the one that constitutes justice.

or not two actions are mutually performable, we need, not only a physicalistic description of them (a list of their time-indexed physical components), but also an intentionalistic description of them. It is only when we have information about the intentionality of an action that we know whether it can be performed simultaneously with another action at the same spatio-temporal location. I illustrate this with examples of actions that simultaneously share physical components, and yet are not mutually preventative.

I therefore propose a reformulation of the structure of a set of compossible rights. Extensional differentiability is a sufficient but unnecessary condition for compossibility. Since actions do not necessarily frustrate each other by their mere extensional overlap, we need an intentional description of them in order to know if they are mutually performable. Therefore the mutual compossibility of a set of rights is yielded by the relation of non-interference between the actions therein prescribed (in relation to specified time-indexed physical components) given the intentional action that they are.⁵ Rights, then, can pertain not merely to specified time-indexed physical objects, but rather to specified intentional actions in relation to such objects. The time-indexed physical objects that feature in the full description of a right, therefore, are not necessarily differentiable from those featuring in another person's right; it will be the particular intentional action prescribed in the right that yields determination over its compossibility with others in the set.

In this paper I do not challenge any of the more foundational elements of Steiner's theory of rights that lead up to his endorsement and problematisation of the compossibility requirement. For example, I will not question the Hohfeldian correlativity of rights,⁶ hence when I refer to hypothetical sets of rights, I am also referring to the correlative duties to all the rights in that set.

⁵ I am using interference here to mean when one action stops or prevents another action from taking place. Interference in this sense is to be understood as stopping an action from taking place, rather than merely frustrating one's plans or desires. (Though, of course, stopping another actor's actions from taking place will often frustrate her plans or desires.) For example, if *A* cultivates crops on a patch of land and *B* comes and digs up all the seed, then *B* has interfered with *A*'s crop-cultivation. But if *B* starts cultivating crops of her own somewhere else, and succeeds in selling the harvest to more customers, though this may interfere with *A*'s plans or desires, it does not interfere in her action – at least, not this particular action. I'm grateful to Eric Mack and Ralf Bader for both independently impressing upon me the importance of this distinction. A further point to note on interference is that, of course, *B*'s interference with *A*'s actions cause *A*'s actions to stop, but that causation is not sufficient for *B* to count as interfering. *B* can cause *A* to *choose* to stop her own actions. In such cases, we do not think of *B* as having interfered with *A*'s actions. So long as whatever *B* did to change *A*'s mind is mutually performable with *A*'s not changing her mind as is the case with acts of persuasion, it does not constitute interference for our purposes here. As Judith Jarvis Thomson says, to ask someone not to eat a salad does not interfere with her eating the salad, though it may cause her to not eat the salad, whereas holding on to the place so she cannot reach it does (1990: 53).

⁶ See Hohfeld (1917). For an argument against correlativity, see Valentini (2017).

Nor will I question the will-theoretic account of rights that he endorses (Steiner, 1994, ch. 3). Rather, I take everything up to the compossibility requirement for granted so as to shed light on what follows from it. I will not, therefore, give any argument in favor of the compossibility requirement.⁷

In the following section I will reconstruct Steiner's argument for extensional differentiability in more detail. Section 2 will give my argument against the necessity of extensional differentiability for compossibility. Section 3 will describe the structure of a set of compossible rights, given that extensional differentiability is sufficient but unnecessary to it. Section 4 will highlight a plane of contrast between this formulation and Steiner's vis-à-vis how they deal with the fragmentation of ownership rights. Section 5 will give reasons for why thinking about the necessary and not merely sufficient conditions for a compossible set of rights of justice is important.

1. From Compossibility to Extensional Differentiability

A set of rights is categorically compossible only if the actions and forbearances therein determined to be permissible or compulsory are jointly performable. Impossibility arises where two or more persons can act within their respective rights, and yet come into conflict due to the way they choose to exercise their rights.⁸ Or, alternatively, when two person execute their respective duties and thereby come into conflict. A categorically compossible set of rights ensures that no matter how persons exercise their rights, they never come into conflict in action.

Compossible rights tell us how to avoid conflict in our actions. If a conflict arises, it will be because one or more persons have transgressed their own duties and the rights of others. Whenever *A* incurs a duty to *B*, it must be the case that all other parties have duties to forbear from any action that would interfere with *A*'s execution of her duty to *B*. If third parties do not have those duties, they will be at liberty to interfere with *A*'s execution of her duty to *B*, meaning that *B* is denied her right (Steiner 1994: 89-90; 2009: 238-9).

The key to establishing what is required of rights to guarantee their compossibility is in identifying what must be true of a set of prescribed actions for them to be jointly performable

⁷ For criticism of the compossibility requirement, see Gaus (1996: 205), Knowles (1996: 398), Schmidtz (1996: 289-90), Dowding & van Hees (2003), and Kramer (2009). For Steiner's responses, see Steiner (1998: 131-2; 2009: 236-9).

⁸ In other words, that one of the actors interferes with the other, or that they mutually interfere with one another.

(1977: 769). Steiner says that where two actions spatio-temporally overlap, they are mutually preventative. For two actions to be mutually performable, it is necessary that their physical components – the time-indexed objects that they subsume – be entirely differentiable.

[Two or more] actions are incapable of jointly occurring if there is a partial coincidence between their *extensional* descriptions – if those actions simultaneously have at least one... of their physical components (objects or spatial locations) in common. (1994: 91, italics in original; cf. 1977: 769)

The actions that rights permit, prescribe, or proscribe, then, must be given in extensional – physicalistic – terms. Where the content of one right is extensionally differentiable from every other, no person's permissible action can spatio-temporally overlap with that of any other, so that everything falling under those extensional descriptions features under the forbearances prescribed in everyone else's duties.⁹

Since all rights are rights to time-indexed physical objects, they may be regarded as property rights. Rather than what Steiner calls action-based domains, untethered to particular times and spaces (e. g., the right to privacy, to vote, to protest, to a fair trial, to free-speech, to health-care, etc.), rights must be title-based domains – rights to the disposition of specific objects at specific times. Whilst we may often find it useful to refer to these title-based domains using action-based language, such terms can only ever be surrogates for the extensional descriptions of what our rights are really rights to. A right to free speech, to be right at all, must be a right to one's vocal chords, and to particular space to occupy as one speaks, and to the particular airwaves one utters into, etc., at a particular time. (1994: 100)

Steiner's pure physicalism here is mistaken, however. Compossibility does not *require* extensional differentiability of rights, although it is *guaranteed* by it. Whilst a set of rights assigning protected, physical domains to each individual is sufficient for ensuring that no permissible actions will stand in preventative relation with any other, it is not necessary. Steiner says that 'one individual's action cannot interfere with another's if *and only if* none of their respective physical components is identical.' (1977: 796, italics added) It is this '*and only if*' that I believe is mistaken. Whilst sets of extensionally differentiable rights are indeed compossible, it

⁹ The same is true when duties are positive performances rather than forbearances, as I say in the text below.

is not the case that a set of rights must be extensionally differentiable for it to be categorically compossible. Two or more actions can share time-indexed physical components without being mutually unperformable, and hence where rights are assigned to specified non-mutually interfering actions that are not extensionally differentiable, then no impossibility arises.

2. The Non-Necessity of Extensional Differentiability

Whether or not a particular object can be subsumed into two different actions at the same time without those two actions thereby coming into conflict is knowable only in the context of an understanding of the action in question as an intentional activity – that is, with an account of its meaning, purpose, or end.

Consider an example: let us stipulate that *A* has a right to practice yoga at some particular location, at any time. Let us also stipulate that *B* has a right to set up a Wi-Fi network at an adjacent location. The radio waves from her wireless router permeate through the space in which *A* does her yoga practice. Given that the action *A*'s right permits her to engage in, and the action that *B*'s right permits her, respectively, to engage in, simultaneously share physical components, they are, under Steiner's account, mutually unperformable. Therefore, under Steiner's account, *A*'s and *B*'s respective rights in this instance are impossible. The very same time-indexed spatial coordinates are implicated in both *A*'s yoga practice and *B*'s Wi-Fi network – indeed, they implicate many of the very same atoms at the exact same time (the air and floor that compose the location at which *A*'s yoga practice occurs, as well as *A*'s body itself, since the Wi-Fi signal will penetrate her skin). According to Steiner's account *A*'s yoga right and *B*'s Wi-Fi right are impossible because the two actions that are respectively permitted by those rights 'conjunctively suffer from... extensional overlap' (1994: 91). An extensional description of *A* exercising her yoga-right will share terms with the extensional description of *B* exercising her Wi-Fi-right, and yet these two activities do not interfere with each other, but rather, are mutually performable. One knows this so long as one knows what yoga and what setting up a Wi-Fi network are as intentional activities. *A* doing yoga within the range of *B*'s WiFi router does not interfere with the network, and harmless radio-waves surrounding and penetrating *A*'s body while she does yoga does not interfere with her practice. Given the kinds of intentional activities they are, they do not interfere with each other merely in virtue of their conjunctive occurrence in the same space at the same time. To know that, we need to be acquainted with more than just the physical facts. We also need

to know what kind of intentional activities these are. A physicist can tell us what interferes with WiFi signal, but she can only under some understanding of what that WiFi signal is *for*.

If *B* also had a right to fill the location adjacent to *A* with gas and ignite it, resulting in the explosive destruction of that area, as well as all surrounding locations, this right *would* be impossible with *A*'s right to do yoga. It is not *merely* because the physical components of *B*'s action overlap with those of *A*'s, but because of the nature of the action itself, and the way it renders the physical components unsuitable for subsumption into *A*'s actions, given what those actions are. It is only an understanding of the nature of the actions qua intentional activities in conjunction with their respective physical components that yield a judgement regarding any relation of prevention between them. Assigning persons merely extensionally differentiable rights partitions action-space beyond that which is necessary to service the compossibility requirement, as these examples illustrate.

It is indeed the case that if *A*'s yoga-right were a right to practice yoga *simpliciter*, not tied to any particular place or time, then this would be impossible with *B*'s Wi-Fi-right. In this case, *A*'s right would permit her to practice yoga in the very spot *B* needs to plug in her router – placing one of her hands over the plug socket needed to supply power to the router, say – and thus interfere. However, where rights to particular actions are also specified in terms of the time-indexed objects they may subsume, impossibility can be avoided. Given the intentional actions that yoga and setting up a WiFi network are, we know that as long as *A*'s right to do yoga is tied to a certain range of space and time, its exercise will not interfere with *B*'s setting up her WiFi network. But that range of space and time *can* overlap with the range of space and time described in *B*'s right. Whether or not such overlap gives rise to mutual unperformability of the actions and thereby impossibility between the rights thereto, is a question that can only be answered in light of an understanding of the actions as intentional actions, not as mere physical events. Therefore, such specification needs to be given, and if non-interference is guaranteed by that specification, then compossibility obtains.

In order for a set of rights to be compossible, it is necessary that the actions therein permitted, prescribed, and proscribed, be mutually performable, but mutual performability does not necessarily require extensional differentiability. Extensional differentiability of actions is sufficient for their mutual performability, but not necessary to it. What is necessary is that actions that are not completely extensionally differentiable are not thereby rendered mutually preventative

given their intentionality. Whether or not this is the case cannot be cashed out in purely physicalistic terms, but also requires the terms of intentional activity.

3. A Reformulation of the Structure of a Set of Compossible Rights

Steiner's dichotomy between title-based and purpose-based rights (1994: 91-92) is, therefore, a false one inasmuch as we need not pick one or the other. Though extensional differentiability is a sufficient condition for compossibility, and hence title-based rights can feature among a compossible set, it is not a necessary condition. All rights can be purpose-based, where the purposive actions in question are also specified in relation to time-indexed physical objects, in addition to their description qua intentional actions. So long as those actions are non-interfering, given their intentionality and extensional description, rights thereto are categorically compossible. It is not a right to a time-indexed object, but a right to an action that is specified, in part, by the time-indexed objects it subsumes. Steiner is right to say that rights that are *merely* purpose-based can give rise to impossibilities (as in the case of the general right for *A* to practice her yoga whenever and wherever she chooses), but he was wrong to say that rights must therefore be extensionally differentiable, simply because they must be, in part, extensionally specified.

It is possible for two actions to take place with one or more of the same physical components, and hence individual rights to those several actions can be assigned to different persons. The mutual performability of two actions hinges not merely on whether or not they have shared physical components, but on the nature of their subsumption of those physical components, and whether their mutual subsumption is complimentary or preventative. Hence, rights can be specified in terms of actions, where the material object of those actions is specified along with them. Whilst physicalistic specification is part of the content of any right in a compossible set, we need to know more than that aspect of its specification to know whether it is compossible with the others in the set. Again, it is not physical differentiation which is the necessary condition of compossibility.¹⁰ What must differentiate rights, though, is not merely those objects, but the compatibility of the actions that subsume the same objects. There is no way to formally specify in advance the characteristics of those actions beyond their non-interference with any other rights-

¹⁰ This account does not, therefore, problematically supervene on a physicalistic account. Rights must, in part, be extensionally specified, but they need not be extensionally differentiable. I am grateful to James Pattison and Hillel Steiner for raising the possibility of this objection.

protected action. We therefore need information regarding the nature of rights-protected activities qua intentional activities before we can know whether or not they are compossible. Merely physical information isolated from an understanding of action qua purposeful human activity is inadequate.

Although I illustrate with an example including only two agents, and hence illustrating impossibility between rights, the same is true of impossibility between duties. If *A* owes *B* a duty of *x*, and *A* owes *C* a duty of *y*, it needs to be the case that *x* and *y* are jointly performable for those duties, and hence the set of correlative rights, to be compossible. Again though, so long as *x* and *y* are specified as particular actions in conjunction with time-indexed physical objects which, given the kinds of action they are and not merely the time-indexed physical objects they subsume, are mutually non-interfering, then any arrangement of duties to engage in these positive performances will not lead to conflict, and hence those duties are compossible.¹¹

4. The Fragmentation of Ownership

For purposes of expositing the distinction between Steiner's formulation and the one defended here further, it is worth making the following note regarding the fragmentation of ownership.

Since all rights, under Steiner's view are property rights it is important to distinguish between mere property rights in general, and what is typically called *full liberal ownership* in particular. Full liberal ownership is a particular bundle of various juridical incidents with regard to the owned thing, whereas *property rights* could refer to any one or more of the various incidents that compose full liberal ownership.¹² Whilst Steiner's view can tolerate the fragmentation of full liberal ownership, and its various incidence being assigned to different persons, it cannot tolerate the inter-personal fragmentation of the claim-rights therein. Whereas the reformulation offered here can.

A. M. Honoré famously theorized that property ownership can be analyzed into eleven separable juridical incidents pertaining to the owned object. These are the right to possess, the right to use, the right to manage, the right to income, the right to capital, the right to security, transmissibility, absence of term, prohibition of harmful use, liability to execution, and residuary

¹¹ I am grateful to Hillel Steiner for impressing upon me the need to cover this issue.

¹² For early uses of the bundle of sticks metaphor for rights of ownership, see Lewis (1888: 56) and Cardozo (1928: 26). See Penner (1996) for critique.

character (Honoré 1961: 123-4). On the standard analysis, when an individual owns an object, they hold all these incidents. Steiner explicitly says that compossibility does not require that rights come ready-bundled as full liberal ownership:

The compossibility of all the rights in a set, though it requires that these rights be property rights – titles to the disposition of physical things, implying forbearance duties in all others – does not require that they be modelled on the liberal concept of unencumbered full ownership of a single object by a single person. Extensional differentiability is the necessary and sufficient condition of their being compossible. And extensional differentiability does not require full liberal ownership. (Steiner 1994: 99)

And indeed the final sentence is true: the rights of which full liberal ownership is composed are not all claim-rights with correlative duties in third parties. ‘Use’ is a liberty, and ‘management’ a power, for example (Honoré 1961: 123-4). Juridical incidents aside from claim-rights can be held by different persons and yet pertain to the same thing because they do not have correlative duties protecting spheres of action. They have a different juridical function to claim-rights – which enjoin upon others duties to engage in or abstain from particular actions – and hence if they pertain to the same object as a claim-right, do not give rise to impossibilities. Though full liberal ownership is often described as a bundle of rights, there is strictly speaking only one claim-right in it (that of ‘possession’), the others are liberties, powers, immunities, liabilities, and duties. (Honoré 1961: 123-4; Hohfeld 1913: 1917) On Steiner’s account, then, non-claim-right incidents must be extensionally specified, and differentiable from their opposite numbers, but not extensional differentiable from claim-rights. This means that the incidents that compose full liberal ownership of any given time-indexed object can be inter-personally dispersed.

Under the reformulation offered here, however, the claim of exclusive possession that constitutes full liberal ownership¹³ can itself be interpersonally dispersed. Multiple agents can have a claim-right with correlative duties imposed on all others to the very same object, so long as those claims are limited to certain, mutually non-interfering actions in conjunction with that object.¹⁴

¹³ And on some views, *define* it (Penner 1992: ch. 4; Schmitz 2009: 7; 2010: 80; 2011: 599-600).

¹⁴ Hence, the reformed version of the account can be used to conceptualise various forms of common property arrangements where a resource is not parceled, and yet there is no single agent with a claim-right to the resource as a whole, such as the common-pool arrangements studied by Elinor Ostrom (1990). The only way to understand such

Whilst Steiner's account allows full liberal ownership to be fragmented, the buck stops with the claim to exclusive possession. My formulation however breaks open this purportedly atomic juridical incident so that the 'despotic dominion'¹⁵ of exclusive possession can be simultaneously shared—in specified ways – between agents.

5. The Relevance of Necessary Conditions

Granting that my thesis is correct – that what Steiner claims to be a necessary condition for compossibility is in fact only a sufficient one, a residual objection might be something like the following: This has little or no bearing on the status of any substantive theories of rights constructed within the limits of Steiner's system, since they are still compossible. Why ought we to be concerned about laboring under the presumption that all rights must be extensionally differentiable since any such set will end up being compossible anyway?

It is trivially true that any set of rights that complies with the sufficiency requirements for compossibility will be compossible. But I think there is a good reason to *push up against* the necessary conditions when constructing substantive sets of rights, rather than leaving open space in the realm of rights. Where two actions that simultaneously share physical components can take place at the same time, assigning rights to those shared physical components to only one party needlessly excludes the other without such exclusion serving compossibility.

The problem with partitioning action-space beyond the point at which it serves compossibility is that the whole point of beginning the enterprise of partitioning action-space is to construct a set of compossible rights. If we partition action-space any further than is necessary, we are building too much exclusion into the system than serves the set of actions that the set of rights is there to render mutually performable.¹⁶ For *A* to have a right to do yoga some place, she does not *need* a right to stop *B* from setting up a Wi-Fi network nearby. Constructing rights with the purpose of serving human activity (in this case, yoga) that obstruct activity (setting up Wi-Fi)

arrangements is that the group of users shared in the right of exclusive possession, and the power thereto. Under the original formulation, it would be hard to see such property regimes as anything other than a mess.

¹⁵ William Blackstone described property as 'that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe.' (1753: II.I)

¹⁶ As Eric Mack says, the claim rights in any set ought to only extend so far as is necessary to protect the liberty rights in that set (2015), and liberties protect particular kinds of intentional activity.

where such obstruction does not serve this prior purpose is to over-step the brief of rights as the elementary particles of justice. As David Hume said,

For what purpose make a partition of goods, where everyone has already more than enough? Why give rise to property, where there cannot possibly be any injury? Why call this object *mine*, when upon the seizing of it by another, I need but stretch out my hand to possess myself to what is equally valuable? Justice, in that case being totally useless, would be an idle ceremonial, and could never possibly have place in the catalogue of virtues. (Hume 1751: II.I.2)¹⁷

Conclusion

What I hope to have shown is that a set of compossible rights can assign individuals domains which may in principle spatio-temporally overlap with others. Rights pertain to particular intentional actions in relation to particular time-indexed objects, rather than to time-indexed objects simpliciter. The intentional action that features in the description of a right is not a mere surrogate for some underlying physicalistic description that really characterizes the domain of that right, but is rather part of its essential structure, and plays a role in vindicating its compossibility alongside other rights. Steiner's dichotomy between title- and purpose-based domains is therefore a false one since purpose-based domains can be described in both intentionalistic and physicalistic terms, and indeed must be so described in order to yield a determinate judgement as to its compossibility with other protected domains. Whether or not rights under this view can be viewed as *property rights* is a question for another time.¹⁸

¹⁷ Hugo Grotius, similarly remarked that 'the taking of Possession obtains only in Things that are limited' (Grotius 1625: II.II.III.2) He took it that things that could not be occupied by human activity in such a way that prevented others from likewise occupying them must remain in common, and not reduced to any individual's property. This idea was the bedrock of his treatise-long insistence that the sea must remain a commons (1608)

¹⁸ An earlier draft of this paper was presented at a conference on Liberty and Well-Being at Oxford University, June 2017. I am very grateful to Peter Jaworski for his comments, as well as Dan Waxman, Jessica Flanigan, Bas van der Vossen, and Ralf Bader. I am particularly grateful to Ralf for giving considerable feedback on drafts since then. The paper also benefitted from lengthy discussion with James Pattison, Hillel Steiner, and Eric Mack in relation to the preparation and defence of my Ph.D thesis, submitted in August 2017, which contained a kernel of the argument presented here. I also thank two anonymous referees for *The Philosophical Quarterly* for their very helpful comments.

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