Answer to Professor Pascal Salin
Debate: Monopoly, property rights and competition

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I thank Professor Pascal Salin for his contribution to this debate about monopoly, property rights and competition. It was an honour for us to have the possibility to interview him and it is an honour to have now the possibility to receive and publish his stimulating intervention.

In his reply to a previous comment, Professor Salin claims that there is no real difference between a case of monopoly in which there are no entry barriers (such as the case of Microsoft, if for simplicity we wrongly assume that it has no good-enough competitors), for which we both agree that there is no justifiable reason for state intervention, and a case of monopoly in which there are insurmountable entry barriers (such as the case of the owner of the only possible railway between two cities). In my previous comment, I had argued that this second case is structurally different from the first.

Professor Salin's argument rests on the consideration that in a free market there is no general freedom to enter a property, whereas there is freedom to buy or sell that property. "Property rights are rights to exclude (others from the use of the owned good)", and every piece of property by definition excludes others from it. Therefore, "The problem is a problem of property rights, and not a problem of competition (more or less precisely defined)".

In order to illustrate his point, Professor Salin makes the example of a particular piece of land with a very beautiful view: whoever owns that particular piece of land is a monopolist, for there is only that particular piece of land with that particular view. The shepherd's property rights on that particular piece of land exclude all others, but do not prevent the businessman from offering to buy that land in order to build a successful restaurant there (provided his offer is sufficiently attractive for the shepherd) and, later, a TV broadcasting company to buy that piece of land from the businessman in order to build there a TV antenna (under the same conditions).

Until now, I personally find Professor Salin's argument not only illuminating, but perfectly convincing and, environmental issues aside, I completely agree with it and its moral premises.

Professor Salin continues his argument stressing that the case of the particular piece of land is not really different from the case of the only possible railway between two cities, and that today we perceive it to be different "because we assume implicitly that, in this specific field, private property rights are not well defined". In particular, we wrongly assume this because the state, in the name of the "public interest", nationalized (or reserved for itself the right to build) the only possible railway between those two cities and therefore, if it sold that railway to a single company, it would be granting a privilege to a particular company, a privilege which would be unfair not to grant to others. Therefore, in this case, the lack of

competition that would result would come, “not from the specific nature of a railway, but from the existence of an arbitrary privilege which is obtained by using constraint to destroy certain property rights and to create a new one”. If the state had not nationalized the railway in the first place, there would have been no privilege, and therefore no problem of competition, as in the case of the particular piece of land: the creation of the railway would have been the result of a series of free, voluntary, individual contracts between the creator of the railway and the owners of the particular pieces of land which, combined together, would have made possible the construction of the railway. As in the case of the restaurant, this process would have involved free and voluntary purchase and sale of legitimate property rights, and “property rights are rights to exclude. But the existence of rights to exclude does not mean that there is no competition. Competition is suppressed not by the fact that there cannot exist several different uses of a piece of land at the same time, but by the fact that a privilege is granted to one person, while other ones are excluded. Thus, competition could be defined as a situation in which there is freedom to act but only within the limits resulting from others' property rights”.

Now, I am not entirely convinced that this second part of the argument proves that there is no difference between the Microsoft case and the railway case.

Before illustrating my tentative argument, I would like to emphasize that in my previous comment I had not based my argument that the railway case is different from the Microsoft case on the implicit assumption that, in the former, private property rights are not well defined (for simplicity, let us call this the “privilege assumption”). On the contrary, I had fully and explicitly recognized that, in the case of the only possible railway between two cities, state intervention would necessarily violate the property rights of the creator of the railway, and that these rights were legitimate property rights, for the same reasons that Professor Salin has illustrated.

However, I had also claimed that, in the case of monopoly with insurmountable entry barriers, at the same time other presumed principles of justice cherished by liberals could be violated. Professor Salin argued against this claim, stressing that "the owner of the railway is not harming others, since they have no right on the railway and the pieces of land on which it is built. There are external effects – as in any human action – but they cannot be labelled as harmful as far as legitimate property rights have been defined".

I believe that this is the key point on which Professor Salin and I may have a different opinion. Professor Salin's illuminating reply gave me the opportunity to realize that my argument was incomplete and to attempt to improve it. In order to do it, I shall use the following two examples.

Let us imagine that Mr. Guglielmo Marconi (1874-1937), immediately after discovering the radio, established a TV and radio broadcasting company using all frequencies for radio and television for different channels. Being Mr. Marconi the first person to discover the radio and a commercial use of it, Professor Salin and I (though probably not John Locke) may perhaps agree on the fact that he has a legitimate property right on those frequencies and/or on their commercial use. However, on the other hand, the fact that a single man is in control of *all* TV and radio information, for example, may be a violation of my right (if it exists) to plurality of information, that is to exclude other individuals from the direct control of all TV and radio information available. In addition, and perhaps more importantly, at least until broadband internet access will be universally available (which, at least in Italy, will happen many years from *today*), the fact that today a single man is in direct control of all radio and TV can be a major threat to the very existence of a political system based on the rule of law, that is of a political system which protects and enforces as much as possible *all* legitimate property rights.

Incidentally, this is especially true in an epoch in which, unfortunately, democracy is identified with that political system based on majority rule and representation (so that the more group decisions by representative authority, the better), rather than on its maximum possible limitation (so that the less group decisions by representative authority – i.e. the more space for uncoerced, legitimate, voluntary interaction among individuals - the better): in fact, today radio and especially TV are an exceptionally efficient tool to form majority opinion.

In this situation, the legitimate property rights of the discoverer of the radio and of the commercial use of it may have to be balanced against other people's (presumed) rights to plurality of information, and against their (presumed) rights to protect the rule of law from a major threat.

I emphasize that these are “presumed” rights because I personally agree with a view of the law according to which, because it is the result of a slow, dispersed and spontaneous process of selection of successful uses, conventions and institutions (i.e. of uses, conventions and institutions which, as in the case of private property, in time demonstrated to enhance the chances of survival of a community, for example by reducing internal conflict, and therefore slowly survived and emerged as *moral principles*), the law exists *before* legislation and independently of authority. As a consequence, what is “legitimate” has to be discovered, not to be decided. Even if tomorrow, in a referendum, the whole population of Europe voted against private property (and therefore in favour of the “right” to exclude private individuals from the possession of property), this would be enough to make private property illegal, but it would have no influence whatsoever on its legitimacy, that is on its moral value. In this case, this decision would be illegitimate and violating the rule of law, as the Nazi decision to persecute the Jews was and did. In other words, the assessment of legitimacy requires a very delicate and elevated form of intellectual activity, similar in a way to that of an archaeologist (an archaeologist of the law), and directed to discover an abstract, general principle: because I do not have this intellectual capability, I

can only presume that a right is legitimate. (A legitimate property right in the sense used by Professor Salin, e.g. a property right one has acquired via uncoerced, voluntary transactions, from a liberal perspective is so obvious and evident that it is legitimate, that it does not have to be "presumed" to be such).

A somehow similar case to the one of the radio is the one of a country in which all accessible water supply, through a series of individual, free and voluntary transactions, follows under the direct control of Water Limited, a private company owned by one single person, Mr. Water. In such a situation, Professor Salin and I may perhaps agree on the fact that Water Limited has a legitimate property right on the businesses it has individually purchased without violating any abstract, general principle I can think of (that is, any law). However, on the other hand, the citizens of that country may have (individually) a legitimate right to the fact that their lives do not depend on the whim of others, that is a right to exclude others from having absolute power on their own survival.

These two (admittedly extreme) examples, are, on the one hand, similar to Professor Salin's example of the particular piece of land because they are also two cases of monopoly based on legitimate property rights. On the other hand, however, in my opinion they are also fundamentally different from that example because of two main reasons. The first reason is that in these two examples the monopoly covers *the whole industry*, not a particular case. In other words, it is true that, if the owner of the restaurant on that particular piece of land does not accept me because he finds out that I am in love with his wife, I will not have the unique possibility to eat in a restaurant while enjoying that spectacular view; however, this does not imply that I will not have the possibility to eat in a restaurant, for the restaurant market does not have entry barriers. If Mr. Marconi, however, broadcasts only TV programs in favour of his preferred political party, no citizen will have the possibility to watch on a different TV channel the arguments of a competing candidate. And if Mr. Water decides that for him it is more convenient to sell all his fresh water to another country, in particular circumstances it may happen that no individual has

the possibility to buy fresh water from a different supplier (the situation obviously would not be different if only some individuals would not have this possibility).

It is true, as Professor Salin emphasizes, that the concept of industry is arbitrary (does a company producing tomato sauce belong to the tomato industry or to the food industry?), but in my opinion only to some extent: whether radio and TV are an industry by themselves or part of the media industry is relatively unimportant compared to the fact that their direct and complete control involves systemic risks hardly acceptable for a liberal.

For simplicity, let us label "natural monopoly" a monopoly protected by insurmountable entry barriers. Because Professor Salin in his reply does not explicitly mention any fundamental difference between "natural monopoly" in a particular case and "natural monopoly" in an entire "industry", he can argue (rightly, I believe) that the cases of "natural monopoly" are in fact very many. On the other hand, because, as I tried to explain, I do see a fundamental difference between "natural monopoly" in a particular case (which is not only necessary and unavoidable, but more importantly just and legitimate) and "natural monopoly" in an entire industry, and because I tend to consider dangerous and avoidable only the second kind of "natural monopoly", I am inclined to believe that "(potentially) dangerous natural monopolies" are rare. In other words, before reading Professor Salin's reply, I used to identify "natural monopoly" with what here I labelled "(potentially) dangerous natural monopoly", that is a monopoly extended to an entire industry and protected by insurmountable entry barriers. Now, after reading his illuminating reply, I am convinced that a "(potentially) dangerous natural monopoly" is only a particular form of "natural monopoly".

The second reason (also in terms of importance, I believe) is that, in Professor Salin's example, the particular piece of land can have many different alternative uses: land for sheep, golf playground, restaurant, hotel, mobile telephone antenna, TV antenna etc.

However, in Mr. Marconi example those radio frequencies do not have so many different alternative uses, so there could hardly be any Mr. B or Mr. C available. Also in Mr. Water example, monopoly on fresh water supply would in fact place the monopolist in a position for which there may be no Mr. B available: in fact, it may happen that for no other use of water people will pay more than for drinking in case someone could exploit the full monopolistic power on drinkable water.

Therefore, to go back to the main point, it is true that individuals different from the monopolist "have no right on the railway and the pieces of land on which it is built". However, they may have some legitimate rights on other things, which the legitimate property rights to the monopoly of the entire industry may violate. If these competing legitimate rights exist, harm would not be avoidable: different rights would have to be (arbitrarily?) balanced, and the final decision may also depend in part on the consideration of the particular circumstances and characteristics of each specific situation.

In my previous comment I had said that I could not say whether the particular case of the railway would be eligible for state intervention, because this would depend on the particular circumstances and characteristics of each specific situation. Now, after reading Professor Salin's reply, I may add that I could not say it also because I do not know whether in this particular case there are competing legitimate rights. More specifically, I am inclined to believe that the fact that a "natural monopoly" is extended to an entire industry does not, by itself, necessarily and automatically involve a violation of legitimate rights: in my opinion, it may depend on which industry we are talking about (which may however be considered as one of the particular characteristics of the specific situation). In other terms, not having access to fresh water or to pluralist information is different (and may be significantly so, for the purpose at hand) from not being able to go from Rome to Milan by train. Therefore my example of the railway might have been not entirely appropriate, and I thank Professor Salin for giving me the opportunity to realize that and to improve, I hope,

a position whose underlying fundamental approach, however, remains not entirely different from the previous one.

In conclusion, Professor Salin claims that "Competition means that there is free entry into a market, but it does not imply that it is actually possible to enter it". I do not completely agree with this claim. In my opinion, I would agree more on the following statement: "competition means that there is free entry into a market, but, provided that there is no violation of *any* legitimate right, nor a systemic or major threat of it, it does not imply that it is actually possible to enter it", where by "legitimate right" I intend what I said earlier, and therefore also other possible legitimate rights competing with the existing legitimate property rights of the monopolist and which are not decided to be legitimate but *discovered* to be so.