

## A further comment to Mr. Birindelli's remarks

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From our previous discussion, it seems that Mr Birindelli and I do agree on the fact that defining competition and monopolies is not an easy task, but that the real issues are about the role of property rights and the freedom to enter into a market. Now, Mr Birindelli introduces a new distinction, the one between a monopoly concerning one single good or activity and a monopoly concerning a whole industry. And he stresses that a liberal ought to be concerned by the fact that a monopoly in a whole industry might be a threat upon widely accepted liberal principles. To that end, he gives a striking example, the one of an hypothetical situation in which some Mr Marconi, discovering the radio would get hold of all frequencies for radio and television channels, so that he would have a complete monopoly over a whole industry which can be considered of primary importance in a free society. In such a case, he writes, there would be a risk that plurality of information – which liberals do cherish – would no more exist.

Now, I think that two sorts of answers can be given, so that this example may not be considered as an illustration of possible exceptions to the statements I have made previously. In fact, I stressed previously that competition did not mean freedom to enter

into a market at the expense of legitimate property rights. Now, the problem of Mr Marconi shifts back to the problem of determining to which extent Mr Marconi has legitimate rights to own the whole spectrum of frequencies, just because he has discovered their role. In fact, liberals have always stressed that a legitimate right does not stem just from the fact that someone is the first one to claim that he is the owner of something which had not been owned until then. There is no more basis for Mr Marconi to claim that he is the legitimate owner of all frequencies all over the world than there would be for Mr Christopher Columbus to claim that he is the legitimate owner of all South America and the Caribbean just when he puts one leg on South American land. New legitimate property rights are created not only when someone discovers a new use of something, but when he does mix his own work and faculties with some resource in order to transform it and create a new value. As was stressed by John Locke, someone cannot claim that he is the legitimate owner of a piece of land which was unused until then, except to the extent that he has actually transformed this piece of land by mixing his own labor with it. The individual – if ever he has existed – who discovered that, by cutting in a special way some category of stone, he could get a desirable diamond, cannot be said to be the legitimate owner of all diamonds in the world. He has issued a new idea, but he is the legitimate owner of the diamonds he has got by applying his idea and cutting himself some stones (or paying some people to cut them). Similarly, Mr Marconi could be the owner only of frequencies he is using by himself (or for which he is paying people to manage the radio or TV channels). By the way, it is exactly this scheme which has been used by Courts, especially in the US, at the beginning of radio broadcasting. The Courts recognized the rights of those who had been the first ones to actually run a radio station, using specific frequencies on a given area. But someone else was the legitimate owner of the same frequency if he was the first one to use it on a different area.

But there may be an even more important reason not to follow the distinction made by Mr Birindelli between a "good-monopoly" and an "industry-monopoly". Let us take again the example of Mr Marconi and let us assume that he is the "legitimate" owner of all

frequencies all over the world (either because he has actually used them or because one considers that the one who issues a new idea is the owner of this idea and of all possible applications of this idea, which is much debatable). Mr Birindelli would say that there is a conflict of principles between, on the one hand, the legitimate property rights over the frequencies and, on the other hand, the need for plurality of information. Now, both principles have not the same status. A liberal society is a society in which legitimate property rights are respected. But respecting a plurality of information cannot be considered as a legitimate principle of a free society. In fact, saying that the members of a free society have a right to plurality of information would imply that each member have a right over other members (including Mr Marconi) to get something which is called plurality of information. But, attributing to members of a society such a "right to" is not compatible with the necessity to be respectful of others rights. If the rights of Mr Marconi are legitimate, one cannot say at the same time that other people can legitimately take part of these rights. The distinction made by Mr Birindelli between both principles (legitimate rights of the owner and "rights to plurality of information") reminds me of the (wrong) distinction made by many non-liberal thinkers between formal freedom and concrete freedom (which, in fact, means "capacity to act"). We may regret that plurality of information does not exist, as we may regret that all people are not richer (and have a higher capacity to act), but this is a fact of life. It is both contradictory and illusory to try to reconcile, on the one hand, individual freedom and, on the other hand, the right to plurality of information or the right to equality in incomes. Therefore, it is dangerous to claim, as Mr Birindelli writes, that "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." But who will balance these rights one against the other and according to which guideline ? Who will define when plurality of information does exist and when it does not ? Which are the opinions which get the privilege to be broadcast and those which do not get it ? By stressing the principle of plurality of information, one takes the risk of justifying institutions which are not friendly to a free society. Just to give an example, in France, we have a regulatory organization

which is in charge of allowing radio and TV frequencies, under the pretext that plurality of information can thus be safeguarded. This organization is assumed to be independent, which in fact means that it has the power to decide arbitrarily. Its members decide according to their own prejudices and they act as if they were the owners of the frequencies (except that they do not manage the frequencies and do not get the returns). But they are not legitimate owners.

The other example given by Mr Birindelli – which seems very convincing – is the one in which Mr Water owns the whole amount of water resources in an area at the expense of those who live there and who would need these resources. Now, one cannot consider such a case without caring about its dynamics. Let us take two different assumptions. First, assume that in the far past, nobody was living in the concerned area and nobody used the water. Mr Water arrives and uses the water to drink and to grow vegetables. He is the legitimate owner not of the whole river, but of the use of the necessary quantities he needs regularly. Now, if ever someone else is coming he may also become a legitimate owner, if there is enough water available, or he may buy some use of the water to Mr Water. In any case, there is no possibility for Mr Water to become a "monopolist" except by using constraint.

Second, assume that the first legitimate owners of the different uses of the river are people other than Mr Water. How could Mr Water become a monopolist ? By using constraint, in which case he is not a legitimate owner, or by buying rights to the legitimate owners. But, in this later case, those who sold their rights have no reason to complain. If they have no more water to drink, they may go to another place, but they did know that when selling their rights. And if ever newcomers come, they do know that they can survive only by buying rights to Mr Water, if ever he agrees. Therefore, it is impossible to imagine a situation in which some people would have legitimate rights on the water owned by Mr Water, so that the rights of Mr Water could be limited or "regulated".

Now, Mr Birindelli might argue in the following way. Let us assume that Mr Water is a "monopolist" in a given area and he has accepted to sell water to Mr Newcomer at a given price during a three-year period. But when the three-year period is over, he no more accepts to sign a second contract with Mr Newcomer and he is "abusing" his right. Mr Newcomer must leave the area and it is certainly sad. But there is no difference between this case and the case in which Mr Newcomer would rent a flat and the contract would not be renewed. When you sign a contract you know there is a risk, in particular if there is a "monopolist". But it does not mean that you have a right on Mr Water beyond what you have freely accepted. In fact, the only case I can imagine of a real monopoly corresponds to the situation in which the state (or some public authority) claims that all water resources belong to him and it delivers water under the conditions it decides arbitrarily.

In short, and contrary to what Mr Birindelli says, there is no difference between "not having access to fresh water or to pluralist information" and "not being able to go from Rome to Milan by train". Accordingly, it cannot happen that "competing legitimate rights exist" and there is no reason to decide that "different rights would have to be (arbitrarily ?) balanced" by some organization which would decide "on the consideration of the particular circumstances and characteristics of each specific situation", which would open the way to arbitrary decisions.