

Discovery, Capitalism, and Distributive Justice.
By Israel M. Kirzner. New York: Basil
Blackwell, 1989.

Israel Kirzner is a name familiar to all readers of the *Review of Austrian Economics*. Kirzner's association with Austrian economics began with the inception of his long and distinguished career. He attended Ludwig von Mises's seminar at New York University for many years and received his doctorate under the aegis of the great Austrian. His thesis concerns the history of doctrine, and another of his works is a textbook on price theory. But the bulk of Kirzner's career has centered around entrepreneurship. His books and articles on the entrepreneur have secured his standing as the leading Austrian authority in this area.

A dominant theme runs through Kirzner's many contributions on his chosen topic. The entrepreneur, as Kirzner sees matters, is engaged in a process of discovery. He does not combine resources that already exist to produce goods whose patterns everyone knows. If he did, the existence of profit would be mysterious. Instead, he brings new resources into existence. Further, the class of entrepreneurs must not be confined to a relatively narrow group of businessmen. Kirzner regards the need for entrepreneurship as universal. Everyone must constantly adjust to unpredictable circumstances in an ever-changing world.

With the details of Kirzner's view of the entrepreneur, and his account of the market as a selective agent, we are not primarily concerned here. Though much of *Discovery, Capitalism, and Distributive Justice* is devoted to an account of precisely the topics just mentioned, the book's key theme (discovery?) lies elsewhere. Kirzner believes that his approach to entrepreneurship can be used to help resolve the much-debated issue of distributive justice.

Kirzner advocates what he terms the "finders-keepers" principle. If someone picks up an unowned sea shell at the beach, does he not become its owner (p.69)? After all, he found it: even if other people admire the shell and wish it were theirs, the discoverer has been first in the field.

One might initially object to Kirzner that "finders-keepers" covers only the exceptional case—does it apply to anything besides small objects that stand ripe for the picking? Kirzner emphatically disagrees, and it is here that his view of the entrepreneur enters the scene. Someone who devises a new use for a good or service has in effect brought that good into existence. Kirzner of course does not ascribe to human beings the divine prerogative of creating matter out of nothing. Rather, he holds that someone who discovers a new use for a resource has brought the resource (not the matter of which it is composed) into being. Until someone realized that oil can be used as fuel, it had not begun to exist. The fact that it lay in the ground for untold thousands of years before its economic "creation" counts for nothing.

Kirzner uses this view of economic creation to extend the finders-keepers rule. Far from applying only to the odd object that someone picks up, the principle has near universal application. Whenever someone thinks of a new use for something, he has created an economic good. Finders-keepers applies and he owns what he has made.

Kirzner does not claim that his extension of finders-keepers suffices for a complete account of property rights. Quite the contrary, he thinks of it as a supplement to property rights accounts based on self-ownership, such as the theories of Murray Rothbard and Robert Nozick. It is, however, a supplement that threatens to devour the views it has been devised to aid.

Before turning to Kirzner's application of finders-keepers to natural rights, a preliminary task of analysis confronts us. How strong is the case for Kirzner's principle? To begin with the ordinary version of finders-keepers, before Kirzner extends it through his doctrine of resource creation, a crucial ambiguity lies at hand.

Someone who first picks up a stray object usually is recognized as its owner: so far, so good. But is this just a rule-of-thumb that applies only within a theory of property which has been constructed on other grounds, or does it apply whenever an unowned object is discovered? On the first alternative, finders-keepers is simply a summary of certain rules within a legal code. A rule might, for example, provide that if one discovers a wallet whose owner cannot be identified, one must first report the incident to the police. If no one claims it within a month's time, the finder owns it. This procedure is

simply an artifact of a particular legal system. Other legal codes might well handle the situation in a different way, e.g., by using lost property to reduce the tax burden.

On the second alternative, which Kirzner clearly favors, matters look different. Here, any object that someone first acquires becomes his. Finders-keepers is here not a mere addendum to a legal system but the sum and substance of the law code. If this is what Kirzner has in mind, in what sense has he arrived at an alternative to the standard Lockean account? As contemporary Lockean theories conceive of things, land and natural resources start unowned: the first person to meet the requirement of the principle of initial acquisition becomes the owner of what he has taken. Kirzner's finders-keepers doctrine, taken this way, just is a version of Lockean property rights.

I do not regard this as an objection to Kirzner, since the Lockean account seems to me correct. But Kirzner presents finders-keepers as an important supplement to the Lockean account, not a restatement of it. Although himself attracted to the Lockean view, he thinks that many people have moral intuitions that prevent them from fully accepting this doctrine. He notes, for example, that some people will refuse to accept exchanges based on wrong information as fully voluntary. People who take this position will reject the moral Nozick draws from his Wilt Chamberlain example. They will not agree that all bargains that begin from a just starting point preserve justice. They will instead wish to impose much more rigid requirements for voluntary exchange than libertarians have in mind.

Kirzner believes that finders-keepers enables advocates of a libertarian system to avoid a direct confrontation with these non-libertarian intuitions. Since nearly everyone accepts the finders-keepers rule, no direct challenge to moral intuitions need take place.

But this requires that finders-keepers be a different principle from a Lockean rule of acquisition. Otherwise, he would have no other reply than garden-variety Lockean do to the moral intuitions he wishes to circumvent. What then is the difference between finders-keepers and other Lockean accounts? If finders-keepers is taken in a way sufficiently broad to have critical bite, I cannot see that it counts as anything but a variant of Lockean property-rights theory. Kirzner's obvious reply is to move between the horns of my dilemma. He might claim that finders-keepers has moral force independent of particular legal systems. At the same time, the principle is not a full-fledged theory of justice. I shall address this reply at a later point.

Kirzner might also reply that this objection misses the crucial

point. On his view, the creator of a new use for a resource brings the good into existence. This position does not feature in the standard Lockean presentations. Here lies the key to the mystery: once the creativity of the entrepreneurial discoverer is taken to heart, the true power of finders-keepers stands apparent. The structure of Kirzner's argument can be set out like this: (1) practically everyone acknowledges the finders-keepers rule; (2) the scope of the rule is far-reaching, because the discoverer of a new use for a resource creates the resource; (3) the finders-keepers rule resolves issues of distributive justice in a way Lockean will favor, but without relying on controversial moral assumptions. The sketch of the argument I have just presented does not purport to be a rigorous deduction. I have devised numbered premises simply for convenience.

This argument is less than fully convincing, although its force cannot be dismissed. If people come to realize that finders-keepers has much greater scope than they at first imagined, it does not follow that they will accept the new, extended finders-keepers rule. They may instead think that the principle calls for a more precise and limited statement than they had initially thought necessary. Kirzner appears to think that someone who has non-libertarian intuitions will reason in this way: "Market exchanges are often not fully voluntary. How can Nozick and his friends fail to see so obvious a point? But what's this? There are Kirznerian entrepreneurs present in every exchange. Finders-keepers! Now my non-libertarian intuitions have been shown up as the illusions they are."

Perhaps some people will reason in this way; but it is not apparent why they must. If some people's non-libertarian views about voluntary exchange override the strength of ordinary Lockean property rights, why will bringing in finders-keepers change matters? These people may still hold to their original opposition to the free market.

Kirzner's argument is however not without merit. Non-libertarians who feel the force of his finders-keepers rule will face a challenge to their views. It is because Kirzner believes that his principle has overwhelming intuitive plausibility that he believes that its acknowledgement will overcome anticapitalist qualms. The crucial question then becomes: exactly how plausible is Kirzner's principle?

As I have already suggested, analysis of finders-keepers should follow a twofold path. First, the ordinary-language sense of finders-keepers is just a rule-of-thumb about how to handle lost objects. Though here I have little to oppose to Kirzner's intuitions than my own contrary ones, finders-keepers as usually taken seems no great shakes. If a dime drops out of someone's pocket without his noticing it, perhaps the person who finds it becomes its new owner (p. 151).

But suppose a wallet containing \$10,000 and a number of credit cards falls from the same pocket. Will most people say that anyone who finds it becomes its new owner? I hardly think so. And in cases where people do accept finders-keepers, how do we know that it has moral force independent of particular legal systems? If a legal system used other rules for dealing with lost objects, is it obvious that we would think these morally wrong?

But once more I may be accused of failing to grasp the essence of Kirzner's case. It is not just ordinary-language finders-keepers that he favors, but finders-keepers combined with his view of the discoverer as creator. Exactly at this point, I fear, lies one of my two most radical dissents from Kirzner's provocative analysis. It is not at all evident to me that someone who thinks of a new use for a resource does in fact own it. (I am at this point not challenging Kirzner's position that the entrepreneur creates new resources: I am instead questioning the implications about ownership which he draws from his view.) Does the first person who thought of commercial television own all subsequent television sets? How much money is the fortunate heir of the inventor of the wheel entitled to receive? If Kirzner protests that he wishes his principle of creativity to be more directly tied to physical production than my examples presuppose, what in his finders-keepers principle justifies this restriction?

Suppose however that we place to one side any unusual examples. Let us assume that Kirzner's theory resembles other libertarian accounts of the items it picks out as subject to ownership. Kirzner states: "I do not really wish to say that the first discoverer of a resource should be declared its just owner even if he did not raise a finger to take possession of what he has found or discovered" (p. 172). Regardless, then, of whether Kirzner's discovery principle justifies this restriction, no further cases will be presented that ignore it.

We are at last in a position to treat the decisive point. Is it in fact obvious that creators ought to own what they have made? In Kirzner's doctrine, an inventor seems, if anyone is, to be entitled to own what his ingenuity has devised (see pp. 158-59). But do people regard it as morally outrageous that inventors receive only limited patents? In point of fact, this issue of inventors' rights is a much-disputed one. Though I find plausible Rothbard's opposition to patents, the point here is not whether Rothbard, Kirzner, or some other scholar holds the correct view of the issue. Rather, the existence of moral dispute is what to my mind Kirzner has neglected. He thinks that once people realize the creativity of the entrepreneur, they will accept his finders-keepers principle. They will do so even if they have certain moral

intuitions of an anti-libertarian sort. But it is just false that everyone recognizes the intuitive force of Kirzner's principle. Even if he is right, he is not obviously right.

There is a connected issue where I find myself at odds with Kirzner. He seems entirely right to emphasize that without creative persons, little or no production can occur. How does it follow from this, though, that the entrepreneur brings into existence the use of a resource? Kirzner's argument confuses a necessary with a sufficient condition. Until someone had the idea of using oil for fuel, oil did not exist as fuel: equally, however, the idea without its physical embodiment does not suffice. Both are necessary. Kirzner's fallacy is analogous to the Marxist claim that labor is the source of value, since labor is almost always needed to create an economic good.

If this point is correct, then the extension Kirzner wishes to make from ordinary-language finders-keepers to his own comprehensive version lacks a basis. Even if Kirzner is right that first finders of objects acquire them, finders-keepers will not directly apply to those who devise new uses for things. These people have not brought anything besides their own ideas into existence: they cannot then claim to own physical assets on the ground that they have created them.

The objections raised above do not, if successful, throw finders-keepers entirely out of court. To the extent one finds the principle intuitively plausible, it can provide a useful supplement to Lockean theories of property. Kirzner has in my view radically overestimated the scope and power of finders-keepers; but his insightful and provocative analysis is an important contribution to the theory of distributive justice.

David Gordon
The Ludwig von Mises Institute